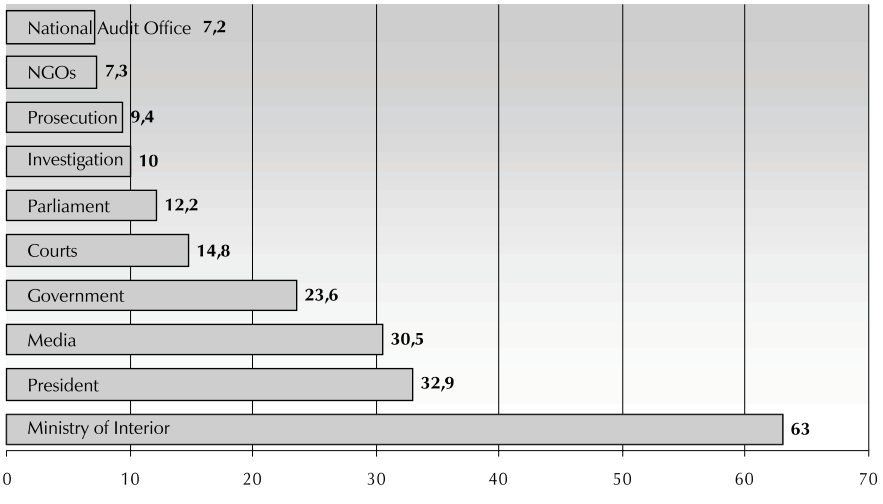
B. PUTTING IN PLACE AN OVERALL INSTITUTIONAL AND LEGAL ANTI-CORRUPTION FRAMEWORK

The development and making operational of efficient legal and institutional mechanisms limiting corruption have been seriously addressed since 1997-98 in a number of anti-corruption initiatives. Initially, these were mainly non-governmental or public-private initiatives, including those of the *Coalition 2000*, which were later integrated into various government programs and strategies.

A number of political decisions and legal instruments adopted at the end of 2001 and in the course of 2002 resulted from the commitment to put in place a legal and institutional framework hostile to corruption. On October 1, 2001, the *National Anti-Corruption Strategy* was adopted and complemented by the *Program for the Implementation of the National Anti-Corruption Strategy* adopted by a Decision of the Council of Ministers on February 13, 2002.

The program provides for the creation of legislative, organizational and social prerequisites facilitating the implementation of the European and international anti-corruption principles and standards in nine major areas. An *Anti-Corruption Coordination Commission,* chaired by the Minister of Justice was set up (Decision No. 77 of the Council of Ministers of February 11, 2002).

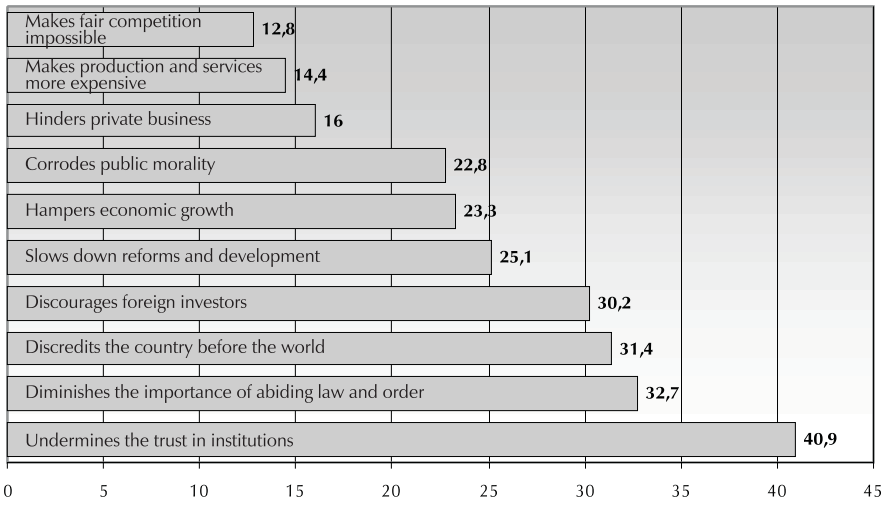
FIGURE 10. ASSESSMENT OF THE ANTI-CORRUPTION EFFECTIVENESS OF INSTITUTIONS IN BULGARIA* (%)



Source: CMS of *Coalition 2000*, October 2002
(*) Note: Respondents marked up the three most effective institutions in curbing corruption, therefore the sum total of percentages exceeds 100.

The results of the *Program for the Implementation of the National Anti-Corruption Strategy* in the first half of 2002 were described in a six-month report. In addition, an annual report was released on the implementation of the Strategy and the Program. Nonetheless, **the results of the anti-corruption measures undertaken were not sufficiently publicized neither were the problems encountered during the implementation of those measures**. The reports contained primarily findings, rather than an analytical overview of existing problems

FIGURE 11. ASSESSMENT OF CORRUPTION EFFECTS* (%)



Source: CMS of *Coalition 2000*, October 2002
(*) Note: Respondents marked up the three most harmful consequences of corruption, therefore the sum total of percentages exceeds 100.

that might help formulate future tasks. Greater transparency is necessary, as well as regular reporting on the activities of the governmental Commission, in view of its fundamental tasks to analyze and summarize the information about any existing anti-corruption measures, coordinate and monitor the implementation of the National Strategy, and propose further measures to enhance the fight against corruption. The Commission also needs considerable institution-building and institutionalized democratic civil involvement in its work.

In 2002, the high level of corruption persisted and was perceived as a viable pattern of behavior. This was largely due to the unresolved problems of the nation-wide administrative reform and the means of control over the administration. The lack of efficient anti-corruption measures undertaken by state institutions and of meaningful interaction between them, on the one hand, and between the state and the society, on the other, and the insufficient level of civil anti-corruption control have also contributed to the persistently high levels of corruption.

B.1. Public Administration Reform: from Legislation to Practice

Administrative reform in Bulgaria has been under way since 1998. It started by adopting new laws in that area, its philosophy was refined in the *National Anti-Corruption Strategy* and in the *Strategy for Modernizing Public Administration* approved by Government Decision No. 645 of July 9, 2002.

The Strategy for Modernizing Public Administration is based on the following key points: bringing the administration into line with the principles of the rule of law, market economy and respect for human rights; strengthening the capacity of the administration to plan, coordinate and implement the pre-accession processes, and preparing the public administration for a fully-fledged operation within the EU. The Strategy also lists measures that would help build an adequate administrative environment to prevent and curb corruption. These measures are to be implemented in the framework of the *National Anti-Corruption Strategy*. This approach reiterates **the significance of the modernization of the administration for successful anti-corruption efforts and actions.**

In 2002, the process of formulating the strategic basis of the administrative reform was finalized. Almost all intended legislative instruments and measures for the day-to-day implementation of the reform were approved, the implementation of the reform being the most serious challenge of all

changes so far. While a lot has been achieved in the context of administrative reform, **the objective results still fail to match the public expectations** of better administrative work, especially given that the administrative sphere is prone to corruption. The problem is important as corruption affects, to a larger or lesser degree, the administration of all bodies of the executive. Failure to solve that problem and the persisting limited administrative capacity will hinder compliance with the stringent requirements to the administration in the context of Bulgaria's future membership of NATO and the European Union.

B.1.1. The Common Organizational Model of the Administration: Its Anti-Corruption Potential and Results

The implementation of uniform standards for institution-building and internal organization of the administration is a serious guarantee that corruption would be confined by way of clearly defining the powers and responsibilities of the variety of administrative structures. The *Law on the Administration* (in force as of December 1998, amended in 1999, 2000 and 2001) became the basis for the introduction of a common organizational model, and common rules on the internal structure of various executive bodies (central, regional and municipal). Similarly, an electronic register of the administrative structures and the acts of the administrative bodies has already been functioning.

