CONCLUSION

This study justified the urgent need for optimization of the economic and legal policies to restrict and counteract corruption in public procurement and their integration into a complete and effective system. Its point of departure is the legal framework of public procurement and its statutory and institutional prerequisites for the occurrence of the most common corrupt practices. From the perspective of anti-corruption efforts, the following are the four major elements of this legal framework:

a) the types of public procurement procedures;

b) their scope from the point of view of contracting authorities and thresholds;

c) the legal remedies;

d) the system of control and sanctions.

In accordance with the *acquis communautaire,* the existing *Law on Public Procurement* defines three main principles underlying the legal framework of public procurement: openness and transparency; free and fair competition and equal treatment; non-discrimination. They shape the overall frame for assessing the effectiveness of the public procurement regime. The issue is whether the existing regime provides maximum transparency, competition and equal treatment of public procurement suppliers and contractors. These are the benchmarks for the assessment of the corruption risk and for the identification of the most vulnerable aspects of the legal framework of public procurement.

Many experts in Bulgaria believe that there is nothing more to be desired from the legal framework of public procurement since it has been almost completely harmonized with the *acquis communautaire*. Firstly, such a conclusion should be accepted with some reservations. There still exist essential discrepancies, especially with regard to the regime of concessions and some procedures. But even if this were true, it would mean that the commitments to the European Commission have been fulfilled but not necessarily those to the Bulgarian society, particularly with regard to the reduction and prevention of corruption. The harmonization with the EU legislation is primarily intended to guarantee the free movement of goods, people, services and capital within the single market. However, these freedoms imply and require a corruption-free business environment. Therefore the transposition of the *acquis communautaire* into the national legislation provides the

groundwork on which to build and it is particularly relevant when it introduces higher standards than those envisaged in the domestic legislation.

Secondly, the harmonization of the public procurement legislation is not a one-off act; it is a dynamic process of reflecting the continuously changing market challenges in the national legislations. Therefore it is never the ultimate goal but it is rather a tool in the process. From the perspective of the accountability of the legislature to society for the establishment of regulatory and institutional barriers to corruption, the relevant question is not whether the legislation is fully harmonized with the *acquis* but whether it meets the objectives for which it has been developed, i.e. whether it meets the specific social needs and copes with the corruption risks in the country.

There are still many urgent questions related to the optimization of the legal framework of public procurement from the perspective of the anti-corruption agenda of the Bulgarian society and their answers will not come from abroad. These are the issues of the thresholds above which the law operates; the guarantees against corruption at the sectoral contracting authorities; the negotiation arrangements and their share of the Bulgarian public procurement market; the powers and responsibilities of controlling bodies; the effectiveness of administrative and penal sanctions; the involvement of business associations in public procurement procedures.

The starting point for the identification of a practical solution to these issues can be found in the three principles which have already been mentioned: transparency, competition and equal treatment. But they are hardly sufficient on their own. Equally important are two other principles related to economic efficiency which tend to be underestimated for the time being. **Firstly**, the awarding and implementation of public procurement contracts should be carried out at minimum costs for the public and private sector. **Secondly**, the legal framework should guarantee not only equal treatment of suppliers and contractors but also equal treatment of the contracting authorities in comparison to the other market participants. Both principles are important from the perspective of economic efficiency and the protection of the public interest. They guarantee that the public sector will not consume goods and services at prices higher than those in the private sector, i.e. they are necessary preconditions for maximizing public benefit through the supply of public goods at prices close to the market levels. The problem is that the last two principles do not always and everywhere imply solutions of the same type that is required by the first three principles. The challenge for the reform in this area is to strike a proper balance between the principles of transparency and equal treatment, on the one hand, and the principles of economic efficiency, on the other.

Economic efficiency is related mainly to competition but it also often implies greater freedom of consumer choice than even the most up-to-date, perfect legal framework. This conclusion becomes increasingly relevant with globalization, the development of the knowledge-based economy, e-society, new technologies and commercial practices. The changes for the last two decades have enhanced the role of partnership relations, trust and confidence, expertise, and the choice of suppliers/contractors. In other words, all other conditions being equal, the

conventional approach to the selection of the supplier of many goods and services is not the most efficient solution from the perspective of the public interest. An example to this effect is the advantage that EC Directives give to suppliers and contractors from the European Union which is hardly aimed at maximum economic benefit, i.e. to ensure that the public sector is on equal footing with the private sector in the selection of suppliers of goods and services.

The ambition to optimize the public procurement system to make sure that it does not lag behind the development of the market has brought about a lot of remodeling of the harmonized European legislation and the entry of many negotiation procedures. They inevitably enhance the discretionary powers of the contracting authorities and limit the operation of the principles of competition and sometimes also of transparency. In brief, they increase the risk of corruption in public procurement. The effect of raising the lower thresholds set out in the legislation is similar.

