SPAI

Stability Pact Anti-Corruption Initiative

SPAI Steering Group

ANTI-CORRUPTION MEASURES IN SOUTH-EASTERN EUROPE

Country reviews and priorities for reform

Albania
Bosnia Herzegovina
Croatia
"The former Yugoslav Republic of Macedonia"
FRY/Republic of Montenegro
Romania

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Foreword

The Stability Pact Anti-Corruption Initiative (SPAI), adopted in Sarajevo in February 2000, was born out of the conviction that corruption is a serious threat to the development and stability of South-eastern European countries. Albania, Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia" and Romania are committed to the SPAI Compact and Action Plan and are actively implementing new measures to fight corruption. The Federal Republic of Yugoslavia and Moldova have expressed their wish to join the SPAI, while the FRY/Republic of Montenegro is already part of the Initiative. International and local non-governmental organisations and bilateral aid agencies are combining their efforts with those of national governments and international organisations to combat and curb corruption in South-eastern Europe.

The SPAI takes a multidisciplinary approach to fighting corruption, addressing issues ranging from the adoption and implementation of international instruments containing anti-corruption provisions (Pillar I) to promotion of good governance (Pillar II), strengthening of the rule of law (Pillar III), promotion of transparency and integrity in business operations (Pillar IV) and development of an active civil society (Pillar V). It also provides all actors with a general framework for co-ordination, optimisation of efforts and permanent dialogue with the donor community.

This publication covers a wide range of issues. It provides policy makers, legislators, businesses, civil society organisations and other stakeholders with an assessment of anti-corruption measures in place and underway in the South-eastern European countries participating in the SPAI. This assessment is based on the appraisal of experts from the SPAI lead agencies of existing legislation, institutions and practices.[1] The report analyses the needs of these countries and the gaps in terms of their legal and institutional framework. It proposes specific targets for reform under the first four pillars of action of the SPAI Compact described above.

The assessment has benefited from the contributions of the SPAI Steering Group consisting of senior SPAI government officials, experts of Stability Pact countries actively involved in the implementation of the Initiative, as well as members of the SPAI Managing Committee. The Group discussed and adopted the assessment between 17 and 20 April 2001 in Tirana, Albania.

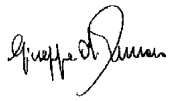
The Chairman of the SPAI Steering Group, the Office of the Special Co-ordinator, the Council of Europe and the Organisation for Economic Co-operation and Development believe that this publication will broaden the debate on

1. This report does not necessarily reflect the views of its authors and overall editors, the OECD and the Council of Europe, or of their member countries. It is published on the responsibility of the Managing Committee of the Stability Pact Anti-Corruption Initiative.

anti-corruption strategies and contribute to strengthening initiatives to improve integrity and transparency in public governance, the rule of law and corporate behaviour.

We wish to express our thanks to the World Bank, which substantially contributed to the report, in particular to Chapter 1 of the study, and to the United States Departments of State and of Justice for their support as well as to other donors[1] who have made this process possible.

We encourage countries of South-eastern Europe to pursue their efforts, which are vital for the future of the region, and reiterate our readiness to help and accompany them on this difficult but necessary path.



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1. Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Japan, Norway, Slovenia, Sweden, Switzerland and the United States.

Table of contents

1. The institutional and policy environment for fighting corruption in South-eastern Europe

1.1. Overview

Corruption is highly detrimental to the stability of democratic institutions and considerably undermines the business climate, discouraging private investment and hampering economic growth. Stabilisation in South-eastern Europe therefore goes hand in hand with the fight against corruption, for no country in South-eastern Europe can afford the social, political and economic costs that bribery and corruption entail.

As such, combating corruption has moved to the top of the regional political agenda and figures prominently among technical assistance activities at the international level.

On 15 and 16 February 2000 in Sarajevo, South-eastern European countries agreed under the Stability Pact Anti-Corruption Initiative to reform their legal and institutional framework, outlaw the practice of bribing public officials to obtain business deals, curtail money laundering, clean up public procurement practices and promote legal instruments aiming at improving ethical standards in the public sector and at strengthening the rule of law. The Initiative intends to give a decisive momentum to the fight against corruption in the region by building upon existing programmes, enhancing co-ordination between the various actors involved in this fight, and by developing a rigorous monitoring process that will make it possible to evaluate progress achieved in fighting corruption.

This report analyses progress achieved and identifies the needs and gaps of South-eastern European countries in terms of their legal and institutional framework and practices.

The report is divided into eight chapters. Chapter 1 provides an executive summary of the report, including a chart on the adoption and implementation of European and international instruments, a study on corruption and governance and an overview of the recommendations for reform made under Pillars I to IV of the Compact and Action Plan. Chapters 2 to 7 correspond to country reports. The legal and institutional framework of countries covered by the Initiative is presented and analysed in light of the requirements of Pillars I to IV of the SPAI Compact, and country-specific recommendations for reform are formulated under each pillar. Chapter 8 corresponds to the SPAI Compact and Action Plan.

An Overview of Anti-Corruption Policies in South-eastern European Countries

Efforts to establish more effective legislation and institutions to curb corruption are particularly complex as they are linked with the need to reform many aspects of public management and elements of the administrative, judicial and legislative systems.

Recognising the importance of effectively fighting corruption, governments of the region rapidly engaged in a process of reforms of their legislation and institutions. The adoption of the Stability Pact Anti-Corruption Initiative in February 2000 gave further impetus to this process as it encouraged governments of the region to make concerted efforts to develop a more effective anti-corruption structure through the improvement of framework legislation, the establishment of national anti-corruption teams that serve as co-ordination mechanisms for anti-corruption activities and through the further development and implementation of administrative reforms. The Initiative also encouraged governments to consolidate their anti-corruption systems through greater involvement of civil society, trade unions and business associations in anti-corruption efforts.

In the past few years, criminal legislation has been thoroughly amended and most countries have done their best to ensure that corruption offences are adequately criminalised. New Criminal Codes and Criminal Procedure Codes have been adopted in Albania, the Federation of Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia" and Romania. In the Republika Srpska (Bosnia and Herzegovina), a new Criminal Code has been adopted and the Criminal Procedure Code is under review. In the Republic of Montenegro[1], a new Criminal Code was adopted in 1993 and a Law on Courts is currently being drafted. In all countries, various laws related to the modernisation and adaptation of the legal system have been adopted or are currently under parliamentary procedure.

The promotion of integrity and the fight against bribery in business transactions has also become high on the regional agenda. All countries criminalise the offence of bribery of domestic public officials, and the level of sanctions regarding natural persons is in line with international practices in many cases. All of the countries have also taken steps to help companies overcome pressure for bribes from domestic officials through criminalisation of the offence of passive bribery, although gaps still exist in the legislation of countries such as Albania and the Republic of Montenegro. Most countries of the region also criminalise non-compliance with accounting and auditing regulations and do not qualify bribes as deductible expenses for tax purposes in order to enhance transparency and integrity in business transactions. Yet, there is still a lack of effective sanctions on companies that bribe public officials.

There has also been an intensive legislative search in most countries for an overall amelioration of their acting against money laundering. Countries such as Croatia and Romania recently adopted relatively comprehensive anti money laundering

1. The Republic of Montenegro is one of the two republics of the Federal Republic of Yugoslavia.

legislation, and Albania and the Federation of Bosnia and Herzegovina took significant steps in the same direction. Countries such as Croatia have criminalised laundering of proceeds from serious crimes. This extends to bribery at national and international level. Furthermore, the majority of countries have laws aimed at depriving criminals, including persons engaged in corruption and bribery, of the proceeds of their offences.