The administrative structures were completely restructured in 2001 but, since then, numerous deviations from the common organizational model of the administration and from its anti-corruption potential came into being:

- The administrative structures proliferate in a way that is not strictly necessary in view of their specific activities (*e.g.* Nuclear Regulation Agency, Bulgarian Standardization Institute). Some structures were created but still have a rather obscure place and role in the system of government agencies. This entails ambiguous powers and responsibilities and makes it even more difficult to consolidate the institutional environment that should act as a barrier to corruption.
- The rank of some administrative structures does not correspond to the hierarchical place of the respective authorities they should assist, as required by art. 67(3) of the *Law on Civil Servants*. Almost all sets of internal organic rules deviate from the legislative requirements about general administration directorates. Legal and information services are often provided by the specialized administration, in violation of art. 7 of the *Law on the Administration*.
- Executive agencies are set up with the special purpose to provide administrative services but they do not carry out such activities in reality (*e.g.* Military Residential Estates and Disposal of Property, National Communications System). The process of freeing the administration from extraneous functions thus slows down and becomes cumbersome.

Relieving the administration of the burden of extraneous functions and the privatization of administrative services still tend to be **isolated examples, rather than a consistent policy** aimed at curbing corrupt practices based on a clear distinction between public and private and on

the active involvement of NGOs in various regulatory functions. Serious efforts should be made in that respect, as **the withdrawal of the administration from such spheres of action would naturally mitigate the administrative environment beneficial to corruption**.

- *Openness, transparency, access to information*

A prevailing number of central administrative bodies, as well as some regional and municipal ones have already set up their web-sites that provide information on their structure, functions, procedures, and sometimes even the forms to be filled out for the services sought. A number of administrations have also established an interactive dialogue and solicited feedback from citizens.

The measures ensuring the openness in the work of the administration still fall short of what is needed, despite the annual reports describing the performance of the administration and the reports of separate administrative structures presented at their web-sites. While almost all administrations have special reception rooms for citizens having petitions or complaints, there are no efficient mechanisms ensuring feedback and the drafting of adequate legal norms. The constitutional right of citizens to file petitions and complaints should be governed by a new piece of legislation, as the existing *Law on Proposals, Warnings, Complaints and Petitions* of 1980 is deplorably obsolete.

In August 2002, the *Ordinance on the Conditions and Procedure for Keeping the Register of Administrative Structures and the Acts of the Administrative Bodies* was supplemented with additional regulations. Under the new rules, the main parameters (including sample documentation) of all licensing, authorization, registration and coordination procedures within the respective administration should also be entered into the register. This will certainly facilitate the individuals and the legal entities, and would also provide ample data for an in-depth analysis of the existing regimes.

The procedures to exercise the right of access to public information, the grounds for refusal of access and the appeal procedures are covered by the *Law on Access to Public Information* passed in 2000. This instrument put in place the minimum required legal framework to gradually overcome the traditional aspiration of any administration to keep most of the information related to its operations for official use only. **Although a number of provisions in the *Law on Access to Public Information* have a rich anti-corruption potential, the practice of its implementation has brought to light the lack of sufficient guarantees for transparency and public accountability**. In April 2002, the law was amended and supplemented with the intention to remove some of the existing regulatory drawbacks: the restrictions on the access to public information were only confined to **classified information**; the period during which access to some categories of public information for official use could be refused was shortened from 20 to 2 years; the courts were given the power to also control the legality of the affixing of security marks if access to information was denied on account of classification.

In April 2002, a *Law on the Protection of Classified Information* was passed. It covers the creation, processing and storage of information constituting a **state or official secret** and the conditions and the procedure for providing access to such information. The **principle of legality** has been introduced with respect to state and official secrets alike. However, the

information that is subject to classification as a state secret is included in a list annexed to the law, whereas the official information is to be announced by the head of each administration in a separate list. The procedure and the way for announcing the lists of official secrets will be part of the rules implementing the law. No such rules have been set up yet. The lack of those lists, therefore, has blocked the application of the *Law on the Protection of Classified Information* as far as official secrets are concerned. Hence, it is **possible to refuse access to information on grounds of unclear criteria, and these circumstances lead to corruption**.

Greater accountability is needed, as well as better access to information within the possession of public authorities, as that would limit the possibilities for corruption-driven action or inaction.

- *Accountability in the administration*

In implementation of art. 61(3) of the *Law on the Administration*, in 2002 the government drafted and discussed a *Report on the Situation with the Administration in 2001*. Based on the analysis in that report, proposals have been made to restructure and streamline the administrative units in the central administration and to make some urgent changes in the statutory framework. The report, however, does not contain any **findings of corrupt practices, nor does it refer to specific anti-corruption measures.** It is still difficult to identify benchmarks for the efficiency of administrative work and for a target-oriented performance management. The same holds true of the annual reports of the variety of administrations most of which are available on their web-sites. To prevent those reports from becoming a pointless formality, however, **clear emphasis should be laid on the degree to which the objectives set have been met** and on how the problems within the competence of a given administrative structure are solved.

B.1.2. Introducing a System of Professional Civil Service

The public perception of a high level of corruption among officials in the administration makes it necessary to examine with utmost care the implementation of the *Law on Civil Servants* and of the anti-corruption measures envisioned in the Law.

In line with the *Law on Civil Servants* (in effect as of August 1999), a **system of professional civil service** is currently being introduced to comply with the principles of lawfulness, political neutrality, loyalty and accountability. On that basis, civil servants' status has been gradually introduced in the administration of the Council of Ministers, the ministries, and some other administrative structures, the regional and municipal administrations.

The civil servant status has been introduced in all structures of the central administration and in 95 per cent of the municipal administrations. It is unusual, though, that **the status is inapplicable to the National Audit Office and the tax administration**, especially given the important supervisory functions of those bodies. Similarly, the *Law on Civil Servants* is not yet applicable to the expert positions within the general administration which remain covered by the *Labor Code*. There is a trend for some special laws (*e.g.* the *Law on the Judiciary* providing that the officials within the administration shall avail of that status, the *Law on the*

Ministry of Interior, the *Law on Defense and on the Armed Forces,* the *Law on the Constitutional Court*) to include only a few „beneficial" elements of the civil servant status, without taking on board the status as a whole. The derogations from and exceptions to the status of civil servant impede the introduction of a system of professional civil service based on a steady anti-corruption behavior and culture.

- *Recruitment and professional qualification*

As the competition procedure is not compulsory for taking a position in the civil service, most administrations simply do not apply it. This gives rise to well-founded doubts that inadmissible influence is exerted for the appointment of civil servants. The lack of clear criteria for the evaluation of the professional knowledge and skills of applicants nurtures corruption and fails to guarantee objective recruitment based solely on professional merit. The existing possibility for the head of an administration to appoint any of the first three applicants ranked by the recruitment committee, instead of the winner, is also conducive to corruption.

The professional qualification of civil servants, as a means to enhance the efficiency of the administration, is a major factor that contributes to limiting corruption. In that respect, in February 2002, the government approved *a Strategy for Training the Officials in the Administration*. It provides for the introduction of a modern system to evaluate the needs for training and of rules that would ensure the required financial resources for such training. It is necessary, though, to put in place **a general system for the development of professional skills and qualifications of those working in the administration**. The introduction of a **systematic training of public officials on corruption-related issues** could also be quite important. The latter is offered by the Institute of Public Administration and European Integration, an institution that has been mainly involved in offering compulsory and specialized training courses to improve the qualification of civil servants over the past two years.

