

Corruption and Anti-corruption Policy in Bulgaria

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EXECUTIVE SUMMARY

Corruption is widespread in most areas of Bulgarian public life. The most affected areas include the customs administration, public procurement, political party finance and possibly the judiciary. Privatisation has suffered from endemic corruption in the past, but may have improved. While public attention has focused on corruption of ministers and senior officials, for ordinary citizens corruption appears to be most widespread in dealing with customs, the health system and the police, and corruption in the local branches of an over-centralised State administration presents a particularly serious problem. The existence of a large grey economy, extensive smuggling networks and active (although perhaps weakened) organised crime groups has both exacerbated the problem of corruption and made fighting it more difficult.

Corruption and anti-corruption policy have been major political issues since 1997, when a new Government came to power on a platform that included the fight against corruption as one of its main priorities. The Government took important steps to limit the influence of organised crime on the economy. The subsequent Government approved a National Anti-corruption Strategy in October 2001, based not only on repression but also prevention and civil society involvement. Both the Government and civil society organisations have played a very active role in putting corruption at the top of the public agenda and formulating the national anti-corruption policy.

Although a number of important laws have been passed – notably on freedom of information – some reforms (for example public administration reform) have been ineffective, and the coordination of anti-corruption efforts has been poor until recently. Moreover, the National Anti-corruption Strategy remains focused on low-level corruption, and virtually no progress has been made towards fighting corruption at the level of Government, the Parliament (National Assembly) and in political parties. Most worrying, there are doubts over whether the Government can pursue reforms in areas where powerful vested interests are opposed, such as customs.

The EU accession process has been one of the most important influences on the development of anti-corruption policy, and anti-corruption is clearly recognised by the Government as a condition for both EU and NATO accession. Pressure from the

European Commission was instrumental in encouraging the Government to produce the National Strategy, and anti-corruption policy has been an important part of the *Accession Partnerships*. The Commission has provided increasing assistance for the development of anti-corruption policy.

Bulgaria has made important progress in approximating national anti-corruption legislation to the requirements of international anti-corruption instruments. Further changes required to fulfil the requirements of the Council of Europe Criminal Law Convention are in the process of legislative approval. The definition of a public official remains unclear.

There is minimal regulation in the area of conflict of interest in Bulgaria, with only limited provisions for ministers and almost none for MPs. Since 2000 senior officials have been subject to duties to submit declarations of assets and income, but supervision and enforcement is inadequate and there are no sanctions for violation.

State financial control has undergone major reforms in recent years, including new legislation on the National Audit Office (NAO) and on State Internal Financial Control. Although the NAO is independent, the impact of its findings is almost zero and its record in providing information to the public is mixed. On the other hand, considerable resources have been invested in the institutions to implement internal financial control, and the EU has praised the Government's success in putting in place mechanisms to distribute pre-accession funds.

There are no specialised anti-corruption agencies in Bulgaria, with the exception of a unit to fight organised crime at the Ministry of Interior. Moreover, there are no specialised units for fighting corruption within the prosecution offices or courts. Progress has been made towards the establishment of an Ombudsman.

Bulgaria has passed important laws to reform the public administration, including a Civil Service Act. Despite this, the impact of the reforms has been largely cosmetic, and the civil service remains overly politicised. In addition, mechanisms for redress against administrative actions are burdensome and ineffective. The only regulation of conflict of interest in the executive branch and civil service are vague provisions in the civil servants' Code of Conduct, and the Code of Conduct itself is of little value. There are no provisions for monitoring the assets of officials below the level of minister. As of early 2002, a number of investigations of former senior officials and ministers were under way, especially related to privatisation.

The Parliament does not function as an effective anti-corruption mechanism. Parliament does not scrutinise public finances effectively or initiate anti-corruption legislation, and two anti-corruption committees were abolished in 2001 after proving to be entirely ineffective. Regulation of conflict of interest and lobbying is minimal or non-existent, and immunity provisions are extensive, creating an environment highly

susceptible to corruption. There are serious concerns that Parliament may be effectively under the control of vested interests with an interest in blocking anti-corruption policy.

The judiciary is widely regarded as highly corrupt both by public opinion and foreign observers, and there is some specific evidence of corruption. However, corruption may not be a bigger problem than executive interference and neglect of the needs of the judicial branch. The Government has initiated a programme of judicial reform; however, certain of the proposed reforms may undermine judicial independence.

Political party finance is an extremely weakly regulated area. Liberal rules on donations, a non-transparent system for determining State subsidies and the virtual absence of supervision probably underpin widespread illegal funding and corruption, although direct evidence of corruption is scarce.

Likewise, regulation of public procurement remains weak, despite significant legislative progress. In particular, procedures for supervision and redress are highly ineffective, contributing to a system of contract allocation that has allowed widespread collusion and probably major high-level corruption. Attempts at further reform recently faltered.

Bulgaria suffers from serious problems of corruption in a number of public services. The Customs Administration appears to be more seriously affected by corruption than any other public institution, and was identified by the Government as the number one priority in the fight against corruption. However, recent events indicate that the Government may not be strong enough to overcome the influence of groups with a vested interest in the *status quo*. Licences and permits remain major barriers to doing business, due to the number required, control of allocation by unaccountable local offices of central Government and arbitrary criteria. However, the Government is in the process of carrying out important licensing reforms.

The legal environment for the media is generally favourable, and has received an important boost with the passage of an Act on Access to Public Information. However, the effectiveness of the new Act may be counteracted by other laws and regulations that have been recently adopted. The independence of public broadcasting remains an important concern, as political influence appears to rule out any investigative role.

1. INTRODUCTION

1.1 The data and perceptions

Although there are few criminal convictions for corruption, corruption remains widespread in most areas of Bulgarian public life and the public regards corruption as one of the most serious problems facing the country. The most affected areas include the customs administration, public procurement, political party finance and possibly the judiciary. Privatisation has suffered from endemic corruption in the past, but may have improved. While public attention has focused on corruption of ministers and senior officials – particular in the privatisation process – ordinary citizens appear to experience most corruption dealing with customs officers, doctors and the police. Corruption in the local offices of the over-centralised State administration has been identified as a particularly serious problem. Corruption is underpinned, *inter alia*, by a large grey economy and the existence of active organised crime networks, especially in the area of smuggling.

Criminal proceedings

Criminal statistics are unreliable in Bulgaria: although the courts are supposed to provide the Ministry of Justice with the statistics, not all do so or do so consistently.¹ According to the National Statistical Institute² there were 45 convictions for bribery-related cases in 2000. Tables 1 and 2 show data on corruption related offences provided by the police for 1998-1999.³

Table 1: Corruption related offences registered in Bulgaria, 1998–1999

	1998	1999
Bribery	95	114
Malfeasances in office	2,489	2,376
Tax offences	112	220

Source: Ministry of Justice

¹ As the Commission of the European Union noted in its *2000 Regular Report*, “It is difficult to obtain concrete information on how the judicial system is dealing with corruption cases.” Currently proposed amendments to the Judicial System Act would give the Ministry of Justice greater powers to obtain statistics.

² *Standart*, 30 May 2001.

³ *Bulgaria’s Progress towards EU Membership in 2000 – the NGO’s Perspective*, conference proceedings of the European Institute, Sofia, 31 January 2001, pp. 37–38.

Table 2: Cases of acceptance of a bribe by public officials, 1997–2001

<i>Year</i>	<i>Number of convictions</i>	<i>Acquittals</i>
1997	26	3
1998	21	4
1999	25	2
2000	21	1

Source: Ministry of Justice

These statistics appear more likely to indicate a lack of enforcement than low levels of bribery.

Perceptions

While Bulgaria's ranking in the Transparency International Corruption Perception Index has improved considerably, from 67th place in 1998 to 47th place in 2001, the share of the public that ranks corruption among the three most serious problems facing the country has risen from 36 percent in 1999 to 45 percent in October 2001.⁴ Moreover, the perception that corruption is widespread has grown and people have become less optimistic about the prospects of eradicating it. A survey conducted in October 2001 indicated the following:⁵

- Six percent of respondents said that during their contacts with the public sector, officials asked them directly for cash in all or most cases, while 17 percent said this happened in isolated cases.
- Fifteen percent of respondents said that officials showed that they expected cash or a benefit in all or most cases, while 20 percent said this happened in isolated cases.
- Twenty percent of respondents said they had given cash to officials in the previous year (and six percent in "all or most cases"), and similar percentages had given officials gifts.
- Seventy-six percent of respondents believed that most or all public officials are involved in corruption, and the same percentage believed that to solve a problem one is rather or very likely to have to give cash or other benefits to an official.

⁴ Coalition 2000, *2001 Corruption Report*, p. 61.

⁵ Survey data provided by Vitosha Research.

Thirteen percent of respondents regarded it as admissible for a minister to solve a problem for someone and accept a gift in return, while six percent thought it admissible to accept cash

The findings of international organisations tend to support the public assessment. According to a UNDP *Report on Anti-corruption Initiatives in Bulgaria*, published in January 2002,

The lack of transparency and accountability and effective internal and external oversight in the Bulgarian system of state administration reinforces and shelters corrupt activity, thereby contributing to economic stagnation, high rates of poverty and widespread corruption.⁶

Corruption at higher levels is also a principal concern for international investors. According to the *Country Commercial Guide* of the Central and Eastern Europe Business Information Centre,

Although the Bulgarian Government has achieved some successes in the fight against organised crime and corruption, many observers believe that corruption and political influence in business decision-making continue to be significant problems in Bulgaria's investment climate. The problems range from the demand for petty bribes for government licences and permits to nontransparent privatisation's of major state enterprises.⁷

1.2 Main loci of corruption

According to surveys from January 2002 (see Table 3) the Bulgarian public perceives the most corrupt institutions to be the customs administration, senior politicians, and Parliament and occupations linked to the judicial system. Perceptions of MPs and ministers have worsened noticeably. Surveys of experience with corruption indicate that bribery is most common among customs officers, doctors, police officers, higher education staff and judicial staff and judges (see Table 4).

⁶ D. A. Bilak, *Report of the Evaluation Mission on Anti-corruption Initiatives in Bulgaria*, review commissioned and funded by the Bulgaria Country Office of the United Nations Development Programme, p. 3.

⁷ Central and Eastern Europe Business Information Centre, *Bulgaria Country Commercial Guide FY 2002*, p. 7. The same report notes, however, that, "[R]ecent business surveys indicate that foreign investors consider bureaucratic impediments to be a considerably larger problem than corruption," (p. 75).

Table 3: Opinion of the Bulgarian public concerning the incidence of corruption in specific groups

	<i>Relative quota of the answers “almost all are corrupted” and “most of them are corrupted”</i>						
	<i>February 1999</i>	<i>April 1999</i>	<i>Sept. 1999</i>	<i>January 2000</i>	<i>April 2000</i>	<i>Sept. 2000</i>	<i>January 2002</i>
Customs officers	73.3	73.2	75.2	77.0	78.6	75.2	74.15
Members of Parliament	39.0	37.7	42.6	45.0	55.1	51.7	47.78
Ministers	39.1	35.3	43.9	45.3	53.4	55.0	45.34
Police officers	51.5	49.2	55.8	51.9	50.5	54.3	47.00
Prosecutors	48.5	50.0	50.8	46.3	54.4	51.3	55.35
Judges	49.5	50.8	50.7	48.5	56.0	50.1	55.00
Lawyers	55.5	55.4	55.6	54.8	51.9	52.9	55.53
Tax officers	47.1	45.2	56.4	53.9	51.0	53.7	51.26
Ministry officials	42.5	41.9	48.2	47.9	55.1	49.7	47.08
Business people	49.5	47.6	48.3	48.5	51.4	42.3	
Investigators	43.6	41.8	44.9	41.0	48.0	43.8	48.04
Political parties and coalition leaders	40.5	31.1	42.7	37.5	45.0	43.8	
Administrative officers in the judiciary	42.0	40.5	49.7	42.0	45.2	40.2	41.17
Municipal officials	44.3	39.6	48.8	45.0	46.5	41.6	39.34
Bankers	-	-	-	20.9	38.8	33.5	
Local political leaders	34.0	27.5	38.2	31.7	36.4	36.8	
Municipal counsellors	31.2	26.4	34.7	32.5	35.2	32.1	31.77
Doctors	56.9	46.0	47.3	42.5	40.9	43.6	
University officers or professors	29.5	28.5	35.7	29.4	29.3	28.1	27.68
Representatives of NGOs	16.3	11.5	20.9	16.2	18.2	23.9	
Journalists	12.7	12.0	14.3	10.6	14.1	13.9	12.27
Teachers	12.6	8.4	11.5	9.5	8.2	10.9	9.75

Source: Coalition 2000.