Parallel to these efforts, countries of the region have taken measures to improve law-enforcement structures with the objective of curbing corruption and bribery. In particular, important efforts have been made to pass reforms aimed at enhancing the judicial police system and to set up specialised anti-corruption services. Such services have been created in Albania, Bosnia and Herzegovina, the Republic of Montenegro and Romania, and are under consideration or in the process of being established in Croatia and "the former Yugoslav Republic of Macedonia". Most countries are also committed to concluding new bilateral mutual legal assistance treaties with neighbouring countries and countries from outside the region in order to enhance effective sharing of evidence and extradition, and prompt international seizure and repatriation of forfeitable assets. Yet, all countries need to devote further attention to the law-enforcement structures and resources for pursuing the objective of curbing corruption.

Last but not least, there has also been a growing recognition among South-eastern European countries that the state administration has an important role to play in preventing corruption through a combination of interrelated mechanisms such as adequate control, guidance and public management. In this regard, important efforts have been made by SPAI countries to enhance public procurement and public expenditure management systems. Public procurement systems, largely based on the UNCITRAL Model Law, have been established in Albania, Croatia, "the former Yugoslav Republic of Macedonia" and Romania, and to some extent in Bosnia and Herzegovina, and public procurement legislation is under review in the Republic of Montenegro.

Public financial management has also been strengthened in most of the countries, and new civil service legislation, aimed at establishing a more open and equitable system of hiring government officials and at promoting the integrity of public officials, has been adopted in Albania, Croatia, "the former Yugoslav Republic of Macedonia", the Republic of Montenegro and Romania and is being developed in Bosnia and Herzegovina. In most of the countries, significant efforts have also been made to bring the legal framework for responsibility, roles and functions of financial control more into line with international requirements, to establish internal audit units and to strengthen the public sector external audit system by setting up independent State Audit Institutions. However, to a large extent, the effectiveness of internal and external audit structures remains weak.

In conclusion, considerable efforts have already been made by South-eastern European countries under the SPAI. All these efforts demonstrate the willingness

1. See attached chart on the adoption and implementation of European and international instruments.

of these countries to fight corruption and to implement the Stability Pact Anti-Corruption Initiative. Areas of difficulty remain, however, and much further work is required.

Where Do Countries Stand?

Adoption and Implementation of European and International Instruments

Significant efforts have been made by regional countries to accede to key international legal instruments containing anti-corruption related provisions.[1] Nevertheless, further actions are needed in all countries, in particular with regard to effective implementation of these instruments. Further steps are required for instance in Bosnia and Herzegovina and Romania, as these countries have not yet ratified the conventions that they have signed.

In most of the countries, measures have been undertaken or are under consideration to strengthen legislation related to international co-operation and mutual legal assistance in criminal matters. However, deficiencies, to a greater or lesser degree, are apparent in all countries. Additional efforts are required to make co-operation mechanisms more effective by further promoting direct contacts with judicial, prosecutorial and law enforcement institutions abroad and in the region, by establishing a network of contacts and by appointing and training officials who would be responsible for international co-operation with and in relevant institutions. Particular efforts are also required in countries such as Bosnia and Herzegovina, where the co-operation between entities appears to be limited.

A particular case is that of the Republic of Montenegro, which is part of the Federal Republic of Yugoslavia and not, as such, an international legal subject capable of acceding to international agreements and other mechanisms. Actions, such as promoting direct contacts and communication between judges and prosecutors, could help improve the effectiveness of mutual legal assistance in the republic.

Loopholes can also be observed in some countries in the field of data protection. The existence of European data protection standards is usually a pre-condition for the exchange of sensitive data among European countries. In this regard, efforts are required in countries such as Bosnia and Herzegovina, Croatia and Romania, where related legislation still needs to be adopted and implemented.

Promotion of Good Governance and Reliable Public Administrations

The Stability Pact Anti-Corruption Initiative requires countries of the region to strengthen their national procurement legislation to promote an efficient, open and transparent procurement process, to improve effectiveness, transparency and accountability in budget preparation, execution and control, and to establish professional and stable public services and efficient external audit institutions and practices in line with European and international standards.

1. No information is available for the Republic of Montenegro regarding this issue.

Public Procurement System

Significant efforts have been made by countries of the region since the beginning of the reform process to improve their public procurement system. The adoption of the SPAI in February 2000 gave further impetus to these efforts, encouraging countries participating in the Initiative to speed up the adoption of more effective measures. New public procurement legislation more in line with international standards has been adopted in Albania, the Federation of Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia" and Romania and is to be passed in the Republic of Montenegro. New legislation has still to be adopted in Republika Srpska and a revised law on public procurement, strengthening the existing legislation, is expected to be passed in Romania in the near future.

Further review of existing legislation is, however, needed in most of the countries in order either to bring the legislation fully into line with the WTO Government Procurement Agreement and/or EU Directives (Albania, "the former Yugoslav Republic of Macedonia" and Romania), or to enhance the transparency and efficiency of the public procurement system (Bosnia and Herzegovina and Croatia). In addition, secondary legislation needs to be adopted in almost all countries.

Deficiencies regarding the functioning of public procurement agencies can be noted in several cases. Remedial actions are needed to strengthen the existing agency in Albania and "the former Yugoslav Republic of Macedonia", and to set up an independent agency in Bosnia and Herzegovina, Croatia and Romania.

In some countries, such as Bosnia and Herzegovina and the Republic of Montenegro, efforts should also be made to introduce an independent appeals procedure, and in almost all countries measures introducing standard forms and documents to be used by procuring entities and suppliers are needed.

Public Expenditure Management System

In most countries of the region, noteworthy progress has been achieved in terms of reform of the public expenditure management system. Transfer of competence from the ZPP to the Treasury system is completed in all almost all former states of the Socialist Yugoslav Republic or will be completed by the end of 2001 in countries such as Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia". In the Republic of Montenegro related legislation is still to be passed. A final draft Government Budget Law is expected to be adopted by the Montenegrin Parliament soon.

In addition, several countries are currently working on further amendments to the legislation in order to strengthen central overseeing organisations and enhance procedures for public financial management.

Financial Control

Significant efforts have been made by SPAI countries during the past few years to adjust the legal framework for responsibility, roles and functions of financial control, in accordance with international requirements. The legal basis for internal

audit functions has been created in Albania, Croatia, "the former Yugoslav Republic of Macedonia" and Romania and internal audit units or sections have been established at the central and/or local levels in all countries save Bosnia and Herzegovina, where the setting up of an internal audit unit within the Ministry of Finance at the cantonal level is under consideration in the Federation. In the Republic of Montenegro, the creation of an internal audit unit is foreseen in the draft Government Budget Law prepared by the Montenegrin authorities. The effectiveness of these structures remains, however, weak in some of the countries.

In spite of these positive efforts, further measures are needed in all countries to strengthen legislation and develop the institutional framework in order to enhance the functioning and effectiveness of financial control. In particular, actions will need to be undertaken to create relevant control structures or to strengthen those already existing. The absence of internal auditing guidelines and methodology can also be noted in several cases.

