2 ANTICORRUPTION POLICIES AND REGULATORY ENVIRONMENT

Having taken a measure of the levels of proliferation of corruption and understood the experiences and attitudes of the public with respect to it, it is appropriate to turn to an evaluation of the intentions of governments and the tools they employ to tackle corruption – in other words, the policies. Looking into the experience of Southeast Europe is all the more instructive as their regulatory regimes with respect to corruption have been particularly dynamic since they had to respond to a multitude of factors and balance a number of considerations:

- the magnitude of the problem in their countries: a multifaceted practice that afflicts all levels and sectors of the national system of governance;
- corruption often responds to pressure by changing form and moving to other social loci instead of disappearing;
- gradual changing of the understanding of its causes and effects;
- recommendations from foreign partners and international institutions.

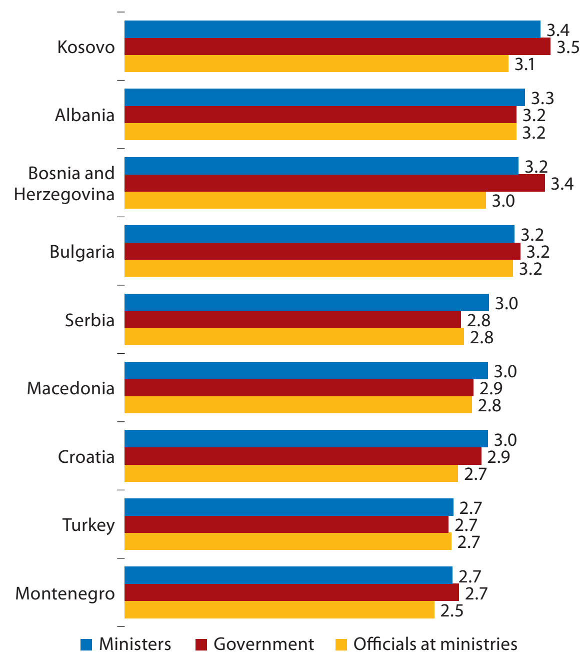
2.1. NATIONAL ANTICORRUPTION STRATEGIES

The anticorruption strategy as a government tool first appeared in Southeast Europe in the late 1990s and early 2000s as a response to a growing awareness of the severity and spread of corruption. The purpose of strategies was to demonstrate intentions for reform (commonly referred to as "political will") and to guide efforts over the long term and across election cycles.

Many expectations were associated with these strategies but they also encountered a number of structural difficulties. The first was constitutional. Adopted and implemented mostly by the executive, albeit on occasion through wider consultations, the strategies often had significant implications for the other branches of state power – the judiciary, legislature – as well as for the private sector, media, etc. The executive was held accountable for the delivery of the strategic intentions but it found it difficult, if at all possible, to enforce the implementation of the provisions on the other branches of power. The independence – at least nominally – of the judiciary, the complicated politics of national parliaments made the task of governments difficult at best.

Another issue was the continuity in the relevance and implementation of the strategies across election cycles, beyond the lifetime of the government that has adopted them. Unlike a policy, which is expected to change with the change of government, anticorruption strategies were designed for the longer term and were expected to weather the political winds. The highly partisan politics of the countries of Southeast Europe, however, made such continuity unlikely. While some permanence of intention was maintained, each successive government wanted to affirm its own anticorruption credentials by adopting some consequential document. **Corruption**

Figure 17. Estimates of the corruptness of the government and ministers[18]



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

[18] For public officials the scale is from 1 to 4, where 1 is "Almost no one is involved" and 4 is "Almost everybody is involved." For the institutions the scale is from 1 – "Not proliferated at all" to 4 – "Proliferated to the highest degree."

had become – by the 2000s – **an electoral campaign issue** almost everywhere in Southeast Europe which tended to water down the commitment to strategic pledges.

A further design problem was the intention to have the strategies address all possible aspects of corruption. Instead of prioritising, these documents became all-embracing; with respect to anticorruption, **strategic has come to signify simply exhaustive**. Further, in being general and comprehensive, the national strategies have become hardly distinguishable. There is little, if any, national specifics in them to reflect national circumstances in the generation and manifestation of corruption.

Arguably, the most significant drawback of these strategies is that they never became policies. The language of the documents – "strengthening integrity" or "enhancing awareness" – was understandably general which was thought to be compensated by their being translated into specific actions. The action plans that followed the strategies, however, rarely sought to establish targets – *x*% reduction of corruption or *y*% of improvement of public services – or even some kind of benchmarks but were instead lists of "measures." While a policy is a combination of an intended outcome with appropriate means, measures were standalone actions, the completion of which was the sole criterion of achievement. Thus, the evaluation of the strategic approach to corruption was done in terms of percentage of actions implemented, instead of corruption actually reduced.

A commendable feature of all strategies in the SELDI countries was their attempt at an assessment of the state of corruption in the respective country. These evaluations, however, hardly venture beyond a fact-finding of the sectors that are worst hit to try to analyse the underlying social, economic, cultural or other factors fuelling corruption.

In **Albania,** the latest *Anti-Corruption Strategy* 2014 – 2017 was prepared with the technical assistance of the OSCE Presence in Albania, and is much shorter and simpler than the previous one. The drafting of the strategy underwent several consultation meetings with international experts, civil society and the private sector. The specific objectives and implementation procedures will be defined in the action plans of the line ministries, other state bodies and independent institutions. The strategy gives special attention to the harmonisation of statistics and track records on corruption and organised crime among law enforcement agencies. Furthermore, it focuses on three main approaches: preventive, sanctioning and raising awareness.

In the context of strengthening the preventive approach to corruption, the strategy sets as a short term priority for the creation of new legal framework on whistleblowers as well as the establishment of an implementing agency. The new legislation aims to narrow down and make more detailed the existing legislation by extending it to public employees and private entities. Managing public complaints are seen as a crucial element in the fight against corruption in the new strategy. Among other measures, the strategy also foresees an overall assessment of the anticorruption legislation and the institutions in charge of implementing it, and corruption proofing of legislation – a practice which will be used for the first time in Albania. Systematic risk analyses, corruption trends, effectiveness of anticorruption measures and monitoring of their implementation are foreseen as future steps to be taken with regard to the fight against corruption. In addition, anticorruption policies by local governments are seen as a priority.

Bosnia and Herzegovina was a relative latecomer as regards anticorruption strategies. Efforts on planning strategic anticorruption interventions started in the mid-2000s with measures being integrated in development and anti-crime strategies. The latest applicable document – the *Strategy for the Fight against Corruption* – was adopted in 2009 with a timeframe of 5 years. With the Strategy about to expire, out of 81 planned measures only 8 (9.8%) have been completed in full, 57 (70.4%) have been partially completed and 16 (19.8%) have not been implemented.[19] This has affected some key reforms efforts such as such the preparation and adoption of the *Program of Modernisation of the Public Administration* aimed toward strengthening of the civil service at the BiH level. The backlog is mostly due to the late establishment of the Agency for Prevention of Corruption and Coordination of Fight against Corruption which is charged with carrying out the strategy. The strong autonomy which the entities that constitute BiH enjoy means that they also pursue their own anticorruption policies. At the end of 2013, the National Assembly of Republika Srpska adopted the *Strategy of Fight against Corruption* covering the period 2013 – 2017; following its adoption, a corresponding action plan is expected. For the first time, this strategy requires

[19] (Transparency International BiH, 2014, p. 15).

public sector bodies to prepare integrity plans as a mechanism for enabling legal and ethical quality of work of governmental bodies. The administration of the implementation process of the Strategy and its action plan will be in hands of the Commission for Monitoring of Implementation of the Strategy, a government level body in Republika Srpska. In the Federation of BiH, the *General Framework of the FBiH Government for Fight against Corruption* was adopted in May 2012 and covers the period until the end of 2014. The Framework is an example of the wide ranging, comprehensive and ambitious nature of the strategies in Southeast Europe – it covers a range of legislative measures, activities to be implemented by public administration institutions, measures for the judiciary and law enforcement agencies, involvement of the public in fight against corruption.

