

## 4. ANTI-CORRUPTION REFORM IN THE CUSTOMS AGENCY AND IN THE MINISTRY OF INTERIOR

### 4.1. REFORMS IN THE CUSTOMS AGENCY

The legal framework of the Customs Agency<sup>38</sup> is harmonized with the legislation of the European Union and is based on several specific organizational principles of customs administration:

- The principle of structural separation and centralization of customs administration: This principle is characterized by an exceptionally hierarchical system of the Customs Agency, built on three levels (national, regional and local) and incorporated into one, autonomous administration within the Ministry of Finance.
- The principle of acceleration of customs procedures at the border and shifting of customs activities into the interior of the country: This principle is applied through the introduction of a two-tier customs procedure (customs clearance at the border and in the interior) based on the EU practice, with special attention given to control in the interior (at the internal customs bureaus).
- The principle of effective division of functions and tasks between customs bureaus: This principle is based on the possibility for dynamic reorganization of the work of individual customs bureaus and the possibility for assigning to them particular tasks, which depend on their location, intensity of traffic, type of the means of transportation, type of transiting goods, economic profile of the region, etc.

However, as it is the case with other Bulgarian institutions, the modern legal framework and its successful adjustment to the EU standards are often in contrast with practice. The efforts to counter smuggling of consumer goods, drug smuggling and trafficking in human beings are not sufficiently effective yet, the systemic and individual corruption is still spreading, there is no clear government vision for overcoming the weaknesses within the system, which make corrupt practices possible, the management of the Agency acts inadequately towards or inexplicably tolerates corrupt officials, customs officials are obviously much better off than other state officials. All these factors have contributed to the exceptionally negative public image of the Customs Agency and of the customs officials in the years of transition. The main incentive for the reform, which started at the beginning of the decade, however, was

<sup>38</sup> Customs administration is conducting its work according to the Customs Law, Regulations on Implementation of Customs Law and according to its Rules of Organization, adopted by the Government. Customs Law forms the institutional and foundational framework of the customs activities, while Regulations on Implementation elaborate on its provisions in the functional scheme, and the Rules of Organization on provisions in the organizational scheme.

the realization that the greater the corruption and smuggling, the smaller the revenues for the state budget.

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The customs reform was among the priorities of the National Movement Simeon II (NDSV, *Nacionalno dvizhenie Simeon Vtori*) and corresponded to its policy based on honesty and fight against corruption. Such orientation was completely justified, considering the problems this institution faced under the government of Ivan Kostov (1997-2001).<sup>39</sup> The attempt to introduce radical changes undertaken by the team headed by Mr. Emil Dimitrov in the fall of 2001, however, proved unsuccessful. When his six-month term expired in February 2002, it became clear that the customs revenues had decreased due to the break in coordination between the individual components of the customs administration both on the central and regional levels.

Among the most significant reasons for the negative result of the first stage of the reform were the lack of overall vision, the reduction of the reform to personnel changes and the belief that the head of the customs, together with few assistants, can personally control the entire staff of the Agency. On the positive side, the actions of Emil Dimitrov did result in the temporary closure of some smuggling channels as a consequence of a series of sudden inspections and numerous dismissals from work, especially at the border crossing Kulata.

After February 2002, a period of "normalization" followed. To evaluate the term "normalization" accurately, it needs to be explained what the normal condition of the Bulgarian customs is like and which of the present practices within this institution will most likely continue in the future.

The updated business strategy of the Agency for the period until 2006 is based on the following priorities:

- Adapting customs administration to EU standards
- Strengthening the cooperation between customs, economic operators, businesses and the public
- Improving the collection of customs and other duties
- Counteracting customs and currency violations

The developments within the Agency can best be assessed by the changes in the collection of customs duties and other revenues, since such collection is an absolute priority of the government, faced by increasing financial difficulties and public pressure. In this regard, there has been a modest improvement within the customs. The revenue collection increased for over 42 million leva in September 2002 in comparison with September 2001. The net budget revenues for the first nine months of 2002 were 98,985,941 leva higher than the revenues in the same period of 2001.<sup>40</sup>

<sup>39</sup> For more details see *Corruption and Trafficking: Monitoring and Prevention*, Sofia: Center for the Study of Democracy, 2000.

<sup>40</sup> See *Dnevnik*, October 9, 2002.

Since February 2002, the Customs Agency has undertaken numerous steps to improve the effectiveness of the fight against customs violations and frauds:

- **Particular excise and risk goods can enter the country only through several specifically selected border customs bureaus.** This measure has limited the possibilities for illegal import of such goods. By concentrating technical and human resources in these bureaus, the control was intensified, the possibilities for corrupt practices reduced, and labor division in customs administration made more efficient.
- **Customs bureaus in which excise and risk goods will be exclusively placed under the customs regimes import and export have also been determined.** This step is aimed at limiting the possibilities for conducting customs frauds with excise goods by declaring them as other type of goods or by declaring untrue value or origin.
- **The excise and risk goods will be exported or re-exported only through specific customs bureaus.** This step will limit the possibilities for the so-called "fictive export" when goods only appear to be leaving the territory of the country. As a result of "fictive export," the due payments are avoided or VAT is illegally reimbursed.
- In direct relation to the issue of intensified fight against smuggling, **the changes in the Road Traffic Law have empowered the customs control organs to stop transport vehicles on the roads and conduct inspections in accordance with the Customs Law.** This has created another barrier to illegal import of excise goods.
- Customs administration is trying **to implement the post-clearance control of customs declarations envisaged by the Law.** Such control would be conducted on the spot by inspecting the documents and the declared data concerning the performed import and export operations. Although such control was formally defined in the Customs Law (Article 84), it has still not been provided for with enough resources.
- A contribution to the improvement of the fight against customs and currency violations is expected also from an **impending introduction of a subsystem for customs investigation and intelligence as part of the Bulgarian Integrated Customs Information System (BICIS).** BICIS is already operating and connects all customs bureaus in the country, but relies only on data from customs declarations. However, these declarations are not automatically processed to determine the level of violation risk, no assessment of the risk profile is made, and no intelligence information is extracted.
- **A new mechanism for strengthening customs control over the import of liquid oil products was designed.** Specific instructions setting up clear rules for detection of illegal actions during the import of oil products were prepared for this purpose.
- **Increased control over the import of goods, characterized by a high level of risk for customs violations,** is being implemented. Such goods include meat and meat products, fuels, Turkish and Chinese goods, cigarettes, alcohol, coffee and

### Actions against customs violations

From the beginning of 2002 until the fall of the same year, customs authorities initiated 8,455 legal proceedings on indictments for customs violations and 194 for currency violations. Of these, 530 involved serious violations of customs law (smuggling according to Article 233, customs fraud according to Article 234, and diversion of goods under customs control, according to Article 234a of the Customs Law), which represent a high degree public threat and cause considerable harm to the state budget.

In the same period, 6,926 decrees based on the indictments were issued. The violators were sentenced to pay the overall sum of 13,307,775 leva of fines.

other excise goods, For this purpose, the information on the type of goods entering the Customs Agency database is being analyzed. As a result, high-risk areas were identified, where customs control needs to be increased to prevent the declaration of untrue quantities and values of goods, causing losses to the state budget.

■ **The international cooperation** with the customs administrations of countries-exporters enables inspections in cases when the declared customs value or the indicated tariff classification of the goods is suspected to be false. As a result of such inspections, **numerous cases of false declaration of value or tariff number, causing losses to the state budget, were discovered.** Such cases were sanctioned according to the law.

■ **The international cooperation for establishing the authenticity of origin certificates for fuels is also continuing.** As a result, cases were established, where the

### Cases of prevention of smuggling of goods in 2002

- As a result of inspection at the border crossing Kapitan Andreevo, conducted jointly by the officers of the Customs Intelligence and Investigation Directorate of the Customs Agency and the officials of the Ministry of Interior, the illegal import of vegetables was prevented. The inspections established that in cases, when the cargo includes several types of vegetables, the real quantity correlation between the various types is concealed. An increased quantity of goods on which lower customs duties are levied is declared, while the weight of the other goods is significantly reduced or completely concealed.
- Twenty-one uncompleted transit operations for vegetable deliveries from Turkey were revealed. Violations were conducted by several Turkish transport companies. The goods entered the country at customs bureau Kapitan Andreevo and were directed towards the customs bureau Suhodol. However, by using false customs seals, the goods were diverted from the customs control and most likely sold within the county without the due customs duties and other taxes being paid. Following this disclosure, another such attempt to divert goods was prevented and the goods were detained. The officers of the NSCOC are investigating the case.
- Thirty-eight other cases of related frauds were revealed. Twenty-four of them concerned deliveries of raw coffee, 5 were deliveries of chicken meat, and 9 were deliveries of Chinese goods. These goods entered the country at the customs bureau Kulata and were directed to the customs bureau Suhodol, but were diverted from customs control and their transit concluded with false customs seals. The Regional Prosecutors Office in Blagoevgrad is working on the case.
- Fifty-four transit-related frauds were revealed also at the Sofia airport. The goods were directed from the airport towards various customs bureaus, but were diverted from customs control and their transit concluded with false customs seals. The Regional Prosecutors Office in Sofia is investigating these cases.
- The investigation, conducted by the officers of the Customs Intelligence and Investigation Directorate of the Customs Agency, has prevented the attempt for customs fraud by presentation of falsified documents for customs clearance of nine cisterns, containing 450 tons of A-95 gasoline.
- As a result of the investigation, conducted originally by the customs bureau Ruse and later by officers of the Customs Intelligence and Investigation Directorate of the Customs Agency in cooperation with the NSCOC and the General Tax Directorate, several large violations involving import of fuel were revealed. Companies-importers did not pay the due VAT, excise tax, the tax State Road Network and the tax Preservation of Natural Environment in the overall sum of 1,487,015 leva. The fuel was cleared by customs authorities on the basis of false payment orders.
- In order to prevent similar frauds in the future, the customs authorities must be able to follow whether the due taxes have really been paid. Negotiations on how to make this possible are being conducted with the General Tax Directorate. This will prevent clearance of goods in cases when importers have not paid the due taxes.
- Two attempts to smuggle 7 kg of gold were prevented. Gold was hidden in special secret compartments in cars, traveling from Turkey to Yugoslavia and Romania respectively. In a separate case, an attempt to smuggle 25 kg of precious metals, hidden in cars traveling from Turkey to Moldova, was prevented.
- An attempt to smuggle 30,952 USD hidden in cars traveling from Romania to Turkey was prevented.
- Customs inspection prevented two attempts to smuggle objects of historic value out of the country – antique coins and other objects of considerable value.

payment of the necessary duties was avoided by the illegal use of origin preferences. These cases were also sanctioned according to the law.

The positive results in the fight against corruption and smuggling, as well as the closure of the chapter Customs Union in negotiations with the EU in the summer of 2002 **represent a success for the new management of the customs**. However, the short period in which the undertaken measures were implemented does not allow for precise assessment of the long-term impact. A significant increase in revenues, singled out as the principal priority of the reform, has also not occurred yet.

#### 4.1.1. COOPERATION WITH CROWN AGENTS

At the beginning of 2002, the government made an unprecedented step by enlisting the British consultant company Crown Agents to help with the reform in the customs. From the very beginning, the procedure for hiring the company and the definition of its role in the customs reform became a subject of criticism by the opposition and by the public. The main points of the criticism were the following:

- An unconvincing argument that the procedure for hiring the company to supervise the customs was not public because the contract was linked to the question of national security.<sup>41</sup>
- The right of the Ministry of Finance to conclude a contract with a private foreign company without this being approved by the Parliament, as is required for international contracts, was disputed.<sup>42</sup>
- Suspicion arose that corruption has motivated the presumed infringement of the law and of the procedures for public procurement, as well as the determination of the sum, which is going to be paid to Crown Agents according to the contract (over £8 million).
- The competency of the company was questioned, since according to critics, its experience is based on the work with developing countries in Africa, and not in the former socialist countries.
- The management of the Ministry of Finance was accused of non-professional behavior because the size of the payment to Crown Agents was not bound to the increase of revenue collection by the Customs Agency. Bulgarian experts have pointed out that the criteria and methods for the assessment of Crown Agents' performance were not set.
- There is no independent monitoring of the company's performance and results.

<sup>41</sup> See *Novinar*, May 11, 2002.

<sup>42</sup> Fifty MPs turned to the Constitutional Court with demand that the contract should be declared as anti-constitutional, since its interpretation and the relations between the two parties of the contract were settled according to the British and not according to the Bulgarian law. The Constitutional Court ruled that the contract is a private transaction of the state and is not liable to ratification in the Parliament as opposition demanded. (See *Pari*, May 29, 2002.)

- Media criticized the representatives of the British company for not taking the necessary measures to inform the public about their work within the limit of understandable considerations for discretion. The fact that the contract with the company was declared secret was mentioned as a proof that the accusations about the lack of transparency were justified.

Although some of these arguments – especially the accusation of insufficient publicity – have serious justification, it cannot be denied that some of the loudest accusations were not aimed at protection of national interest and of priorities of the reform, but served the interests of certain political parties and certain individuals.

According to the head of the company's team for Bulgaria, Mr. John Brown, the priorities of the Crown Agents include: cooperation with the customs management in internal audit, intelligence gathering and investigation, facilitation of trade, consultations in the field of legislations and ethics in the fight against corruption.<sup>43</sup>

### The road inspections

Since the end of August 2002, five mobile teams for countering smuggling are operating on the Bulgarian roads. Each unit consists of two customs officials, one NSCOC officer and a Crown Agents consultant. They are equipped with laptops, cameras and other equipment. They also have a special weighing machine, which corresponds to the EU norms. The data from the weighing machine is compared to the data on customs documents, detecting any possible corrupt involvement of customs officials at the border.

The mobile teams can stop transport vehicles, check documents and transported goods, and in case of suspicion detain the suspects. The inspections are carried out after the risk assessment or upon a signal. The teams are in constant contact with the regional departments of the Ministry of Interior and the results of inspections are stored in the information system of the customs.

It is not by accident that one of priorities in the work of the British team became the development of customs control, which would use intelligence and internal investigation for prevention of smuggling and corruption in a more efficient way. This goal can be achieved only through the introduction of modern methods for developing risk profiles on the national, regional and local level, and which would cover all border crossings and all customs bureaus, both at the border and in the interior.

The company is also advocating better cooperation with the other law-enforcing agencies, operating at the borders and in the interior, the development of an efficient cooperation with businesses and with the civil society, etc. The Crown Agents gave an example in this respect by declaring that it would act on signals, given by traders. According to the created mechanism, data on illegal import will be sent to the Bulgarian Trade Chamber via the Internet or telephone, and then forwarded to Crown Agents. Signals will not be anonymous and will contain information about the date on which the violation occurred, transport vehicles involved, border crossing where it occurred and the type of violation committed.

Special interest and high expectations were raised by the joint action of Crown Agents' mobile customs teams, customs administration and the Ministry of Interior regarding inspections of transport vehicles in the interior of the country, starting in August 2002. The first results of such actions should become clear by the end of the year. Immediately after the beginning of this operation, some media reported that the work of the customs officials on measurement of the weight of the trucks has improved. Thus, some of the crudest manipulations with quantities of registered imports can be averted.

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<sup>43</sup> See *Pari*, September 2, 2002.

Although it is still too early to give an overall assessment of the work of Crown Agents, it can be noted that the decision to recruit a consultant company from abroad testifies to the genuine intentions of the government of Simeon Saxe-Coburg-Gotha to limit smuggling and corruption.

#### 4.1.2. RECOMMENDATIONS FOR ACCELERATION OF THE CUSTOMS REFORM

In order to accelerate the reforms and to increase their positive effect it is necessary to implement several steps, some of which were also included in the government's anti-corruption strategy. We recommend that priority is given to the following:

- **Improvement of the cooperation between all law-enforcing agencies in fight against smuggling, trafficking and related corruption.** Political and public support has to be provided for the new forms of cooperation between the customs, the Ministry of Interior and the National Investigation Service. Such cooperation is necessary for overcoming the inherited bureaucratic and ineffective mechanisms for interaction between these institutions.
- Overcoming the lack of information exchange between customs and tax authorities through a **permanent mechanism for comparing the data from customs declarations to the data from tax documents and to the information on paid taxes.**
- Creation of a **system for exchange of operative information** between the Bulgarian border customs bureaus and the customs bureaus in the neighboring countries.
- **Optimization of the work of the customs through:**
  - **Establishment of effectively operating structures for customs investigation of smuggling violations**, which would improve efforts for countering trans-border crime and related corruption.
  - Introduction of a **system for development of risk profiles**, which would lead to better coordination of internal control, intelligence gathering and investigation.
  - Establishment of **technological models for customs clearance of goods**, which would not depend on subjective factors. This will make possible the introduction of control on several levels, based on information technologies, which would enable objective registration of events and automatic notification of specialized anti-corruption departments.
  - Introduction of **timeframes for conducting inspections of natural persons, goods and vehicles** at the borders and in the interior and during customs clearance of goods. The use of such timeframes will lead to acceleration of processes, linked to customs clearance of goods and to a considerable facilitation of import, export and transit of goods. Non-adherence to these timeframes should be sanctioned with disciplinary and other measures.
  - **Optimization of number and composition of officers** in dependence to the timeframes and to the real volume of the work in customs bureaus in particular periods of time, so that a better balance between correct implementation of legal provisions and facilitation of economic operations could be achieved.

- **The timeframes proscribed for processing complaints and requests of citizens/clients should be shortened.** The timeframes in which the respective policy decisions are made should be shortened also through changes in the legal framework, while preserving the strict observation of its provisions. Now, decisions regarding complaints and requests are deliberately delayed, laws are interpreted arbitrarily, etc. Such actions increase the corruption pressure on the clients of the customs.
- Introduction of **modern personnel policy**, which would stimulate professional growth of officials through various forms of training, examinations and assessment of their acquired knowledge and skills. This will create preconditions for successful professional growth and will guarantee transparency in appointment to executive positions.
- Overcoming the present discrepancy between the large public and economic importance of the work of customs officials and **the level of payments in this sector.**
- **Timely and appropriate sanctioning** of customs officials, committing offenses. More efficient use of mechanisms of publicity will put pressure on activities of the entire customs administration.
- **Informing the public on rights and obligations of customs officials.** Citizens need to know not only the jurisdictions, but also the duties of customs officials. They also need to know whom they can turn to if officials fail to perform their duty. This would limit the possibilities for dishonest officials to abuse their professional status and to violate rights and interests of their clients.

These recommendations are in line with conclusions, contained in the *2002 Regular Report on Bulgaria's Progress Towards Accession to the EU*. The Report recommends to Bulgaria to "focus on further alignment with the Community customs acquis, strengthening information technology and human resource policy, as well as on completing major projects on revenue collection, transit control and risk analysis."<sup>44</sup>

## 4.2. ACTIVITIES OF THE MINISTRY OF INTERIOR FOR COUNTERING SMUGGLING, TRAFFICKING AND CORRUPTION

### 4.2.1. INSTITUTIONAL STRUCTURE

According to the Ministry of Interior Act, fight against corruption is one of the main priorities of this Ministry (Article 7, Section 3 from the Ministry of Interior Act). This task is performed by several specialized departments.

The main task of **the National Security Service (NSS)**<sup>45</sup> is the fight against corruption, linked to the involvement of foreign services and organizations. In other words, the NSS investigates those cases of corruption, which directly threaten security and legal exercise of the functions of state institutions. At the same time, the NSS investi-

<sup>44</sup> Commission of the European Communities. *2002 Regular Report on Bulgaria's Progress Towards Accession to the EU*.

<sup>45</sup> Precise description of its functions is: the NSS conducts independently or in cooperation with other state organs counter-intelligence activities for surveillance, detection, prevention and frustration of planned, prepared or realized violations against the national security, linked to corruption.