- *Stability and career development*

Servants who are aware of their uncertain status are much more inclined to misuse their official position. Stability is, therefore, a key anti-corruption factor within the administration. Unfortunately, the guarantees provided for in the *Law on Civil Servants* have proved to be insufficient. Civil servants are often times laid off on account of formal internal restructuring and reshuffling of various units within the administrations. The highest structural levels strive **to blur the divide between political and career-based appointments**. This is a serious challenge to the comprehensive implementation of the status of civil servants, of which **stability** is a core element.

The performance-based career development of any civil servant is a decisive precondition to improve the work of the administration as a whole. The implementation of **fair and transparent career development procedures** contributes to uprooting the existing conditions for in-house corruption. In May 2002, the Council of Ministers issued an *Ordinance on the Evaluation of Officials in the Public Administration* that introduced a performance-based evaluation system. The latter has been applied on a pilot basis since June 1, 2002, in the administration of the Council of Ministers, the Ministry of Finance and the Ministry of Regional Development and Public Works. It is still early to see if that would yield the required prerequisites for a systematic, well-founded and documented

evaluation of the performance of any official in the administration and to what extent such a system would be beneficial to their professional development and career promotion. This, however, should be a major task for the administration as it creates a genuine incentive for civil servants to perform better and rectifies the imbalance between the capacity of the administration and the needs of society, whereas that imbalance being a serious corruption-generating factor.

The implementation of the „merit" principle to career development must also be reflected in the remuneration which currently depends exclusively on the position held, the category of the respective administration and the length of service of the official in question. The lack of material incentives for better performance is a serious reason for corruption; moreover the salaries in public administration are far from being comparable with those in the private sector.

- *Ethical norms of conduct*

Already at the end of 2000, the Minister for Public Administration approved a *Code of Conduct for the Civil Servant* which is not yet published in the State Gazette. Therefore, it is not really sure if all civil servants are aware of it but, at the end of the day, they are expected to model their conduct after the Code. In addition, the administration is composed of civil servants and employees whose status is governed by the *Labor Code*. Thus, without any good reason the officials working under contracts of employment are not bound by those ethical norms, although employees are an equally risky group in terms of corruption. The Code itself needs serious changes; it should contain clearer anti-corruption rules and mechanisms ensuring their observance. Recommendations along these lines were made in the *Corruption Assessment Report* 2002. A number of European instruments also contain important blueprints in that sphere, *viz. Recommendation No. R (2000)10* of the Committee of Ministers of the Council of Europe to the Member States on codes of conduct for public officials adopted at the 106th session of the Committee of Ministers on 11 May 2000 and the *Model Code of Conduct for Public Officials* annexed thereto, and the *Code of Good Administrative Behavior* adopted by the European Parliament on 6 September 2001 which is based on the case-law of the European Court of Justice and on the domestic laws of EU member states with respect to the administration.

- *Internal control and corruption-preventing mechanisms*

The application of legal instruments concerning the administration has shown that **the latter has no working and efficient self-control mechanisms.**

The inspectorates with the various ministries and government agencies, as set up by virtue of art. 46 of the *Law on the Administration* fall short of performing their tasks. In a number of cases they only exist formally and have a minimum number of officials which makes them unable to exert genuine control. If their staff is sufficient, the inspectors could be involved in the internal investigation of maladministration and corrupt practices of the officials. In view of these tasks, it would be appropriate to provide for better protection of the inspectors that should guarantee their impartiality.

Given the practical implementation of the *Law on Civil Servants*, the government has started drafting some amendments. The draft envisages a number of anti-corruption measures, such as the mandatory organization of **competitions** in the event of recruitment and appointment, introducing **incompatibility** between holding an office as a civil servant and working as a trustee in bankruptcy or a liquidator; removing the possibility for an earlier promotion in rank on the basis of unclear criteria, etc. In order to ensure the avoidance of any **conflicts of interest**, the restriction on relatives to work in the same administration should be extended and made applicable to any type of hierarchical relationship, be it direct or indirect. In view of the better implementation of the principle of **political neutrality**, the restriction on the members of municipal and local councils to work as civil servants should apply to all administrative structures, not only to municipal administrations as is the case now.

B.1.3. Administrative Services

The measures aimed at improving the administrative services for citizens and the prevention of existing corruption, arbitrariness and abuse in this sphere are of key importance, as the public perception of the administration is built up exactly in the process of applying for and providing administrative services. This process must convince citizens that the administration is there to service them. It would thus be possible to eradicate the years-old negative perception that the administration is a slow, bureaucratic and hostile system.

Further to the implementation of the *Law on Administrative Services for Natural and Legal Persons*, the administration has started opening up towards the citizenry. The step-by-step implementation of the „one-stop shop" principle in the separate administrations upgrades the quality of administrative services. The annual reports on the situation with the administration contain details about the number of administrative services provided and analyze the general picture of the provision of administrative services.

Nonetheless, the expected results, i.e. **lawfulness, swiftness, accessibility, good quality of administrative services and declining corruption**, have not been seen yet. Many administrations have addressed the problems of administrative services only formally, without going down to the essence of the reform under way. There is no understanding that efficient services are unthinkable without the improvement of the internal procedures applied in each administration. The required information materials are not always provided or, if provided, they sometimes contain obsolete information. The quality of administrative services differs from one administration to another. This is a practical obstacle to the gradual development of administrative services from the mere provision of a service to integrated administrative servicing, to constructing a uniform model of „one-stop shop" services provided by any administration within the executive branch. This finding is reconfirmed by the fact that the legal instruments rarely provide for procedures of *ex officio* coordination among several administrations. The process of improving the administrative services is also undermined by the lack of financial resources for documents and equipment.

It is necessary to put in place a reliable **feedback mechanism** to solicit the views of service recipients, so that their ideas could be used to improve

the process of administrative servicing and to resist corruption. Special attention should be given to providing various channels of access to services (phones, post, e-mail, internet portals) and to the use of a flexible working time by administrative service units. The specialized training of officials working at those units should spread out a new administrative culture and improve their competitiveness. That would make the provision of services more efficient and suppress the reasons for corruption. Such training should prepare the officials to meet the new requirements in their relations with citizens: to provide information, to make transparent decisions, to guarantee the right of appeal.

Two recently adopted documents are the *E-Government Strategy* and the *Concept Paper for Improving Administrative Services Based on the One-Stop Shop Principle*. Both of them provide guidelines for a modern and efficient administration meeting the public demand for high-quality and readily accessible administrative services, including those provided through electronic links between the citizens and different public administration agencies. While the most optimistic predictions suggest that the complete automation of the administrative process would take at least seven to ten years, the gradual implementation of the model of electronic administration in the course of that process would entail greater transparency, accountability, flexibility and swiftness of administrative processes and, hence, reduce the level of expenditure. The exercise of state power, including the provision of administrative services through information technology vehicles, would reduce bureaucracy and advance a corruption-hostile environment.

B.1.4. Specialized Control Bodies

The reinforcement of the control exercised by the National Audit Office, the bodies of public internal financial control, the Financial Intelligence Bureau remains a key issue in all anti-corruption initiatives and strategies. Equally central is the drafting of clearer rules on the competencies of those bodies and the coordination among them, the introduction of new mechanisms and instruments loaded with a potential to curb corruption.

- *The National Audit Office*

As of the end of 2001, a new *Law on the National Audit Office* has been in effect. It is expected to strengthen the independence and extend the powers of the National Audit Office to exert control and prevent corruption, as discussed in detail in the Corruption Assessment Report 2001: enlarge the scope of audit activities, reinforce current control, improve the interaction with the National Assembly and other state bodies.

The implementation of the new measures approved in 2002 is a good basis to summarize the following results and problems relating to the control of the management and spending of public funds in Bulgaria:

- At the beginning of March 2002, a special current audits department was set up to carry out on-going monitoring of income and expenditure, to identify the possible risks in the execution of the state budget, and to timely warn the government and the parliament of them;

- The results of the audits performed are now more widely disclosed to the public;
- Cooperation and interaction agreements have been signed with the Public Internal Financial Control Agency, the tax administration, the customs administration, the Agency for State Receivables, the Financial Intelligence Bureau and the public prosecution. The agreements provide that interaction would take the form of exchanging information about any violations of the relevant legislative instruments, the risky spheres and areas in terms of corruption, any financial irregularities, the efficiency of the legal framework and the mutual provision of expert assistance. Those agreements aim to extend cooperation and improve the interaction in the fight against fraud, corruption and money laundering, enhance the efficiency of the control system in the country and the collection of state receivables;
- Contacts have been established and good relations are maintained with the specialized EU committees for combating corruption, fraud and crime, the interaction with specialized institutions in other countries is also expanding. Joint inspections are organized with the Romanian National Audit Office to check the observance of customs legislation and the collection of customs revenues, in view of reinforcing the customs control. A regional association of audit offices in the Black Sea region is in the process of being set up. It would enable joint operations on common issues, including suspicious international transactions involving public resources. The drafting and adoption of *Rules of Procedure of the National Audit Office* is forthcoming - it will be an important instrument in the fight against fraud and corruption, the development of procedures to detect fraud and corrupt practices in the public sector, and the introduction of an electronic public register;
- The efficiency of the National Audit Office is hindered by the fact that it lacks powers to impose sanctions if it comes across violations of the law. Under the legislation in force, the findings of the National Audit Office must be reconfirmed by the Public Internal Financial Control Agency which is a body of the executive. In other words, **the body that is especially created to monitor the lawfulness of public expenditure may only notify the executive which should then penalize itself**.

It is necessary to think and discuss ideas about how to improve the *Law on the National Audit Office* and the practice of its implementation along the following lines:

- Vesting the National Audit Office with supervisory powers not only with respect to budget-funded entities but also with respect to banks and commercial companies that might be used to drain public resources;
- Extending the existing powers of the National Audit Office to rely on the results of audit operations; the findings in the audit reports and the materials collected during the audits should be the proper evidence before the competent authorities. That would require the corresponding amendments to the *Law on Accounting*, the *Law on Public Procurement*, the *Law on the Judiciary* and other instruments;

- Granting the auditors from the National Audit Office with the status of civil servants;
- The *Law on Property Disclosure by Persons Occupying Senior Position in the State* should be amended as follows: setting up time limits in which the persons appointed or removed from office should file declarations; providing for a possibility to control the information in the declarations filed; envisaging appropriate sanctions for failure to file a declaration or to respect the time limits, and for declaring false data; extending the list of persons under an obligation to disclose their property, income and expenses.

- *Public Internal Financial Control*

The Pubic Internal Financial Control Agency (PIFCA) must harmonize and co-ordinate the development and functioning of *ex-ante* and *ex-post* financial management and control systems. In October 2002, the *Law on Public Internal Financial Control* was amended (amendments in effect as of January 1, 2003) to correct some inconsistencies with other domestic laws. Many amendments are clearly inspired by the endeavor to combat corruption and the need to harmonize Bulgarian legislation with the *acquis communautaire*.

The amendments provide that **financial comptrollers** should be appointed who would be in charge of ***ex-ante* control**. All first-level central or municipal budget spending units, the units spending funds under EU programs and the heads of the National Social Security Institute and the National Health Insurance Fund are now obliged to appoint financial comptrollers. The major idea of that change is **to spread the functions** of making decisions, exerting control and keeping the accounting books among various persons. This would help overcome the current practice of concentrating the supervisory and accounting functions in the same hands (those of the chief accountant), enhance and improve the efficiency of the financial management and control systems and restrict the conditions for corrupt practices.

The amendments have also introduced additional guarantees for objectivity and impartiality in the process of exerting control. In that respect, in-house auditors are prohibited from getting involved in the management, accounting and control of entities where they have previously carried out *ex-ante* control, for a period of three years after that control has ended. The rule should prevent conflicts of interest that might invite corrupt practices.

Another interesting change is **the extended scope of the public internal financial control** - it now covers the operations of the spending units with funds provided under international treaties, agreements, conventions and other international instruments, where the relevant instrument so provides. Other changes concern the extended list of individuals and entities put under an obligation to build up financial management and control systems. Similarly, the *Law on Administrative Offences and Penalties* has been amended so as to set a longer time limit for finding violations of the statutory instruments governing the budget-related, financial, economic and reporting activities. That would guarantee better detection of those administrative offences.

The application of the amendments would largely predetermine the extent to which PIFCA would properly exercise its control powers, including

those to combat corruption. As a sustainable anti-corruption institutional environment should be promoted and the recommendations of the European Union towards Bulgaria taken on board, it is necessary to distinguish more clearly between the functions of PIFCA and those of the National Audit Office.

- *Measures against money laundering*

The transparent movement of cash flow is a must in the fight against corruption. The key role in preventing and detecting money laundering is entrusted to the Financial Intelligence Bureau (FIB).

In the first half of 2002, the FIB submitted to the public prosecution 116 reports on money laundering cases worth a total of 193 millions US dollars. During the same period, 14 investigation cases were instituted based on FIB reports. The biggest case which the FIB submitted to the public prosecution involved 83 millions US dollars. In the first half of the year the BFI, jointly with the privatization authorities, prevented the investment of significant funds of a suspicious origin in the privatization of the government stakes in several commercial companies. From the beginning of the year up until June 2002, the BFI received 105 suspicious transaction reports worth a total of 172 millions US dollars. Most of those reports were submitted by commercial banks, as usual. The FIB works in active cooperation with foreign financial intelligence units to combat the financing of terrorism and to exchange methodologies, experts and theoretical information. Thus, more than 500 persons were inspected out of the lists supplied by competent American services.

The FIB also carries out operations directly related to the combat against corruption, in line with the *Program for the Implementation of the National Anti-Corruption Strategy*. Some of the measures undertaken by the FIB to shield itself against corruption are the in-house internal training program drafted in line with the general strategy for anti-corruption training of civil servants and the initiative to additionally protect classified information by enhancing the system of personal accountability of FIB officials. With its media strategy, the FIB endeavors to ensure the transparency, the general accessibility and openness of its work. Especially important for the success of FIB is the effective cooperation between the Bureau and other bodies and institutions, such as the Ministry of Interior and the national services attached thereto (National Service for Combating Organized Crime and National Security Service), the Public Prosecution, the Customs Agency, PIFCA, the General Tax Directorate, foreign financial intelligence units. Lasting contacts have been established with the financial intelligence services of some well-known offshore areas and joint projects are under way.

On October 1, 2002, the Council of Ministers presented to the parliament draft amendments to the *Law on Measures against Money Laundering*. The objective of the draft is to complete the harmonization of Bulgarian laws with the core instruments of the *acquis communautaire* in the area of combating money laundering (*Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering and Directive 2001/97/EC of the European Parliament and the Council of 4 December 2001 amending Directive 91/308/EEC*), and to expand the scope of anti-money laundering, while improving its mechanisms and efficiency.

In line with the explicit requirement of *Directive 2001/97/EC*, the list of

reporting entities under art. 3(2) of the *Law on Measures against Money Laundering* has been extended. Bound to report on any suspicious transactions and operations would be the attorneys-at-law, and other persons who provide consultations on a professional basis; real estate dealers and persons organizing unofficial securities markets; persons dealing in high-value items on a professional basis, etc.

Some of the amendments aim to extend the forms and ways of identifying natural and legal persons, for instance if a transaction or an operation is not made in the presence of the client, which covers electronic statements, documents, signatures, etc. With commercial banks, the so-called „double signature" system applies that has proven to be quite efficient.

The proposed amendments put in place conditions for a quicker and more effective exchange of information between the FIB and the law enforcement structures. Later, this would hopefully result in a quicker and efficient investigation of instances of money-laundering by way of combining the information resources of units that use different methods of information gathering and processing.

The draft amendments envisage that a supervisory mechanism should be set up for the financial investigation work. In particular, a **Chief Financial Investigation Inspector will be appointed who would be one of the Deputy Ministers of Finance**. While the Chief Inspector would be able to monitor and control the activities of the FIB, strict legal guarantees would prevent him from unduly intervening in its day-to-day operations.

The passing and efficient implementation of the law would result in a more comprehensive and accurate cash-flow monitoring, thus severely restricting the opportunities to engage in strong corruption triggers such as money laundering.

B.1.5. Other Control Mechanisms and Means to Combat Corruption: the Ombudsman Institution

The public authorities and bodies endowed with controlling or supervisory powers in Bulgaria cannot always timely and effectively resist corruption. The specialized authorities themselves are not immune from corruption. Examples have been seen already of abuse on behalf of public officials who are in charge of preventing various forms of corruption. The process of fixing the relevant institutional and legal framework, and of drafting in-house rules of conduct for the officials of different institutions or units is still under way (*e.g.* Ministry of Defense, Ministry of Interior, including the police, the border police and other specialized services, the Ministry of Finance and the Customs, etc.). The same holds true for the elaboration of codes of ethics and other internal control mechanisms for combating corruption. Hence, there are widely spread instances of maladministration (misuse of power, corruption, disrespect for human rights and insufficient protection). All this entails the need for a new mechanism that should be implemented in parallel to the existing institutions and complement their work. An institution like the Ombudsman may well play this part. Bulgaria, however, is among the very few European countries whose legislation does not provide for an Ombudsman.

The idea of setting up a specialized institution that should control and monitor the administration (an ombudsman or a civil/public defender),

inter alia in the event of corruption, was developed by the Center for the Study of Democracy back in 1998, in a special report „Opportunities for Introducing Ombudsman Institution in Bulgaria". The report outlined the fundamental principles and possibilities for a future legal framework in Bulgaria of an institution similar to the ombudsman that should match the current needs, the public attitude and the political and constitutional background in the country. The recommendations in the report were included in the Anti-Corruption Action Plan, a major document produced by *Coalition 2000*. Starting from a detailed strategic basis, a *Draft Law on the Ombudsman* was prepared. The draft provides that the institution of the ombudsman should be introduced at both the central and the local levels and should combine the features of the classical institution (the Swedish ombudsman) and the versions of other countries, while matching the peculiar conditions in Bulgaria. In 2002, a modified version of the draft, viz. the *Draft Law on the Civil Defender and the Local Civil Mediators* was presented to the Chair of the National Assembly and to the chairpersons of the standing parliamentary committees for human rights, for citizens' petitions and complaints and for legal issues. Nonetheless, the modified draft was not officially tabled by the 39th National Assembly. Later, three other draft laws on the ombudsman were officially presented to the Assembly and they were all passed at first reading.

On the basis of the three drafts officially presented to the parliament, the Standing Parliamentary Committee for Human Rights and Religions developed a consolidated *Draft Law on the Ombudsman* that will be tabled for second reading. That version contains only some of the proposals of the first draft elaborated by *Coalition 2000*. Moreover, some of the solutions embodied in the new summarized version invite doubts as to whether the future institution would be **politically neutral and efficient**. For example, the list of persons empowered to nominate candidates for an ombudsman (only MPs and parliamentary groups) would somewhat politicize any election made by a simple majority, there would be fewer possibilities for selection, for alternatives and for competition among the candidates. There is no rule on what should happen if none of the nominees is elected at the second voting in Parliament. In his or her activities, the future ombudsman should be supported by an administrative service, a point that is not covered by the consolidated draft either. The procedure for handling complaints is incomplete and there is no possibility whatsoever for the ombudsman to require an administrative authority to pronounce explicitly in the event where the deadline to appeal against a tacit refusal has expired.The consolidated draft law contains only one general text that **enables the municipal councils to elect local public mediators (ombudsmen).**

Despite the lack of relevant legislation local ombudsman institutions, set up mainly on the initiative of the civil society and with the assistance of the local authorities, operate quite successfully in a number of municipalities (*e.g.* Sofia, Veliko Tarnovo, Razgrad, Zavet, Loznitsa, etc.). Their work is geared towards facilitating the access of citizens to the public services offered and reducing the improper contacts between citizens and municipal officials where the latter perform their duties.

The public has become better aware of the need for and usefulness of such an institution at the local level, of its potential in enhancing the **transparency of the local administration, improving the administrative services** and fostering a climate of respect for human rights and intolerance to corruption. Recently, amendments were drafted to the *Law on Local Self-Government and Local Administration* according to which the municipal councils should have autonomous budgets. Therefore, it would be appropriate to envisage that, when adopting the corresponding municipal budget, the municipal councils should also be able to adopt a budget for the local ombudsman.

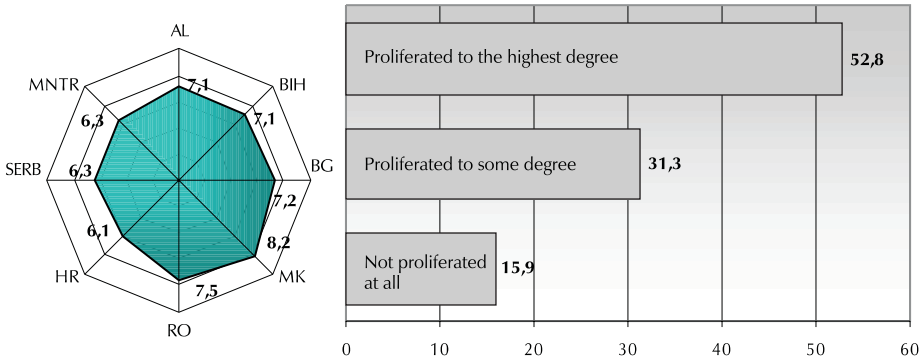
B.2. The State Institutions, Law and the Society

In addition to the guarantees for transparency and openness of administrative and governance processes and functions, the general institutional and legal climate needed for the fight against corruption would be greatly supported by enhancing the law enforcement and social functions and by **streamlining the regulatory functions of the state**. In particular, **the state should withdraw from the economy and the sphere of services**, the democratic values and anti-corruption morality should be rooted in politics and in public relations, **civil control should be institutionalized**. While the efforts of the state and society to fight corruption in 2002 did bring about some positive results, those efforts are not yet based on a consistent partnership.

B.2.1. Parliamentary Governance and Law

- *The role of parliament*

FIGURE 12. SPREAD OF CORRUPTION IN THE PARLIAMENT* (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, January '02

Source: SELDI, January 2002
(*) Note: The maximum value of the index is 10.0 indicating the highest possible level of corruption. The minimum value is 0.0 indicating total absence of corruption.
Legend: AL - Albania; BIH - Bosnia and Herzegovina; BG - Bulgaria; MK - Macedonia; RO - Romania; HR - Croatia; SERB - Serbia; MNTR - Montenegro.

The exercise of state power in a democratic context is based on the principle of the separation of powers but is intrinsically linked to the development of dialogue and cooperation among the three branches of power.

As a supreme institutional representation of the nation, the National Assembly holds a key place in the system of state authorities. Its tasks require that the parliament should work with maximum openness and transparency and contribute to the efficiency of all anti-corruption initiatives in the state and in society in general.

By the decision of September 11, 2002, the National Assembly set up a

Standing Anti-Corruption Committee. The committee is still in the process of identifying its position and role within the overall anti-corruption process. In order to become an operational anti-corruption mechanism, the Committee should fulfill its intent to analyze corrupt practices, the legal and social conditions that perpetuate or benefit such practices, and initiate the required legislative measures in that respect.

Although in 2002 the parliamentary committees again tended to invite NGO representatives to participate in the discussions on various draft laws, public hearings and the democratic participation in the process of law-making are not a well-established practice yet.

The Committee on Civil Society Issues and some of its members were very active in preparing and tabling draft laws with varying anti-corruption potential, *e.g.* the drafts laws on lobbying, on the ombudsman, on ethical rules, on political parties, etc. Serious criticism could be voiced in that respect, however, as no sufficient efforts were made to involve a wider roster of experts, to fully use the existing potential and experience gained by the spectrum of civil organizations, or to launch a wider public debate on any initiated anti-corruption legislation. Members of Parliament in this and other standing committees may also be recommended to more actively commit themselves to the anti-corruption initiatives of the civil society. There have been specific examples of an almost complete absence of MPs from fora organized in public-private partnership or on the problems of judicial reform, the role of the judiciary and law enforcement in combating corruption, on the ombudsman institution, etc.

Despite some of the measures taken, the National Assembly is still **far from being an institution serving as a model of anti-corruption efficiency**. No mechanism ensuring the settlement of conflicts of interests within the legislative branch was set up in 2002 either. A group of MPs presented a *Draft Law on the Ethical Norms Applicable to the Work of the Members of Parliament*. The draft contains some principles for the conduct of MPs (priority of public interests, transparent actions, respect for the citizens, objectivity, etc.), rules on the disclosure of information (declaring and disclosing information about the income and property status of MPs), and also principles and rules on the conflicts of interests.

The proposed norms place Members of Parliament under an obligation to provide information about their income at the beginning and the end of their tenure (including information on the sources of funding for their pre-election campaigns), about expenditure for their reception rooms or offices, on technical and other assistants and/or advisers, information about their trips and travel, on gifts received, and also on the details of any personal or family interest involved in the exercise of their powers. It is proposed to set up a standing parliamentary ethics committee that should keep record of any declared conflicts of interests, handle complaints from citizens and civil organizations from MPs' behavior incompatible with the law and with the Rules of Procedure of the National Assembly, and propose sanctions. The draft law also identifies a list of possible sanctions. The establishment of ethical rules and their practical implementation would consolidate the reputation of the National Assembly and enhance the public confidence in the work of MPs.

In addition, the following measures remain indispensable:

- Introducing a mechanism to inform the public of any violations of

the fiscal discipline committed by MPs, and of the sanctions imposed in each case; here, a subtle balance should be struck between the requirement to keep confidential the information that the future standing parliamentary ethics committee would use in its work and the need for transparency and openness.

- Improving the quality of the legislation while avoiding the automatic copying of foreign experience and taking into consideration the views of the experts in every relevant field and the lasting public interest;
- Bringing the legislative program in line with the needs of society and the aspiration to root an anti-corruption model of relationships between state and business, and state and civil society;
- Making changes towards the democratic decentralization of the state.

The parliament creates the legal basis for the functioning of the other branches of power. It elects and removes from office the members of the government, elects some of the members of the Constitutional Court and the Supreme Judicial Council (the body that administers the judiciary) and participates in the formation of a number of other important state authorities. It is therefore indispensable for the National Assembly to play a **key part** in establishing a democratic balance among the different branches of power, overcoming the conflicts and tension that arise from time to time between some of them, and **coordinating anti-corruption efforts**. Due to the specificity of transition in Bulgaria, the separation of powers often results in opposition between the branches of power, rather than in a balanced relationship between all those branches. The negative effect of that peculiarity over the past year was enhanced by the lack of homogeneity, coordination and dialogue both within the government and inside the parliamentary majority. Practice has given a number of good examples of **the lack of dialogue or of a mechanism to overcome the tension between the branches of power**. A fresh example was the fact that the Supreme Court of Cassation challenged the consistence of the latest amendments to the *Law on the Judiciary* with the Constitution, resulting in most of the amendments being adopted to be declared anti-constitutional. Other examples include the preparation of the draft budget and the ensuing debates which resulted in the Supreme Judicial Council's challenging the draft budget before the Supreme Administrative Court; the fact that the Supreme Judicial Council requested the Prosecutor General to resign, etc. In addition, last year, the tools available to the judiciary and the constitutional justice venue were much more frequently used against the executive than were the tools of parliamentary control. The right solution, however, would hardly lie in limiting judicial review of the acts issued by the executive. The parliament itself should develop its supervisory functions and more actively apply the mechanisms of parliamentary scrutiny and control. In the end, it is exactly the parliament that has the heaviest responsibility in fortifying statehood.

- *Improving the process of law-making*

The principle of the rule of law is intrinsically linked to the law-making process and to drafting and application of legislative instruments. In that sense, the existing *Law on Legal Instruments* (passed in 1973) is not an adequate basis for law-making. The prevailing opinion is that the legal instruments are of poor quality, which is due to the insufficient administrative capacity in the area of law-making. The instruments of

secondary legislation are often inconsistent with the requirements of the laws they are intended to implement. The legislation is oftentimes amended and this entails difficulties not only for the citizens and organizations trying to enforce their rights but also for the administration that has to apply the rules. The unclear and contradictory provisions and the existing principle of abolishing obsolete rules pave the ground for subjective assessment, thus advancing a corruption-friendly environment.

Hence, it is **mandatory to draft a new piece of legislation that should govern the law-making work**. That law should provide for coordination procedures that guarantee the involvement of the structures of civil society in the drafting of all legislative programs and legal instruments. A system of criteria should be developed to evaluate the expected results of the implementation of legislative instruments, also with respect to the individuals, institutions and organizations concerned. It is especially important to rely on the capacity of local authorities and civil organizations, in particular by devising a mechanism to constantly monitor the effects of the implementation of legal instruments, and to make appropriate conclusions about the required amendments.

TABLE 2 MAJOR FACTORS FOR THE SPREAD OF CORRUPTION*

	January 2000	September 2000	January 2001	October 2001	January 2002	May 2002	October 2002
Fast personal enrichment sought by those in power	57.0	57.8	60.8	59.2	58.6	58.6	58.4
Imperfect legislation	**35.1**	**40.5**	**39.1**	**38.0**	**43.0**	**39.7**	**39.2**
Ineffectiveness of the judicial system	**24.7**	**22.2**	**27.2**	**28.5**	**32.3**	**31.2**	**38.0**
Low salaries	47.2	41.6	33.7	32.3	38.5	36.0	36.6
Lack of strict administrative control	30.8	32.3	31.8	35.2	34.5	38.9	34.5
Mixing official duties and personal interests	28.3	32.6	25.8	31.7	26.7	26.9	28.8
Moral crisis in the period of transition	18.2	17.0	18.9	21.1	18.3	16.3	13.2
Problems inherited by the communist past	7.3	7.8	4.4	5.8	5.0	6.9	6.3
Specific characteristics of Bulgarian national culture	5.9	4.2	5.9	4.4	5.3	4.3	4.9

Source: CMS of *Coalition 2000*
(*) Note: 1) % of those citing each factor
2) Respondents marked up to three answers, therefore the sum total of percentages exceeds 100.

MPs who exercise their legislative initiative are not bound to coordinate their drafts with various ministries or agencies, unlike the government, which is under an obligation to coordinate its bills. This affects the quality of the drafts presented by MPs and may easily entertain suspicion that improper influence has been exerted. As the MPs from the ruling majority exercise their right of initiative more than frequently, the political government has no serious commitment to the drafts presented by MPs and to their enforcement once they are passed.

Out of 436 draft laws presented to the 39th National Assembly until the end of 2002, 235 were produced by the Council of Ministers, whereas of 201 bills submitted by MPs, 97 came from members of the NMS2 parliamentary group.

Source: Web-site, Bulgarian National Assembly

It appears that the principles of the legislative process should be reconsidered so as to guarantee the better quality of bills presented by individual MPs and mechanisms should exist for the compulsory coordination of those bills with the widest possible range of institutions and persons involved in the area in question. Despite the progress towards transparent reforms that is demonstrated by the public hearings on a number of draft laws, larger openness is needed at the stage of developing and discussing the program for reforms. Otherwise, the current practice of presenting alternative draft laws will persist, as will the trend to consolidate the different bills mechanically and pass versions that are devoid of a consistent strategic basis.

B.2.2. Anti-Corruption Measures within Public Order and Security Bodies

The specific role of the institutions in charge of ensuring public order and security gains importance in the fight against corruption (i.e. the Ministry of Interior and its national and specialized services, the Ministry of Defense and its structures, the special and specialized institutions subordinate to other authorities such as the National Intelligence Service, the National Guard Service etc.).

At the same time, corruption within the public order and security institutions is among the most distressing, complex and important problems as those institutions are vested with the widest powers to combat corruption in the overall political, economic and social life of the country. The major problems of combating corruption inside those institutions stem mainly from the lack of coordination among the different bodies, the duplication of functions, the poor equipment and underfunding, the insufficient training of staff, the difficult recruitment of good experts as a result of the low salaries, etc.

A key factor that predetermines the spread of corruption within the public order and security institutions is the significant volume of classified information that they have to collect, process and store. The possibility for that information to be improperly used paves the ground for particularly dangerous and disturbing corrupt practices.

At the end of 2002, on the initiative of the Parliamentary Committee for Foreign Policy and the Parliamentary Committee for Domestic Security and Public Order, a debate was launched if it would be possible to draft a special *Law on National Security* to delineate the place of the secret services, their functions and the interaction among them. The opportunity is discussed, *inter alia*, to merge the secret services in a National Security Agency that would have the status of a ministry directly subordinate to the Council of Ministers. The steps to be undertaken should be closely linked with the efforts to more efficiently combat corruption.

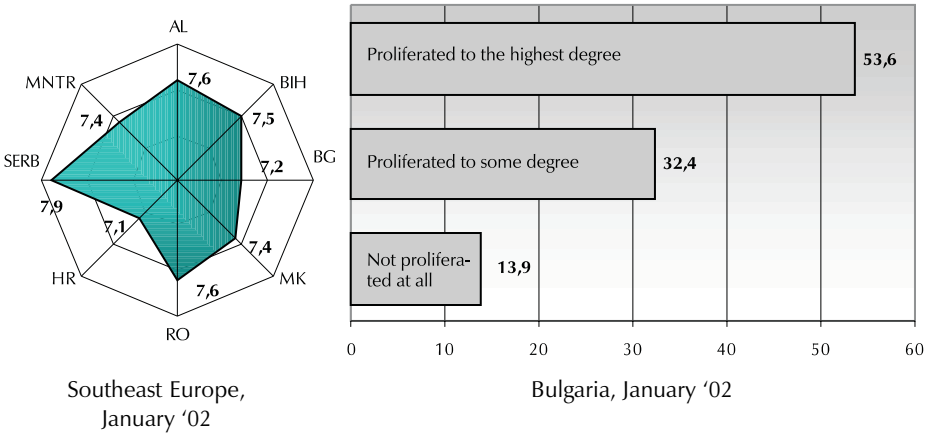
In line with the tasks stemming from the *National Anti-Corruption Strategy*, the **Ministry of Interior (MoI)** adopted and started implementing its own *Anti-Corruption Program*. The latter aims in particular to limit corruption by way of efficient mechanisms for consolidating the status of the units involved in anti-corruption efforts, improving in-house control and the interaction between the bodies of the MoI and the mass media. It is worth mentioning that an **Intra-Ministerial Anti-Corruption Coordination Board** has been set up within MoI and a set of *Methodological Rules for the*

Organization and Procedure of that Board have been adopted. The Board is chaired by the line Deputy Minister of Interior who is in charge of the general monitoring and supervision of interaction in the fight against organized crime and corruption.

The operational interaction between MoI structures upon receiving, notifying and clarifying the complaints of internal corruption, and the control of their handling, have been entrusted to a special **Department on Combating Corruption within MoI**, of the Inspectorate. In the national and the territorial services of MoI, **specialized units** have been assigned the functions of conducting **operations to check information about corruption**. In conformity with the legal requirements for checking complaints of corruption, the directorates at the national and territorial services summarize information at the end of each quarter and provide it to the Department on Combating Corruption within MoI of the Inspectorate. In turn, every six months the department drafts and submits to the Intra-Ministerial Coordination Board consolidated reports analyzing corruption prevention and detection in the system of the MoI.

The data provided by the newly-created Intra-Ministerial Anti-Corruption Coordination Board within MoI show that, **in the first six months of 2002, 113 officials of the Ministry were penalized for corruption**. One of them was a civil servant, 63 were officers and 49 were sergeants. Twenty-six persons were fired, 20 were moved to other positions, and 19 were subjected to psychological aptitude tests. Files about violations committed by 40 officials were submitted to the public prosecution and 8 officials were arrested. The results of the anti-corruption efforts made by the MoI were appreciated by the leadership of the Ministry who are of the opinion that the new mechanism for preventing and detecting corruption among MoI officials operates smoothly at all levels.

FIGURE 13. SPREAD OF CORRUPTION IN THE POLICE FORCE (GENERAL PUBLIC) (%)



Southeast Europe, January '02

Bulgaria, January '02

Source: SELDI, January 2002

Measures were taken to reinforce the commitment of the structures of civil society in the fight against corruption while relying on public reception rooms, „hotlines", „mailboxes" and other forms that enable NGOs and individual citizens to provide information about instances of corruption on the basis of guaranteed anonymity. The Crime Prevention and Public Relations Groups with the Metropolitan Directorate of the Interior and at the county police directorates across the country frequently appear in broadcasts on local media. Attention is paid to the possibility of citizens to file information about corruption among officials of the MoI. The opening up and greater accountability of MoI towards the society needs to be further promoted. The working style of secrecy and concealment which gives rise

to suspicions and forms a good ground for corruption should be replaced with wider transparency and openness. The development of a system of staff recruitment and career development, on-the-job training, the use of objective performance evaluation criteria are also of key importance as they all promote the motivation of staff members.

To enhance the efficiency of MoI in combating corruption and to reconfirm the role of the Ministry in that process, the structure of the Ministry should be streamlined and the place and functions of the special services should be better defined.

After Bulgaria was invited to start negotiations for NATO membership, the **Ministry of Defense** declared it would start working to reform the legislative framework of defense and of the armed forces. The initial ideas suggest that the reform would already start at the beginning of 2003. It will have to distinguish between two separate sets of legal rules - on defense and on the armed forces. This will be achieved, among other things, by passing two separate laws - a law on defense that should cover the entire system of interaction among, and subordination of all institutions in the country for the purpose of national defense and security, and a law on the armed forces that would govern in detail the system of the armed forces and professional military service.

When the contemplated reform of the legislative framework is implemented, it should not be forgotten that some specific problems of the Ministry of Defense may also generate corruption, *e.g.*: the lack of transparency and of sufficient controls in the allocation of the considerable budget funds earmarked for army maintenance and modernization, and for tendering procedures; the management of substantial property, including real estate, and the fact that large portions of that property have become redundant in the army as a result of the military reform. At the beginning of December 2002, the government approved an *Ordinance on the Conditions and the Procedure for the Award of Public Procurements relating to National Defense and Security*. The entities that may be contracting authorities under the Ordinance are those vested with defense and security-related functions in Bulgaria, whereas the potential bidders must satisfy the conditions for access to classified information or the requirements for applying special security measures. It is still early to conclude to what extent the application of the Ordinance would help curb corruption.

B.2.3. The State and Society

- *The system of political parties*

The year 2002 witnessed further gradual transformation of the political party system into more transparent and independent of the state system. The funding of political parties had already been covered by the relevant legislative instrument in 2001 which, however, preserved the possibility for anonymous donations, along with a number of anti-corruption provisions. In May 2002, a new *Draft Law on Political Parties* was presented to the National Assembly. A number of its rules intend to establish lawful means of financing and mechanisms to control the funding of political parties, such as:

- a full ban on anonymous donations and on the possibility of political

parties to receive support, in whatever form, from commercial companies with any government or municipal equity interest (by contrast, the current rule only prohibits such support if the government or a municipality is a majority shareholder);

- a possibility for restricted, albeit authorized and controllable economic operations so as to cut off the current practice of conducting business operations „in the shadow", avoiding the legislation in force.

A second draft law on political parties is in the process of being prepared and should be presented to the National Assembly. Its underlying ideas are close to those of the first draft. The second draft provides for more stringent restrictions on donations to political parties, and a total ban for such parties to be funded by companies involved in the business of gambling. It also suggests a new mechanism for allocating government subsidies for political parties and prescribes a mandatory requirement for political parties to submit their financial statements for the last three years to the National Audit Office in order to participate in elections.

Political consensus is required for the most important anti-corruption measures concerning political parties and the informal links between political parties and various private interests. It is clearly necessary to ensure, by legislative means, maximum transparency in the course of conducting activities as a political party, to make clear the sources of funding, to do away with the „shady" cash flows from and to the headquarters of political parties. The attainment of these objectives would move forward the combat against corruption and help reform the system of political parties while placing it on a solid anti-corruption basis.

The *Draft Elections Code*, presented to the National Assembly in 2002, pursues similar objectives. It seeks to codify the law on elections, to change the elections system and to **provide for new rules on the funding of election campaigns**. It would prevent state-owned and municipal companies from funding such campaigns. Another provision introduces a ceiling on the expenditure in the course of an election campaign (2 400 000 Bulgarian levs for a political party and 80 000 levs for each independent candidate). In addition, a deposit should be paid in advance (10 000 levs for each political party and 500 levs for each candidate standing on a first-past-the-post basis) on a bank account of the Central Elections Committee, with the proviso that the Committee would release the deposit after the political party or candidate in question submits a report on collecting and spending the funds for the campaign. The draft proposes that a permanent elections administration should be put in place and the spending of the funds should be controlled by the Central Elections Committee, instead of the National Audit Office.

The introduction of a new control mechanism that should achieve the required transparency is largely supported by the major political forces. Nonetheless, it needs discussion and sophistication so that its anti-corruption ideas and potential could be fully developed. Most debatable are the envisaged changes to the current election legislation, *e.g.* the introduction of a mixed (majority and proportional) elections system modeled after the German one. The establishment of a professional elections administration has also given rise to some controversy.

The reinforcement of the autonomy and transparency of the political party

system, the eradication of any possibilities to use corruption in order to achieve the goals of political parties necessitate the adoption of a modern and consistent domestic legislation that should be strictly implemented.

- *Lobbying and conflicts of interests*

Lobbying is a specific activity which greatly exceeds the constitutional right of citizens to lodge petitions and make proposals to state institutions. It often accompanies, in one form or another, state governance at different levels. Lobbying is practiced on behalf of a third party, against payment, and aims to promote specific private interests, individual or collective. To implement the principles of transparency in the interaction between state and society, and to demolish corruption in that sphere, clear rules are needed about the mechanisms whereby individuals and private organizations could influence decision-making within the executive and the legislative branches of power. This will stop any inappropriate pressure behind the scene and any conflicts between private and public interests. This objective, however, requires a complex process of adopting new legislative and ethical norms, while simultaneously infiltrating new practices and developing a corruption-hostile public and political culture.

Some very practical steps were undertaken along this path in 2002. The *Draft Law on the Disclosure and Registration of Lobbyists and Lobbying*, presented to the National Assembly by a group of MPs from the ruling majority, proposes that a **Public Register of Lobbyists and Lobbying** is set up. It contains definitions of the concepts of „lobbyist" and „lobbying" and covers the conditions, procedure, prohibitions and restrictions in relation to lobbying. The draft rules, however, trigger a number of critical remarks:

- the formulation of „lobbying" is far too broad, there is no requirement that lobbying and the financial investment therein should be disclosed to the public;
- the possible addressees of lobbying, be they institutions or personalities, are too numerous (all authorities of the legislature and the executive, authorities of local self-government, civil servants, members of political cabinets and persons working under contracts of employment at the bodies of the Executive, at the administration of the National Assembly and at the administration of the President of Bulgaria);
- there are no criteria to distinguish between the activities defined as „lobbying", on the one hand, and ordinary civic activities or democratic civic involvement in the process of law-making and the general political process, on the other hand. The draft does not treat as lobbying only those activities of NGOs that are developed under projects with grant financing from the European Union, other international organizations or specialized foreign government programs. All the other activities of NGOs, including those in pursuit of public interests, would thus fall within the definition of lobbying;
- the relationship between unlawful lobbying and the crime of „trade in influence" remains unclear.

Given the lack of traditions in Bulgaria, and the lack of experience in most European countries, in order to achieve its goal and provide for „additional guarantees to enhance transparency in the work of state

institutions and to curb corruption", the draft needs to be substantially improved and reflect the views of a wider range of experts, representatives of the civil society, individuals and organizations that might be engaged in lobbying.

- *Civil control, legal and institutional framework of the non-governmental sector*

The legal framework for the non-profit sector has developed more than slowly: the *Law on Not-for-Profit Legal Persons* only came into effect on January 1, 2001. While that law laid the legal foundation of a modern non-profit sector in Bulgaria, it failed to address a number of issues concerning the institutionalization and strengthening of anti-corruption civil control, the dialogue and interaction between non-profit organizations and the state. Since the entry into force of the law, no steps have been undertaken to improve the legislation, regardless of the problems encountered in practice. Some of those problems are the lack of clear criteria to distinguish between non-profit organizations depending on their objectives and on how society assesses the relevance and usefulness of those objectives, the complicated procedure for the registration of non-profit public benefit entities and the complex requirements they should meet.

In addition, no guarantees have been envisaged for a fully-fledged implementation of the freedom of association, as enshrined in the Constitution, and to avoid the risk that many profession-based non-profit organizations might actually become monopolies strongly linked with the corresponding state structures.