It is only understandable that the prevailing approach to the reduction and prevention of corruption in Bulgaria is the legislative one. In other words, economic efficiency is often neglected in order to close all real and perceived loopholes for abuse in the laws. These measures frequently fail to produce a greater effect than mere repair work of filling in gaps and imperfections in the legal framework – something which Bulgarian businesses are increasingly skeptical about. Moreover, the transposition of the European norms is only the beginning of the optimization of the legal framework. It is much more important and difficult to attain the European standards for their implementation. In this context, the enhanced quality of the legal framework does not end with the modernization of the law; it depends on its feasibility under the Bulgarian conditions. After the exhausting and often self-serving pre-accession marathon of harmonizing the national legislation with the *acquis communautaire* the confidence in the potential of the law is seriously eroded without the requisite reforms of the judiciary. It is generally recognized that the legal framework of public procurement in Bulgaria is almost fully harmonized with that of the European Union but corrupt practices become greater in scale, better streamlined, and less vulnerable. The number of skeptics is growing as to whether the law is capable of reducing corruption in the public procurement sphere. Bribery is very difficult to prove and, in many cases, there might be no procedural irregularities, i.e. the awarding of the public procurement contract to a pre-selected contractor might be formally lawful.

These constraints raise the issue of the other priorities of the anti-corruption policy in this sector. They are more or less external to the legal framework of public procurement but they are equally important for the attainment of a sustainable anti-corruption effect. They include the following:

- financial control and accountability in the public sector;
- the efficiency of the judiciary;
- administrative capacity and the codes of conduct;
- the financing of political parties;

- the regulation of lobbyism and conflicts of interests;
- the regulation of public-private partnerships;
- the declaration of the property and income of senior officials, etc.

Besides, it becomes ever more imperative to increase the share of economic analysis in the efforts to reduce and prevent corruption. Economic policies are usually reduced to the so-called "positive anti-corruption incentives", such as the increase of salaries or party subsidies. However, these positive incentives can rarely reach the size and motivation potential of bribery in public procurement. It is more important to consider all internal (mainly the LPP and RSPP) and external sources of corruption risk in public procurement in their entirety and interaction from the viewpoint of costs and benefits for society and the economy. This implies an economic impact assessment of the various alternatives which are the focal point of the public debate today. These are, for instance, the questions whether regulation should cover even the smallest procurement or below a certain level they should be left to the discretion of administrative staff with all the subsequent risks.

The competition among the suppliers of goods and services for the public sector certainly runs the risk of being restricted by the growing administrative discretionary powers in the selection process. But it could be restricted also where the administrative costs (i.e. the time and money that the company spends to take part in the tender) as excessively high as a percentage of the total price of the supply. If businesses have to allocate time and money to participate in tenders even for the smallest procurement contracts, then the participants would hardly be the most qualified ones. Their alternative costs for the sale of their products to the public sector will be higher than the sales costs on the free market. This means that the public sector will consume at prices that are higher than the market ones which does not comply with the public interest in achieving maximum economic efficiency.

The solution of the issue of the sectoral chambers of associations is not so straightforward as it seems to be in the public debate. Again, the point of departure should be the assessment of the extent to which they can really be better guarantors of free competition and public interests than the state. Each entrepreneur considers free competition as the most important condition to reach the customers and to purchase raw materials at beneficial prices. But does it mean that, once established on the market, the entrepreneur will not strive for maximum profit, i.e. for monopoly or oligopoly over the goods and services that he supplies? Can sectoral associations guarantee the broadest possible and equal access to public procurement? Provided that they represent only their members are there guarantees that their interests coincide with the public interest? Can sectoral associations really safeguard public interests better than civil servants given the fact that the latter are, after all, subject to greater civil control?

The question about the optimal balance between the procedure prescribed by law and the discretionary powers of the contracting authorities cannot have a single answer for all European countries and it can hardly be resolved by means of

harmonization of the legislation. Modern impact assessment techniques should be applied to the regulations, taking into account the specific national circumstances. In this case, they have to weigh the losses to society due to the additional corruption risk which depends also on the effectiveness of the administrative and judicial anti-corruption barriers, against the benefits derived from the greater freedom of the contracting authorities to negotiate the best terms and conditions. Pre-fixing and strictly following the parameters of the supply or service is not always feasible or beneficial on the market. Generally, the access to negotiation procedures, competitive dialogue and framework agreements calls for a certain level of efficiency of the risk management system and independence of internal and external control, courts and prosecution offices to provide these benefits to society by bringing contracting authorities in the public sector closer to normal market conditions.

There are many questions and they have not been answered either in theory or in international practice. Moreover, in the international context they are essential elements of the freedom of movement of goods, services and capital and of the anti-corruption efforts. New challenges emerge in the process of globalization, development of e-society and e-commerce. The identification of the optimal Bulgarian solutions is still an area in which politics is in debt to businesses.