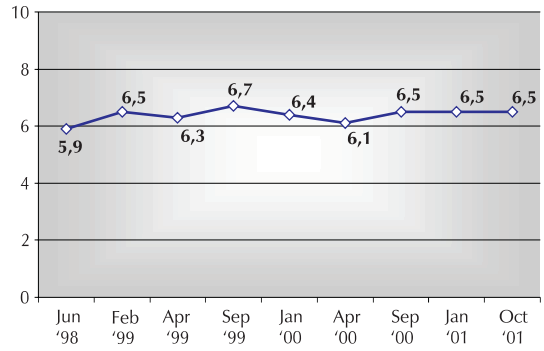
A. CREATING A FAVORABLE INSTITUTIONAL AND LEGAL ENVIRONMENT FOR CURBING CORRUPTION

The assessment of corruption in year 2001 is based on a comparison between the available data on corruption and the observed outcomes of anti-corruption efforts of the institutions and the general regulatory mechanisms. As a result of the legislative amendments and institutional changes introduced over the last three years, one can clearly see at the end of 2001 which of the different measures undertaken were consistent with the general strategy and which were not, what the difference was between the initial ideas and the final outcomes of the newly created mechanisms and what further measures need to be adopted.

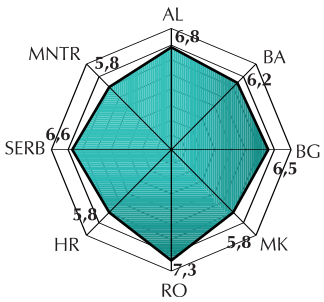
A.1. Public Administration Reform: Legislative and Practical Aspects

The reform of public administration in general and the creation of an effective legislative framework for its transparent operation in particular are of major importance because **discretionary exercise of administrative authority creates the greatest opportunities for corruption.** The legislation adopted since the end of 1998 to 2000 to regulate the public administration's organization and its functions lay in the basis of the operation of the administration in 2001. The analysis of the **data on the spread of corruption** at the background of the new regulatory framework allows to draw conclusions on the new legislation efficiency and its impact on corrupt practices as well as the need for further regulatory changes to be introduced.

SPREAD OF CORRUPTION*
(BULGARIA, 1998-2001; SOUTHEAST EUROPE, JANUARY 2001)



Bulgaria



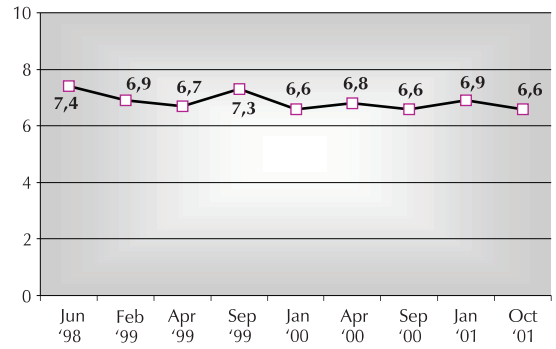
Southeast Europe

Source: CMS of *Coalition 2000*; SELDI
* 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; BA - Bosnia and Herzegovina; BG - Bulgaria; MK - Macedonia; RO - Romania; HR - Croatia; SERB - Serbia; MNTR - Montenegro.

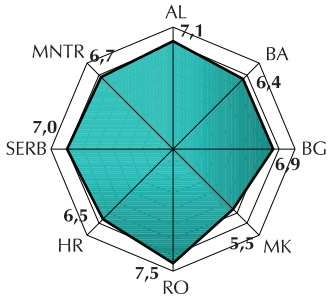
A.1.1. Towards a Common Organizational Model of the Administration

The *Law on the Administration*, in force since December 6, 1998, laid the foundations for the introduction of a uniform organizational model and common rules of internal organization of the executive bodies. On the basis of this Law, the transformation of all levels of administration (central,

EFFECTIVENESS OF CORRUPT PRACTICES*
(BULGARIA, 1998-2001; SOUTHEAST EUROPE, JANUARY 2001)



Bulgaria



Southeast Europe

Source: CMS of *Coalition 2000*; SELDI
* 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.

district and municipal) was completed in 2001. The *Rules of Organization and Procedure* of these administrations, most of which were adopted in 2000, as well as their subsequent amendments outlined their specific functions, tasks, and responsibilities. **The implementation of the principles of accessibility, transparency and accountability in the process of re-structuring of the administration is of extreme importance for reducing corruption.**

- *Transparency and Access to Information*

Despite the promulgation of the *Rules of Organization and Procedure* in the *State Gazette*, the large number of administrative bodies (110 only in the central administration) and their variety (agencies, commissions, inspections, offices, centers, etc.) makes understanding their dynamics difficult for both experts and ordinary citizens. These difficulties can be overcome to some extent with the use of the *Register of the Administrative Structures and the Acts of the Administrative Bodies,* set up and maintained on the Government's website in the Internet. This Register should ensure openness of the work of the administration and provide information on the status, structure and responsibilities of the individual units in the administration. An important step toward making this Register work better could be the **introduction of a feedback mechanism** serving both its users and persons affected by administrative action - such a step will be even more appropriate in view of the planned additional amendments to the *Rules of Organization and Procedure* for most of the government ministries.