The centrepiece policy document with regard to anticorruption policy in **Bulgaria** is the 2009 *Integrated Strategy for Prevention and Countering Corruption and Organised Crime*. The Strategy, though vague in its commitments, attempts to set general direction and recommendations for limiting the spread and impact of corruption and organised crime on multiple levels of governance (central, regional and local), while also including the business sector and civil society in the process. While the Strategy fails to provide feasible incentives for implementation, the elaboration of action plans and audit reports of implementation increases, at least theoretically, the specific nature of the Bulgarian action in the anticorruption domain. The responsibility for its coordination lies with the General Inspectorate and the Commission for the Prevention and Combating of Corruption, operated by the Inspectorate. As with some of the other strategy documents in the SELDI countries, this one claims to introduce a “unified approach” to anticorruption policy. Few other policies need this kind of integrative aspect but with corruption it is justified by the diverse areas and bodies involved in its delivery.

Due to the unstable political environment, lack of coordination and delays in implementation, the publication of the action plans has been sporadic so far – at central government level such are available for the period of July 2011 – July 2012, for August 2012 – December 2012, as well as for October – November 2013. This fact alone, leaves **a considerable gap in the Bulgarian anticorruption policy**. Since the adoption of the Strategy, **anticorruption measures have been missing for a substantial period of time** without any justification. The availability of associated indicators for each anticorruption measure also varies, leaving a considerable portion of measures without a base to be assessed against. So far, a total of 119 indicators are produced, leaving 78 measures with no indicators (from a total of 197 measures across all action plans). Overall, there is **no clear indications of how the action plans**, more specifically their measures and associated

Box 1. A model for monitoring anticorruption reforms

In 2006, the Center for the Study of Democracy (CSD) in Bulgaria, developed a **comprehensive model for the monitoring of the anticorruption policies** of governments. Specifically, it contained a set of indicators for the assessment of the implementation of Bulgarian government’s 2006 – 2008 *Strategy for Transparent Governance and for Prevention and Counteraction of Corruption*. The model evaluates several groups of outcomes of anticorruption policies:

- The first set of indicators reflects the adequacy, effectiveness, timeliness, and implementation progress of policy measures.
- The second group of indicators evaluates the social environment factors directly affecting the level of corruption and governance transparency – involvement in corrupt practices, attitudes to corruption and the value of integrity, trust in government institutions, etc.
- A third group of indicators show the effect of policies. These evaluate public service delivery and are of greatest value in assessing the effectiveness of anticorruption policies and the prevention and counteraction of corruption.

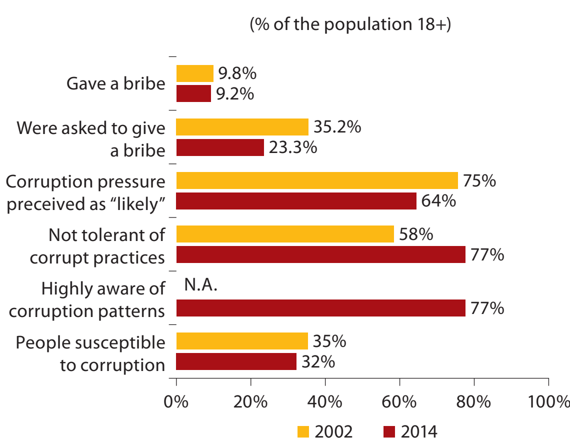
Albeit being formally adopted by the government, this model has not yet been implemented.

Source: *(Center for the Study of Democracy, 2006).*

indicators, should **impact the general anticorruption environment and contribute to the implementation** of the Strategy; this is further confirmed by the available reports on implementation.

Croatia's anticorruption strategy has been in place since 2008 and sets a number of broad objectives for the widest possible range of public services, from the administration of justice to education. It is transformed into specific measures through an action plan updated annually; the most recent (2013) updates include stronger monitoring of compliance with conflict of interests and asset declarations legislation. Since the adoption of the strategy, the action plans have downplayed preventive measures, highlighting instead corruption repression through prosecution, sanctioning, etc. All concerned government authorities in the country are required to monitor regularly the implementation of the action plan accompanying the strategy, assess the risks of corruption and take appropriate measures. Although the risk assessment is one the main tasks of the Committee for Monitoring the Implementation of Measures for the Suppression of Corruption, there are no documents or data available on the reports made by the Committee on this topic. In the *Strategy and Action Plan of the Tax Administration for Fighting Corruption*, the Ministry of Finance has the task of determining risk areas at all levels. However, the Ministry of Finance publishes no data on risk assessment connected with corruption.

Figure 18. Corruption profile of Croatia



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

In **Kosovo**, the *Strategy and Action Plan for the years 2012 – 2016* guide the operations of the Anti-Corruption Agency and other relevant institutions. It is a pertinent example of the issue noted above – percentage of completed activities rather than results are taken as indicators of success. As in the other countries, the strategy is all-embracing – central and local government, civil society and media, law enforcement and judiciary, the civil service and international cooperation are all "priority" sectors. An area of particular concern is the accuracy of the asset declaration data from public officials, given the huge discrepancies in the amount of the wealth that officials declare and what they really own. Issues of conflict of interest and political appointments, such as those in governing boards of public institutions, are also part of the list of issues which call for immediate action. The strategy lists a set of anti-mafia laws, such as the *Law on Confiscation of Assets*, as necessary to include best practices like reversed burden of proof and extended confiscation. Cash registers, and the completion and implementation of the *Public Procurement Law* are seen as priorities because it is evident that most losses from corruption happen in forging of tenders.

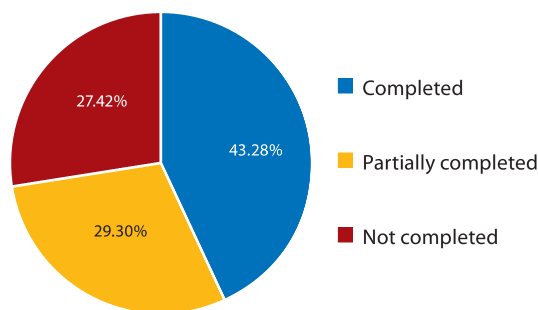
> *Addressing low level of trust in public institutions – political, judiciary and the administration – remains the main priority in building a credible state that functions in the public interest. Failing to properly tackle this challenge puts in jeopardy all efforts to obtain full international recognition and internal legitimacy.*
>
> **Kosovo Anticorruption Strategy 2012 – 2016**

In **Macedonia** two strategic documents of 2011 – the *State Programme for Prevention and Repression of Corruption* and the *State Programme for Prevention and Reduction of Conflict of Interests* – are combined to form a single vision. Again, these cover the entire range of public sectors – from law enforcement to education and sports. There is an attempt to introduce some degree of prioritisation in the action plans of the two state programmes by designating the various actions "first" or "second" priority, while still not being clear whether this concerns significance or sequencing. Anticorruption is also part of the measures envisaged in the two-page *Program for Fight against Corruption* of the Ministry of Justice (mostly outlining the Ministry's tasks with respect to anticorruption legislation and ratifications), the government's *Annual Working Program and the Strategy for Reform of Public Administration 2010 – 2015*.