Civil Service Capacities

Reform of civil service capacities has also been an important field of action for countries of the region. New civil service legislation has been passed in Albania, Croatia, "the former Yugoslav Republic of Macedonia", the Republic of Montenegro and Romania, and is about to be adopted in Bosnia and Herzegovina. Agencies for civil servants have been established in "the former Yugoslav Republic of Macedonia" and Romania and a civil service commission created in Albania.

However, in all countries, implementation of civil service legislation remains insufficient and institutions for management and control of the civil service will need to be strengthened – or created as in the Republic of Montenegro. Furthermore, in all countries, deficiencies can be observed in the training strategy. Specific efforts will also need to be undertaken to strengthen the salary system and develop a fair salary scheme for civil servants and public employees.

Public Sector External Audit System

As part of the efforts made by SPAI countries to promote good governance, public sector external audit systems underwent important changes in South-eastern European countries. State Audit Institutions independent from the government have been established in all countries of the region. In the Republic of Montenegro, a system of external audit is currently being established in co-operation with a private auditor.

However, further efforts are needed in all of these countries to secure the financial and functional independence of the State Audit Institution (SAI). Loopholes can also be noted in terms of staff training and management of the SAI and greater attention needs to be given to the development or updating of strategic development plans and to the adoption and implementation of auditing standards.

Strengthening Legislation and Promoting the Rule of Law

The SPAI Compact and Action Plan requires that countries of the region develop an appropriate legal framework by criminalising corruption and money laundering, set up independent specialised anti-corruption units and strengthen the investigative capacities of criminal justice institutions.

Criminalisation of Corruption and Money Laundering

The adoption of the Stability Pact Anti-Corruption Initiative gave significant momentum to the efforts undertaken by SPAI countries to improve their anti-corruption and money-laundering legislation and bring it more into line with European and international standards. However, important differences in countries' legislation can be noted.

Money laundering is not criminalised on the whole territory of Bosnia and Herzegovina, and the Republic of Montenegro legislation does not provide for a separate criminal offence in respect of money laundering. According to the Montenegrin authorities, in the course of 2001 a new law is to be prepared, introducing money laundering as a separate criminal offence. Loopholes can also be identified in the provisions introduced by some countries to criminalise money laundering. Certain countries, for instance, still have a limited list of predicate offences and do not criminalise the negligent offence of money laundering.

Deficiencies regarding the criminalisation of corruption can also be observed in several countries. Bribery of foreign and international officials is not explicitly criminalised in Albania, Bosnia and Herzegovina, the Republic of Montenegro and Romania.

Finally, insufficiencies regarding the monitoring of the effectiveness of legislation and central/harmonised data collection on corruption offences can be noted in a number of countries.

Specialised Units and Investigative Capacities

Considerable efforts have been undertaken by SPAI countries to move forward in the establishment of specialised units as required under the SPAI Compact and Action Plan. Specialised anti-corruption services have been established in Albania, the Republic of Montenegro and Romania. Although the existence of specialised investigative units has not yet been formalised in legislation in Bosnia and Herzegovina, the concept of anti-corruption task forces composed of prosecutors and police officers has been developed in this country. In the other countries, the establishment of specialised services is underway. Croatia, for example, is in the process of establishing the Office for the Prevention of Corruption and Organised Crime. The effective creation of these services and the strengthening of those existing already will need to be monitored under the second phase of the SPAI.

As regards investigative capacities, significant efforts are still required. In all countries, deficiencies in the institutional capacities to investigate and prosecute

corruption cases can be observed. In particular, inter-agency co-operation needs to be improved and specialisation within the prosecution and the police enhanced, in particular through training for prosecutors, the police and the judiciary, and for financial intelligence officers.

Loopholes have also been identified in the field of witness protection. Almost all countries still need to enact comprehensive legislation on the protection of collaborators of justice.

Finally, an important step in improving investigative capacities of corruption and money laundering offences is the existence of a comprehensive legal and institutional framework for the use of special investigative means with due regard for human rights (providing necessary control mechanisms and the oversight of the judicial authorities). In this respect, further actions are required in Albania and Romania to improve the legal and institutional framework for the use of special investigative means, while "the former Yugoslav Republic of Macedonia" and the Republic of Montenegro still need to enact the legislation that would permit their use.

Promotion of Transparency and Integrity in Business Operations

Under the Stability Pact Anti-Corruption Initiative, countries of the region are required to free business deals of corrupt practices through the enactment of effective measures to combat active and passive bribery in business transactions, the development of open and transparent conditions for domestic and foreign investment, modern accounting standards and adequate internal and external controls on companies accounts, and through other measures aimed at strengthening the efforts of corporations themselves to combat corruption.

Preventing Bribery of Public Officials in Business Transactions

In a region where bribery in business transactions is widespread, cleaning-up business deals constitutes a priority objective for the governments of the region. Considerable efforts have been made by South-eastern European countries under the Initiative to criminalise bribery of public officials and enhance transparency of the regulatory system for doing business. Active and passive bribery are criminalised in all the countries, and the definition of both offences generally complies with international anti-bribery standards. The level of imprisonment sanctions provided for natural persons in relation to the offence of bribing a public official is in line with international standards in all the countries, although in Croatia and the Republic of Montenegro it is lower than the level of sanctions provided for similar offences such as theft, fraud and embezzlement. The level of fines, however, when they are provided, appears insufficient in almost all of the countries.

Jurisdiction is exercised in all countries on both a territorial and nationality basis, and some countries, such as "the former Yugoslav Republic of Macedonia", Albania, Croatia and Bosnia and Herzegovina, have established an additional jurisdiction in relation to criminal offences committed by foreigners against the country's and the citizens' interests. Bribery of a public official is an extraditable

offence in all countries, subject to certain conditions such as dual criminality. However, a national cannot be extradited in any of the countries. Furthermore, in all countries except Croatia, which intends to improve its legislation on this point, the statute of limitations for investigation and prosecution of bribery offences is very much in line with the statutes that are applied in OECD countries.

Despite these positive achievements, a number of loopholes can be observed. In some countries, there are deficiencies with regard to the definition of the "public official" who may not be bribed. In particular, the definition of the public official does not appear to be precise enough in Albania, and should be enlarged in the Republic of Montenegro, where certain categories of public officials are excluded from the scope of the offence of bribery. In addition, several countries (Albania, Bosnia and Herzegovina, the Republic of Montenegro and Romania) do not criminalise bribery of a foreign public official. "The former Yugoslav Republic of Macedonia" (only partially) and Croatia have recently introduced this offence into their legislation.

Corporate liability is also an issue of concern. International standards call on establishing effective, proportionate and dissuasive sanctions on legal persons for the bribery of public officials and it appears that none of the countries is up to these standards. In almost all countries, non-criminal sanctions (namely, civil or administrative sanctions) that can be imposed on companies bribing public officials are insufficient. None of the countries has so far established the criminal liability of legal entities, but Croatia and Romania have prepared draft legislation establishing corporate criminal liability.

The issue of non-punishability, when the perpetrator of the bribery offence has been asked to bribe and reports the fact voluntarily to the competent authorities before its discovery, is also an issue of concern. Such a provision, which exists in Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", the Republic of Montenegro and Romania, presents a potential for misuse and emphasis should be put on its practical implementation.

On the enforcement side, loopholes regarding the legislation governing the confiscation of the bribe and its proceeds have been identified in almost all the countries. Mutual legal assistance is provided in all countries pursuant to the provisions of international or bilateral treaties, or, in the absence of such treaties (for example, in Bosnia and Herzegovina, which has signed very few treaties), pursuant to the provisions of the Criminal Code. All countries provide for prosecutorial discretion in launching proceedings (principle of opportunity), and it appears that the independence of prosecution is not totally free from improper influence or concerns of a political nature. In Croatia, however, efforts have been made in order to submit the prosecutor's decision to launch or to stop proceedings to a judicial control.