The legal framework for public procurement, provided with the *Law on Public Procurement* of 1999 was not amended in 2001. Nevertheless, the implementation of the Law continued to invoke criticism because of lack of sufficient transparency and control. Future legislative amendments should focus on **rationalization of the procedures and avoidance of the opportunities for corruption and discretion,** on guarantees for accountability and transparency, on free and fair competition and equal opportunity for all candidates. A *Public Procurement Register* administered by the Public Procurement Directorate at the Council of Ministers was established. In order to further increase the effectiveness of the Register**, its status as an electronic database accessible through the Internet** should be legally regulated**.**

Rules of transparency of governance should provide opportunities to the citizens for informed participation **through access to the information** stored by public institutions. The legal prerequisites for accountability, accessibility and transparency in the activities of the administration,

however, have not yet been created. The current *Law on Access to Public Information* has been in force since the summer of 2000. Its implementation record shows that in spite of the numerous requests for access to public information submitted to different branches of the executive, the numbers of denials is high. Access to information is restricted primarily to journalists, non-governmental organizations and ordinary citizens.

When the administration restricts access to information, it often refers to **state or other secrets protected by the law.** While state secret is explicated in the *List of the Facts and Circumstances Representing State Secret*, the legal framework of other existing classified information is scattered among various laws (*Law on Administrative Proceeding*, *Law on Refugees*, *Law on Customs*, *Law on Transformation and Privatization of State and Municipal Enterprises*, *Law on Notaries and Notary Activity*, *Law on Consumer Protection and on Rules for Trade,* etc.), which give different meanings to the term or refer to it without providing a definition at all. Another problem with regard to official and other secrets arises in cases of partial access to information: in such cases the administration has to decide, sometimes arbitrarily, to which part of the requested document to grant access and to which to withhold it. In order to limit the scope of discretion against public interest, **the restrictions to the right of access to information should be regulated comprehensively by a law.** Executive and internal regulations, adopted in the 1970's and 1980's and still implemented on a regular basis, should not be used any more.

The adoption of an appropriate law has been unreasonably delayed which means that access to public information continues to be dependent on administrative discretion and there is no guarantee of adequate transparency of the activities of the administration. The *Draft Law on Classified Information* submitted to the Parliament aims at solving this problem by specifying the levels of access to the different kinds of classified information. In order to facilitate bringing transparency to the activities of the administration to create an environment unfavorable for corruption the future law should narrow down the volume of information considered as confidential and **precisely determine the right of access to confidential information under the terms and procedures specified by law** and therefore not based on discretion. It is also mandatory to introduce internal control over classification of information and granting access to it.

At the end of year 2001, the Parliament adopted the *Law on Personal Data Protection* (in force since January 1, 2002). Such a Law was badly needed not only because of the numerous offences in this field but also because these offenses can serve corrupt purposes.

- *Administrative Accountability*

There are legal prerequisites in place for establishment of a **system of accountability of the administration through annual reports** of the managers of the respective administrative structures (Article 61 of the *Law on the Administration*). Nevertheless, these reports still have not been used as an instrument for evaluating the impact of administrative reform or taking action when corrupt practices are either suspected or have been proved. The maintenance of the Register of the Administrative Structures should be part of the responsibility of the individual administrative bodies for the activities performed, which, in turn, should **limit the opportunities for corruption.** Indeed, a proper system of accountability could turn it

into a reliable source of information on the necessity to reform or remove inefficient administrative structures.

A.1.2. The New Civil Service System

The process of building up a professional civil service, based on legality, loyalty, responsibility, stability, political neutrality and hierarchical subordination, started with the adoption of the *Law on Civil Servants*, in force since August 28, 1999, and continued with the adoption of secondary legislation on the status of civil servants. As a follow-up, the status of civil servants was accorded to the employees of the Council of Ministers, all the ministries, the other central government agencies, the district and the municipal administration.

A necessary next step in the process of consolidation of a responsible civil service is to gradually extend the civil servant status to people holding expert positions in the general administration through broadening the scope of applicability of the *Law on Civil Servants*.

- *The Status of Civil Servant and Internal Control against Corruption*

The offences committed in the course of the implementation and consolidation of the civil servant status bring up **the need for constant control and timely measures**. Many of the legal solutions adopted in this field are insufficient or inapplicable; they do not contribute to preventing or punishing for corrupt practices. This conclusion is valid for:

- **The disciplinary councils** - According to the *Law on Civil Servants,* these councils should be established by every branch of the administration and consist of five permanent members and two substitutes. In practice, however, some administrative bodies have fewer than seven civil servants and they are therefore unable to form such disciplinary councils. As a result, the appointing authorities cannot lawfully impose the penalties of „reduction in rank for a period of six months up to one year“ or „dismissal“. This problem can only be overcome through amending the *Law on Civil Servants*.
- **The powers and operation of the State Administrative Commission (SAC)** - This Commission should exercise control over compliance with the civil servant status, which does not include overall control over the civil servants' activities. Nevertheless, the activities of the Commission so far indicate that its control is performed only in one direction and does not extend to cases in which the appointing authorities themselves are operating in violation of the civil service legislation. A new legal framework for the activities of the State Administrative Commission is necessary in order to provide it with powers to exercise effective overall control on compliance with the civil servant status. These powers should include the right to intervene in cases of corruption, especially when instances of corruption are discovered, not only by giving mandatory prescriptions to the appropriate authorities but also by monitoring their implementation, issuing penal provisions, initiating changes in administrative acts already issued, etc. The introduction of units with similar functions at the level of municipal administration is also necessary.