The currently applicable anticorruption strategy for **Montenegro** covers the period 2010 – 2014. It seeks to state the priorities for a clampdown on corruption,

mostly related to improvement of parliament's control function, criminal prosecution and international cooperation. It also lists areas vulnerable to corruption, such as political parties financing, conflict of interest, free access to information, public procurement, state property, urban planning, education, health sector, civil society, media and sport, etc. – again, the longlist of sectors. It also lists some 40 laws as relevant to anticorruption. In order to make it more concrete and functional, an *Action Plan* for implementation of this Strategy for the period 2013-2014 was adopted. It defines priorities in prevention of corruption at the political and international level, areas of particular risk, prevention of corruption in law enforcement bodies, with an impressive range of 109 objectives and 230 measures for their achievement.

Figure 19. Level of completion of the measures of the Montenegrin anticorruption strategy



Source: *Bulletin of the Directorate for Anti-Corruption Initiative, July 2013.*

Besides these documents, the government of Montenegro has adopted an *Action Plan for Chapter 23 in the EU negotiations* (Judiciary and Fundamental Rights) which contains two sections – for prevention and suppression of corruption. Concrete preventive actions refer to the institutional framework for fight against corruption; improvement of the system of reporting on assets of public officials; improvement of internal rules of procedures in state bodies, particularly with regard to the appointments and internal control; improvement of political parties financing system; insurance of effective implementation of free access to information rules; improvement of control in public procurement. According to the Action Plan, the government intends to establish an Anticorruption Agency. The Agency will combine and expand the existing competences of the Directorate for Anticorruption Initiative, the Commission for Prevention of Conflict of Interest as well as competences of the State Election Commission in the area of control of financing political parties and election campaigns, and the competences of the National Commission for the Implementation of the Strategy for the fight against corruption and organised crime. The Agency is to be established by January 2016.

In **Serbia**, a new *Anticorruption Strategy* was adopted in July 2013, for the period 2013 – 2018. The proclaimed objective of the Strategy is to reduce corruption to the lowest possible level, as it is "an obstacle to economic, social and democratic development". The Strategy stresses that corruption may lead to a drop in public confidence in the democratic institutions, and that it also creates uncertainty and instability of the economy, which is reflected, inter alia, in lower investments. As with the other countries, the Serbian strategy addresses practically all public sectors and seeks to analyse the situation and provide some more or less general recommendations. In order to specify the recommendations and measures, in addition to the Strategy, the Ministry of Justice has prepared a fairly detailed Action plan which operationalises the Strategy by defining measures, activities, time frame, responsible government bodies, indicators (again, mostly actions to be taken rather than results achieved) and required resources for each of the numerous priorities. The implementation of the strategy is expected to move away from the hands-on approach so valuable for political ratings towards an institutional building process that would enhance the anticorruption capacity of implementing institutions.

The current national strategy and action plan for preventing corruption in **Turkey** was adopted in January 2010. It was drafted by a government appointed Executive Board but with no appropriate participation of civil society. According to the *Strategy Plan of Enhancing Transparency and Strengthening the Fight against Corruption*, corruption is defined as the infraction of rules and laws in order to achieve illegal objectives. The Strategy Plan states that corruption should not be taken as a solely legal issue; the socioeconomic dimensions of corruption should also be taken into account when planning measures to combat against corruption. There is a working group for each of the 10 anticorruption measures, and the reports of these groups have been submitted to the Committee of Ministers; as of June 2014, the publication of the results was still pending. While pointing that the strategy "incorporates important preventive provisions and addresses the issue of political corruption," a March 2012 evaluation report by OECD's SIGMA found that "implementation of the Strategy appears to have slowed down."[20]

[20] (SIGMA, 2012, p. 6).

2.2. ASSESSMENT OF THE REGULATORY ENVIRONMENT FOR ANTICORRUPTION

Overall, the SELDI countries have adopted the better part – more importantly the logic and approach – of the international anticorruption standards in their national legislations. Their statutory laws should now be able to deliver results in reducing corruption. This section looks into the genesis of the anticorruption provisions and seeks to identify shortcomings to be addressed.

2.2.1. Changes to national anticorruption policies

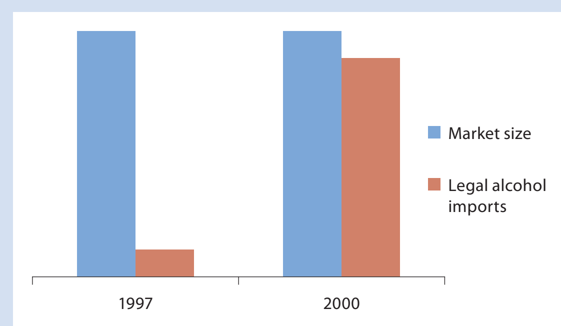
Arguably, the most notable feature of the laws in the SELDI countries has been their pace of change. A single law could be amended dozens of times a year, amounting to hundreds of amendments in the overall legislative framework. Anticorruption laws have been no exception. Such speed came at a cost, mainly in terms of effective enforcement, particularly as law enforcement and the courts struggled to keep up with the changes. "Frequent, unexpected and opaque changes in policies and laws restrict mechanisms of effective democratic control on the part of the government, undermine trust in public institutions, and can easily be misused to the benefit of corporate interests and corrupt political actors."[21]

As regards priorities, there have been two significant changes in the approach to anticorruption – a shift of attention from petty corruption (that of traffic policemen or public sector doctors) to grand (of members of parliament or ministers) and criminalisation of a wider array of abuses of public office.

While petty graft is widespread but straightforward (small cash for a simple, usually one-off illicit service), high level corruption is complex not only for investigation and prosecution but also in that it occurs among shades of grey, i.e. is often borderline illegal.

Box 2. Proper diagnosis is half the cure: the case for smart anticorruption policies

Anticorruption policymaking is often seen as a tough act requiring considerable political courage since it is expected to upset entrenched and powerful interests. Understanding the incentives architecture of corrupt transactions, however, allows policymakers to achieve tangible impact with safe and precision interventions. The slashing of illegal alcohol imports to Bulgaria is a case in point.



In the late 1990s, smuggling in the Balkans had become such a common practice that only a severe law enforcement crackdown was thought capable of restraining it. An in-depth look into what drove smugglers and legal traders suggested a better approach. A comparison between customs data on imports and the results of market research, carried out by the CSD, showed that before 1998 only 8-10% of imported liquor sold in the country was taxed. Following advocacy by CSD and legitimate traders, the way imported alcohol was taxed was amended. Prior to 1998 the excise duty on spirits was determined on the basis of declared value, i.e. it was entirely dependent on the declared import price which in turn rationalised the spread of value-related fraudulent schemes. The change of policy had excise duty on spirits determined by alcohol content ("proof") alone. In this changed situation, the risk return trade-off to the importer drastically shifted in favour of the legal activity. There was no longer an incentive for bribery to avoid payment or reduction of customs duties. As a result, the share of legally imported alcohol increased more than seven times in three years to reach almost 80% in 2000.

Source: *(Center for the Study of Democracy, 2002a).*

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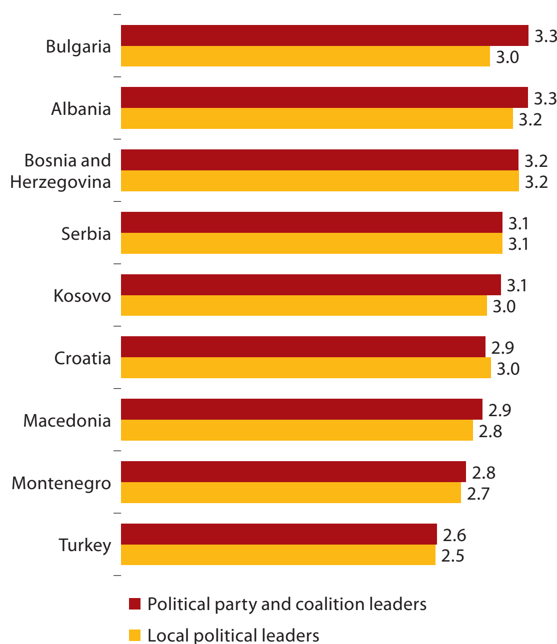
[21] (Center for the Study of Democracy, 2009, pp. 72-3).

Most complex cases do not actually involve anyone charged for the crime of corruption, but for some other crimes – tax evasion, trading in influence, etc. This has required legislators to take an equally sophisticated approach to defining and sanctioning new and complex types of illegal practices. In Southeast Europe, this shift of attention has not been warranted by any explicit reference to the damage done by the various types of corruption but is rather related to concerns about the low level of trust in political governance.

Figure 20. Estimates of the corruptness of political leaders[22]



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

The incrimination of a wider range of corruption-related practices has been a worldwide trend and the SELDI countries have been no exception. **Criminal law** is expected to have a most direct impact on corruption and is among the most important anticorruption tools a legal system employs. Although the term "corruption" is rarely defined in the legislation of most of the countries in the region – it is a concept of policy rather than law[23] – their criminal laws include a number of provisions aimed at sanctioning various corruption related offences. In the last few years, most of the countries have focused their efforts on amending the relevant criminal legislation in order to provide criminal sanctions for the largest possible range of corrupt practices and to introduce the European and international standards. The SELDI countries have criminalised the bulk of the mandatory corruption offences under UNCAC, and some have introduced criminal liability for the non-mandatory offences (e.g. corruption in the private sector or trading in influence).

A public official or responsible person who solicits or accepts a bribe, or who accepts an offer or a promise of a bribe for him/herself or another in return for performing within or beyond the limits of his/her authority an official or other act which should not be performed, or failing to perform an official or other act which should be performed shall be punished by imprisonment from one to ten years.

Article 293 of the Croatian Criminal Code

Whoever accepts a gift or other advantage to use his official or social position or influence to intercede for performance or failure to perform an official act, shall be punished by imprisonment of three months to three years.

Article 366 of the Serbian Criminal Code

In early 2012, the **Albanian** government amended some legislation relating to corruption. The amendments were firstly in the *Criminal Code* covering cases of bribery by foreign public officials and introducing harsher sentencing for corruption in the private sector. In the same year, the parliament passed constitutional changes that restricted the immunity of high-ranking public officials and judges. The latter have been warranted by cases where immunity has served as a barrier for the prosecution of high level public officials and judges. Despite these changes, however, not much has changed concerning investigations, prosecution, or convictions.[24] The government has proposed new, rather drastic changes. First, the Ministry of Justice has tabled a draft law with amendments to the *Law on the Prevention and Fight against Organised Crime* (better known as anti-mafia law) to include corruption within its scope. Under it, corruption offenses are to be investigated by the Courts of Serious Crimes. The current law aims to prevent and fight organised crime and trafficking mainly through the investigation of the wealth of a suspect. The proposed changes would extend the anti-mafia provisions to individuals suspected for all kinds

[22] For public officials the scale is from 1 to 4, where 1 is "Almost no one is involved" and 4 is "Almost everybody is involved". For the institutions the scale is from 1 – "Not proliferated at all" to 4 – "Proliferated to the highest degree".

[23] Article 5 of UNCAC, for example, associates anticorruption policies with practices rather than laws.

[24] (U.S. Department of State, 2013d).

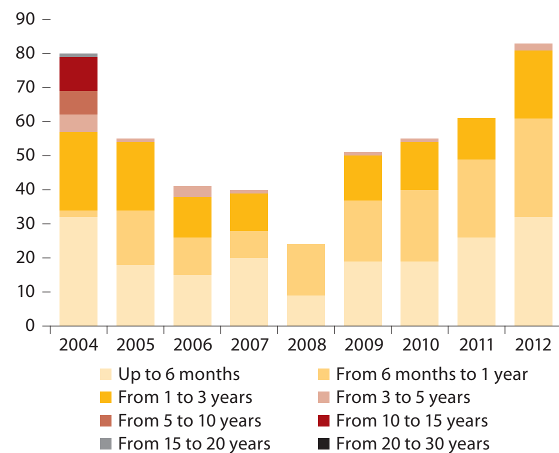
of corrupt affairs. More specifically, the prosecution and the police, on their own initiative or on notification from third parties, would be able to investigate the assets and wealth of individuals suspected for engaging in corruption. Family members and relatives of the suspects are also included in the draft amendments. These have been justified by referring to the fact that anticorruption has been identified as a priority and as such should be given "more importance," corruption should be taken more "seriously" and it should be punished "more heavily." It should be noted that these potential changes have been questioned by the OSCE Presence in Albania, the US Office of Overseas Prosecutorial Development Assistance and training, and also EURALIUS, the European Assistance Mission to the Albanian Justice System. The latter, for example, has advised that a threshold for the briberies that are to be sent to the Serious Crimes Court should be introduced.

In May 2014, a revised *Law on the Right to Information on Official Documents* was drafted, which introduced administrative sanctions and procedures for the examination of complaints to the Commission for the Right to Information and Personal Data Protection. Amendments to the laws on asset declaration and conflict of interest were proposed in April 2014, aiming to strengthen the competencies of the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests.

A key development in **Bosnia and Herzegovina** was the introduction of protection for persons who decide to report corruption related offences. Although with significant delay, the *Law on Whistleblowers* was adopted in December 2013 on the state level. At the level of Federation of BiH, the *Law on Protection of Persons Reporting Corruption* was adopted in late December 2013. In Republika Srpska, the *Strategy for Fight against Corruption* defines the issue of protection of "so called whistleblowers," or persons reporting irregularities or suspect on corruption in public institutions.

In the past few years, one of the focal points of the anticorruption policy debate in **Bulgaria** has been the regulation of conflict of interests. Conflicts of interests and incompatibilities regarding persons occupying public positions have always been a potential source of corruption and illegal practices. Since Bulgaria's EU accession, the European Commission through the Cooperation and Verification Mechanism has been monitoring and has reported regularly on efforts to prevent and fight corruption and organised crime, and reform the judiciary including conflict of interests and related issues. Since the adoption in 2008 of the first conflict of interest law, a number of weaknesses hampering its effective implementation have been revealed. In an attempt to address these weaknesses, the law has been subject to several amendments (in 2009, 2010, 2012 and 2013), some of which introduced radical changes in the system of government bodies involved in its implementation.[25]

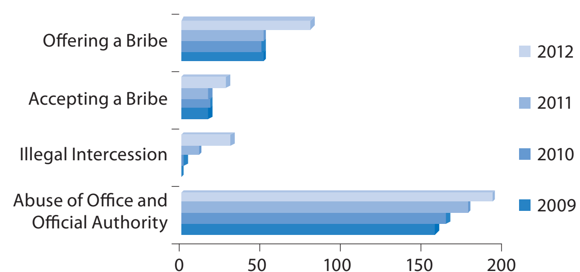
Figure 21. Trend in the sentencing of bribery in Bulgaria



Source: *National Statistical Institute.*

In **Croatia,** the legal environment for anticorruption has been particularly dynamic in the last couple of years. Dozens of changes with relevance to anticorruption have been made annually to laws regulating conflict of interest, public procurement, electoral campaign finance, criminal procedure law, civil service law, State Judicial Council, etc. In November 2011, the Croatian Parliament passed a new *Criminal Code* which came into force on January 1, 2013. It introduced harsher penalties for corruption crimes.

Figure 22. Convictions by type of corruption-related offence, 2009 – 2012, Croatia

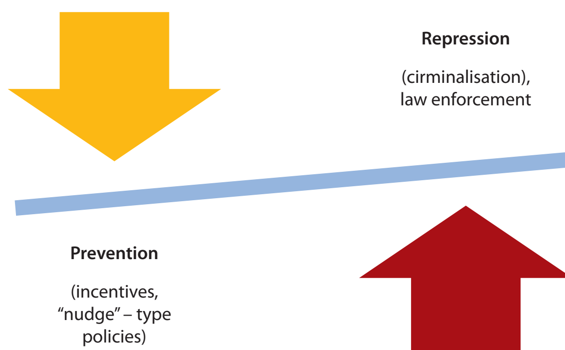


Source: *Croatian Bureau of Statistics.*

[25] This is further developed in section 2.2.3.2. below.

The criminal procedure law had been amended a number of times in the last five years in an attempt to make proceedings against corruption more effective. These were, however, criticised by judges. In February 2013, the Minister of Justice presented to parliament the final draft of changes on the *Law on Courts* and the *Law on the State Judicial Council*. According to this draft, the President of the Supreme Court would have an obligation to submit an annual report to parliament, although the latter would not decide on the report, but just acknowledge it. According to the draft of the *Law on the State Judicial Council*, the declarations of assets of judges would not be made public online, however they would have to be available to public 8 days after the official request, which can be submitted by anyone. Although the judges saw it as a threat to their security and independence of the judiciary, the government greeted the changes and the new *Law on Courts and Changes* and amendments to the *Law on the State Judicial Council* were adopted.

Figure 23. The equilibrium of anticorruption policies



Kosovo sought to tackle corruption by creating task forces and trying to improve the legislation and the mechanisms of enforcement, however, with very little real effect. One such effort was, for example, the creation of a Task Force on Anti-Corruption composed of prosecutors and police officers under the Special Prosecution Office in Kosovo. The Task Force was mandated by the Prime Minister but "the decision itself interfered with the independence of investigations and prosecutions. The overall results of the Task Force have been minimal, almost a year and half from its set up."[26] One key policy development has been the amendment of the *Law on Financing of Political Parties*, which was acceptable as it was, but now determines the level of fines that shall be applicable in case of violations, and also puts more pressure on the political parties to make their finances more transparent and publish updated statements. As regards asset forfeiture, civil society has been active in addressing some issues regarding the *Law on the Confiscation of Illegally Acquired Assets*. The amendment which extends the competences for confiscating such assets does not address the assets illegally acquired since the end of the 1998 – 1999 war, in a way legitimizing those acquired in the after-war period. Another important policy improvement has been the amendment of the *Law on Financing of Political Parties*, which now determines the level of fines that shall be applicable in case of violations, and also puts more pressure on the political parties to make their finances more transparent and publish updated statements.

During the last three years set of changes to anti-corruption policies in **Macedonia** were made as a result of the recommendations by GRECO. The country had in total 13 recommendations for improvements in the incrimination and transparency of party funding, most of which required changes to national anticorruption policies. The 2011, amendments to the *Criminal Code* eliminated the condition that bribery occurs when there is performance or omission to perform an official act which is within the scope of the official's duties. Instead, the amendment considered bribery (both, active and passive) all acts and omissions in the exercise of the functions of a public official, whether or not they are within the strict scope of the official's duty. Also, the amendments reformulated the offence of bribery of foreign public officials in similar terms to that of bribery of domestic public officials (the additional elements of proof formerly contained in the offence of bribery of foreign officials were eliminated). A further significant policy change was the **criminalisation of corruption in the private sector**. The amendments to the *Criminal Code* have also introduced the offence of active trading in influence. This enabled that corrupt acts cover, the tangible and intangible character of the advantage, the direct or indirect commission of the offence, and third party beneficiaries. In order to abolish the requirement of dual criminality, amendments have been introduced to the *Criminal Code* to extend jurisdiction to anyone who commits an act of bribery or trading in influence abroad, irrespective of the offender's nationality, country of residence or any other relation with Macedonia.

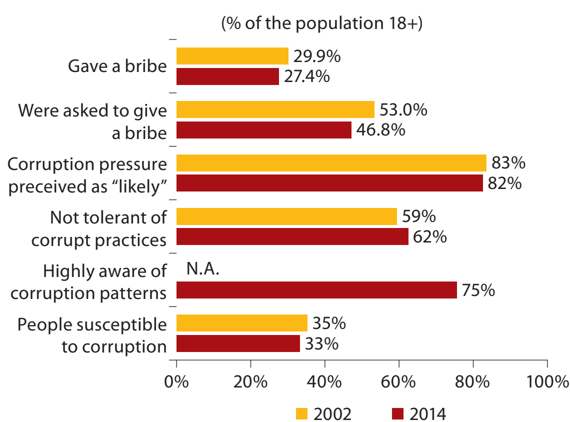
Since 2010, the **Montenegrin** *Criminal Code* has been amended three times, including amendments to the criminal offences of bribery, illegal influence, insider dealing, fixing the outcome of a tender. These amendments were influenced by the necessity to harmonise national practice with international standards, as well

[26] (KIPRED, 2011, p. 6).

as to introduce new criminal offences defined as corruption. Anticorruption can also be expected from the July 2013 amendments to the Constitution which strengthened the independence of the judiciary by reducing political interference in the appointment of prosecutors and high level judicial officials. Amendments introduced new procedure of the appointment and dismissal of the President of the Supreme Court, Supreme State Prosecutor and prosecutors, the composition and competences of the Judicial Council, the election and dismissal of judges of the Constitutional Court. The very procedure for their appointment is more transparent and merit-based, which should contribute to less corruption risk in appointments and judicial proceedings.

In addition to adopting a new *Anticorruption Strategy and Action Plan*, the government of **Serbia** which took office in mid-2012 put fight against corruption very high on its agenda. One of its first moves was to reopen investigations on about 20 major privatisation cases where more or less serious allegations of corruption have existed for years (this was also a requirement by the EU). A notable development has been the compliance with the recommendations of the October 2012 report by GRECO extending the incrimination to private sector bribery, abolishing some dual criminality requirements, extending the offence of active and passive bribery in the public sector to cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence, etc.

Figure 24. Corruption profile of Serbia



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

In the past few years, the government in **Turkey** has enacted the 3rd and the 4th Judicial Reform Packages, which concerned certain amendments that directly affects the prosecution of bribery and bid rigging. With the provision of the 3rd Judicial Reform Package in July 2012, the scope of the definition of bribery in article 252 of the Turkish *Penal Code* has been expanded and re-regulated. On the other hand, with the 4th Judicial Reform Package that was adopted by the parliament in the first half of 2013, the sentence for civil servants who rig public tender bids were decreased from 5-12 years to 3-7 years. If no public harm has been done, the penalty is reduced to 1-3 years.

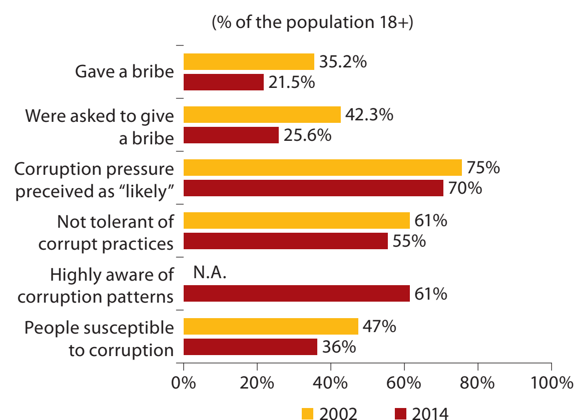
2.2.2. Specialised anticorruption laws

Two SELDI countries have had experiences in enacting laws that seek to control corruption, in addition to all the other provisions in the criminal law and other pieces of legislation.

Kosovo adopted its first *Law on the Suppression of Corruption* under the United Nations Interim Administration in Kosovo, setting the groundwork for the legislative work against corruption. It introduced important good governance concepts such as "Legal acts resulting from corruption are null" and compensation for persons whose interest have been damaged by corrupt acts of officials. In 2009, this law was later replaced by the *Law on Anti-Corruption Agency* which constituted the Agency, including the way in which it conducts its preliminary investigations.

In **Macedonia**, the *Law on Prevention of Corruption* was enacted in April 2002. The law regulates the measures for prevention of corruption in the exercise of power, public authorisations, official duty, and measures for prevention of conflict of interests, prevention of corruption in legal entities in executing of public authorisations, and corruption in commercial companies. The

Figure 25. Corruption profile of Macedonia



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

law envisaged creation of an independent anti-corruption institution – the State Commission for Prevention of Corruption – which is competent for implementation of the measures and activities envisaged in the law. The law also defines corruption as misuse of office, public authorisation, official duty and position for the purpose of gaining any benefit for oneself or others.

There were several main justifications for adoption of the law. For instance, prior to the adoption of the *Law on Prevention of Corruption*, there were no independent institutions for prevention and repression of corruption. Moreover, there was no system of mutual and horizontal inter-institutional control (system for national integrity) and there was an evident lack of engagement from the civil society and media in raising public awareness, and significant parts of the national legislation had not yet been harmonised with international anticorruption standards.

2.2.3. Other relevant legislation

2.2.3.1. Protection of whistleblowers

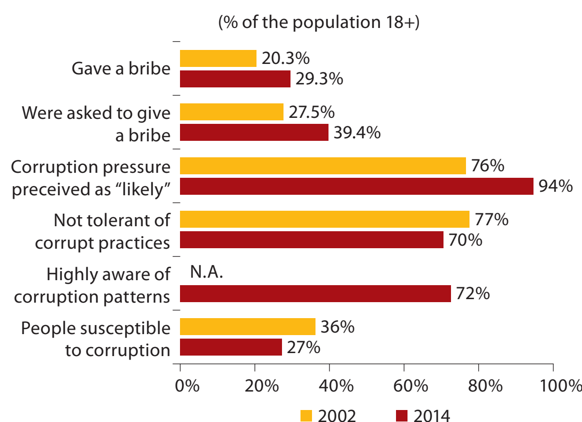
What makes corruption frustratingly difficult to uncover and punish is its latent nature. Both sides in a corrupt transaction have an incentive of not reporting it. Encouraging the "blowing of a whistle", especially by civil servants and officials becomes crucial in prosecuting bribery and other misconduct. While legislation protecting persons who report cases of corruption, graft, abuse of power, or abuse of resources from recrimination is essential, it also needs to be combined with practices encouraging an organisational culture which equates reporting with integrity.

The **Albanian** the whistleblowing legislation complies with international best practice standards and the 2006 law provides adequate protection of whistleblowers against administrative, civil and criminal sanctions; the legislation was designed with the intention to take into consideration the complaints of all citizens. The enforcement of the law is, however, uneven and there have been a considerable number of cases when there various reprisals against civil servants who report corruption. The organisational culture in the public sector does not sufficiently support whistleblowing. To address this and strengthen the preventive approach to corruption, in 2014 the Albanian government started the drafting of new legislation on whistleblowers and their protection in both the public and private sectors. The amendments intend to narrow down the range of persons that can make a complaint. It is not intended to include citizens, but only public administration officials and employees in the private sector. Besides this, another novelty would be the establishment of a public entity that will be in charge of the implementation of this legislation.

With significant delay, the *Law on Whistleblowers* was adopted in **Bosnia and Herzegovina** December 2013 at the state level. At the level of Federation of BiH, the *Law on Protection of Persons Reporting Corruption* was adopted in late December 2013. In Republika Srpska, the *Strategy for Fight against Corruption* defines the issue of protection of "so called" whistleblowers, or persons reporting irregularities or suspect on corruption inside public institutions. According to the Law, the Agency for Prevention of Corruption and Coordination of Fight against Corruption shall assign a status of a whistleblower to a person reporting corruption within 30 days from the date of report being filed. Supervision over implementation of the Law is trusted to the Administrative inspection office within the Ministry of Justice of Bosnia and Herzegovina and to the Agency that is obligated to annually publish a special list of institutions where corruption was reported at, including information on suffered damage and corrective measures proclaimed.

In **Bulgaria,** effective administrative arrangements for whistleblowing are not yet in place. The *Administrative Procedure Code* and the *Law on Prevention and Ascertainment of Conflict of Interest* contain provisions on the protection of whistleblowers' identities, while the *Criminal Procedure Code* requires citizens, and specifically public servants, to report crime, however, no adequate steps were taken to strengthen the protection of whistleblowers. Recommendations for legislative

Figure 26. Corruption profile of Bulgaria



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

measures on regulating lobbying and whistleblowers protection remain on Bulgarian anticorruption agenda.

In October 2013, the proposal of the *Act on the Protection of Whistleblowers* was done and sent to the **Croatian** Parliament for the further discussion. The proposal includes protection of the rights and rehabilitation of whistleblowers, the introduction of the Ombudsman for the protection of whistleblowers and misdemeanour and criminal provisions.

The **Kosovo** law defines a whistleblower as "any person, who, as a citizen or an employee reports in good faith to the respective authority within public institution at central or local level, institutions, public enterprises or private for any reasonable doubts about any unlawful actions". The law does provide protection for whistleblowers (which is also in large part covered by the *Law on the Protection of Witnesses*), however, there are some shortcomings. One example is the ambiguity as to how reporting of such cases should be done. Article 6, on the delivery of information, states that "a whistleblower shall submit information about the unlawful actions to the official person dealing with reported wrongdoings or to any other supervisor". This creates some ambiguity as to what the person should do in cases when they want to report their superiors for corruption. Other criticism of this law has been that its language is too general and it does not specify the mechanisms for safe whistleblowing.

The existing legislation in **Macedonia** sets some provisions for whistleblower protection. As of mid-June 2014, there were still no direct provisions guaranteeing direct and comprehensive protection for the whistleblowers. However, this shortcoming is expected to be overcome as a draft law has been published and has entered in parliamentary procedure. The amendments will provide a legal definition of the term whistleblower (article 54b) and the mechanisms for his protection (article 64d). There are also several provisions for indirect protection. For instance, under the principle of equality, Article 4 of the *Law on Prevention of Corruption* envisages that "everyone, without suffering any consequences, shall have the right to prevent or to report an action which represents a misuse of office, public authorisations, official duty and position and serves for achievement of personal benefits or causes damage to others". The same law provides indirect support through the principles of publicity and liability, as well as in the sections on relief of the obligation to keep classified information, protection of collaborators to justice and witnesses.

The *Law on Civil Servants and State Employees* introduced to **Montenegro** the institute of protection for whistleblowers. Such servants/employees must be adequately protected against all forms of discrimination, as well as regarding their rights related to their office. The very fact that they have reported for corruption must be held as secret in terms of their anonymity. In the event of dispute arising from the violation of any right of civil servant/state employee, the burden of proof is on the body that issued the decision violating those rights. Amendments to the *Code of Criminal Procedure* in 2013 introduced a new criminal offense for those who fire the employee who reported corruption, with a sentence of up to three years of imprisonment.

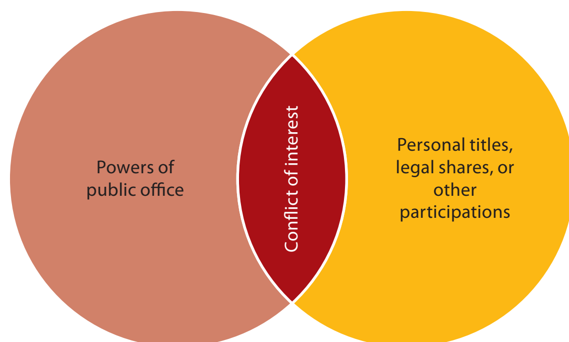
As of July 2014, in **Serbia** there is no specialised law on whistleblower protection, although a draft is in the pipeline. There are some provisions in the law establishing the Anti-Corruption Agency and in the procedural rules of the Agency.

In **Turkey** there is a *Witness Protection Act*. However, for the whistleblower to be fully protected from any prosecution, the crime in question needs to be sentenced by at least ten years of imprisonment or the crime in question needs to be part of an organised crime, which is to be sentenced by at least two years of imprisonment. As evidenced by interviews and media watch, whistleblowers who inform the authorities about corrupt acts by their superiors, have been faced with threats and mobbing. As a result, whistleblowers could lose their jobs or face relocation within the public administration.

2.2.3.2. Regulation of conflict of interest

Corruption in the SELDI countries, especially in the legislative process, occurs most often when officials attempt to influence decision making, regulations, tender awards, etc., in their own favour. While the use of various types of proxies to siphon off public funds is growing, the majority of corrupt elected officials and civil servants still prefer to have some type of personal control over the illegal proceeds (accounts, property, etc). In such cases, provisions in the law which preclude potential conflict between a person's **interests** (stakes in companies, ownership of property, etc) and his or her public office are required to prevent corruption. Conflict of interest legislation in the SELDI countries sometimes goes beyond this definition and covers practices such as acceptance of gifts, money or services for performing civil servants' duties.

Amendments to the *Law on Conflict of Interest* in institutions of **Bosnia and Herzegovina** were adopted by both Houses of Parliament of BiH at the end of 2013. Largest change is related to the institution in charge for implementation of the law. Instead of the Central Elections Commission which was previously charged with implementation, it is now to be overseen by a commission appointed by the two parliamentary houses, while at least one third must be representatives of opposition parties. Law was further amended in a part related to sanctions. Previously, the law prescribed that persons who violated the law are non-eligible to be nominated for any elected position, executive position and/or counsels in period of four years from the date of the violation. In addition, violators could have been fined. Changes provide that the new Commission may decree a seizure of up to 50% of net monthly salary and may also submit a proposal for dismissal from duty and an invitation to quit duty. Adoption of these amendments was challenged by a number of members of parliament, noting that suggested constitution of the Commission is not providing necessary level of independence, which would ensure effectiveness in its work. They find that the Commission might be a subject to political influence through such elected members that would disable decision making process. The Delegation of the European Union in BiH also expressed its concern over this issue.



In **Bulgaria** the main legal provisions are contained in the *Law on the Prevention and Ascertainment of Conflict of Interest*. There are a number of specific laws and regulations that reflect the specifics regarding certain persons – *Law on Civil Service, Labour Code, Law on Public Procurement, Law on Local Self-Government and Local Administration* as well as various internal ethical regulations on conflict of interest and assets disclosure. According to the *Law on the Civil Service*, all civil servants, upon starting employment are required to declare their property possessions to the appointing authority. By April 30th of each year, civil servants are also required to declare property possessions, as well as any external payments, received from activities outside their official employment (reasons for such activities and the employer/sponsor, who has paid them) during the previous year. This law lists the incompatibilities, but all relevant norms related to conflicts of interests are found in the *Law on the Prevention and Ascertainment of Conflicts of Interest*. There are no specific rules on conflicts of interest applicable to public procurement officials but these are explicitly asked to disclose potential conflicts of interest in each public procurement case. According to the *Law on Public Procurement*, public procurement officials should declare that they have no private interest within the meaning of the *Law on Prevention and Ascertainment of Conflict of Interest* as regards the respective public procurement they work upon. Also, officials may not be "related persons", within the meaning of the law, to a bidder or a participant in the procedure or with subcontractors appointed by him/her, or to members of their management or control bodies.

In an attempt to address weaknesses identified in the legislation, the law has been subject to several amendments (in 2009, 2010, 2012 and 2013), some of which introduced radical changes in the system of government bodies involved in its implementation. The 2010 amendments established the Commission for Prevention and Ascertainment of Conflict of Interest to replace the previous decentralised implementation of the law.[27] The establishment of conflict of interest can serve as grounds for dismissal from pubic office as well.

Most of the cases involving a sanction by the Commission have concerned mainly junior public officials or had to do with conflicts of interests at local and regional level (e.g. mayors). The number of investigations regarding elected politicians has been very limited and these cases are moving particularly slow into their final decisions, with too little publicly available information. Furthermore and indicative of the integrity of the Commission, its former Chair was charged with criminal breach and violation of his duties in the period December 2012 – July 2013, found guilty and sentenced by a first instance court to 3.5 years imprisonment. A further problem in the work of the Commission is its accountability. The Commission is required to submit to parliament an annual report but it is for information only; thus there is no effective oversight of its work.

[27] For an evaluation of the operation of the Commission, please refer to section 3.1.

In **Croatia**, the *Conflict of Interest Prevention Act* regulates the matters related to conflict of interest and incompatibilities among elected and senior appointed officials. The law regulates the prevention of conflicts between private and public interests in public office, the filing and contents of a report on the financial situation of an official, the process of checking the data from these reports, the period of duties for public officials under the law, selection, composition and jurisdiction of the Commission for the Resolution of Conflicts of Interest and other issues of importance to the prevention of conflicts of interest. The rest of the legal provisions, aside from provisions regulating the organisational structure of the commission, almost exclusively deal with the property of public officials. Most of the sanctions in the law, as well as monitoring and reporting mechanisms are tied to the declaration of assets and not to conflict of interest per se. Instruments for declaration and monitoring of the actual interests of the officials are insufficient and weak with no public control or public participation in the process, which is in contradiction with the *General Administrative Procedure Act* and/or *Criminal Proceedings Code* according to which public bodies should to act upon the citizens' request for procedure, or upon citizens' report on suspicion of crime. Sanctions for conflict of interest are minor, limited to financial fines and reprimand, or "publishing of the Commission's Decision", and they do not represent any serious obstacle to the conflict of interest. The law does not clearly regulate differences between the incompatibilities and conflict of interest, or among apparent, potential and actual conflict of interest.

The **Kosovo** *Law on the Prevention of Conflict of Interest in the Discharge of Public Function* adopts all the mechanisms that should prevent conflict of interest, but the implementation is mostly based on reporting by some third party. The Anti-Corruption Agency needs to be further empowered to keep track and registry of the private interests of public officials, and to be able to act on cases of conflict of interest.

Provisions relating to conflict of interest in **Macedonia** were initially incorporated in the already mentioned *Law on Prevention of Corruption* of 2002. Later on, in 2007 a *Law on Prevention of Conflict of Interests* was enacted, in order to provide more detailed provisions for prevention of conflict of interest. Also, certain provisions on conflict of interest prevention can be found in the *Law on Public Procurement* and *Law on Lobbying*. The provisions of the *Law on Prevention of Corruption*, although largely replaced by the *Law on Prevention of Conflict on Interests*, still deal with prevention of conflict of interest. In the *Law on Prevention of Conflict of Interests*, the offence is defined as a "conflict between the public authorisations and duties with the private interests of the official, where the official has a private interest which impacts or can impact on the performance of his/her public authorisations and duties" (article 3). The State Commission for Prevention of Corruption is competent for its application. The law is an example of a broad understanding of the concept of conflict of interest as it provides that officials, while performing their duties, cannot be driven by personal, family, religious, political or ethnic interests, pressures or promises from their superiors; they must also not accept or request benefits in return for performing his/her duties, exercise or acquire rights by violating the principle of equality before the law, etc. – provisions about more straightforward forms of corruption.

The **Montenegrin** *Law on Prevention of Conflict* lists the officials that must act in accordance with its provisions, as well as their obligations in terms of reporting changes in their assets while holding public office. Significant improvement in this regard was introduced by the latest amendments to the law, giving the Commission for Determining and Prevention of Conflict of Interest competence to check the validity of data provided by the officials in their reports on assets and income, to conduct proceedings and issue decisions on the violation of the law (both as a first and second instance authority since it decides on requests for review of first instance decisions); give opinions on the existence of conflict of interest; determine the value of gifts (the law states that public officials may not receive gifts); initiate amendments to laws; submit a request for initiation of misdemeanour procedure to the regional misdemeanour authorities.

In **Serbia**, provisions regarding the conflict of interest are contained in the *Law on the Anticorruption Agency*. Although in the narrow sense the fight against corruption is not the main purpose of these provisions, the law prevents certain mechanisms of corruption. For instance, there is a provision stipulating that a public official cannot also be a consultant to legal entities, thus preventing the mechanism whereby a legal entity makes payments to a public official through consultancy fees. Likewise, the provisions on the obligation to report property to a certain extent eliminate the possibility for an official to significantly increase his property during his term in office. As regards the coverage of the law, a very large number of public officials are covered. On one hand, this is actually a shortcoming because the Anticorruption Agency must invest a large share of its

resources in the creation and maintenance of a database on public officials. On the other hand, some decision-makers are not covered by this law, such as advisors to the prime minister and deputy prime ministers, as well as advisors to ministers. The law also prohibits a public official from owning a controlling stake or holding managerial positions in a commercial company. Similarly, it is prescribed that public officials cannot sit on the management of public enterprises, although it is not clear exactly about what kind of conflict these target, since public enterprises, at least according to the law, work in conformity with the public interest. These provisions do not apply to members of parliament.

As regards the penal provisions, penalties are too mild. The first penalty, a confidential caution not disclosed to the general public, constitutes practically the first step after it has been established that a public official has violated the law. The second penalty – the public announcement of a decision that this law has been violated for elected public officials and a public announcement of a recommendation to resign for other types of public officials – is the most serious penalty.

As regards conflict of interests, in **Turkey** there is no specialised legislation. There is, however, Article 13 of the *Regulations on Principles of Ethical Conduct for Public Officials* regulates and controls matters on conflict of interest. Also, according to the *Civil Servants Law*, public officials have a personal responsibility to prevent cases that would lead to conflict of interest; they are responsible to act cautiously about potential cases and immediately inform their superiors in case there is one. The *Civil Servants Law* also state the disciplinary penalties for such issues. For instance, if a public official personally benefits financially from a property of the state, the amount is to be taken out of his/her salary.

2.3. RECOMMENDATIONS

Overall, the SELDI countries have adopted the better part – more importantly the logic and approach – of the international anticorruption standards in their national legislations. All have some kind of strategic document containing their overall approach to tackling corruption. As regards their anticorruption laws and regulation, the key challenge now is to keep up with the shifting manifestations and forms of corruption while maintaining regulatory stability and avoiding overwhelming the judiciary with rapid changes.

The assessment of the anticorruption legislation carried out by SELDI reveals the following gaps that need to be addressed:

1. Define national anticorruption efforts in terms of policy related to **quantifiable goals** and milestones rather than simply measures or legislation. This would entail setting **specific targets to be achieved** and selecting appropriate intervention methods. These targets should be quantified as much as feasible.
2. **Prioritise certain sectors, types of corruption and methods of intervention** and pilot different approaches before rolling out full blown measures. Corruption is a broad concept, related to various and varying types of fraud which cannot be addressed simultaneously in an effective way.
3. Countries that have not introduced **whistleblower protection** legislation should do so.
4. **Policies need to be informed.** While some effort has been made in the national anticorruption strategies to estimate previous results, none of the SELDI countries has a sustainable mechanism of evaluation of anticorruption policies. At the very least, this requires: a) reliable and regular statistics about anticorruption efforts (investigations, prosecutions, administrative measures, etc.); b) regular monitoring and analysis of the spread and forms of corruption in the various public sectors. The monitoring should be independent and/or external to the country, involve civil society and incorporate the basic components of non-administrative corruption monitoring systems, such as SELDI's CMS.

The effectiveness of anticorruption policy should be evaluated with the use of the following indicators:

- Number of draft laws and other regulatory documents related to anticorruption / number of adopted laws and other regulations;
- Number of initiated, completed, suspended or terminated corruption-related criminal investigations and number of persons accused;
- Number of indictments and number of persons indicted;
- Number of initiated, completed, suspended or terminated corruption-related court proceedings;
- Number of convictions and acquittals, types and severity of the penalties imposed and number of persons convicted;
- Number of corruption-related complaints filed/number of inquiries conducted/number of officials sanctioned for involvement in corrupt practices (by government body).