Table 4: Percentage of respondents experiencing requests for bribes from officials

<i>Type of official</i>	<i>January 2000</i>	<i>April 2000</i>	<i>Sept. 2000</i>	<i>January 2001</i>	<i>October 2001</i>	<i>January 2002</i>	<i>May 2002</i>
Customs officer	19.8	29.1	15.8	22.7	18.4	18.55	25.5
Doctor	20.0	18.6	22.1	6.1	22.3	17.96	20.2
Police officer	23.4	19.5	24.0	18.9	18.5	19.9	15.2
University professor or official	10.1	12.6	13.9	13.2	8.8	14.29	12.0
Administrative staff from the judicial system	18.5	10.4	11.5	13.3	11.3	9.38	11.0
Judge	6.9	7.7	9.1	5.8	6.8	7.8	10.7
Businessman	13.7	11.9	9.7	11.6	13.4	10.77	9.4
Ministry official	3.2	3.7	7.0	8.9	5.6	4.92	9.3
Prosecutor	5.9	4.7	7.8	7.2	0.8	4.07	8.5
Criminal investigator	6.1	8.4	6.0	5.5	6.0	4.27	8.2
Banker	8.1	1.8	2.9	4.1	4.1	4.07	5.6
Municipal official	11.3	11.7	10.3	11.2	11.3	9.96	5.5
Tax official	8.4	7.8	8.3	6.4	9.1	5.29	3.8
Member of Parliament	1.9	4.5	6.4	4.2	2.1	2.08	3.5
Teacher	4.9	3.0	5.5	3.7	6.1	3.6	3.1
Municipal Council member	6.7	5.6	3.2	2.1	1.4	2.05	2.7

Source: Corruption Indexes of Coalition 2000, May 2000, <www.online.bg/vr/crl/corr_ind_05E.htm>, (last accessed 23 July 2002).

Privatisation

The privatisation process has been regarded as highly corrupt, and many investigations of former senior officials and politicians have concerned allegedly corrupt privatisation deals (see Section 3.6). In October 2001, the Deputy Prosecutor General requested the investigation of over 200 suspicious privatisation cases, including those of the national airline carrier Balkan Airlines and the Plama oil refinery. The current Government has moved to reduce the number of “worker-management buy-outs,” which was considered a major source of corruption whereby the Government appointed its preferred managers and then sold companies to them.

Corruption in public administration

The problem of corruption in customs is widely acknowledged and has been confirmed by expert analyses (see Section 8.2). Although the perception of endemic corruption in

the courts and prosecution system is shared by a significant number of expert observers, the extent of corruption is in fact unclear (see Section 5.2). Networks of political party patronage, nepotism and clientelism are deeply entrenched, and influence staffing decisions for senior administrative posts and managerial positions in State enterprises.

Political party finance

Political party finance is an extremely weakly regulated area. Liberal rules on donations, a non-transparent system for determining State subsidies and the virtual absence of supervision probably underpin widespread illegal funding and corruption, although direct evidence of corruption is scarce.

Public procurement

Likewise, regulation of public procurement remains weak, despite significant legislative progress. In particular, procedures for supervision and redress are highly ineffective, contributing to a system of contract allocation that has allowed widespread collusion and probably major high-level corruption. Attempts at further reform recently faltered.

Local government

Corruption at the level of local public administration is a problem of particular. According to the UNDP *Report on Anti-corruption Initiatives in Bulgaria*, these problems are rooted in an anachronistic, centralised system. As a result, around 90 percent of public budgets are determined at the central level, and a wide range of public services are provided not by local governments and agencies appointed by and accountable to local citizens, but by local offices of central institutions. For example, gaining a construction permit requires signatures from four such institutions: the safety inspectorate (Ministry of Labour), fire inspectorate (Ministry of Interior), health inspectorate and sanitation inspectorate (Ministry of Health), all of which routinely require bribes for their approvals; the total amount necessary to obtain a permit may reach as high as €2,000.⁸

One recent study⁹ identified the following areas of local public administration as especially prone to corruption: municipal procurement; licensing of economic and trade activities; renting and tenders for reconstruction of municipal sites; tenders for

⁸ OSI Roundtable Discussion, Sofia, 8 February 2002. *Explanatory note: OSI held a roundtable meeting to invite critique of the present Report in draft form. Experts present included representatives of the Government, international organisations, and civil society organisations. References to this meeting should not be understood as an endorsement of any particular point of view by any one participant.*

⁹ Study carried out by the NGO Coalition 2000 as part of a project to establish Centres for Information Services in five municipalities.

privatisation of municipal property and supplying of municipal premises with fuel and consumables

Organised crime and State capture

Since 1997, the Bulgarian Government appears to have made significant progress in breaking the links between the State and economic groups that operated outside or on the edge of the law. Key steps in this respect include the re-licensing of insurance companies launched in 1997, and the refusal of the Bulgarian National Bank in 2001 to provide banking licences to the former owners and founders of two banks that went bankrupt in 1996 (First Private Bank and Orthodox Bank).

Nevertheless, the continuing power of entrenched interests with an overriding interest in preventing effective anti-corruption policy is still strong. The resignation of the Director of the Customs Agency in February 2002 amid politically motivated attacks on a contract with a British consultancy company to help clean up the customs administration appears to indicate the continuing power of strong lobbies against anti-corruption reform in this area at least.

1.3 Government anti-corruption policy

Corruption and anti-corruption policy have been major political issues since 1997, when a new Government came to power on a platform that included the fight against corruption as one of its main priorities. The Government took important steps to limit the influence of organised crime on the economy. A number of important laws were passed, in particular the Acts on: Administration, Administrative Services to Natural and Legal Persons, Civil Servants, Asset Disclosure by Persons Occupying Senior Positions in the State, and Access to Public Information, as well as amendments to the Criminal Code. However, some reforms have been ineffective, particularly public administration reform (see Section 3.1) and asset disclosure provisions (see Section 2.3). The coordination of anti-corruption efforts has been poor, at least until recently, and the National Anti-corruption Strategy approved by the Government in October 2001 was the first attempt to place anti-corruption efforts within a systematic framework. However, the National Anti-corruption Strategy remains focused on low-level corruption, and virtually no progress has been made towards fighting corruption at the level of Government, the Parliament and in political parties. Most worrying, there are doubts over whether the Government can pursue reforms in areas where powerful vested interests are opposed, such as customs.

The National Anti-corruption Strategy

The Government adopted a National Anti-corruption Strategy in October 2001, supplementing the National Strategy for Combating Crime adopted in 1998. The strategy was divided into the following main headings:

1. Guaranteeing transparency in the work of the public administration
2. Improvement of financial and fiscal control
3. Anti-corruption reform in the Customs Agency
4. Anti-corruption measures in the Ministry of Interior
5. Combating corruption at local government level
6. Anti-corruption measure in the financing of political parties
7. Reform of the judiciary and criminal legislation
8. Cooperation between Government, NGOs and the media

The Strategy itself is a short and very general five-page document. However, the Government supplemented it with an action plan for implementation, which lists a number of more specific measures with deadlines for implementation. An Implementation Commission was created at the end of 2001, chaired by the Minister of Justice.

The action plan elaborates the strategy, with the notable exception that reform of political party financing is missing entirely. On the other hand, it dedicates an additional section to reducing corruption in the economic sector and liberalising the conditions for private business development (see Section 8.6). Table 5 shows some selected measures from the plan.

Table 5: Selected measures in the National Anti-corruption Strategy

<i>Measure</i>	<i>Deadline</i>	<i>Fulfilled?</i>
Review of public administration reform strategy in order to elaborate a new strategy	30.6.2002	Implementation plan adopted
Amend Act on Administration to inter alia distinguish political from career positions	28.2.2002	Partially implemented by amendments in force since 23.11.2001
Implement project to introduce “one-stop shop” system of service provision	30.12.2002	Ongoing project funded by DFID (UK) and implemented by KPMG
Amend Act on Letters, Signals, Complaints and Petitions to improve exercise of rights to redress	30.7.2002	No progress
Introduce register of property status of tax officials	30.12.2002	No progress
Set up Interdepartmental Coordination Council at Ministry of Interior	30.12.2001	Completed
Draft amendments to Penal Code to harmonise with international conventions (bribery of foreign officials, trade in influence, restrict immunity provisions, bribery in private sector)	30.7.2002	Draft law in Parliament
Draft Act on restriction/removal of MPs immunity	28.2.2002	No progress
Develop system of case distribution among magistrates excluding based on objective criteria	31.12.2002	Implementation plan adopted
Reform of licensing arrangements: transfer to registration/notification for economic activities, transfer specific licensing to professional organisations	March 2002 (development), 30.12.2003 (implement)	Working group established

Source: Programme for the Implementation of the Anti-corruption Strategy, draft version, February 2002.

Implementation of the strategy is still at a very early stage, with most of the deadlines not yet reached. Important measures that appear to be on track are reform of licensing procedures (see Section 8.6) and amendments to criminal law. However, there has been little progress on more politically sensitive measures, particularly changes that would start to limit the opportunities for abuse of power and political corruption at the

highest level – for example the restriction of immunity for MPs or measures to reform party financing rules (see Section 6).

As of May 2002, however, the ability of the Government to continue its progress on anti-corruption measures appeared somewhat doubtful. For example:

- In accordance with the plan, in March 2002 the Parliament passed a proposed new Act on Privatisation and Post-Privatisation Control, which would exclude the method of negotiations with selected bidders. However, the President vetoed the Act.
- The resignation of the customs Director mentioned above took place in the context of strong pressure from the opposition.

On the other hand, one of the most important anti-corruption figures appointed by the Government, the Secretary General of the Ministry of Interior, enjoyed the highest ever approval rating for a public figure.

The role of civil society

A key role has been played in the development of the anti-corruption debate by Coalition 2000, a group of civil society organisations set up in 1998 as an anti-corruption initiative. The coalition has worked to facilitate cooperation between the Government, NGOs and other institutions in the area of anti-corruption policy, and currently operates a Corruption Monitoring System through regular public opinion surveys. Coalition 2000 drafted an Anti-corruption Action Plan for Bulgaria which was endorsed by the first Coalition 2000 Policy Forum in November 1998, attended by over 150 government officials, business leaders, NGOs and international organisations. The National Anti-corruption Strategy itself is largely based on the Action Plan.

Local municipalities and the local NGO partners of Coalition 2000 have also set up “public-private councils” in a number of cities, including Smolian, Varna, Vratza, Pleven, Plovdiv, and Pazardzhik, to generate and support local anti-corruption initiatives and achieve coordination of anti-corruption activities between municipal and regional levels.