- **Ethical norms and mechanisms -** The *Code of Conduct for Civil Servants*, approved by the Minister of State Administration on December 29, 2000, outlines the fundamental principles and rules of ethical behavior for civil servants in their interaction with citizens, in the course of performing their professional duties and in their private and public lives. Nevertheless, these principles and rules need to have a better expressed **anti-corruption content** through clearer rules on civil servants' loyalty and conflict of interests, obligations on granting access to public information, etc. In addition, further clarification should be brought to the regulation of **professional ethics monitoring mechanisms** and their importance for career advancement, increased internal control and strict linkage of the preservation of the civil servant status to the performance of duties.

In its current version the Code does not create sufficient conditions for a decrease in administrative discretion or for creating a higher degree of transparency and accountability in its work. The following documents provide a good basis for amending it: *Recommendation No. R(2000)10* of the Committee of Ministries of the Council of Europe on *Codes of Conduct for Public Officials*, adopted by the Committee of Ministers at its 106th session on May 11, 2000, and the *Model Code of Conduct for Public Officials*, attached as Appendix to the Recommendation as well as the *Code of Good Administrative Behavior*, adopted by the European Parliament on September 6, 2001 based on the practice of the Court of Justice of the European Community and the administration-related national legislation of the member states.

- **Internal mechanisms for control and prevention of corruption - Specialized units** should be created in the branches of the administration in order to exercise internal control over their activities and prevent corrupt practices by civil servants as well as carry out appropriate internal procedures for investigation of administrative abuse and corruption.

- *Selection and Professional Qualification*

In order to improve the selection of civil servants a contest-based procedure should be introduced with distinct criteria for evaluation of professional knowledge and skills which should serve as a basis for their appointment and promotion. The transition to systematic monitoring and management of the human resources in the civil service should be carried out as a follow-up of the *Ordinance on the Civil Servants Register*, issued by the Minister of State Administration, in force since February 15, 2001. The application of the civil servant status will be further facilitated by improving the provisions on ranks included in the *Ordinance on the Implementation of the Uniform Classification of Positions in Administration*, issued in 2000.

Systematic **civil servant training** with a strong anti-corruption component is needed in order to bind the application and compliance with the civil servant status to breeding a **new form of administrative culture and anti-corruption attitude**, as well as to strengthen the professional and public prestige of the civil service. For this purpose as well as for the application of a unified approach to civil servants' training and retraining one should take advantage of the opportunities presented by the Institute for Public Administration and European Integration to the Minister of State Administration. Cooperation with non-governmental anti-corruption initiatives and

structures, such as *Coalition 2000* and the organizations participating in it, will also be instrumental for these goals.

- *Political Appointments and Civil Servant Promotion*

The process of application of the legal framework for the public administration's new organizational model and the introduction of the civil servant status raised several issues**.** There is a **lack of clear boundary between political appointments and those based on promotion**; it is also too hard to tell who should be appointed just as an employee (in the former case) or as a civil servant (in the latter case). This problem was partially solved by the *Law on Amending the Law on the Administration*, adopted on November 7, 2001, in force since November 23, 2001. It mandates strict implementation of the provisions which govern these two types of appointments. It is necessary to strictly apply the rules regulating these two types of appointments, observe transparency of the process and exercise control over compliance in order to move progressively toward a state administration model resistant to excessive political appointments and dismissals and overcome political dependence and pressures over the activities of civil servants.

A.1.3. The Administrative Service

The introduction of an effective organizational model for the administration is a necessary prerequisite for the improvement of administrative service of the citizens and for prevention of corruption, discretionary exercise and abuse of administrative power.

- *Opening the Administration to the Citizens*

In order to open the administration to the citizens and more effectively implement the *Law on Administrative Services for Natural and Legal Persons* the following measures have been undertaken: preparation of billboards with information about the types of services, fees, necessary documents, specific administrative unit performing the service and data on its managers and experts; provision *ex officio* of forms and samples; publication of brochures entitled "The District Administration in Service of Citizens and Firms" by the Council of Ministers on the 28 districts in the country; introduction of badges for the employees of different administrations in order to eliminate their anonymity and initiate responsibility in cases of poor or unscrupulous performance of duties and so on.