Promoting Integrity in Businesses

As part of their efforts to clean-up business deals in their country, the governments of South-eastern European countries undertook to bring their legislation more into line with international standards by adopting new accounting and auditing laws in

order to instil transparent accounting methods and to help detect suspicious payments. Legislation in force in all countries criminalises non-compliance with accounting regulations and denies deductibility of bribes for tax purposes. Furthermore, all countries have developed or are currently developing legislation to render procedures for foreign investments and international business more transparent (for example, by instituting, as in Croatia recently, the principle of equal treatment of both foreign and domestic capital).

However, further steps are required in Albania, Bosnia and Herzegovina and the Republic of Montenegro to strengthen financial, criminal and civil provisions aimed at prohibiting the use of "off-the-books" or secret accounts, and in Croatia, Romania and "the former Yugoslav Republic of Macedonia" to ensure that corporate fines concerning violations of accounting crime are effectively imposed. Loopholes can be observed in several countries, especially Albania, Bosnia and Herzegovina and the Republic of Montenegro concerning the legislation on private auditing. Further efforts are needed in these countries to enact legislation providing for independent auditing and in Romania and "the former Yugoslav Republic of Macedonia" to strengthen such auditing practices.

In all countries, efforts are needed to promote changes in business conduct, in particular via accounting and fiscal education of the business community, and further involving the private sector in the anti-corruption reform process in order to promote self-implementation of sound business practices.

Concluding Remarks

This report is the fruit of the assessment work undertaken under the first phase of the SPAI. It reviews anti-corruption policies developed in countries covered by the Initiative and analyses the needs and gaps of South-eastern European countries in terms of legal and institutional framework and practices. While considerable efforts have been invested in the preparation of this report, information may not always be complete. Information provided corresponds to the situation in South-eastern European countries as of May 2001. The report, which includes recommendations for reform, will serve as a reference tool for the expertise and monitoring phase that the Initiative has now entered.

1.2. An Overview of Adoption and Implementation of European and Other International Instruments

Accession to international conventions	Albania	Bosnia and Herzegovina	Croatia	"The former Yugoslav Republic of Macedonia"	Federal Republic of Yugoslavia	Romania
Criminal Law Convention on Corruption – COE	Signed on 27/01/99	Signed on 01/03/00	Ratified on 08/11/00	Ratified on 28/07/99	–	Signed on 27/01/99
Civil Law Convention on Corruption – COE	Ratified on 21/09/00	Signed on 01/03/00	–	Signed on 08/06/00	–	Signed on 04/11/99
Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime – COE	Signed on 04/04/00	–	Ratified on 11/10/97 Entry into force on 01/02/98	Ratified on 19/05/00 Entry into force on 01/09/00	–	Signed on 18/03/97
Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – OECD	–	–	–	–	–	–
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	–	Party	Party	Party	–	Party
United Nations Convention on Transnational Organised Crime	Signed	Signed	Signed	Signed	Signed	Signed
Trafficking Protocol	Signed	Signed	Signed	Signed	Signed	Signed
Smuggling Protocol	Signed	Signed	Signed	Signed	Signed	Signed
Participation in:						
Group of States against Corruption (GRECO) – COE	–	Accession on 24/02/00	Accession in Dec 2000	Accession on 06/10/00	–	Accession on 07/05/98
Select Committee for the evaluation of anti -money-laundering measures (PC-R-EV) COE	Y	N	Y	Y	N	Y
Working Group on Bribery in Business Transactions (OECD)	N	N	N	N	N	N
The *ad-hoc* Group on non-members of the OECD Working Group on Bribery in Business Transactions	N	N	Y	N	N	Y

1.3. Corruption and Governance[1]

Governance refers broadly to how power is exercised through a country's economic, social, and political institutions. Governance combines two concerns: how the executive is held accountable[2] for its actions and whether the executive has the capability[3] to deliver basic regulatory and social services, including protection from crime and violence.

Corruption is a major symptom of poor governance. To analyse trends and incidences of corruption in South-eastern Europe (SEE), which – for the purpose of this report – includes Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Federal Republic of Yugoslavia, "the former Yugoslav Republic of Macedonia" and Romania, it is therefore important to look at the level of accountability and capability in each of these countries. The analysis is carried out at four levels:

1. SEE Governance in a regional perspective
2. Governance within the SEE region
3. Different SEE environments in which to do business
4. Challenges for individual SEE countries.

The analyses rely solely on an important new source of data on governance and corruption in transition economies – the *1999 Business Environment and Enterprise Performance Survey (BEEPS)* commissioned jointly by the World Bank and the EBRD. In this survey, more than 3000 enterprise owners and senior managers in 22 countries were asked questions on the obstacles in the business environment. By using this large enterprise survey, it is possible to draw general conclusions with respect to accountability and capability of the public institutions in each of the countries. However, we should keep in mind that enterprises have a particular perspective and that other actors might see government actions differently.

Most SEE, central and eastern Europe and Baltic states (CEE/Baltics)[4] and countries of the Commonwealth of Independent States (CIS)[5] participated in the BEEPS survey, thus providing data for this chapter.[6]

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1. This section of the report is based on the working paper by Sandra Bloemenkamp & Nick Manning, with Sergio Lozoya, Corruption in South East Europe – an overview, World Bank, 2001.
2. *Accountability* reflects arrangements that enable citizens to express their preferences and to hold public officials accountable for translating these preferences into results. These arrangements include a fair and transparent electoral process, with power-sharing arrangements to protect minority groups, as well as mechanisms to incorporate civil society and local governments within the policy-making process.
3. *Capability* refers to the capacity of governments to deliver basic regulatory and social services. These services can only be undertaken by governments that have some core public management elements in place. Capable governments face only modest problems with the implementation and supervision of such basic administrative tasks and traditional public disciplines prevail: formal rules are not disconnected from practical realities, the budget on paper is to be taken seriously; and staffs are constrained within some clear standards of behaviour.
4. *Central and eastern Europe (CEE):* Czech Republic, Hungary, Poland, Slovak Republic, Slovenia; Baltic states: Estonia, Lithuania, and Latvia.
5. *Commonwealth of Independent States (CIS):* Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, the Russian Federation, Ukraine and Uzbekistan.
6. The only SEE country for which data is not available is the Federal Republic of Yugoslavia (FRY). Moldova, as an observer to the Stability Pact Anti-Corruption Initiative (SPAI), has, for the purposes of this analysis, been included in the SEE region.

Following the methodology of the World Bank report *Anti-Corruption in Transition: A Contribution to the Policy Debate,* an analysis of the BEEPS survey can generate broad indicators of corruption in two general areas, namely "state capture" and "administrative corruption":

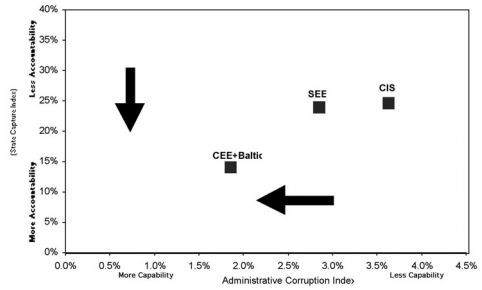
– High "state capture' means that individuals, groups or firms in the public and private sectors have ample opportunities through bribes to influence the formulation of laws, regulations, decrees and other government policies to their own advantage. Captured states are less accountable and political actors may serve special interest groups rather than the interests of those that elected them. High state capture reflects a form of non-accountability.
– High "administrative corruption" means that the implementation of existing laws, rules and regulations is influenced by bribe payments to public officials, including such examples as bribes to gain licences, smooth customs procedures, win public procurement contracts, or receive priority in the provision of a variety of other government services are common. High administrative corruption occurs more easily in states with weak institutional and supervision structures; it reflects low capability.