In addition, the NGO Access to Public Information has played a very important role in lobbying for the adoption of the Act on Access to Public Information (see Section 9.2), educating officials on the Act and facilitating appeals by citizens.

1.4 The impact of the EU Accession Process

The Bulgarian Government has explicitly cited EU accession as one of the most important reasons for the adoption of its national anti-corruption policy. The preamble to the National Anti-corruption Strategy states that, “Efforts to introduce up-to-date international standards of transparency and publicity... are a significant prerequisite for... guaranteeing membership in the EU and NATO...”¹⁰

The European Commission has registered increasing concern about corruption in Bulgaria. The *2000 Regular Report* noted that, “Corruption continues to be a very serious problem in Bulgaria,”¹¹ on the basis of “persistent rumours” and the assertion that “allegations of corruption are rife,”¹² there was no analysis of the causes of corruption or reference to existing national and international studies. The *2001 Regular Report* adopted a more precise approach, referring to existing surveys and identifying some areas of particular concern. Despite acknowledgement of some new anti-corruption measures, notably the anti-corruption strategy (described below), the Commission expressed continuing concern: “Whilst there have been some improvements since last year, in particular in the legal framework, corruption continues to be a very serious problem in Bulgaria.”¹³

Anti-corruption policy was first incorporated into Bulgaria’s EU accession agenda in the *1999 Accession Partnership*. The *Partnership* addressed corruption within the justice and home affairs section, and set as the most important short-term priority the adoption of a comprehensive Government anti-corruption strategy, to be implemented by the end of 2000.¹⁴ Subsequently, the Commission criticised the previous Government for having failed to implement this provision. The present Government fulfilled the priority in October 2001 (see Section 1.3).

A medium-term priority of the *1999 Accession Partnership* was the implementation of an anti-corruption strategy; in the *2001 Accession Partnership* this became a priority “in need of particularly urgent action,”¹⁵ as did the completion of the legal framework for external audit. A new Act on the National Audit Office came into force in December 2001 (see Section 2.4).

¹⁰ *National Anti-corruption Strategy*, p. 1.

¹¹ Commission of the European Union, *2000 Regular Report from the Commission on Bulgaria’s Progress towards Accession*, p. 17.

¹² Commission, *2000 Regular Report*, pp.17-18.

¹³ *Commission, 2001 Regular Report*, p. 19.

¹⁴ *2001 Accession Partnership*, p. 6.

¹⁵ *2001 Accession Partnership*, p. 6.

EU assistance

The European Union has not provided any assistance to Bulgaria explicitly for the development of the anti-corruption strategy. However, the 2001 PHARE programme includes the projects listed in Table 6, which are indirectly related to corruption prevention. In addition, two large assistance projects for anti-corruption policy at the ministries of Justice and Interior are expected to be announced during the summer of 2002.

Table 6: Selected PHARE projects, 2001 (support in €000)

<i>Project Code</i>	<i>Objectives and projects</i>	<i>Total Phare support</i>	<i>Institutions building</i>	<i>Investment</i>
0103.02	Implementing civil service reform	2,400	1,800	0,600
0103.03	Recruitment and training strategy for the judiciary	2,000	2,000	-
0103.05	Strengthening the national customs agency	1,300	1,300	-
0103.07	Combating money laundering	1,200	1,200	-
0103.09	Improving the management of EU funds	1,800	1,590	0,210

Source: PHARE 2001, Bulgaria National Programme

NATO accession

As for neighbouring Romania, the prospect of entering NATO has become a much more important issue after the events of 11 September in New York. The Alliance has given clear signals that the two countries could be invited to join at the November 2002 summit in Prague, and at the same time has stated or given signals that one of the main obstacles to accession is corruption. In March 2002, the US *charge d'affaires* in Sofia, Roderick Moore, stated that,

The closer the date that Bulgaria becomes an ally with the U.S., the more we insist on the fight against corruption, because this is a factor that could run in the whole partnership between us.¹⁶

As the former UDF Government had made EU and NATO membership top priorities, the UDF's strong opposition to the current Government of National Movement

¹⁶ "Bulgarian Deputy Prosecutor-General admits to problems in fight against corruption," RFE/RL Newsline, 28 March 2002.

Simeon II and the Movement for Rights and Freedoms appears to have been softened somewhat by the sudden prospect of early membership in NATO.¹⁷

Other international initiatives

Bulgaria participates in the monitoring procedures in the framework of the OECD Working Group on Bribery in International Business Transactions and GRECO, is a member of the Stability Pact for Southeast Europe (which launched an Anti-corruption Initiative in February 2000) and has also played an important role in the Southeast Europe Legal Development Initiative (SELDI), of which the Bulgarian policy institute, the Centre for the Study of Democracy, was a co-founder.

2. INSTITUTIONS AND LEGISLATION

Bulgaria has made important progress in approximating national anti-corruption legislation to the requirements of international anti-corruption instruments, although further changes will be needed for full compatibility. There is minimal regulation in the area of conflict of interest in Bulgaria. State financial control has undergone major reforms in recent years, including new legislation on the National Audit Office and on State Internal Financial Control, although the impact of the NAO's findings is minimal. There are no specialised anti-corruption agencies. Progress has been made towards the establishment of an Ombudsman.

2.1 Anti-corruption legislation

Bulgarian anti-corruption legislation has developed significantly in recent years, and is compatible with most international standards. Bribery is made an offence by the Bulgarian Criminal Code in the following ways:

- Acceptance of a bribe by a public official¹⁸ in order for the official to perform or not perform his/her duties is punishable by one to six years' imprisonment. If the bribe is received in return for violation of official duties the penalty is up to eight years. Public officials can be sentenced to 10-30 years and have their

¹⁷ See e.g., U. Buechsenschuetz, "T-SO opposition in Bulgaria," RFE/RL Newline, 3 April 2002.

¹⁸ Criminal Code, Article 301.

property confiscated if the bribe is particularly large (as defined by court practice). Passive bribery of foreign public officials is not yet covered.

- Offering or giving a bribe to a public official¹⁹ (including foreign public officials) is subject to up to six years imprisonment, or seven years in the case of violation of official duties.
- A person who acts as a mediator in the process of giving or receiving a bribe²⁰ is subject to up to three years imprisonment.

In addition, there are several articles in the Criminal Code grouped under the title of Malfeasances. For example:

- An official who uses his or her official position to acquire unlawful benefit for him or herself or for another is subject to imprisonment for up to three years.
- An official who violates or fails to fulfil official duties, or exceeds his or her powers or rights for the purpose of acquiring a benefit for himself/herself or for another, or to cause damage to another, from which significant harmful consequences may result, may be punished by up to five years imprisonment, deprivation of the right to hold a certain State or public office, and/or corrective labour. If there are major harmful consequences or the perpetrator occupies a senior official position the penalty rises to up to eight years, and for particularly grave cases from three to ten years.
- Penalties for the above crimes may be even higher in certain cases, such as if they are connected with privatisation or management of state property.
- An official who refuses or delays the issue of a permit beyond the terms provided by law may be punished by up to three years imprisonment, fined up to €255,000 and deprived of the right to perform certain official activities.
- An official who consciously allows a subordinate to commit a crime related to his/her office or work is subject to the same sanctions as the individual who committed the crime.

The sanctions for a number of the anti-corruption provisions are very severe compared to sanctions in OECD countries, and could paradoxically deter courts from passing guilty verdicts in corruption cases.

Trading in influence does not receive sanctions under criminal law, nor is the threshold at which a benefit is considered a bribe specified. In order to harmonise Bulgarian law

¹⁹ Criminal Code, Article 304.

²⁰ Criminal Code, Article 305a.

with international obligations and particularly the Council of Europe's Criminal Law Convention, these areas need to be regulated, along with the inclusion of requesting and accepting non-material benefits under bribery provisions. In addition, the definition of a public official is not entirely clear under current Bulgarian law. For example, it is disputable whether an MP or municipal councillor can be prosecuted for passive bribery under the present Criminal Code.

As of July 2002, amendments to the Criminal Code had passed first reading in Parliament. The amendments would broaden the definition to include foreign public official and criminalise acceptance of bribes by foreign officials, criminalise bribery in the private sector, include non-material benefits as possible types of bribe, criminalise trading in influence and increase the sanctions for bribery of magistrates (judges, prosecutors and investigators).

2.2 Conflict of interest legislation

Conflict of interest in individual areas are covered separately in Sections 3.3 and 4.3.

2.3 Asset declaration and monitoring

In May 2000, the Act on Property Disclosure by Persons Occupying Senior Positions in the State came into effect, introducing significant changes to a previously unregulated area. Civil servants occupying senior official positions (MPs, President and Vice-president, ministers, Constitutional Court judges, senior magistrates, district governors, etc.) are now obliged to submit declarations of their assets by 31 May each year. The declaration must include all income and property acquired during the previous year, and also the income and property of spouses and children under 18 years of age.

The register of asset declarations is held by the President of the National Audit Office. 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 obtaining access.

The disclosure of compliance or failure to comply with the rules is expected to entail strong moral sanctions. The National Audit Office published such a list of those who failed to submit declarations in 2000 on their website, but has not yet done the same for 2001. Nevertheless, the need for effective monitoring of compliance, as well as for sanctions against those who breach its provisions, is illustrated by the fact that as per mid-July 2001, 90 persons (including MPs from the outgoing Parliament as well as magistrates and deputy ministers) had failed to file declarations.

2.4 Control and audit

The National Audit Office

The auditing of public finances is performed by the National Audit Office (hereinafter NAO). The NAO reports to the Parliament. According to surveys the Bulgarian public believes the NAO to be one of the least corrupt institutions.²¹ The NAO audits the use of central budget and off-budget funds, management of State debt, privatisation, and the financial statements of local governments, as well as other accounts if provided by law (principally the financial activities of political parties).

The President and ten members of the NAO are elected for nine years by the Parliament, which may also dismiss them under the following circumstances: upon their own written request; in case they are incapable to perform their duties for more than six months; if they have been convicted for a crime; in case of a court-imposed deprivation of the right to hold office; due to incompatibility of his or her mandate occurring after the appointment; or in case of death.²²

Neither the President nor NAO members may have been members of the Government or heads of administrative agencies during the three years prior to their appointment, nor may their spouses, siblings or any other close relatives. The President and members may not perform other paid activities with the exception of scientific work or teaching.²³

The NAO performs audits according to an annual programme adopted by the NAO and presented to the Parliament.

In December 2001, a new Act on the National Audit Office came into force, which adopted international audit standards and laid out a broader set of anti-corruption measures, including the following:

- The audit competencies of the NAO were broadened to include the budget of the State Social Insurance Fund, the National Health Insurance Company and the financial resources from funds and programmes of the European Union, including their management by the respective authorities and end users.
- All audit reports are to be made public after they are approved by the NAO.
- The law specifies more clearly the procedures for reporting to the Parliament, and provides for regulation of cooperation between the NAO, the State internal financial control authorities, the tax and customs administrations, the authorities for

²¹ Coalition 2000, *Beyond Anti-corruption Rhetoric: Coalition Building and Monitoring*, forthcoming.

²² Act on the National Audit Office, Article 9.

²³ Act on the National Audit Office, Article 10.

collection of State receivables, the financial intelligence authorities and the courts. The specific forms of cooperation are to be specified by joint agreements, which had not been reached as of May 2002.

The NAO also holds the register of declarations of assets submitted by public officials (see Section 2.3). The chairperson presents the audit reports carried out by the NAO to the Parliament, and once a year, upon approval by Parliament, an annual report is published in the *Official Gazette*. However, the record of the NAO in providing information on political party finances and officials' asset declarations is poor (see Section 9.2).

The NAO may submit recommendations to the audited authorities and, if these are not followed, it may send a report to the Parliament, the Council of Ministers or the Municipal Councils, depending to which institution the audited authority is subordinate. However, there is no institutionalised mechanism for cooperation with Parliament or the Government, and most NAO reports are ignored.

The NAO does not perform an enforcement role. When it uncovers criminal violations of the law, it sends the materials to the Prosecutor's Office or to the superior institution responsible for imposing administrative or other liability. Violations of the Public Procurement Act are reported to the Ministry of Finance.

The NAO has adopted 11 Auditing and Reporting Standards, as well as a Code of Conduct for auditors.²⁴

Internal control and audit

An Act on State Internal Financial Control was adopted in 2000 and came into force on 1 January 2001. The Act lays down a modern system of financial control ranging from preliminary internal control to external control by the NAO, and created an Agency for Internal Financial Control to supervise implementation of the law. The Agency is staffed by around 1,500 employees.

In its *2001 Regular Report*, the European Commission noted these changes without criticism, and in addition commented that Bulgaria's SAPARD agency for distributing pre-accession funds was the first in any candidate country to be accredited by the Commission.²⁵ On the other hand, in June 2001 the European Parliament noted in an opinion produced for the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy that,

²⁴ Cited in: *Corruption In Transition: The Bulgarian Experience*, A Report by the Bulgarian Anti-corruption Working Group to the Partners in Transition II Conference, Sofia, September 2001.

²⁵ Commission, *2001 Regular Report*, p. 90.

[It] is surprised... at the absence of a genuine anti-fraud system and takes the view that setting up such a system would lend even more credibility to the efforts already made by Bulgaria.²⁶

2.5 Anti-corruption agencies

There are no special anti-corruption agencies in Bulgaria, with the exception of the National Service for Combating Organised Crime at the Ministry of Interior. Neither Prosecution offices nor courts have specialised units or teams for fighting corruption.

The Bureau of Financial Intelligence

In 1998, the Bureau of Financial Intelligence was established as the main agency for implementing the Act on Measures against Money Laundering. The Act was amended again in 2001 in order to harmonise the legislation with the Directive of the Council of the European Community on prevention of the use of the financial system for money laundering. In June 2000, an evaluation team from the Council of Europe Select Committee of Experts on the Evaluation of Anti-money Laundering Measures published a report on Bulgaria that identified some positive results in the implementation of the law, in particular, the uncovering of a major money laundering channel in 1999. However, the report recommended further widening the circle of institutions subject to the provisions of the law, and the introduction of administrative and financial liability for legal entities.²⁷

2.6 Ombudsman

At the time of writing there was no national ombudsman. However, work on the establishment of this position has been in progress since 1998, and as of July 2002, a draft law was in preparation. The institution of the ombudsman is expected to have an effect on anti-corruption efforts by providing redress against administrative abuses.

Meanwhile, the Centre for the Study of Democracy and the Centre for Social Practices have launched experimental projects for introducing the positions of civic observer and

²⁶ Opinion of the Committee on Budgetary Control for the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy on Bulgaria's application for membership of the European Union and progress in the negotiations (COM[2000]701 – C5-0601/2000 – 1997/2179 [COS]), 26 June 2001, p. 5.

²⁷ European Committee on Crime Problems, Select Committee of Experts on the Evaluation of Anti-money Laundering Measures, *First Mutual Evaluation Report on Bulgaria*, Strasbourg, June 2000.

public mediator in several municipalities. In May 2001, the Sofia Municipal Council appointed an ombudsman for Sofia under the title of Public Mediator; there are also local ombudsman offices established in other Bulgarian cities either on the initiative of the local municipality or under an agreement between the municipality and local civic organisations. They act as *de facto* ombudsman offices processing complaints and issuing recommendations. The experience of their work allowed a provision on establishing local level ombudsman offices to be included in one of the draft acts considered by the Parliament.

3. EXECUTIVE BRANCH AND CIVIL SERVICE

Although Bulgaria has passed very important legislation to reform its public administration, including a Civil Service Act, the impact of reform so far has been limited. Mechanisms for redress against administrative actions are burdensome and ineffective. The only regulation of conflict of interest in the executive branch and civil service are vague provisions in the civil servants' Code of Conduct, and the Code of Conduct itself is of little value. Provisions on asset declarations only apply to the most senior official, while supervision and sanctions for violation are inadequate. Corruption of senior officials has become an the subject of increasing media focus, and as of early 2002, a number of investigations of former senior officials and ministers were under way, especially related to privatisation.

3.1 Structure and legislative framework

Although a number of laws have been passed to reform the Public administration in recent years, to date the Government has not succeeded in establishing the legal framework for a professional and independent civil service. Bulgarian public administration remains highly over-centralised, which results in citizens at the local level being confronted by unaccountable and highly corrupt local offices of central Government.

The December 1998 Act on Administration lays down in detail the structure of the administration, the distribution of powers between different bodies of the executive, and the rules and structures of its work.²⁸ The Act established common rules for the internal organisation of the administrative structures of the executive bodies. The Rules

²⁸ Act on Administration no. 130/1998, in force since 6 December.1998; the Act has been amended many times since, most recently in November 2001.

of Organisation and Procedure for administrative structures, most of which were adopted in 2000, as well as their subsequent amendments, outline the concrete functions, tasks, and responsibilities of administrative units.

The Civil Service Act lays down the requirements for acquiring the status of civil servant, recruitment procedures and rules governing termination of employment.²⁹ It defines as civil servants all employees of the Council of Ministers, ministries and other central administrative structure, and district and municipal administrations. Technical staff, members of political cabinets (which can include up to ten members in a ministry), deputy regional governors and deputy mayors are exempted, however – an omission criticised by NGOs, which claim that this undermines bureaucratic continuity and preserves the tradition of political appointments.

Although amendments to the Act on Administration adopted in November 2001 mandated stricter provisions to regulate the division between political and non-political appointments, according to a January 2002 UNDP *Report on Anti-corruption Initiatives in Bulgaria*, “[E]ven under the new civil service law, civil servants are dependent on political masters and senior bureaucrats to gain promotion.”³⁰

The Civil Service Act also created the State Administrative Commission (SAC) to supervise adherence to the Act. The SAC supervises the hiring of civil servants and arbitrates in labour disputes. The Commission, which was established in August 2000, consists of five members appointed by the Council of Ministers upon a proposal by the Prime Minister. However, as the UNDP *Report on Anti-corruption Initiatives in Bulgaria* notes, the Commission’s role is restricted to protecting the social and employment rights of civil servants; it does not play any role in ensuring that hiring, firing and promotion are free from political interference, nor does it have any mandate to play a direct role in combating corruption.³¹

In the area of training, an Institute for Public Administration and European Integration was established in 2000 to train civil servants. In November 2001 the Institute organised a round table of senior civil servants to discuss corruption and measures to combat it in the public administration, and is now offering a training course on “Preventing corruption – risks and challenges to the public administration.”

²⁹ Civil Service Act no. 67/1999, in force since August 1999; the Act has been amended five times since, most recently in April 2002.

³⁰ D. A. Bilak, *Report of the Evaluation Mission*, p. 18.

³¹ D. A. Bilak, *Report of the Evaluation Mission*, p. 19.

3.2 Administrative procedure and redress

The 1999 Act on Administrative Services for Natural and Legal Persons sets forth general procedures for the provision of administrative services. Specifically, the Act stipulates a deadline of three working days following the submission of the request for the provision of an administrative service. When the service requires an administrative decision, the deadline is seven days. If provision of a service is denied, reasons must be provided within three days. However, the Act also states that procedures for providing administrative services are governed by the specific Rules of Organisation and Procedure of each administrative body, while problems not covered by these rules are to be dealt with in “internal regulations approved by the competent administrative secretary,” which are not public.

The 1989 Act on State Liability for Damages Inflicted on Citizens, and the Act on Administrative Procedure lay down rules for redress and claiming damages. Citizens may file a complaint against an administrative act to the body that carried out the act, with the right to appeal to the superior administrative body and finally to a court. If the act is annulled by the respective administrative body or by the court, citizens may also apply for damages to a court, either at their place of residence or at the place of damage. When damages are claimed as a result of an act whose defects are so serious that it cannot be considered valid, no previous annulment of the act is required. Claimants pay court costs if the claim is overruled in whole or in part. The Supreme Administrative Court is the final arbiter of appeals.

In practice, these provisions do not enable citizens to effectively defend their rights *vis-à-vis* public bodies. Rules concerning administrative procedure, appeals and redress are scattered across several acts, legal procedures are slow and complicated, and implementation is undermined by the fact that the very institution that is accused of carrying out a damaging act is charged with explaining to claimants their rights and complaint procedures. According to the UNDP, the existence of various rules and deadlines for procedure and appeals makes it very difficult for citizens to seek redress.³² There are no known cases in which the law has been used to obtain compensation for acts involving corruption. In order to provide one of the basic conditions for effective redress, all rules concerning administrative procedure, appeals and redress should be codified in a single act.

³² D. A. Bilak, *Report of the Evaluation Mission*, pp. 19-20.

3.3 Conflict of interest and asset monitoring

There are no rules on conflict of interest at the executive branch level, with the exception of some vague provisions in the Code of Conduct for Civil Servants (see Section 4.2). Apart from the ineffective Act on Asset Disclosure by Persons Occupying Senior Positions in the State (see Section 2.3), which does not apply to officials below the level of minister, there are no provisions for monitoring officials' assets.

3.4 Internal control mechanisms

The Civil Service Act provides for the establishment of a seven-member Disciplinary Board in each unit of public administration to hear disciplinary cases and impose disciplinary penalties ranging from reduction in rank for a period of six months to one year to dismissal. In practice, many administrative units have fewer than seven civil servants and are therefore unable to form such disciplinary councils.

3.5 Interaction with the public

The Code of Conduct for Civil Servants, approved by the Minister of State Administration on 29 December 2000, outlines the fundamental principles and rules of ethical behaviour for civil servants in their interactions with citizens, in the performance of their professional duties, and in their private and public lives. However, the Code is vague, does not provide clear rules on conflicts of interest and imposes a duty of loyalty to the organisation, which may encourage the withholding of public information and provides a clear disincentive to whistleblowing – a situation which is exacerbated by the absence of mechanisms or legal provisions to protect whistleblowers. There are no mechanisms for observing or enforcing the Code. In practice, the Code contributes little to increased transparency and accountability in the civil service.

The most positive step taken in regulating the relationship between officials and citizens was the Act on Access to Public Information, which came into force in July 2000 (see Section 9.2).

3.6 Corruption

As the figures in Section 1.1 show, there have been very few convictions of Bulgarian public officials for corruption. However, in the past few years the executive branch has been increasingly the focus of media allegations of corruption. As of January 2002, 34

senior public officials or former public officials were under investigation or had been charged, including nine former ministers. The more important cases are summarised below:³³

- Former Executive Director of the Privatisation Agency Zahari Zheliazkov was fired in November 2000 and subsequently charged in connection with the privatisation of Incoms Telecom Holding, which was cancelled in February 2001 amid accusations of corruption. Zheliazkov was under criminal investigation in connection with the privatisation of several other companies, including Balkan Airlines.
- Former Deputy Prime Minister and Minister of Industry Alexander Bozhkov was charged in three cases: the first in connection with the sale of an optical technology company for a very low price in 1998 (a deal he signed without receiving the opinion of the Privatisation Agency); the second in connection with the privatisation of a publishing company; and the third for allegedly exceeding his powers by signing an inflated issue of compensatory bonds to an individual. Then Deputy Minister of Industry Marin Marinov was also charged for his activities in connection with the liquidation of an electronics company.
- Former Minister of Health and Director of the National Health Insurance Company Ilko Semerdzhiev was charged in connection with a contract signed for the State insurer for an integrated information system with the US company AremiSoft, allegedly in violation of numerous provisions of the Public Procurement Act.
- In April 2000, former Minister of Interior Bogomil Bonev alleged that then PM Ivan Kostov had withheld from prosecution offices a number of materials pointing to corruption within the ruling Government coalition and by senior officials. At the same time, four of Kostov's advisors became embroiled in corruption scandals and were removed, one due to revelations that his company located at a border checkpoint was used for smuggling cigarettes.

The number of scandals affecting the most senior officials may be related to an important characteristic of executive decision-making in Bulgaria: the very high degree of discretionary decision-making power retained at the highest ministerial level. A British Embassy official commenting on the process for foreign investors to gain licensing and concessions, noted, that, "It's all about ringing up ministers, no-one below the minister can take decisions."³⁴ While this might be a way of limiting lower

³³ "Who is hounded for what," *Sega*, 25 January 2002.

³⁴ Interview with Dennis Leith, First Secretary (Commercial/Economic), British Trade Partners, British Embassy, Sofia, 7 February 2002.

level corruption, it is also to some extent both a cause and consequence of high-level corruption.

To date, no scandals have hit top officials in the present SNM Government, despite the efforts of the opposition UDF to create a scandal around the Government's decision to hire a British customs consultancy company without a public tender – which appear more politically motivated than grounded in actual malpractice (see Section 8.2).

4. LEGISLATURE

The Bulgarian Parliament does not function as an effective anti-corruption mechanism, and is itself highly vulnerable to corruption. Parliament does not scrutinise public finances effectively or initiate anti-corruption legislation, and two anti-corruption committees were abolished in 2001 after proving to be entirely ineffective. Regulation of conflict of interest and lobbying is minimal or non-existent, and immunity provisions are extensive. There are serious concerns that Parliament may be effectively influenced or controlled of vested interests with an interest in blocking anti-corruption policy, for example in the area of customs reform.

4.1 Elections

Bulgarian elections are free and fair. Elections are organised and supervised by three sets of electoral commissions: a Central Election Commission, regional electoral commissions and sectional/local electoral commissions. The CEC is appointed no later than 60 days before elections by the President, following consultations with parliamentary caucuses, and its composition reflects the relative strength of different parties; no party or coalition may have a majority.

The only scandal to date concerning the conduct of elections broke when a member of the CEC during the November 2001 presidential elections attacked the Commission's choice of a company to calculate the election results (see Section 7.3).

4.2 Budget and control mechanisms

Although the State budget is subject to approval by the Parliament, there are a significant number of categories of public expenditure that do not require legislative

approval. In the 2001 budget, there were 21 extra-budgetary accounts.³⁵ The number and types of these funds is decided by the Government.

Both the State budget and the accounts of extra-budgetary funds are audited by the National Audit Office. As described in Section 2.4, audit by the NAO does not provide sufficient scrutiny, partly due to the lack of a mechanism by which the Parliament would enforce its findings.

Until April 2001, the Parliament had two specialised committees dealing with corruption issues: The Committee for Countering Corruption and Organised Crime and the Committee for Legal Issues and Anti-corruption Legislation. The former was invested with investigative powers to deal with complaints on corruption-related issues but remained inactive despite receiving around 1,000 letters during its existence, while the latter dealt with legislative reform in the area of anti-corruption. Both were abolished after the 2001 elections, having contributed very little to either investigation or legislation.³⁶ The Parliament constituted after the June 2001 elections does not have a specialised anti-corruption committee.

4.3 Conflict of interest and asset monitoring

Regulation of both conflict of interest and asset supervision is inadequate, and the holding of external business interests by MPs appears to be widespread.

Existing regulations of conflict of interest are minimal. A general conflict of interest provision in the Internal Regulations of the Parliament prohibits individual members

³⁵ These were: Unemployment and vocational training with the Ministry of Labor and Social Policy; Environmental Protection Fund; Social Integration Fund; "13 Centuries of Bulgaria" charity fund; National Compensation Fund for Housing Savings; Television and Radio Fund; Extra-budgetary account of the National Assembly; Fund for Safety and Storage of Nuclear Waste; Fund for Decommissioning of Nuclear Power Plants; Special Account for the Proceeds of Municipal Privatisation; Fund to meet the costs of Privatisation of Municipal Property; Special Municipal Fund for Investment and long-term Acquisition of Assets; Municipal Environmental Protection Fund; Housing Construction Fund for all agencies funded through the State budget; Municipal Social Protection Fund; Municipal Fund for Compensation of Former Owners of Confiscated Agricultural Land; Ministry of Finance National Fund established by memorandum of understanding between Bulgaria and the European Commission; Ministry of Finance Fund to cover the costs of concessions; Central Government Fund to cover the costs of privatisation; State Agricultural Fund; Municipal Forestry Fund.

³⁶ For example, the Committee for Countering Corruption and Organised Crime received several thousand letters from citizens about corruption, mostly in local government, but took no action.

from carrying out “activities which are contrary to the status of Members of Parliament.”³⁷ MPs may not be paid for external work under an employment contract, but may receive honoraria for *ad hoc* work. In addition, they may not be members of the boards of commercial entities or use their position to earn money from commercial advertising. When introducing or debating a draft law, MPs are obliged to declare any relevant financial or other commercial interests. These provisions are subject to monitoring through an annual declaration submitted to the Committee on Budget and Finance. These regulations are very vague; for example, there is no definition of what might be “contrary to the status” of an MP. Moreover, in practice the Committee does not monitor adherence to the provisions. Many MPs have continued to operate as lawyers, including the former Speaker of the Parliament.

In addition to the provisions of the Act on Property Disclosure by Persons Occupying Senior Positions in the State (see Section 2.3), under the Internal Rules MPs must notify the same Committee of any gifts or other material benefits received by members “in their capacity as an MP” exceeding a value higher than 20 percent of their base monthly salary. Again, the Committee does not monitor these declarations.

Lobbying of MPs is entirely unregulated. Although specific evidence is thin, one respected analyst believes that one of the main problems facing both the current and former Governments is uncontrolled lobbying:

[L]egislators do not work in the interests of the State, but act as lobbyists for business interests or even on behalf of business groups linked to organised crime, which flourishes under a fragile, powerless Government.³⁸

The National Anti-corruption Strategy calls for the Government to initiate the adoption of legislation to regulate lobbying, but no practical measures have been undertaken yet.

4.4 Immunity

Members of the Parliament enjoy complete immunity from criminal prosecution, which may only be lifted with the consent of the Parliament. Members of the Parliament may not be held criminally liable for their opinions or votes in the Parliament. A Member of the Parliament is immune from detention or criminal prosecution except in the case of grave crimes, when a warrant from the Parliament is required.

³⁷ Internal Regulations of the Parliament, Article 102.

³⁸ Cited in: U. Buechsenschuetz, “T-SO opposition in Bulgaria,” RFE/RL Newline, 3 April 2002.

There are no statistics available on the number of applications for lifting immunity or how many have been refused. According to the press, up to November 2001 three MPs had had their immunity removed, out of five requests.³⁹ One of the denied requests was a potential minor corruption case.

In practice, immunity provisions serve to shield MPs from criminal responsibility. For example, a criminal investigation into alleged abuse of office against Major-General Brigadier Asparuhov, the former Director of the National Intelligence Service, was dismissed after he was elected to the Parliament in the 2001 elections. The Constitutional Court stated that the case should be stopped for the period of his Parliament mandate.⁴⁰

4.5 Corruption

There are no known cases of sitting MPs being charged for corruption-related offences. In October 2000, the Prosecutor General's Office charged former MP Julia Berberjan and her husband of tax evasion in relation to her acquisition of two hectares of municipal land in Sofia. According to the press, in January another MP was being investigated for his former activities as a director of an industrial plant.⁴¹

5. JUDICIARY

The judiciary is widely regarded as highly corrupt both by public opinion and foreign observers. However, although there is some indirect evidence that corruption may be a serious problem, a bigger problem may be executive interference and straightforward neglect of the needs of the judicial branch. Although the Government has initiated a programme of judicial reform, some of the proposed reforms may undermine judicial independence.

³⁹ *Dnevnik*, daily, 27 November 2001.

⁴⁰ "Who is investigated for what," *Sega*, 25 January 2002.

⁴¹ "Who is investigated for what," *Sega*, 25 January 2002.

5.1 Legislative framework

The judiciary suffers most from an absence of political commitment to judicial independence, reflected in substantial executive interference in the operation of the Supreme Judicial Council.⁴² Other problems which hamper the effective functioning of the judiciary include a severe lack of funds, very slow court proceedings for both civil and criminal cases,⁴³ insufficient publicity and transparency, shortages of qualified staff, inadequate training, outdated paper-based filing systems, and lack of coordination between judges, prosecutors and investigators.

The Bulgarian judiciary encompasses the court system, prosecution offices and investigators. Judges, prosecutors and investigators are commonly referred to as the magistracy.⁴⁴ As with members of the Parliament, magistrates enjoy immunity from prosecution for all but serious crimes with more than a five year sentence. Magistrates may be stripped of their immunity only by the Supreme Judicial Council. As the European Commission noted in its *2001 Regular Report*, requests to the Supreme Judicial Council to lift immunity are rare.⁴⁵ A proposal to limit magistrates' immunity was rejected by the Parliament in February 2001 but was being considered again by the Government in March 2002.

Judges are generally banned from carrying on any commercial activities, with the exception of scientific and teaching activities. The Bulgarian Judges Association has produced a set of guidelines for judges, but these rules are voluntary and apply only to the members of the Association. The Association of Prosecutors has not produced any ethical standards, and there are no written standards of conduct for investigators. As of early 2002, a Code of Ethics for magistrates was under development.

Members of the two Supreme Courts are subject to general requirements to disclose income and assets (see Section 2.3), although there are no legal consequences attached to the declarations. There is no such requirement for judges at lower levels.

The SJC has the clear constitutional responsibility and right to supervise and discipline all employees of the judicial branch. The Chairperson of each court is responsible for

⁴² For a detailed account of the judicial legal framework in Bulgaria, see EU Accession Monitoring Program, *Monitoring the EU Accession Process: Judicial Independence in Bulgaria*, Open Society Institute, Budapest 2001, pp. 72–108, <<http://www.eumap.org>>, (last accessed 27 August 2002). See also Sections 3.6 and 5.2.

⁴³ The average case takes three to five years to complete, and in perhaps as many as 70 percent of civil cases the ruling is not enforced until an administrative judge intervenes, which has taken up to seven years in extreme cases.

⁴⁴ Constitution of the Republic of Bulgaria, Article 117 (1).

⁴⁵ Commission, *2001 Regular Report*, p. 17.

reporting disciplinary matters to the SJC, where she believes the offence is serious enough to warrant disciplinary measures. However, in the absence of guidelines or administrative review from either the SJC or Ministry of Justice this procedure is very rarely pursued. The European Commission noted in its *2001 Regular Report* that,

[W]hilst the Supreme Judicial Council has quite wide administrative responsibilities for the operation of the court system, it does not have the necessary administrative capacity to exercise them. Its secretariat is insufficiently staffed for this role.⁴⁶

Amendments to the Judiciary Act passed in 1998 empowered the Minister of Justice and the heads of units within the judiciary (i.e. chairpersons of courts and of prosecution and investigation offices) to institute disciplinary proceedings against all magistrates. However, in practice the likelihood of such proceedings resulting in the removal of immunity are minimal.

According to the *2000 Regular Report*, “very little has been done to upgrade the judiciary, which remains weak.”⁴⁷ Although the *2001 Regular Report* acknowledges progress made with a new Strategy for Judicial Reform adopted in October 2001, it concludes that,

While there have been developments in some areas, there is as yet no reason to change the overall assessment made last year that further efforts are needed for the judicial system to become strong, effective and professional and able to guarantee full respect for the rule of law as well as effective participation in the internal market.⁴⁸

One of the consequences of the problems described above appears to be the failure of the judicial system to bring any senior officials to justice for corruption: none of the cases involving former or deputy ministers mentioned in Section 3.6, or a number of other cases involving similarly ranked officials, have resulted in conviction.

5.2 Corruption

The judiciary has been subject to widespread criticism since the beginning of transition and enjoys very little public confidence. According to surveys, the judiciary is perceived

⁴⁶ Commission, *2001 Regular Report*, p. 18.

⁴⁷ Commission, *2000 Regular Report*, p. 23.

⁴⁸ Commission, *2001 Regular Report*, p. 19.

to be the fourth most corrupt institution in Bulgaria (see Section 1.2). Western embassy officials share the opinion that the judiciary is highly corrupt.⁴⁹

This perception may have been sharpened by cases such as a January 2002 decision by the Supreme Court in a drug-related case. The case began in 1997 when police anti-mafia units raided a synthetic drugs laboratory and seized 313 kg of drugs. The Court ruled that there was insufficient evidence that the drugs were intended for sale, acquitted one of the suspects and gave a one year suspended sentence to the other.

In another case that raised concerns of political interference, a Sofia City Court Judge refused to register the National Movement Simeon II (NMS II) as a political party a month before the June 2001 Parliament elections. The Supreme Court subsequently confirmed the decision. NSM II was forced to participate in the elections as a coalition, and was not registered as a party until April 2002.

The CEEBIC *Report on the Bulgarian Business Environment* warns that “some courts and law enforcement officers may be susceptible to influence (political or economic).”⁵⁰ The January 2002 UNDP *Report on Anti-corruption Initiatives in Bulgaria*, however, urges caution in making across-the-board judgements about judicial corruption, noting that,

[T]he perception of a corrupt judiciary may not be as clear-cut as the public perceives. There is a strong case to be made that judges are not perpetrators of the problem, but victims themselves. This is a view held not just by judges, but also by senior law enforcement officials.⁵¹

The UNDP report indicates that the lack of political commitment to an independent judiciary combined with a failure to reform judicial procedures adequately leaves many judges “at the mercy of unscrupulous political and administrative authorities.”⁵² This is exacerbated by the miserable level of funding allocated to the judiciary: less than one percent of GDP, compared to a European norm of three to four percent.⁵³ The failure of the prosecution and court system to perform its role adequately (including by carrying through corruption cases) may be as much the result of pressure on judges as corruption.

⁴⁹ Interview with officials from British Embassy, Sofia, 6 February 2002: Dennis Leith (First Secretary, Trade Partners UK); Christine Winterburn (Second Secretary); Peter Petrov (Political Officer).

⁵⁰ CEEBICnet, *Bulgaria Country Commercial Guide FY 2002*, p. 71.

⁵¹ D. A. Bilak, *Report of the Evaluation Mission*, p. 19.

⁵² D. A. Bilak, *Report of the Evaluation Mission*, p. 20.

⁵³ D. A. Bilak, *Report of the Evaluation Mission*, p. 20.

6. POLITICAL PARTY FINANCE

The funding of Bulgarian political parties is extremely weakly regulated. Liberal rules on donations, a non-transparent system for determining State subsidies and the virtual absence of supervision probably underpin widespread illegal funding and corruption, although direct evidence of corruption is scarce.

6.1 Legislative framework

Although major progress has been made towards putting a framework in place to regulate the financing of Bulgarian political parties, to date these efforts do not appear sufficient to make a significant difference, and serious loopholes in financing rules remain, accompanied by entirely ineffective supervision.

The funding of political parties has only been legally regulated since a new Act on Political Parties came into force in March 2001. Under the Act,

- Parties may not carry out commercial activities or own shares in entities carrying out commercial activities;
- Parties are allowed to receive anonymous donations up to a total annual maximum of 25 percent of their annual State subsidy (see below), or 25 percent of the minimum annual subsidy in the case of parties that do not receive any subsidy. This was retained in the law despite a Presidential veto.
- Parties are not allowed to receive donations from one individual or legal entity if such donations exceed €15,000 in total.
- Parties are not allowed to receive donations from firms with more than 50 percent State or municipal ownership, or by firms and organisations carrying out a State or municipal contract.
- Parties are not allowed to receive donations from foreign governments or foreign State-owned firms and organisations.

Political parties are entitled to subsidies from the State budget. Parties represented in the Parliament receive an amount proportionate to the number of votes they received in the previous elections, as do parties that are not in the Parliament but received at least one percent of the total vote. The overall amount for political party subsidies is determined annually in the act on the State budget, and divided by the amount of votes to yield the contribution to each party. Curiously, the President of the National Audit Office told the press that the total State subsidy for political parties in the 2002 budget is €2.295m to be distributed among the qualifying parties by a ratio of one Leva

(€0,51) to one vote, although the 2002 State budget does not contain any item clearly corresponding to this. Under this formula, the present governing party would receive €918,000.

6.2 Control and supervision

Parties are obliged to submit to the National Audit Office a financial report of income and expenditures by 15 March each year. The NAO must decide within six months whether the report is in accordance with the law. However, there is no legal duty to make the reports or any related information public, and the NAO has failed to reply to requests for parties' reports. The only sanction imposed on parties for failing to submit financial reports is a one-year subsidy cut. This probably provides little incentive for parties to submit reports, especially if – as is widely suspected – they rely heavily on covert forms of finance.

6.3 Party finance in practice

There is a widespread feeling that a large proportion of corruption and practices connected with corruption – ranging from nepotism to the establishment of monopolies, shady privatisation deals, political interference in the judiciary, and rampant smuggling – have been connected with political party financing. Although the total absence of regulation of financing until recently provided strong reasons for such a belief, the evidence on party financing in practice is extremely thin – a fact which is itself partly the result of lax regulation and supervision. An MP from the Movement for Rights and Freedoms (MRF), a political party supported predominantly by ethnic Turks and currently represented in Government, accused one of its leaders in October 2001 of pocketing approximately €433,333 in party income. He was excluded from the Parliament party caucus, but continued to sit as an independent MP. There has long been suspicion that smuggling groups contribute to political parties.⁵⁴

A survey carried out in January 2001 found that 51 percent of companies expected illegal financing of parties to remain on the same level over the next three years, while 22 percent expected it to decrease significantly and 17 percent to increase significantly.⁵⁵

⁵⁴ Interview with Alexenia Dimitrova, reporter, *24 chassa*, daily, Sofia, 8 February 2002.

⁵⁵ Vitosha Research and Centre for Economic Development, *Global Competitiveness Survey*, January 2001, cited in: Coalition 2000, *Corruption Assessment Report 2001*, p. 20.

7. PUBLIC PROCUREMENT

The legal framework for public procurement has seen massive improvements in the past few years. However, procedures for supervision of and redress against procurement decisions remain ineffective, contributing to a system of contract allocation that has allowed widespread collusion and probably major high-level corruption. The effectiveness of the new system in practice is doubtful without further reform, but attempts at further reform recently faltered.

7.1 Legislative framework

The first Act on Government and Municipal Procurement was passed in 1997, and since then procurement legislation has developed rapidly. The latest version of the Act in effect since January 2002⁵⁶ provides for a relatively advanced procurement framework. Further amendments were in preparation in the first half of 2002, supported by a PHARE programme, to complete the harmonisation of public procurement legislation with the *acquis* and strengthen the institutional capacity, structures and procedures of the Public Procurement Office and agency procurement units.

Contracts over the following threshold values are subject to the Act: €306,000 for construction works, €25,500 for purchase of goods, and €15,300 for purchase of services. As a general rule, procurement must be carried out by open tender, and contracts may not be split in order to circumvent these thresholds.

Contracts may be allocated by a restricted tender (closed bidding procedure) involving bidders invited by the principal after a pre-qualification process, if, in view of the specific character of the subject of procurement, it is only capable of being performed by a limited number of contractors, or the subject of procurement is of a complex technical nature that requires successive technical or technological specifications to be defined in the course of contract performance.

Contracts may be allocated by direct negotiation procedure (similar to sole sourcing), where the principal negotiates with one or several selected persons, under a number of conditions. The most important of these are where:

- There is a need for accident of disaster prevention or relief, a threat to human health and life, or considerable damage or loss of property.

⁵⁶ Public Procurement Act, *State Gazette*, no. 97, 28 November 2000, effective 1 January 2001.

- The subject of procurement concerns supplemental supply by an existing contractor not later than one year after the award of the main contract, and provided a number of further conditions are met, such as when purchase from a different contractor might result in incompatibility or technical differences in operation, and that the total value of the supplemental contract does not exceed 30 percent of the original contract.
- Similar rules apply if the subject of procurement concerns a recurrence of service or supply of supplemental service or construction works by an existing contractor not later than one year after the award of the main contract, and the original contract was awarded by open or restricted tender and invitation to bid set out the likelihood of supplemental procurement or construction works.
- The open or closed tender procedure has been terminated due to lack of bidders, failure of any bidder to conform to tender requirements, the top three ranking participants successively refuse to close a contract, or the grounds on which the original tender was issued change for unforeseeable reasons.

The principal may award a tender by direct negotiation with the permission of the Public Procurement Agency in cases in which:

- The procurement may only be implemented by a specific entity.
- It is objectively impossible to meet the deadlines for conducting an open or restricted tender.
- The tender concerns out-of-warranty servicing or spare parts for machines, facilities or complex equipment.

The Act contains a number of other important standard provisions, for example prohibiting additions to a contract unless circumstances arise that could not have been foreseen at the time the contract was signed, and which render the contract prejudicial to the legitimate interests of one of the parties.

Tender proceedings must be conducted by a special committee appointed by the head official of the authority. Committee members are subject to conflict of interest provisions forbidding any involvement or interest in the tender (for example, specifying the requirement of sealed bids, strict rules for opening bids, and the right of any bidder or applicant to bid to be present at the opening of bids).

Agencies subject to the Act must submit annually to the *Official Gazette* information about their procurement plans for the coming year by 1 March. A Register for Public Procurement was set up in 2001, which must contain information on all procurement contracts regulated by the Act. A recently adopted Act on Electronic Signature and

Electronic Documents in force since October 2001 has created one of the preconditions for introducing online public procurement.⁵⁷

The Public Procurement Office was created in 2001. It is appointed by the Council of Ministers and subordinate to the Ministry of Public Administration. The Office has a wide range of responsibilities, from drafting new legislation, issuing methodological instructions, issuing mandatory instructions if it detects violations of the law, monitoring the performance of public procurement contracts, to keeping the Public Procurement Register.

7.2 Review and audit

Procedures for complaints and review of public procurement decisions are covered only very briefly in the Public Procurement Act. Under the Act, any participant in a public procurement procedure may file a complaint under the Act on Administrative Procedure. This effectively means that redress can be sought only through the courts, and raises the same concerns about redress covered in Section 3.2. The Act further states that review of its application shall be exercised by the National Audit Office and the State Internal Financial Control Agency. The Chairperson of the Public Procurement Office may request the SIFCA to review particular procurements.

Again, given the stage of development of financial control in general, and the weakness of current regulations on administrative procedure, the effectiveness of this framework in limiting abuses during public procurement procedures is questionable. One of three proposed amendments to the Act submitted at the end of 2001 would have established an independent Public Procurement Agency to oversee procurement. The Agency would have received information on each appeal, although it would not have been given powers to decide appeals. The amendments would also have introduced other improvements to the Act, for example the duty of contracting authorities to explain to bidders its choice of winner, and a prohibition on arbitrary changes to tender conditions. However, the proposals were rejected in March 2002 by the Parliament's Economic Committee.

Another weakness of the Public Procurement Act concerns the leniency of the sanctions it imposes for violations of its provisions. The most serious sanction is for failure to conduct a procurement procedure when it should have been conducted, which is subject to a fine of €510 to €2,550. Agencies that award contracts by direct negotiation without due reason are punishable by a fine of €510 to €1,530. There is no provision for the annulment of contracts awarded in violation of the Public Procurement Act.

⁵⁷ See <http://www.csd.bg/publications/law/law_e.htm>, (last accessed 27 August 2002).

7.3 Corruption

Corruption has been a serious problem in procurement, partly due to the absence of any law until 1997. The law remains widely criticised, even after amendments to the 1997 Act, and in a January 2001 survey, half of companies surveyed stated that additional payments and bribes are necessary to win public contracts and obtain licences.⁵⁸

In particular, improvements in the law may not have done anything to deter widespread collusion. According to the Chief Financial Officer of an international organisation with offices in Sofia, rampant collusion raises the price of every contract the organisation issues by around 20 percent on average.

One big corruption scandal surfaced in November 2000 when Jeilan, a Turkish construction company, claimed it provided €58.8m in bribes, some to senior Government officials, to secure large construction contracts, such as one making it the primary contractor for the Gorna Arda water cascade project in an inter-governmental agreement with Turkey. The company went public with the allegations when the Government decided to cancel the contract because the company went into bankruptcy proceedings.⁵⁹

During the November 2001 presidential elections, the Central Electoral Commission had to terminate its contract with a private company that had been commissioned to process the election results after it emerged that the company lacked the technical capacity to carry out the task.⁶⁰ A representative of the Civic Initiative for Free and Fair Elections publicly expressed suspicion that members of the CEC took bribes from the company.⁶¹

IT companies have also registered strong complaints about contracts for software through the Bulgarian Association for Information Technologies, which recently detailed allegedly “flagrant” violations of the procurement law by the Parliament and ministries of Finance, Agriculture and Public Health.⁶²

⁵⁸ Vitosha Research and Centre for Economic Development, *Global Competitiveness Survey*, January 2001; cited in: Coalition 2000, *Corruption Assessment Report 2001*, p. 47.

⁵⁹ G. Alexandrova, “Cok Selam, Jeilan,” *Kapital*, 13 November 2000.

⁶⁰ *Sega*, 13 November 2001.

⁶¹ *Troud*, 16 November 2001.

⁶² *Standart*, 11 July 2001.

8. PUBLIC SERVICES

Bulgaria suffers from serious problems of corruption in a number of public services. The Bulgarian Customs Administration appears to be more seriously affected by corruption than any other public institution, and was identified by the Government as the number one priority in the fight against corruption. However, there are indications that the Government may be unable to push through meaningful reform against the influence of groups with a vested interest in the *status quo*. Licences and permits remain major barriers to doing business, although the Government is in the process of carrying out important licensing reforms.

8.1 Police

The Bulgarian police is regarded as the one of the most corrupt institutions in Bulgaria according to surveys (see Section 1.2), and bribery in the traffic police is a particularly prominent area of concern.⁶³ Bulgarian law enforcement agencies have recently started to develop internal control departments to deal with corruption, *inter alia*, but these are still *ad hoc* in nature and there is no coordinated strategy. The current Government appointed a widely respected former police chief as Secretary General at the Ministry of Interior, one of whose tasks is to devise a strategy to fight corruption in the police. In 2001, the Ministry made serious efforts to adopt a number of anti-corruption priorities as part of the National Anti-corruption Strategy. Most particularly, within its Inspectorate the Ministry has established a special unit on internal corruption monitoring and prevention. The Ministry has also prepared a Draft Code for the Ethical Behaviour of Police Officers with references to anti-corruption.

8.2 Customs

Smuggling, which was already institutionalised by the secret services under the Communist regime, has become even more pervasive in response to the sharp rise in demand for imported goods after 1989. As a result, the Bulgarian customs service has been subject to more corruption pressure than any other sphere of public administration

⁶³ One editorial in an English-language weekly recently referred to alleged widespread bribes of €5-10 to avoid tickets from traffic police; see "Corruption 101," *Sofia Echo*, 31 August 2001.

during the past decade.⁶⁴ In addition, as in neighbouring Romania, the Yugoslav embargo led to massive and highly profitable illegal exports of oil and other products during the 1990's,⁶⁵ facilitated by the active or passive acquiescence of senior Government officials. The symbiosis between corruption and smuggling has become endemic through criminal interactions between smugglers and civil servants at virtually all levels, according to one report published in 2000.⁶⁶ Illegal imports fuel a grey economy that amounts to as much as 35 percent of GDP,⁶⁷ and according to statements to the media in 2001 by the highly respected former Director of the Customs Agency, goods worth some €1.08b are smuggled into Bulgaria every year – an amount equivalent to roughly one-quarter of the annual State budget.⁶⁸

Measures taken under previous governments to combat corruption in the customs agency were largely ineffective. According to the General Customs Directorate (now the Customs Agency), between October 1997 and October 1999, 102 customs officers were fired on account of “proven grave offences” against customs legislation.⁶⁹ One 2000 report calculated that 86 percent of foreign cigarettes imported into Bulgaria in 1998 were imported illegally,⁷⁰ one of the authors of this report recently estimated the percentage at 90 percent in 2001. On the other hand, illegal imports of high-quality alcoholic spirits fell from nearly 100 percent to 20-30 percent, as a result of changes to the law mandating that duties be determined on the basis of alcohol content, rather than on declared value as previously.

The Government has identified improving the customs administration as one of its top priorities in the fight against corruption, and this constitutes part of the Anti-corruption Strategy. In August 2001 it appointed Emil Dimitrov, a former auditor of the Ministry of Finance, as Director of the Customs Agency; under the previous

⁶⁴ For information on smuggling channels and their origins in Bulgaria, see material by Centre for Study on Democracy, available at <http://www.csd.bg/publications/corrupt_1_e_cont.htm>, (last accessed 27 August 2002).

⁶⁵ Neicho Neev, former Deputy Prime Minister in Luben Berov's 1993-4 cabinet, was being investigated in January 2002 in connection with criminal violations of the Yugoslav embargo and suspicion of large scale corruption deals.

⁶⁶ See Centre for the study of Democracy, *Corruption and Trafficking: Monitoring and Prevention*, Centre for the Study of Democracy, Sofia 2000.

⁶⁷ Centre for the Study of Democracy, *Corruption and Trafficking: Monitoring and Prevention*, p. 35.

⁶⁸ *Troud*, 22 August 2001.

⁶⁹ Centre for the Study of Democracy, *Corruption and Trafficking: Monitoring and Prevention*, p. 17.

⁷⁰ Centre for the Study of Democracy, *Corruption and Trafficking: Monitoring and Prevention*, p. 43.

Government, Mr Dimitrov wrote a damning report on the customs administration and was forced to resign. It has also established an Internal Control Department within the Customs Agency, and announced new investigative powers for customs officers. A number of dismissals of customs officers have already taken place. For example, in November 2001 Dimitrov announced he would dismiss the head of the regional customs agency in Rousse and replace other customs officials there, because of confirmation that money had been collected in Rousse for bribes for a high-ranking official in the Customs Agency in Sofia.⁷¹ Also in November, the Agency opened a 24-hour hotline to facilitate reporting of corruption.

Part of the Government's plan was to obtain advice on customs reform from Western experts; Finance Minister Milen Velchev even suggested that customs activities might be outsourced to foreign companies.⁷² In fact, in November, the Government announced a contract with the British consultancy firm Crown Agents for advice on customs reform. However, the contract provoked a strong reaction from the opposition UDF (the previous governing party). In March 2002, four months after the announcement of the contract, the UDF presented a request to the Prosecutor General to investigate the contract, and a petition for the creation of a parliamentary investigative committee. In the wake of these events, Dimitrov presented his resignation.

The UDF's opposition has been widely interpreted to have been motivated by the danger posed to its members by investigations of customs violations that took place under the former Government. The situation was clouded further when Dimitrov also declared his opposition to the contract – which was awarded without a public tender – and declared after his resignation that he was offered €306,000 a year not to interfere with the Crown Agents deal.⁷³

Under these circumstances, it appears that the anti-corruption drive in the Government's top priority area may have lost momentum, and the prospects for reforming customs and breaking the links between powerful smuggling groups and smuggling channels involving customs officials are uncertain.

8.3 Tax collection

There have been no major allegations in the media of corruption in the tax administration. Victimisation surveys indicate that the tax authorities have become less

⁷¹ I. Vatahov, "Customs bribes alleged in Rousse," *Sofia Echo*, 9 November 2001.

⁷² I. Vatahov, "Customs to be foreign-run?" *Sofia Echo*, 3 August 2001.

⁷³ I. Vatahov, "Dimitrov attacks Crown Agents contract," *Sofia Echo*, 22 March 2002.

of a source of corrupt pressure over time. Nevertheless, the public still ranks tax officials among the top ten most corrupt public services in the country.⁷⁴

8.4 Health

According to survey results almost half the population believe most or almost all doctors are corrupt (see Section 1.1). Results of victimisation surveys of the general public in May 2002 indicated an increase in perceptions of corruption pressure in healthcare, with doctors ranked lower only than customs officers as the public officials exerting the strongest pressure to obtain bribes.⁷⁵ The January 2002 UNDP *Report on Anti-corruption Initiatives in Bulgaria* cites perceptions by local citizens that hospitals and doctors are very corrupt as a result of their subordination to the Ministry of Health and lack of accountability at the local level.⁷⁶ One area that has attracted particular attention with regard to corruption has been funeral services.⁷⁷

The Government has acknowledged the problems of corruption in this area – in July 2002, the Minister of Health gave an interview admitting corruption in the health care system (*Standart*, daily, 11 July 2002). Remarkably, however, despite the social sensitivity of this public service there have been almost no anti-corruption policies formulated by the Government in this area. Health care is not even identified one of the target areas in the Government's anti-corruption strategy adopted in October 2001.

Doctors are subject to the bribery provisions of the criminal code. There have been a few prosecutions but – according to available evidence – only one conviction, which resulted in a suspended sentence.

8.5 Education

According to surveys from May 2002, educational staff rank fourth among officials in terms of their tendency to pursue bribes, although the scores in that survey indicated a slight improvement. According to media articles, the most widespread forms of corruption in higher education are linked to pressure on students to purchase learning

⁷⁴ Corruption Indexes of Coalition 2000, May 2002, <http://www.online.bg/vr/crl/corr_ind_05E.htm>, (last accessed 27 August 2002).

⁷⁵ Corruption Indexes of Coalition 2000, May 2002, <http://www.online.bg/vr/crl/corr_ind_05E.htm>, (last accessed 27 August 2002).

⁷⁶ D. A. Bilak, *Report of the Evaluation Mission*, p. 12.

⁷⁷ "Corruption 101," *Sofia Echo*, 31 August 2001.

materials from certain publishers only and the “purchase” of exams.⁷⁸ According to information provided to the Ministry of Education by the National Audit Office, corruption persists due to low penalties for offenders.

Although the Government has acknowledged the existence of corruption problems, education is not explicitly identified as a target area in the Government’s anti-corruption strategy.

8.6 Licensing and regulation

Licences and permits remain a major barrier to doing business in Bulgaria. The system of licensing regimes is non-transparent; estimates of the number of regimes in existence vary between 450 and 526, and State authorities may create licensing regimes by ordinance and maintain them even when the law enabling the ordinance is cancelled.⁷⁹

[One of t]he main impediments to medium-term economic prospects include excessive administrative requirements for entrepreneurs... Recent business surveys indicate that licensing and administrative requirements impose a heavy burden on the private sector, particularly small businesses.⁸⁰

The UNDP *Report on Anti-corruption Initiatives in Bulgaria* supports this opinion, noting that around 30 documents are required from different institutions in order to start a small business.⁸¹ Corruption is believed to be widespread at various stages in this process, such as securing permission from safety inspectorates.⁸²

The previous Government carried out a review of licensing regimes and eliminated or simplified 121 licensing regimes in 2000. In 2001, both the old and new Governments promised to carry out major reviews of licensing regimes. By early 2002, the Government appeared to have carried out the necessary analysis of existing regimes to do this.⁸³ The Government has set up an inter-ministerial working group on licences and registration regulation and, in May 2002, announcing that it will repeal 74 and simplify procedures for another 120 licences. As of June 2002, this commitment had not been fulfilled.

⁷⁸ *Sega*, daily, 19 April 2002, editorial.

⁷⁹ Coalition 2000, *Corruption Report 2001*, p. 48.

⁸⁰ CEEBICnet, *Bulgaria Country Commercial Guide FY 2002*, p. 7.

⁸¹ D. A. Bilak, *Report of the Evaluation Mission*, p. 13.

⁸² Interview with Alexenia Dimitrova, reporter, *24 chassa*, daily, Sofia, 8 February 2002.

⁸³ Interview with Ruslan Stefanov, Project Director, Economic Policy Institute, Sofia, 8 February 2002.

9. ROLE OF THE MEDIA

The legal environment for the media is generally favourable, although a few provisions may discourage freedom of speech. The media received an important boost with the passage of an Act on Access to Public Information in 2000. However, the effectiveness of the new Act may be counteracted by other laws and regulations that have been recently adopted. The independence of public broadcasting remains an important concern: political influence appears to rule out any investigative role, and has been singled out by the Council of Europe as a problem.

9.1 Press freedom

The Bulgarian Constitution guarantees freedom of expression and press freedom.⁸⁴ However, several legal provisions directly discourage investigative journalism. Specifically, the Criminal Code allows the imposition of a fine up to €16,000 for publicly insulting a public official,⁸⁵ and there have been several instances of fines being imposed on journalists.

Although under Bulgarian law journalists may have the right to preserve the confidentiality of sources, in some instances authorities have sought to force disclosure. For example, *24 chassa* (the second largest Bulgarian daily) published a story about alleged non-payment of rent to the Sofia municipality by an NGO run by the wife of the then Chairman of the Parliament (*24 chassa*, 24 May 2000). In a poll of journalists run by Coalition 2000 performed the following week, the story was voted as the top corruption story of the week. The wife of the Speaker filed suit against *24 chassa*, and the court ordered Coalition to reveal the names of the journalists who participated in the poll. Up to May 2002, the court had taken no further action.⁸⁶

9.2 Access to information

Access to information has improved very significantly since the passage of a Freedom of Information Act in 2000, helped by the Access to Public Information Programme, a

⁸⁴ Bulgarian Constitution, Articles 40–41.

⁸⁵ Criminal Code, Article 148.

⁸⁶ *24 chassa*, daily, 24 May 2000.

strong civil society foundation.⁸⁷ Access, however, remains difficult in many cases, and could be compromised by other changes in laws and regulations that have been passed recently.

Under the 2000 Access to Public Information Act (APIA) all Government bodies, public law subjects and legal entities financed from the consolidated State budget are obliged to provide public information on request within 14 days. Public information is defined as any information related to public life and which enables citizens to make their own judgements about the activities of persons to whom the Act applies. The meaning of “information related to public life” has so far been interpreted relatively broadly in the small number of cases that have been heard by courts.

The Act lists a number of exceptions, including internal preparatory documents, State or other secrets protected by law and documents affecting third-party interests (such as the rights and reputations of third parties and commercial secrets) in particular. Access to public information may not be used “against national security, public order, health and morality.” Although APIA gives the administration discretion only in deciding on internal preparatory documents, many officials still interpret all exemptions widely. For example, the Ministry of Finance refused journalists’ requests to reveal whether certain Bulgarian MP’s paid taxes on a real-estate deal on the grounds that the information is an “official secret.”

The newly adopted (in April 2002) Protection of Classified Information Act (PCIA) further regulates the exemptions of the access to public information. PCIA gives definitions of State secret and official secrets:

- A State secret is classified information which is included on the List of Information Classified as State Secret (Schedule 1 to this Act – list of 64 categories) and unauthorised access to which would jeopardise or harm the interests of the Republic of Bulgaria relating to national security, defence, foreign policy or the protection of the order established by the Constitution.
- An official secret is classified information produced or stored by the State authorities or by the authorities of local self-government which does not constitute a State secret and unauthorised access to which would affect adversely the interests of the State or would prejudice another interest protected by law.

The only discretion that officials have is in deciding if certain information can be classified as an official secret, i.e. they can decide whether or not its disclosure would

⁸⁷ Access to Information Programme Foundation was the leading organisation in the public debate for the adoption of the Access to Public Information Act. See <<http://www.aip-bg.org/discuss.htm>>, (last accessed 27 August 2002).

prejudice another interest protected by law. In that case the Protection of Classified Information Act (PCIA) provides for a “harm test.”

Citizens may appeal against a refusal to provide information to the institution that refused to grant information, and thereafter to the courts. This appeal is also filed through the institution, which thereby gets another chance to grant access before forwarding the appeal. Up until April 2002, Access to Information Programme Foundation registered 716 refusals to provide information under the law. Most refusals were without grounds (173 cases), but reasons provided were on the grounds of an instruction from a superior (111), because the matter is not within the particular official’s discretion (78 cases) or on the grounds that it is an administrative secret (51). The largest number of refusals came from territorial branches of central Government bodies (189), followed by local administration (101), central Government bodies (68), courts (67), and legal entities (57). As of April 2002, AIP was assisting in 27 appeals, only one of which involved a journalist. As of March 2002, an appeal by a journalist against the refusal of the Government to provide minutes of a Cabinet meeting was awaiting a hearing by the Supreme Administrative Court.

The Act on Access to Public Information has made an important difference to access to information in practice. Important cases in which access has been secured under the Act include requests for full copies of privatisation contracts and the release of an NAO report on disbursement of EU funds. According to journalists, the Act has had a big impact, and access to information is improving.⁸⁸ An important role in educating citizens about their rights under the Act and in assisting applications for information and appeals against refusals has been played by the Access to Information Programme (AIP).⁸⁹

According to the AIP, it remains difficult to obtain information, especially from central Government institutions and when concerning financial and budget problems. The Ministry of Finance’s Agency for Internal Financial Control defines its audits reports as secret, while the National Audit Office has failed to reply to requests for political party financial reports, MPs asset declarations and other audit reports.

Public officials are not encouraged to reveal public information. The duty to provide information is not mentioned in the Code of Ethics for civil servants adopted in 2000, which also introduces the concept of “internal information,” a term vaguely defined as official discretion that might potentially be used to limit access to information.

⁸⁸ Interview with Alexenia Dimitrova, reporter, *24 chassa*, daily, Sofia, 8 February 2002.

⁸⁹ See, e.g., the website of Access to Information Programme Foundation, <<http://www.aip-bg.org>>, (last accessed 27 August 2002).

Moreover, the Code includes the duty of officials to be loyal to their institutions, which could also clash with freedom of information provisions.⁹⁰

A new Act on Personal Data Protection that came into effect in January 2002 may also create problems through a provision that defines data created during the exercise of duties within a public institution as personal.⁹¹ It is too early to tell whether this provision will be used to deny access to public information.

9.3 Broadcasting regulation

The Bulgarian National Television (Channel I) and Bulgarian National Radio are defined as “national public TV and radio operators.”⁹² Their property is State-owned⁹³ and their budget requirements are met by the State.⁹⁴

Licensing and supervision

The regulatory framework for broadcasting appears to have been subject to mainly political considerations. Under the Act on National Radio and Television, the Council on Electronic Media appoints the Director-Generals of Bulgarian National Television and Bulgarian National Radio and approves the compositions of their boards. The Council consists of nine members: five appointed by Parliament and four by the President. There are no provisions regarding nomination of candidates, and they are essentially political appointees. Council members are elected for six years.⁹⁵

In practice, the Council has reflected the balance of political power in the Parliament and Presidency rather than acting as an independent regulator. However, the appointment in early 2000 by the Council of an unpopular but politically acceptable Director-General of National Radio led to a strike by radio employees, the withdrawal of the appointment and the resignation of the Chairman of the Council.

In 2001, the Government prepared amendments to the Act, which would impose an obligation on the public media to guarantee the pluralism of views presented. However,

⁹⁰ Interview with Gergana Jouleva, Executive Director, Access to Information Programme, 8 February 2002.

⁹¹ Act on Personal Data Protection, Article 2.

⁹² Act on Radio and Television, in force from 24 November 1998, last amended 9 November 2001, Article 7.

⁹³ Act on Radio and Television, Article 42.2.

⁹⁴ Act on Radio and Television, Article 70.

⁹⁵ Act on Radio and Television, Article 29.

the proposal would not tackle the problem of political influence over the Council, and has been criticised on this basis by the Council of Europe, according to which,

Specific regulations are need[ed] in order to prevent improper influence of the Government on the media regulation bodies which should be appointed in a democratic and transparent manner.⁹⁶

9.4 Corruption in the media

Corruption in the media itself is a significant concern, ranging from the restriction of coverage of official State visits abroad to a limited number of journalists whose costs are paid by the State, to standard problems of hidden advertising. Journalists view a widespread media campaign against the contract between the Government and Crown Agents (see Section 8.2) as an example of “publication by order” and of the strength of the anti-reform customs lobby.⁹⁷

9.5 Media and corruption

The media, and the press in particular, have played an important role in bringing the issue of corruption to the centre of public debate. Although investigative journalism is not well developed, the press has brought numerous cases of high-level corruption to the public’s attention. For example, as a result of disclosure by *Sega* of unlawful property transactions between the municipality of Sofia and the family of Julia Berberyan, a former MP from the then ruling UDF coalition, Berberyan was obliged to settle due taxes and was under criminal investigation in early 2002 (see Section 4.5).

10. RECOMMENDATIONS

The following recommendations have been highlighted as particularly important to Bulgaria. For additional recommendations applicable to candidate States generally, please see Part 5 of the Overview report.

1. Redouble efforts to reform the Customs Administration, if necessary by outsourcing to a foreign administrator.

⁹⁶ Cited in: *Banker*, 6 October 2001.

⁹⁷ OSI Roundtable Discussion, Sofia, 7 February 2002.

2. Complete administrative reform to define responsibilities, decentralise functions to local government and provide effective redress to citizens against administrative decisions.
3. Implement measures to prevent uncontrolled lobbying, especially reform of party funding.
4. Pursue judicial reform based not only on anti-corruption measures but also on commitment to judicial independence and provision of adequate resources.
5. Introduce independent supervision of public procurement and effective sanctions for violation of procurement regulations.