

## F. INTERNATIONAL COOPERATION AGAINST CORRUPTION

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

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

### F.1. Legislative Dimensions

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

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

the integration with the EU.

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

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

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

- The *amendments to the Criminal Code*, also adopted in the year 2000, were primarily directed to implement the standards of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the OECD and of the Criminal Law Convention on Corruption of the CoE making the latter likely to be ratified shortly. The amendments criminalized the promising and the offering of a bribe to local and foreign public officials as well as the demand and the consent of a local official to receive a bribe. The law abolished the restriction for sanctions on the active bribery of foreign public officials only in case they are engaged in international business activities. In addition, stricter sanctions were envisaged for all types of bribery.
- In compliance with the standards of the two conventions mentioned above the *Draft Amendment to the Law on Administrative Offences and Penalties* was elaborated introducing property liability for legal persons for corruption and other crimes committed by their high officials in their personal interest. On September 13th, 2000 the bill passed on first reading at the National Assembly. The law is expected to be adopted in December, 2000.
- In the year 2000, measures were undertaken which aimed at increasing the public intolerance of acts of corruption and establishment of adequate ethic rules of conduct for the public officials. The *Law on Property Disclosure by Persons Occupying Senior Positions in the State* was adopted aiming at prevention of a possible corruption conduct of those persons (presented in detail in Chapter 1). Similar measures represent an important instrument for prevention of corruption and are thus recommended by all international organizations dealing with this subject.
- The government also elaborated a Draft Law of the Code of Conduct of the Public Official, corresponding to the Recommendation NoR (2000) 10 of the Committee of Ministers of the Council of Europe to the member-states for the codes of conduct of public officials, adopted on May 11th, 2000.

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

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

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

## F.2. Institutional Aspects

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

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

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

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

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

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

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

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

the private sector in counteracting corruption.

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

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

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

### F.3. Regional Approach

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

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

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

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



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

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

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