- *One Stop Shop*

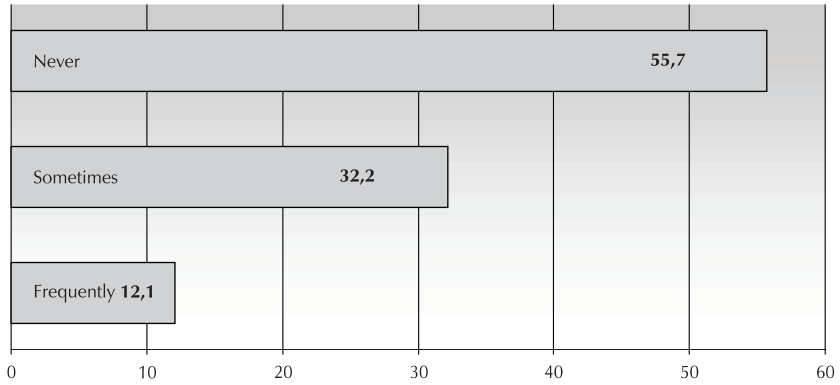
Municipal Service and Information Centers have opened in a number of places providing administrative services of the necessary quality and in a timely manner within a transparent and a better controlled process. The main goal of these centers is to introduce a technology which allows citizens to submit their applications for specific services and receive the necessary documentation at the same place. The first projects of this kind have been initiated by the local authorities and civic organizations in the municipalities of Stara Zagora, Gabrovo, Blagoevgrad, and subsequently in Russe, Vidin, Svishtov and Silistra before the central state administration started thinking about it in the spring of 2000.

The organization of administrative services through a one stop shop aims

at facilitating citizens' access, improving the quality and efficiency of the administration's work and **eliminating the direct contact between applicants for services and service providers, thus decreasing the probability of illegal interactions between the two parties and limiting the opportunities for corruption.** These purposes have not been attained yet not only because the one stop shop project is still in its early stages of implementation. It is the novel approach which does not come easy, the flaws in the internal regulation of the administration, the insufficient qualification of the civil servants and the slow automatization of services and introduction of new information and management technologies which accounts for the delay. In order to deal with these shortcomings, a **common one stop shop model for all branches of the administrations** needs to be created**.**

The scope of the term „administrative services" as defined in the *Law on Administrative Services for Natural and Legal Persons* should be expanded to include individual administrative acts and all regulations concerning **the issue of licenses, permits and the registration procedures** which are currently prone to corruption. Until the adoption of an appropriate legislative amendment the administration should consider expanding its interpretation of „administrative services" along with the organization of the one stop shops.

FREQUENCY OF ADDITIONAL PAYMENTS (SPONSORSHIP, ETC.) AND/OR PAYMENT OF BRIBES IN ORDER TO OBTAIN PUBLIC SERVICES (E.G. TELEPHONE, POWER SUPPLY, ETC.) (%)



Source: Global Competitiveness Survey, Vitosha Research and Center for Economic Development (surveys of 119 companies, February 2001)

• *Quality of Administrative Services*

The administrative service reform is still at the stage of deciding upon its organizational model. The delay in the process of creating uniform internal rules on the operation and the interaction among the units of the respective branches of the administration negatively affects the process of creating an administrative service environment prone to corruption. Often internal rules are provided not in a single regulatory act but in multiple ones, both of internal organization (orders, instructions and rules of procedure) and legislative. Few administrations have uniform internal rules adopted and approved by their secretary general.

Issues still remaining to be solved are those concerning the **deadlines and procedures for provision of administrative services** as well as the **unification of the currently existing procedures for dealing with applications for services and complaints** about the activities of the administration as the current regulations are included in various laws and contain different deadlines and appeal procedures. The solution of these issues would create legal guarantees of citizens' rights in their interaction with the administration, greater transparency and more effective control over

the activities of the administration, limits over obtaining administrative services through unregulated practices.

It has become evident that the poor quality of administrative services is often due to insufficient financial resources: most of the administration units still lack not only computers and the necessary software, but even simple document-processing applications. This, in turn, can practically block not only the coordination of applications for services submitted to different branches of the administration but also the application of the principles of openness of the administration, efficiency of its activities and accessibility of its services in the long run. In such an environment corruption rates at all levels remain relatively high.

- *Modernizing the State Administration*

The introduction of new information and management technologies in the state administration is a necessary condition for increasing its efficiency and improving the quality of administrative services as well as for limiting the causes and opportunities for corruption. Indeed, the rapidness and quality of the services performed by the administration are among the most important factors shaping the citizens' attitude towards both the local authorities and the central government.

It is really important to **modernize the state administration** on the basis of the regulatory framework which has already been put in place with the adoption of the *Law on Electronic Document and Electronic Signature*, in force since October 7, 2001. The implementation of this law in the public sphere could gradually lead to **a transition to e-government.** Going further, it is recommended to start working on a favorable environment for a gradual **privatization of administrative services** as a means to decrease bureaucratic routine and corruption and improve the speed and quality of service provision.

A.1.4. Specialized Control over the Work of the Administration

The introduction of effective mechanisms of control over the work of the administration is an integral part of the anti-corruption reform in the public administration. Issues of particular importance include greater role for the National Audit Office as an institution exercising overall external control over the budget, more effective role of the authorities for state internal financial control, specialized customs and tax control, the Financial Intelligence Bureau and establishment of new mechanisms and instruments of control.

- *National Audit Office*

The control powers of the **National Audit Office** are of great importance for combating corruption. On December 4, 2001 the Parliament adopted a new *Law on the National Audit Office*, in force since December 22, 2001, which laid out a more elaborate system of anti-corruption measures (many of these measures have been recommended by *Coalition 2000*) including the following elements:

- Expansion of the scope of the National Audit Office's activities: the budget of the State Social Insurance and the National Health Insurance Company and **the financial resources from funds and programs coming from the European Union,** including their

management and end users.

- Informing in advance the Minister of Finance or another relevant authority when in the course of an audit either unlawful collecting or spending of budgetary or other public funds or damages to the audited property has been established.
- Public announcement of the results of completed audits, which no longer represent a legally-protected secret.
- legal regulation of the cooperation between the National Audit Office, the state internal financial control authorities, the tax and the customs administration, the authorities for compulsory collection of state receivables as well as the financial intelligence authorities and the Judiciary; the forms of cooperation have to be specified by joint agreements.
- More precise provisions on reporting to the National Assembly and follow up on the National Audit Office's recommendations.

The implementation of the newly adopted measures will contribute to the improvement of control over the management and the use of public funds in the country, including the resources provided by the pre-accession funds, as well as increase its transparency, prevent or uncover corrupt practices in cooperation with other specialized control institutions.

The **National Audit Office** also plays an important role for the successful implementation of the *Law on Property Disclosure by Persons Occupying Senior Position in the State*, in force since May 13, 2000, in relation to the public register established with the Chair of the National Audit Office.

This law has **introduced both rules on financial and property standing and provided for their practical implementation, thus playing a role of prevention of corruption at the highest levels of political power, albeit primarily of a moral nature.** At the same time the law in its current formulation does not represent a sufficient guarantee against conflicts of interest and corrupt practices in the activities of senior civil servants from the three branches of state power. What is needed is to establish **rules on possible conflict of interests** linked to internal rules and codes of ethics as well as to **introduce sanctions** for violations of the established rules. The rules on financial and property standing also need further elaboration to include broader powers for the controlling authorities and the sanctions they can impose, more precise legal regulation of the categories of people bound by the law, appropriate access to the register and protection of personal data, and in a longer time frame - transition to an electronic register.

- *State Internal Financial Control*

Preliminary internal control in Bulgaria has been institutionalized with the *Law on State Internal Financial Control*, in force since January 1, 2001 - it is carried out by the Agency for State Internal Financial Control (*Organizational Rules of the Agency for State Internal Financial Control*, adopted with Council of Ministers Regulation No. 35 of February 13, 2001). Better coordination between internal state financial controlling mechanisms and the external controlling bodies on spending funds from the budget, exercised by the National Audit Office, is of key importance for the effective counteraction to corruption.

- *Measures against Money Laundering*

Measures against money laundering both at national and international level are among the most significant instruments for control, prevention and detection of corrupt practices**. Bulgarian legislation has made significant progress in this direction:** after the first law of 1996, which proved to be ineffective, a new law was adopted in 1998 based on the principle of self-organization of the financial system to prevent and uncover attempts to use it for money laundering. On this basis, the Financial Intelligence Bureau was established at the end of 1998. The Parliament adopted the *Law Amending the Law on Measures against Money Laundering*, in force since January 6, 2001. Most of the amendments were introduced for the purpose of harmonization of the Bulgarian legislation with the *Directive of the Council of the European Community on prevention of the use of the financial system for money laundering (91/308/EEC)*. The Financial Intelligence Bureau was transformed into an agency - a legal entity within the Ministry of Finance, funded by the state budget and located in Sofia (*Organizational Rules of the Agency Financial Intelligence Bureau*, adopted with Council of Ministers Regulation No. 33 of February 12, 2001).

Commercial banks reported the highest number of signals of suspicious operations, followed by the **tax authorities**. This confirms the conclusion that most of the money laundering operations and transactions are carried out through the banking system or through illegal accounting operations.

Distribution of the Cases according to the Money Laundering Stages (October 1998 - April 2001)

- 43 % of the cases involve operations for introducing financial resources of criminal origin into the financial system.
- 11% represent operations for layering the financial resources aimed at removing their criminal origin.
- 6 % represent privatization deals in which financial resources of criminal origin are invested in the legal economy.
- The remaining 40 % of the cases concern criminal activities which generate „dirty money".

Source: Financial Intelligence Bureau, Annual Report for the Period 1998 - 2001.

The fact that most of the cases of money laundering are related to corrupt practices with both national and international dimensions and that the funds involved can serve terrorist organizations and activities increases the need for cooperation between the Financial Intelligence Bureau and other state institutions - the Prosecutor's Office, the Ministry of the Interior and the administrative authorities performing similar functions, as well as for international cooperation in this field. The new challenges require to further improve the legal framework and modernize information technologies on a regular basis so that specialized control against money laundering can continue to contribute to the prevention and uncovering of acts of corruption. Further amendments to the *Law on Measures against Money Laundering* are currently in process of making aimed at blocking terrorist groups' accounts (financial resources) and introducing stricter controls and sanctions.

- *The Future of the Ombudsman Institution*

The idea of establishing a **specialized institution to control and monitor the administration (Ombudsman, or Civic Defender)**, including on corrupt practices, gained support in 2001. A large number of politicians and representatives of the public are convinced in the necessity of introducing a mechanism to supplement and operate parallel to the generally slower judicial, administrative and other forms of control. Argumentation in favor of such an institution was proposed for the first time in the *Coalition 2000* Action Plan endorsed by the Policy Forum in November 1998. At this Forum a detailed concept paper on the introduction of the Ombudsman Institution was presented. In November 2000, a version of the *Draft Law on Ombudsman*, drafted by *Coalition 2000* experts on the basis of public discussions, opinions, recommendations and the proposals made was submitted to the Parliament by a group of MP's. The Draft Law provides for the establishment of the institution of the ombudsman at both central and local levels combining features of the classical ombudsman model, versions implemented in other European countries and specific features designed to address the unique situation in Bulgaria. Although the Draft Law was not considered by the 38th National Assembly, the requisite public and political support for the introduction of the institution of the ombudsman is already in place. An improved version of *the Draft Law on the Civic Defender and the Local Civic Mediators* developed within the framework of *Coalition 2000* was presented to the Chair of 39th National Assembly and to the Chairs of the Parliamentary Committees on Human Rights, on Complaints and Petitions of Citizens and on Legal Issues.

The adoption of this draft would be the result of successful public-private partnership and allow for the establishment of a **national mechanism** as well as **local ombudsman institutions**, operating on the basis of moral authority against administrative abuse and crossing illegally the limits between the public and private spheres for protection of the citizens and their associations. The efforts for setting up the civic observer and public mediator institutions in separate municipalities, implemented within the framework of *Coalition 2000* by the partner organizations - the Center for the Study of Democracy and the Center for Social Practices - reveal the practical benefit of such mechanisms for society and provide additional guarantees against administrative abuse of power.

A.2. The Role of the State and Society

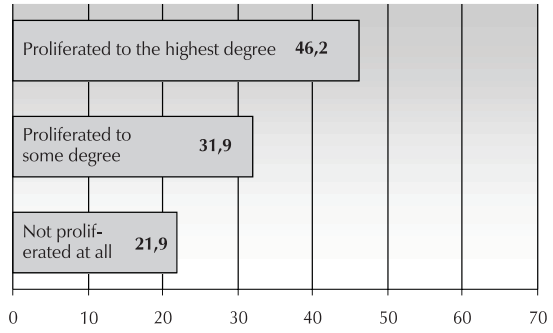
The lack of sufficient and sustainable legal and institutional prerequisites preventing corruption destabilizes the institutions and damages their relationships with civil society and individual citizens; it also leads to human rights violations and impedes the consolidation of the rule of law. The State and society have a crucial role to play in overcoming this problem.

- *The State*

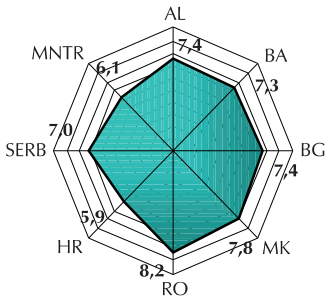
Over the past few years, state institutions manifested a strong reflex of defensiveness and self-preservation rather than developing mechanisms to protect the citizens and society against abuses of power. The Legislature should play a more decisive role in counteracting corruption, with the National Assembly itself providing an **example of effective anti-corruption efforts.**

Increasing transparency and accountability in the work of the National

SPREAD OF CORRUPTION IN THE PARLIAMENT (GENERAL PUBLIC; %)



Bulgaria, October '01



Southeast Europe, January '01

Source: CMS of *Coalition 2000*, October 2001, SELDI

Assembly are important prerequisites for strengthening the prestige of the Parliament and for the consolidation of democratic values in Bulgaria. The accomplishment of this objective requires the establishment of systematic control over compliance with the laws and *the Rules of Organization and Procedure of the National Assembly* by the MP's. In order to reduce corruption in the legislature, the following measures should be undertaken in particular:

- Establishment of a **specialized body on the ethics of the MPs**, led by an independent expert with a outstanding public reputation, whose activities and regular reports should be independent of the National Assembly or any other institution (similar to the existing bodies in some EU member states, such as the UK).
- Bringing greater transparency to the National Assembly's finances.
- Introduction of a mechanism for informing the public about financial violations committed by the MP's, as well as the sanctions imposed.

Preventing corruption in the Legislature and acting quickly upon discovering such cases are important prerequisites enabling the National Assembly to adopt effective anti-corruption measures targeting the entire country. At the same time, legislative amendments and the adoption of new laws should only be undertaken after serious consideration, preparation of a general conceptual framework and compliance with the existing legislation, public discussion of the proposed drafts and taking into account the opinion of all parties involved. Stronger efforts and good will from the Bulgarian Parliament are needed for the adoption and implementation of measures and control mechanisms which contribute to the more effective counteraction of the internal factors fostering corruption, facilitate the creation of a favorable institutional environment for preventing corruption in the legislative process and for the development of the anti-corruption attitudes and behavior.

Democratic decentralization of the state still remains in the realm of political programs. The envisaged amendments to the Constitution and the set of draft laws on local government planned for the period 2000 - 2001 have not been adopted. They aimed at making the municipalities more independent, including with respect to taxation, however, there was no well-argumented view on the specific solutions and objectives to be pursued while this issue was only mentioned in the context of the election campaigns.

The transfer of some public functions to private entities has also failed to progress despite the pressure exerted by the private sector to that effect. Thus, privatization of administrative services still remains a long-term

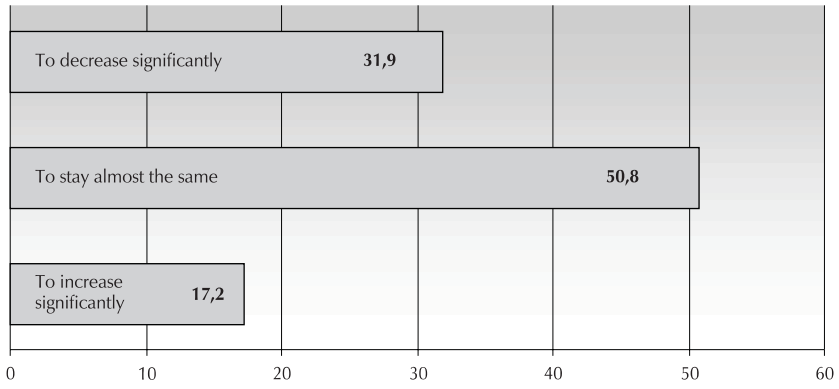
project**. The transfer of some functions of the state to non-governmental organizations,** a feature of many modern democratic countries, remains a top priority and needs to become an integral part of an **anti-corruption model of interaction between the state and civil society.**

The *National Anti-Corruption Strategy***,** launched in the autumn of 2001, articulates the Government's intention to take a comprehensive approach to limiting corruption by „increasing the law enforcement and the regulatory functions of the state, guaranteeing transparency in governance, endorsement of civil control and values such as honesty and ethics in society". The results of the parliamentary majority's increased legislative activity at the end of 2001 as well as the implementation of the program developed on the basis of this strategy will be assessed later.

- *Political Party System*

The party system is not yet based on principles and models which would make it more transparent and independent from the state. The interweaving of political parties with the state apparatus in any society tempts to advance particularistic political interests under the guise of public interests, including through the use of corrupt means. The introduction of state financing based on objective criteria, accountability and strict rules to ensure the transparency of party finances as a whole and of the funds used during pre-election campaigns in particular was therefore urgent in order to **curb corruption with political parties** and to sever the informal bonds between political parties and private interests. **The funding of political parties was finally regulated by law in year 2001.**

EXPECTED DYNAMICS OF ILLEGAL POLITICAL PARTY FINANCING IN THE NEXT THREE YEARS (%)



Source: Global Competitiveness Survey, Vitosha Research and Center for Economic Development (survey of 119 companies, February 2001)

The newly adopted *Law on Political Parties*, in force since March 28, 2001, contains a number of anti-corruption provisions, including prohibition for political parties to engage in business activities or hold equity in companies; exhaustive listing of revenues of political parties and regulation of their annual state subsidies; assigning overall control over political party revenues and expenditure to the National Audit Office. Nevertheless**, the continued tolerance of anonymous donations** makes it impossible to have full transparency of the parties' income because a portion of it remains beyond state control.

In order to further reform the political party system on a sustainable anti-corruption basis the following measures should be undertaken:

- Further differentiation between the state and the political parties as well as between public and private interests.

- Introduction of mechanisms for development of legal sources of funding as well as for control over financing political parties and politicians.
- Introduction of sufficient guarantees for equal treatment of political parties during pre-election campaigns.
- Setting up the legal prerequisites for transparency in lobbying.

- *Civic Control and Legal and Institutional Framework of the Non-governmental Sector*

The creation of an adequate legal framework for the non-governmental sector is a prerequisite for the institutionalization and strengthening of civic controls against corruption on the basis of clear rules and provisions for creative dialog and interaction. This process, however, is proceeding in Bulgaria rather slowly.

The *Law on Not-for-Profit Legal Persons*, adopted in September 2000, in force since January 1, 2001, replaced the formerly existing legal framework and laid out the foundations for a modern not-for-profit sector in Bulgaria. Although this law brought serious changes, it did not fully achieve the objective of singling out the not-for-profit organizations by status (as public or mutual benefit) or public perception of their efficiency.

In order to fully reveal the anticorruption capacity of the non-governmental sector and to minimize the conditions for corruption within this sector, further improvements to the legal and institutional framework should be introduced in the following directions:

- Establishment of a body on special reassures to register the public benefit organizations on the basis of clear legal criteria.
- Making special reassures registration a part of the tax registration in order to guarantee the transparency of public benefit organizations' activities and reduce the possibilities for abuse involving public funds without making registration and control obligations too bureaucratic.
- The body on special reassures should be responsible for control over the not-for-profit activities of the organizations registered by it while the National Audit Office should exercise control over their economic activities.
- Preventing legal persons involved in not-for-profit activities, registered before January 1, 2001, from defining themselves as mutual benefit organizations if they voluntary received property from the state, the municipalities or other public funds or if their activities have been supported through work or contribution of private volunteers (except for their founders).

Along with the proposals mentioned above special attention should be paid to the idea of replacing the court registration of not-for-profit organizations with registration in a newly created **Central Electronic Register for Not-for-Profit Organizations** at the Ministry of Justice, the establishment of which could serve as a first step towards the introduction of a **Central Electronic Register for Persons and Property**. The transition to such a register will have far-reaching anti-corruption effects, especially with regard to the present dismal state of the country's registers. The business community also evaluates the existing registration system as inef-

fective and sees it as an obstacle to growth of business. It has even proposed relieving the courts of the responsibility of keeping the commercial registers in order to make them function better. (Bulgarian International Business Association (BIBA) *White Paper on Foreign Investment'2001*).

Current State of the Registers in Bulgaria

- Private legal persons, except for the political parties, are registered with the District Courts in 28 separate registers located throughout the country.
- Property registration is done in a similar way. Property records are kept by about 110 Regional Courts and are still paper-based. Pilot projects are being carried out for the introduction of electronic information systems in some of the courts, although these information systems have no legal weight.

Except for the Central Pledges Register at the Ministry of Justice, established in 1997, most of the other registries are currently decentralized and paper based which causes serious problems of reliability of information and its physical and legal security. The available data shows numerous cases of fraud, abuse and corruption.

Proposal for Transition towards a Central Electronic Register for Persons and Property

This Register should include registration data on all private legal persons and state enterprises (except for political parties and professional organizations) and should be introduced in the following order:

- First, the Register should be introduced for not-for-profit legal entities. The philosophy of this Register has already been laid out in a concept paper.
- In a medium-term perspective, this Register should include commercial legal persons and merge with the Central Pledges Register. By doing this, data on persons and their pledges will be incorporated in a single register, avoiding the unnecessary duplication of information in the commercial and the pledges registers which may lead to mistakes and inconsistencies.
- In a long-term perspective, the Register should be merged with the property registers but only after the establishment of a national electronic cadastre and its incorporation into a uniform national database.

The implementation of the proposal for a **Central Electronic Register for Persons and Property** will allow to register and obtain information online by electronic means. This will make it possible to quickly publish information about changes in circumstances through filings and the current situation of the Register can be checked in real time, i.e. immediately after the conclusion of a transaction. The Register should be public and everyone should be able to obtain information and receive a certificate verifying the necessary information. A denial of a filing should be subject to appeal before the Minister of Justice following an administrative

procedure; a denial by the Minister should be subject to appeal following the procedure under the *Law on the Supreme Administrative Court* which will minimize the unregulated practices accompanying registration and obtaining information.

In order to further the institutionalization of the civic anti-corruption controls over state authorities the following measures are considered as necessary:

- Improvement of the legal regulation of the interaction between the administration and civil society.
- Further development of a modern legislative framework for the legal status of non-governmental organizations.
- Strengthening the capacity of non-governmental organizations to exercise civic control over the activities of the public administration, political organizations and the Judicial system.

- *Lobbying*

Lobbying in favor of corporate interests is routinely done in modern societies, whether it is considered as legal or not. The lack of a legal definition or any regulation of lobbying activities minimizes its transparency and allows for unlimited and uncontrolled use of lobbying methods which are often border on corrupt practices at all levels of politics; what usually happens is **lobbying through corrupting**. Since lobbyists are operating as representatives and mediators for private persons or companies whose main objective is to influence the final outcomes of the policies (laws, political decisions, public procurement awards, etc), **the negative social impact of their unregulated activities** is obvious, especially if and when they resort to corrupt means. In addition to the direct negative impact of the abuses in the course of lobbying for the authority of the state and its representatives and the common public perception of corruption the consequences can also have unpredictable and possibly negative permanent effects on the state of the national economy policy, different aspects of legislation and so on. Despite these risks, however, lobbying is still not being legally acknowledged.

Lobbying activities need to be legally regulated, although not necessarily through a separate law: it is possible to include specific rules and provisions in relevant laws, mandatory codes of ethics for business organizations and the non-governmental sector in general. In any case, such activities should be regulated on a broad legal basis after a careful consideration. This will help create a new model of interaction between politicians, on the one hand, and businesses and non-governmental organizations, on the other hand, and strengthen the trust between them. The *National Anti-Corruption Strategy* calls for the Government to initiate legislation on lobbying, but no practical measures have been taken so far.