To measure state capture, the BEEPS asked firms to identify the impact that a number of channels of corruption had on their business.[1] A state capture index was then constructed as the average of these six corruption channels and measured in terms of the percentage of firms affected. Administrative corruption is measured as the percentage of the firm's annual revenues that managers report being used for illicit or unofficial payments. By interacting the state capture and administrative corruption indexes, a typology of corruption has been developed that is useful in identifying the level and pattern of corruption across countries.

"SEE" Governance in perspective

First, the SEE region is compared to its two neighbouring regions, CEE/Baltics and the CIS. In particular, the average results of levels of "state capture" and "administrative corruption" are looked at using the typology of corruption above.

Figure 1 – Typology of corruption by region (state capture versus administrative corruption)



1. These channels were: central bank mishandling funds, sale of parliamentary votes, sale of presidential decrees, sale of court decisions, sale of arbitrage decisions and contribution by private interests to political parties.

As Figure 1 shows, SEE as a region appears to be in between two worlds: on the one hand, we see the serious state capture, political distortions, and high administrative corruption of the CIS region and, on the other hand, there are the less problematic results found in the CEE/Baltics region.

Following the economic, political, and social transition of the early 1990s, instability and fragmentation have caused particular problems for the SEE region. And, in some cases, civil and political unrest have compounded these problems and may have added to a weakening of some of the state structures.

Weak states have less capacity to deliver basic public goods, such as regulatory and other services, including protection from crime and violence, securing border control and providing for basic infrastructure, such as telecommunications, roads and utility services. Weaker states are also less consequential in their attempts to influence economic processes. Governments of weak states will intervene less often in their economies, but such a *laissez-faire* approach may be a symptom of a larger issue; these states may have more difficulty to actually control and supervise their public service delivery systems to ensure effective end efficient implementation of government policies. In other words, such states have a capability problem.

The BEEPS data have been further examined to evaluate and compare firm responses that relate to the differences in capacity of the three regions to deliver basic government services, particularly with respect to the creation of a supportive environment for businesses. And we find evidence that SEE, on average, appears to have more difficulty in delivering such basic government services than the average in the CEE/Baltics or CIS states. Some of these results can be observed in Figures 2, 3 and 4 below.

Asked about the main threats and obstacles to business, SEE firms rate their governments as poor in respect to the delivery of several basic public services that are critical for private sector growth (Figure 2). These enterprises report particularly that there are serious problems in SEE in the area of law and order as well as with infrastructure.

Fig 2.- Threats and obstacles to business--"capability matters"
(% of respondents answering yes)

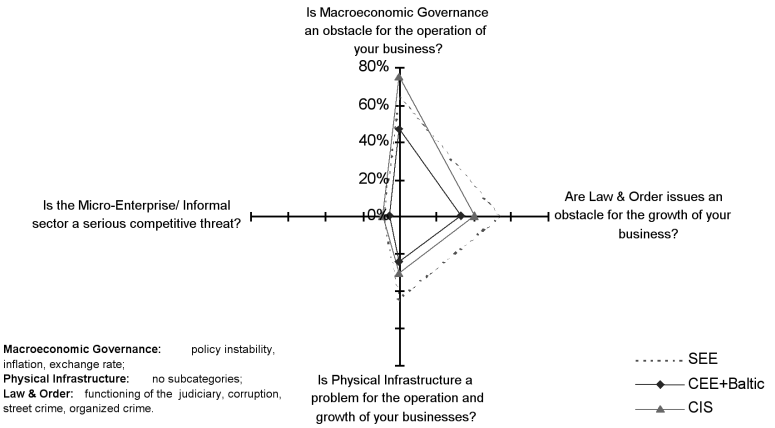
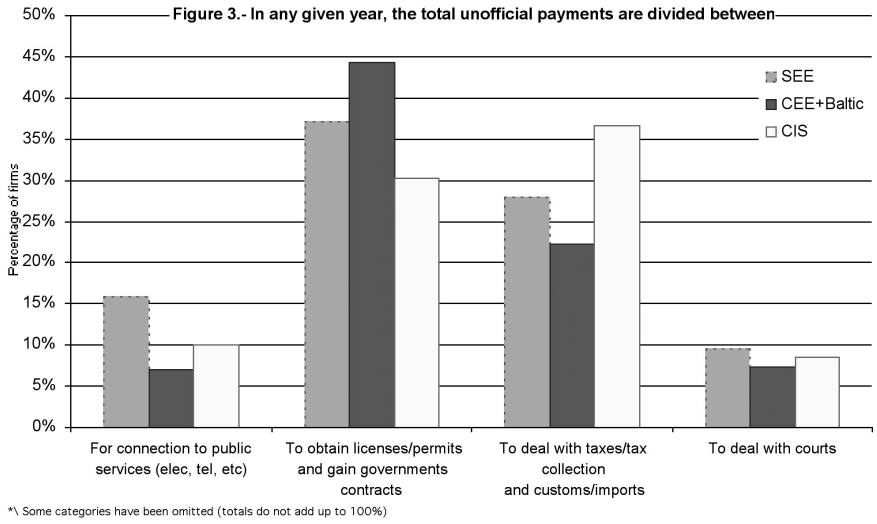
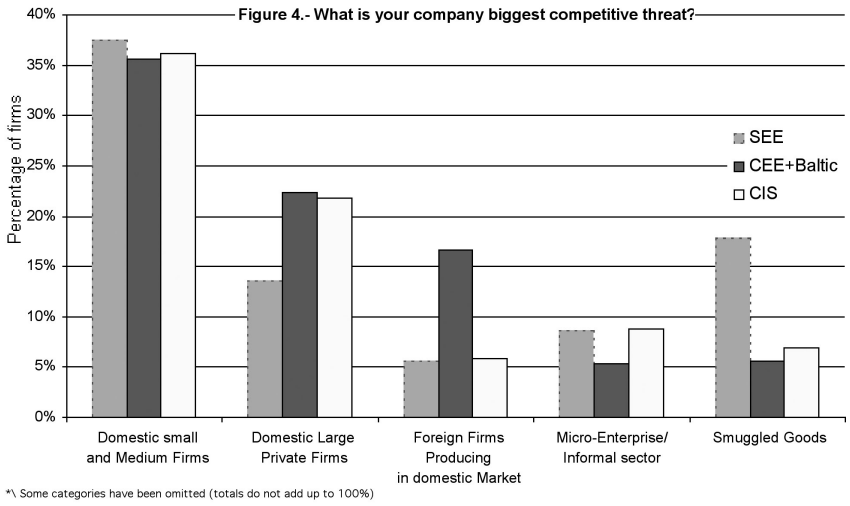


Figure 3 shows the share of total bribes that firms pay for different purposes. For SEE they report – on average – that they spend nearly three times as much of total bribe payments to get connected to basic public services, such as telephone, electricity and water, as firms in the CEE/Baltics or CIS). This suggests the extent to which firms must pay bribes in the SEE for the provisions of basic public goods.



The survey also suggests that SEE countries have much more substantial problems in securing basic control over their borders. Asked what are the biggest competitive threats to their businesses (Figure 4), almost 20% of SEE respondents cite "smuggled goods", a figure nearly three times higher than the CIS and five times higher than the CEE/Baltics.



Governance within the SEE region

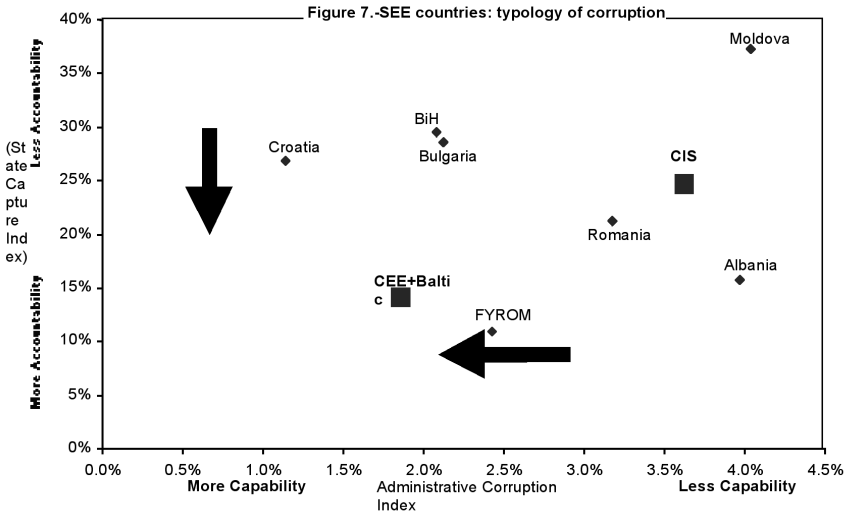
Deepening the analysis to evaluate and compare the governance performance of individual countries within the SEE region reveals wide variations between individual countries. Figure 7 shows that the average indicators for the SEE as a region mask more than they reveal.

Although there are important differences among all seven countries, drawing on the analysis of the "anti-corruption in transition" typology, Figure 7 indicates that SEE countries manifest three different types of poor governance:[1]

– Medium Capture/High Administrative Corruption: Albania and "the former Yugoslav Republic of Macedonia";

– High Capture/Medium Administrative Corruption: Bosnia and Herzegovina, Bulgaria and Croatia;

– High Capture/High Administrative Corruption: Romania and Moldova.



Albania and "the former Yugoslav Republic of Macedonia" seem less influenced by powerful interest in the formulation of policies, laws and regulations, but show higher levels of administrative corruption. These countries have extremely underdeveloped public administrations and lack control and accountability mechanisms within the state. Their institutional capacity is inadequate to ensure proper implementation of basic policies or regulatory frameworks. The lack of capacity for adequate, day-to-day operational supervision of government agencies and individual staff results in persistent, harassing and administrative corruption.

1. This understanding is based on the BEEPS data alone, the Bank has proposed to develop baseline governance data and develop "score cards" that could test this understanding.

Bosnia and Herzegovina, Bulgaria and Croatia seem to have more institutional capacity and are hence more able to prevent administrative corruption. However, while having a higher level of capability, they are also more likely to be "captured" by powerful vested interests encoding advantages for privileged firms directly into the legal and regulatory framework. These countries show a higher concentration of power by vested interests and weak structures for monitoring and accountability. They run the significant risk that powerful groups may block any additional reforms that threaten the distortions that are the source of their concentrated gains.

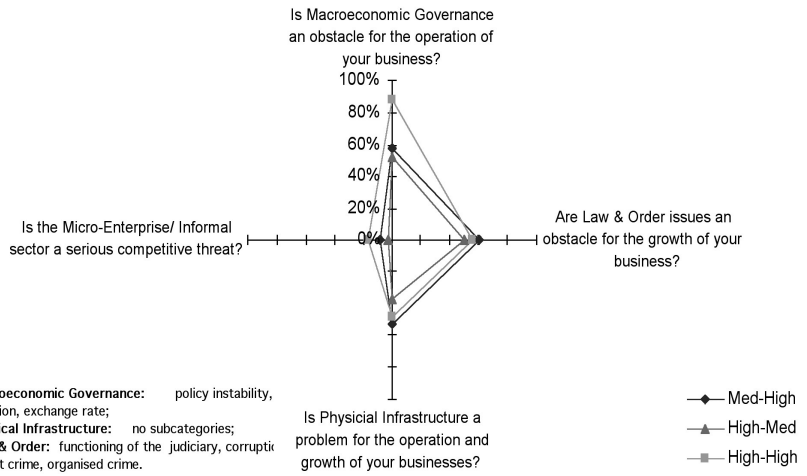
Moldova and Romania show a combination of high state capture and high administrative corruption. These states have to deal with highly concentrated economic interests as well as the limited implementation capacity of government. Often, anti-corruption constituencies are weak and countervailing interests face restricted channels of access. These states combine weak state capacity with the hold of powerful interests on the policy-making process.

The next section looks at the SEE region divided in these three groups and compares their performance in a number of different dimensions.

Different "SEE" environments in which to do business

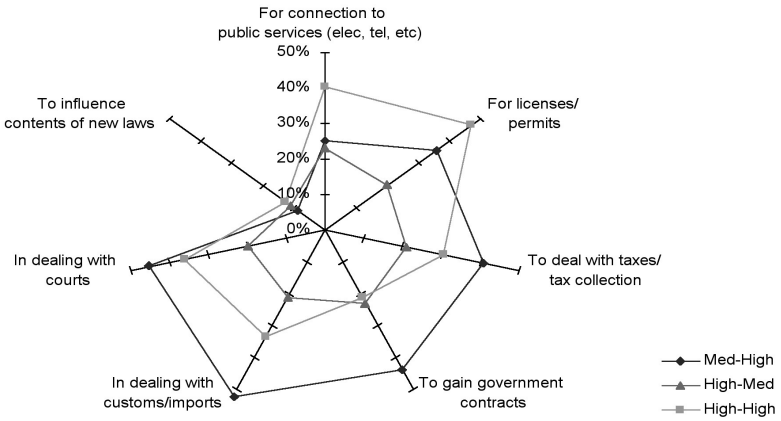
Figure 8 shows the main obstacles in the business environment as perceived by firms in each of the three groups. Looking at the combined effect of a number of indicators to evaluate a government's performance to provide a supportive business climate – macroeconomic policy, basic law and order, infrastructure and size of the informal sector – we find evidence that the "more capable" countries with lower administrative corruption indeed perform significantly better in the delivery of basic public goods. Clearly, capability matters for government performance. It is also interesting to note that enterprises in countries that score high on both capture and administrative corruption are reporting significantly more obstacles in all these four areas; so accountability matters as well.

Figure 8.- SEE countries: Threats and obstacles to business--"capability matters"
(% of firms answering Yes)



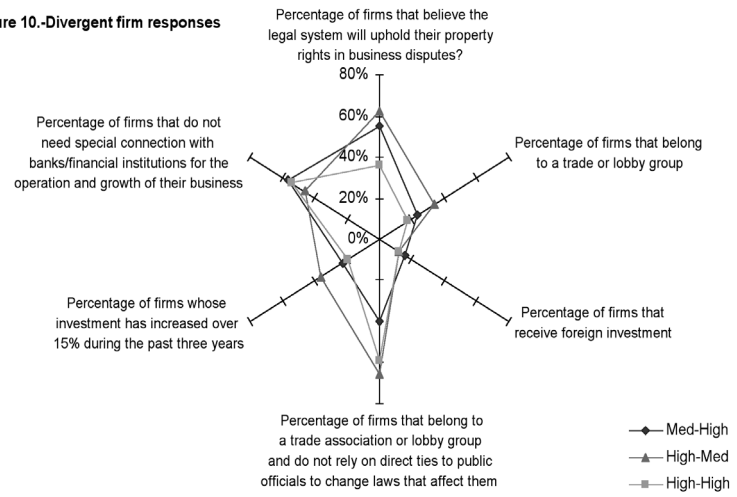
The bribery profiles differ significantly within the three groups. Figure 9 indicates that firms in countries with high administrative corruption (but lower state capture) report higher levels of informal payments in most of the categories. The day-to-day running of a business in countries with weak public service delivery systems is clearly difficult.

Figure 9.- Bribes profiles differ (% of firms that pay for the following services)



Governments that have problems in delivering basic public services and are unable to protect firms from threats of weak law and order, insufficient infrastructure and a poor macroeconomic environment can be expected to produce a distinctive business climate. Figure 10 shows the assessment of the business environment by the firms in each of the three groups. Firms in countries with high capture/medium administration corruption are more confident that property rights will be upheld, these firms are growing faster, and they are more likely to use formal channels in their interaction with governments (namely, increased membership of forma

Figure 10.-Divergent firm responses



1.4. Overview of Recommendations for Reform under Pillars I to IV

Pillar I: Adoption of European and other international instruments

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
• Promote the actual application of existing instruments on bi- and multilateral co-operation by adopting secondary legislation, institutional reforms and training programmes. • Continue with efforts to make co-operation mechanisms more effective by further promoting direct contacts with judicial institutions abroad and in particular of other countries of the region, establishing a network of contacts and training officials who will be responsible for international co-operation with and in relevant institutions. • Establish information systems – in accordance with European data protection standards – to facilitate international information exchange.	• Accede to relevant European and other international instruments. In particular, ratify the Council of Europe Criminal and Civil Law conventions on corruption, and accede to the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime. • Adopt legislation and accede to relevant European instruments in the field of mutual legal assistance in criminal matters/extradition; take measures to make international co-operation, in particular mutual legal assistance, more effective by promoting direct contacts between judges and prosecutors, specialising and training staff, and by supporting judicial networking at European and international levels. • Adopt legislation on data protection as a basis for enhanced international exchange of information in line with the international standards.	• Accede to the Council of Europe Civil Law Convention on Corruption. • Improve national data protection legislation and standards as a basis for enhanced international exchange of information fully in line with the standards set by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) and Recommendation R (87) 15 regulating the use of personal data in the police sector. • Take measures to make international co-operation, in particular mutual legal assistance, more effective by promoting direct contacts and communication between judges and prosecutors, specialising and training staff, and by supporting judicial networking at European and international levels.	• Accede to the Council of Europe Civil Law Convention on Corruption. • Take measures to make mutual legal assistance more effective by promoting direct contacts and communication between judges and prosecutors, specialising and training staff, and supporting judicial networking at European and international levels.	• Despite the constraints on the Montenegro's capacity to accede to international agreements, the Republic of Montenegro should consider making a particular effort to apply all other relevant international standards. These include the forty recommendations of the Financial Action Task Force on Money Laundering (FATF), the Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials signed at the 1999 Global Forum on Fighting Corruption, and the experience of the European Union in the field of combating corruption. • Take measures to make mutual legal assistance more effective by promoting direct contacts and communication between judges and prosecutors, specialising and training staff, and supporting judicial networking at European and international levels.	• Ratify the European Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, Criminal Law Convention on Corruption and Civil Law Convention on Corruption and adopt implementing legislation. • Ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and adopt national data protection legislation as a basis for enhanced international exchange of information. • Finalise the draft legislation on international legal co-operation and in particular on mutual legal assistance and ensure its effective implementation. • Take measures to ensure an effective enforcement of foreign confiscation orders and provisional measures on behalf of other states. Consider measures to enable the sharing, as well as the receipt, of confiscated assets.

Pillar II: Promotion of good governance and reliable public administration

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Public procurement system					
• Review the Public Procurement Law and its implementing regulations in order to bring the legislation fully into line with the WTO Government Procurement Agreement and EU Directives. Draft new guidance documentation and standard tender documents. • Strengthen the public procurement agency. • Develop a public procurement training programme for civil servants.	• Review the existing decree in order to increase the transparency and efficiency of the public procurement system. • Set up an independent policy-making/supervising Public Procurement Agency. • Introduce an independent appeals procedure accessible to all potential suppliers. • Develop and introduce a Public Procurement Law in the Republika Srpska. Introduce secondary legislation and standard forms and documents to be used by both procuring entities and suppliers.	• Revise the existing Public Procurement Law in order to increase the transparency and efficiency of the public procurement system. • Introduce secondary legislation and standard forms and documents to be used by both procuring entities and suppliers. • Set up an independent policy-making/supervising Public Procurement Agency.	• Draft and adopt amendments to the Public Procurement Law, and related secondary legislation, that will bring the legislation fully into line with EU and other international requirements. • Build up the central policy-making capacity in public procurement and reinforce capacity in the contracting entities.	• Adopt the Public Procurement Law including provisions for an independent appeals procedure and introduce the secondary legislation, standard forms and documents to be used by both procuring entities and suppliers, including the Procurement Manual and guidelines. All public servants should be made aware of the operation of the Procurement Law to ensure that the government reaps the maximum benefit from effective purchasing policy.	• Complete work on implementing the new Public Procurement Law, and draft and adopt the necessary secondary legislation. • Strengthen the complaints review system, including drafting and adopting the required legislation. • Strengthen the capacity of the Public Procurement Department of the Ministry of Finance or, preferably, create an independent Public Procurement Office.

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Public expenditure management system					
• Implement the Organic Budget Law, adopt the necessary secondary legislation, undertake an organisational review of the Ministry of Finance and implement the necessary changes. Integrate the procedures for preparing current and capital expenditure budgets.	• Combine all budget functions in one unit and strengthen this unit in stages by adding to its functions those associated with treasury operations. • Establish a Treasury Single Account (TSA) and a treasury general ledger accounting system. • Finalise the abolition of the Central Payments Bureaux at state, entity and cantonal levels and replace them with a direct treasury system.	• Strengthen both the Budget Law and supporting legislation and the central organisations (especially their enforcement mechanisms) overseeing budgeting, treasury and internal control. • Develop standardised accounts, budgets, and procedures for public financial management. • Move all revenues and spending on budget to allow the management of public finances at a national level.	• Further develop medium-term economic forecasting and budgetary models and a medium-term expenditure framework. • Strengthen capital investment budgetary procedures in areas such as priority setting, integrating capital investment in the overall budget and investment appraisal techniques.	• Adopt a draft Government Budget Law as soon as it is practicable and, thereafter, immediately begin the process of enactment by restructuring the Ministry of Finance. Detailed financial regulations and instructions should be prepared as soon as possible after the passing of the Government Budget Law and brought into force by ministerial decree, as provided for within the law. • Prepare detailed training manuals for all aspects of financial management and staff trained in the new systems. In addition, internal audit guidelines and standards should be issued by the Minister for Finance, based on the appropriate international standards.	• Ensure that the draft Law on Public Finance is approved and arrangements put in hand for implementing its key provisions. For example, multi-year budgeting, improved budget preparation, transparent budget documentation and performance budgeting. • Reduce the number of extra-budgetary funds, special funds and the use of earmarked revenues. • Develop an integrated and fully automated financial management information system covering all relevant procedures (budgeting, accounting and cash management through the treasury) and users

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Financial control					
• Enact a Law on Internal Audit in order to define the objective, scope and remit of internal audit and the rights and duties of internal auditors. • Establish a Government Audit Committee in order to increase the effectiveness of the decentralised internal audit units and help safeguard their functional independence. • Complete the preparation of the new Chart of Accounts and coding system in line with the requirements of international standards related to functional and economical budgetary classification. • Establish relevant structures and resources for control of revenues from taxes and customs. • Elaborate national internal auditing guidelines based on international standards (Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Auditors and INTOSAI Guidelines as Internal Control Standards).	• Set up a treasury system ensuring the possibility of aggregating account data and working towards more transparency and exchange of information between the different administrative levels. • Create uniform budget and accounting legislation and regulations for all the entities. • Create better understanding of financial management and accountability among public officials and, in particular, among those with a budgetary responsibility. Invest in training, thus reducing the lack of adequate competence constituting high risk for misuse of funds or simply plain mistakes.	• Amend the Budget Law to formally establish the Budget Supervision Office within the Ministry of Finance, strengthen the penalties for over-spending budgeted resources and violating the Budget Law. Strengthen the Budget Supervision Office with additional staff and resources to properly carry out its duties. • The Budget Supervision Office should focus on ex post audits, with particular attention on how to evaluate the internal control and audit functions within each ministry until such time as these functions are well established and operating effectively. The Budget Supervision Office should also develop and issue guidance and standards for ministry internal control and audit functions to assure quality and consistency. The Budget Supervision Office could also assist in developing professional standards of training for ministry auditors.	• Establish relevant structures and resources for control of revenues from taxes and customs. • Decide the intended overall structure of financial control in the public administration.	• Establish a control structure comprising the legal and institutional basis (Financial Control Unit and Internal Control Unit). • The Central Bank should continue to act effectively as the fiscal agent of the government. • Seek to improve the data provided in the Annual Budget Law. The Minister for Finance should issue detailed instructions for internal control following the passing of the Government Budget Law. • All ministries should develop effective Accounting and Control Sections to work in harmony with the Budget Office and Treasury. • Legislation to establish the proposed Government Revenue Agency should be drafted and enacted in 2001.	• Develop an overall concept of financial control built on the verification of the impact and effectiveness of the existing financial control system. • Draw up and put into effect an implementation plan for the creation of an internal audit function. • Introduce appropriate internal audit methodologies and develop manuals. • Carry out pilot internal audits. • Review progress on – and accelerate as necessary – the introduction of systems to prevent and take action against irregularities and to recover amounts lost.

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Civil service capacities					
• Strengthen the institutions for the management and control of the civil service (Department of Public Administration, Civil Service Commission and heads of personnel at institutions and ministries, including the Register of Personnel) and the salary system. Create a School of Public Administration and develop a training strategy for public managers at state and at local government levels.	• Adopt the state Law on the Civil Service. Make the managing institution for the civil service foreseen in the draft law operational.	• Secure consistent implementation of the Civil Servants Act so as to professionalise recruitment and career advancement practices. Strengthen the central civil service management capacity. • Develop a training strategy for all civil servants at state and local government levels with the objective of promoting the required cultural change and enhancing managerial capacity. Strengthen public administration training capacities.	• Make the Agency for the Management of the Civil Service operational and create human resource management capabilities at ministerial and institutional levels. • Adopt a strategy for the redeployment and training of civil servants and public employees at state level. Create a School of Public Administration. Adopt a fair salary scheme for civil servants and public employees.	• Create a central civil service management capacity and develop a civil service training strategy and associated institution.	• Adopt a fair salary scheme for civil servants and public employees and a redeployment scheme. • Adopt a training strategy for public managers and civil servants at large to promote the necessary cultural change and the values contained in the new Civil Service Law.

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Public sector external audit system					
• The State Audit Institution should ensure that the legislative framework for audit strengthens its institutional, financial and operational independence. It should consider the updating of the strategic development plan setting out its position and future needs regarding the adequacy of the legal framework, the adoption and implementation of auditing standards, the management of the State Audit Institution, staff training and development, and its role in encouraging internal control. • The parliament should consider its arrangements for dealing with audit reports, preferably instituting an impartial and non-politicised Audit Committee and formal requirements for government response to parliamentary and State Audit Institution recommendations. It should also ensure that the State Audit Institution establishes itself as a credible and impartial institution.	• The Council of Ministers should adopt the Salary Rule Book so as to allow the SAIs to assume their audit responsibilities. The Budget allocated to the SAIs must be commensurate with the objectives and mission of the institutions. All SAIs must adopt their internal rules and procedures and staff training programmes.	• Croatia should have a constitutional provision guaranteeing the financial and functional independence of the Croatian State Audit Office as recommended in the INTOSAI Lima Declaration. • The Audit Office should develop a strategic development plan, adopt its own (national) auditing guidelines and develop its permanent training programme.	• The State Audit Office should consider the preparation of a strategic development plan setting out their position and future needs regarding the adequacy of the legal framework, the adoption and implementation of auditing standards, the management of the State Audit Office, staff training and development, their role in encouraging internal control and information technology developments.	• Prepare necessary legislation to establish an independent "national audit institution" at an early date. Such an institution must be independent from the government and independent from involvement in routine government financial management operations.	• Elaborate and adopt a strategic development plan based on the peer review conducted in 2000. • Review the audit methodology in order to develop and disseminate the INTOSAI auditing standards, adapted to Romanian circumstances, and start working on audit manuals and revision of audit methodology. • In order to build up a stable line of communication between the Romanian Parliament and the Romanian Court of Audit, and to make better use of the court's findings, the establishment of a specific standing committee in parliament, assigned to handle the reports of the Court and other audit related questions, should be considered.

Pillar III: Strengthening legislation and promotion of the rule of law

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Criminalisation of corruption and money laundering					
• Enhance the effectiveness of the confiscation and provisional measures regime. • Consider the publication of regular reports on the corruption situation and on measures taken in the country.	• Criminalise bribery of foreign and international officials and money laundering, and adopt specific criminal money laundering legislation establishing an effective confiscation and provisional measures regime. • Ensure the implementation of anti-corruption strategies adopted by the entities and implement the framework policy for the state. Consider the publication of annual reports on the corruption situation in the country as a tool in monitoring the effectiveness of anti-corruption measures. • Pursue the institutional reform of the judiciary and the police, in particular by adopting relevant legislation providing for greater independence and establishing sustainable and independent structures for the administration, training and funding of these important powers.	• Review the confiscation and provisional measures regime to make it fully operational. • Consider the preparation of annual reports on the corruption situation in the country as a tool in monitoring the effectiveness of anti-corruption measures.	• Finalise the drafting, adoption and implementation of the Law on Corruption and the Law on Money Laundering that would ensure the establishment of compulsory reporting systems. • Review provisions concerning confiscation and provisional measures to enhance their effectiveness and ensure that general and specific provisions are consistent. • