

F. INTERNATIONAL COOPERATION

The general international consensus on the significance of corruption in development, and in particular in the process of transition to democracy and market economy, continued to hold ground in 2002. The interest of the international community did not diminish in this area; on the contrary, it became more focused, specialized and prioritized.

Nevertheless, apart from the legal provisions of international legal instruments, international **benchmarking in anti-corruption** continued to be problematic. Levels of corruption, and effectiveness of anti-corruption policies, in the members of the international organizations which are working out common legislation in this area - the UN, Council of Europe, OECD, the European Union - still varies significantly. This makes the elaboration of universally accepted definitions of the scope of corrupt practices - let alone their international enforcement - a continuing challenge. Both the manifestations and sources of corruption differ considerably from country to country and among regions making universal anti-corruption prescriptions difficult to design.

Benchmarking difficulties are also linked to another persisting problem faced by international efforts in this area - the reluctance to look into **cross-border sources** of corruption, particularly in regions such as South-east Europe where levels of economic development, institutionalization of democracy, as well as the international affiliations of countries vary significantly.

At the same time, a welcomed trend has been emerging lately with respect to the acknowledgement of the **linkages between trans-national crime and corruption**. In the post September 11 context addressing this linkage acquires an even more poignant urgency.

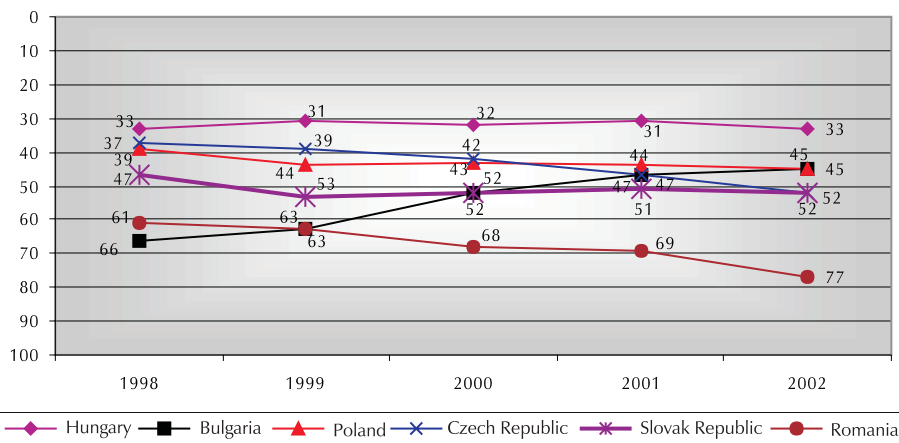
F.1. International Perceptions of Bulgaria's Anti-Corruption Progress

As noted in the Corruption Assessment Report 2001, there is a tangible trend among Bulgarian policy makers to acknowledge the value of international anti-corruption cooperation. This has continued in 2002, particularly in the context of the progress made by the country in its ranking in the Corruption Perception Index of Transparency International. In the late 1990s, Bulgarian governments, as well as other CEE governments, were rather skeptical of the merits of making anti-corruption a priority for government policy as this was seen as compromising the country's efforts to meet requirements for membership in the EU and NATO. Public awareness campaigns and discussions were seen as tarnishing Bulgaria's international image with all its perceived negative consequences - diminished investor interest, international peer monitoring, etc.

Bulgaria has improved its ranking in the Corruption Perception Index of Transparency International. In fact, Bulgaria is the only EU applicant country to steadily improve its rating in the TI Corruption Perception

Index in the past few years. From 66th place in 1998, Bulgaria is now at 45th place out of 102 countries ahead of countries such as the Czech Republic, Latvia and Slovakia.

FIGURE 32. RANKING OF SOME EU APPLICANT COUNTRIES ACCORDING TO THE TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTION INDEX



Source: Transparency International, Corruption Perception Index
<http://www.gwdg.de/~uwww/>

In contrast, the annual Transition Report for 2002 of the European Bank for Reconstruction and Development (EBRD) states that there was a significant increase in the incidence of corruption in Bulgaria. „This suggests that the burden of corruption has been partly reduced by economic growth and rising sales while some of the fundamental factors that contribute to corruption remain“ (p.28). According to EBRD’s Business Environment and Enterprise Performance Survey the percentage of companies making bribes frequently has increased from 23 in 1999 to 32.8 in 2002. The average „bribe tax“ (the proportion of sales that are paid in the form of unofficial payments to officials) as a percentage of annual firm revenues has increased from 1.3 to 1.9. This should be viewed against the trend of a reduction of the unweighted average of this type of burden. It should be noted that the survey shows some surprisingly wide variations among countries (e.g. the percentage of firms making bribes frequently for Georgia is almost three times that of Armenia, while Yugoslavia has half that of Bulgaria).

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F.2. International Anti-Corruption Monitoring and Evaluation

Bulgaria has undertaken a number of international commitments with respect to countering corruption. It has acceded to the leading international instruments in this area, notably the **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions** and the Council of Europe **Criminal Law Convention on Corruption** and **Civil Law Convention on Corruption**. Bulgaria has also continued to cooperate actively with the auxiliary and monitoring bodies of the CoE and OECD conventions, in particular with GRECO and the Working Group on the OECD convention.

In 2002, GRECO completed the first round of its evaluations, including for Bulgaria, of the compliance of the member states and the Bulgaria consented to the second phase of OECD’s Working Group evaluation. Added to several years of corruption assessment made in the European Commission’s annual Regular Report, this should provide a good opportunity for some conclusions of the impact of international corruption monitoring.

The adoption of the provisions of a number of advanced international anti-corruption documents is indicative of the political will in Bulgaria to

adhere to modern anti-corruption standards. At the same time, there is a risk that a kind of „legal optimism“ could blur the sharpness of the anti-corruption response.

An apparent contradiction highlights this risk: although, for example, all EU member states score better than Bulgaria in the TI Corruption Perception Index (and for all intents and purposes could be said to be relatively less corrupt), the majority of these countries have not ratified the Council of Europe's **Criminal Law Convention on Corruption**, while Bulgaria has been among the first countries to do so.

Two conclusions could be drawn from this. The first one is by now commonplace, namely that the adoption of legal provisions is by no means a guarantee against widespread corruption. **The gap between the adoption of modern anti-corruption legislation in Bulgaria and the effectiveness of its implementation**, if persisting, threatens to undermine the rule of law in general by making regulations seem irrelevant to society and the business.

The second one, however, is that countries aspiring to EU and NATO membership, such as Bulgaria, could be required to adopt anti-corruption standards not part of many EU states' legislation. This should have certain implications for the international monitoring efforts in this field.

Most importantly, the **monitoring mechanisms should be capable of adapting the requirements of effectiveness and objectivity**. The fact that the publication of monitoring reports by international institutions makes significant impact domestically should increase the requirements that their conclusions and recommendations be both specific and acknowledge benchmarking difficulties. In particular, this could mean:

- adopt a **system of indicators that objectively demonstrate progress made by the country** through measures, actions, policies or strategies in the field of transparency, governance and accountability. The European Commission, for example, is increasingly using such indicators since its Report in 2000 when it referred to „persisting rumors“;
- create **synergies with other recognized monitoring systems** including national ones (*Coalition 2000's* Corruption Monitoring System is a good example);
- mutual monitoring mechanisms should include an independent expertise into their evaluation work. This would ensure: a) the **consistency of the quality of evaluation** (which now depends on the particular team and varies); b) that **diplomatic considerations do not undermine objectivity of conclusions**.

An example of the limitations of peer monitoring mechanisms is the provision of Article 15 of the **GRECO** statute which states that evaluation reports shall be confidential. Nevertheless, the report for Bulgaria, adopted in May 2002, was made public. As it was drafted in September 2001 it does not reflect some developments in the anti-corruption environment in the country (e.g. the adoption of the government action plan). It correctly highlights some deficiencies of the anti-corruption infrastructure in Bulgaria (the lack of a system of collection and processing of data with regard to the investigation, prosecution and adjudication of corruption offenses; the need to redefine the role of the investigation service with

respect to other law enforcement institutions, etc). Still, the report could have been expected to make more specific recommendations.

The second round of **OECD's monitoring of Bulgaria** in the framework of the Convention on Combating Bribery of Foreign Public Officials started in 2002. The evaluation focused on the capacity of government agencies trusted with the enforcement of the implementation of the provisions of the Convention. Bulgaria's participation in the Working Group on the Convention contributes significantly to the capacity of the administration to put into practice modern anti-corruption standards although the bribery of foreign officials may not be among the highest corruption risks in Bulgaria.

As the focus of assistance of the **European Commission** is on helping the harmonization of rules and enhancing the capacity of the national administrations to enforce them, it has focused on exclusive cooperation with executive agencies. Nevertheless, in the last few years the potential of civil society in areas such as corruption monitoring and awareness building have received growing acknowledgement by the Commission. This appreciation is evident, arguably for the first time in Bulgaria, in the 2002 Regular Report of the European Commission on Bulgaria's progress towards EU membership.

The Government undertook a serious consultation exercise with NGOs and donors on the preparation of the Strategy and the Action Plan, and these bodies will be involved in implementation. The strong role of NGOs is to be welcomed. Measures are aimed at preventing as well as tackling corruption. However, on some important aspects of the strategy, such as decentralisation, the improvement of local governance, and the establishment of improved mechanisms for financing political parties, there is no detail as yet on concrete measures and deadlines.

European Commission Regular Report 2002, p. 26

In 2002, the **Open Society Institute** undertook an evaluation effort aimed at mapping corruption and anti-corruption policies in the ten CEE countries aspiring for EU membership. One of the reasons prompting this exercise was the formalistic approach both by the candidates and the EU itself in this area. The report on Bulgaria highlights law enforcement and judiciary aspects and lack of conflict of interest and lobbying provisions.

The EU accession process has been one of the most important influences on the development of anti-corruption policy, and anti-corruption is clearly recognised by the Government as a condition for both EU and NATO accession. Pressure from the European Commission was instrumental in encouraging the Government to produce the National Strategy, and anti-corruption policy has been an important part of the Accession Partnerships. The Commission has provided increasing assistance for the development of anti-corruption policy.

Corruption and Anti-corruption Policy in Bulgaria, OSI, pp.82-83

In 2002, Bulgaria participated in the negotiations for the **United Nations Convention against Corruption**. Discussions of the best monitoring mechanism of the Convention have been part of these negotiations. A number of views have been expressed on this issue, ranging from states that consider that it is necessary to envisage in the text of the Convention provisions providing for a mechanism to monitor implementation to those that have not yet expressed clear positions on the issue or have more restrictive approach. In this context, the **Bulgarian government should take a more active role by putting forward proposals for a monitoring mechanism** that takes into account lesson learned from previous experience in this area. Such a mechanism should include three main elements - annual meetings of the State Parties to the Convention, a Committee of international experts (subsidiary body) and a new more active role of the Center for International Crime Prevention.

F.3. International Anti-Corruption Assistance to Bulgaria

The most significant development in this area was the launch of the Open Government Initiative project, implemented in the framework of an agreement between the Bulgarian government and the US Agency for International Development (USAID). The project focuses on building the capacity of key government agencies, as well as civil society organizations to prevent and tackle corruption. Within it, assistance will be provided in the fields of the transparency and accountability of public finances and public procurement, as well as to the process of *Coalition 2000*.

The latter is in continuation of the public-private partnership approach adopted by USAID in this area. It is also indicative of a growing appreciation of building coalitions of stakeholders in order to ensure the effectiveness of the provision of international assistance.

Little progress has been made on a problem identified in the Corruption Assessment Report 2001 - namely that results of the EU assistance provided, mostly under the national Phare program, are not sufficiently transparent. The European Commission is supporting a number of twinning projects that have a potential anti-corruption effect - with the Prosecutor General's office, with the Bureau of Financial Intelligence, National Audit Office, and others. Important as the twinning mechanism is for enhancing administrative capacity, it needs to be supplemented with other types of assistance (e.g. such that allow replication in other beneficiary institutions, including non-governmental) in the field of anti-corruption to ensure its wider impact. As noted in previous reports, the planning of the Phare program assistance priorities still lacks adequate transparency and excludes various stakeholders (business, NGOs, media, etc) whose participation in anti-corruption efforts could be a guarantee of the sustainability of reforms. Further acknowledgement is needed of the fact that corruption - unlike most other areas of EU technical assistance - requires extra efforts to be made for ensuring the support of these stakeholders for anti-corruption programs as well as outreaching to the public.

In the *Second Country Cooperation Framework for Bulgaria (2002 - 2006)* the fight against corruption and the support to the judicial reform has been identified as a major priority for **United Nations Development Programme (UNDP)**. In July 2002 UNDP and the Ministry of Justice started a joint project „Comprehensive Review of the Administrative Justice System in Bulgaria“, which is implemented in cooperation with

the Supreme Administrative Court and with the financial support of UNDP and the British Embassy. Its main objective is to help reduce systemic corruption by enhancing the transparency and accountability of the public sector through external control over the activities of state administration.

At the request of the Minister of Justice UNDP and the Center for the Study of Democracy started the development of a *Judicial Anti-Corruption Programme (JACP)*, which will focus on the role of the Judiciary for preventing and combating corruption. In particular, the *JACP* will identify areas that require reform and will formulate recommendations for enhancing the legal stability and the confidence in the Judiciary in Bulgaria

Two general **World Bank** Governance and Public Sector Reform missions and one specialized Anti-Corruption Mission visited Bulgaria in 2002 to discuss the main issues and offer policy advice to the major stakeholders from the government, the respective non-governmental sector and the key donors in the area. As a result of these missions a two-day workshop „The Role of Anti-Corruption Commissions and Agencies in Reducing Corruption“ was organized in cooperation of the government Anti-Corruption Commission. Discussions addressed the three key functions of each anti-corruption commission: - investigation, prevention and public outreach and education. A set of conclusions and recommendations was drafted, which was submitted to all the parties concerned in the area.

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In 2002, positive developments took place as regards **coordination of international assistance** in the field of anti-corruption. A welcomed effort was made by the government to harmonize the various aid projects implemented by the international donor community in Bulgaria. In March the Minister of the Economy announced the launch of a new Donor Assistance Coordination Mechanism with thirteen jointly co-chaired working groups. The Bulgarian Team of the Working Group on Anticorruption, Transparency, Accountability is chaired by the Deputy Minister of the Interior with the development partner being UNDP. Still, certain overlapping existed in 2002 between the projects of some donors in the field of anti-corruption and little effort was made to multiply the results of successful projects.

F.4. Regional Aspects

As noted in previous Corruption Assessment Reports the cross-border aspects of corruption in Southeast Europe have not always been readily acknowledged by Bulgarian governments. For example, Bulgaria opted out of the **Stability Pact Anti-Corruption Initiative** for fear of being tied down to the Western Balkans agenda rather than the EU and NATO enlargement one.

Nevertheless, in 2002 the international community, including Bulgaria, focused particular attention to the cross-border aspects of organized crime and related corruption. The Bulgarian government has shown heightened sensitivity to the threats posed by regional organized crime and its impact on corruption. In November 2002, the Bulgarian Minister of Interior participated in a European Union-led conference on organized crime in

Southeastern Europe in London. The conference, which was organized by the British Home Office, adopted a final statement outlining what it calls a joint coordinated effort by the international community and the countries in the region to tackle organized crime.

Thus, the understanding of the implications of regional instability on corruption in the countries region has been growing. In 2002, the **Southeast European Legal Development Initiative (SELDI)** published an assessment of corruption in SEE which emphasized its trans-national sources.

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It is commonly argued that criminals, including the perpetrators of corruption-related offenses, are always at least one step ahead of law-enforcement authorities. This observation is all the more pertinent to societies that are in the process of radical transformation of property ownership without the adequate rule of law.

The Bulgarian experience suggests that it is not possible to drastically restrict corrupt practices without transparency and democratic control over the operation of the judiciary and the institutions upholding law and order. Anti-corruption measures need to start with severing the links between organized crime and the authorities trusted with opposing it. Completing such a task requires a high measure of coordination and the concerted efforts of all three branches of power.

As the processes of Bulgaria's integration in NATO and the European Union gain momentum, corruption can no longer be treated as a national problem alone. Furthermore, the pre-accession mechanisms are assuming an ever more important role in creating the legal and institutional preconditions for reducing the corruption risk. This is equally the aim of the efforts of civil society, which has been making headway in its combined role of partner and staunch critic of the institutions of the state.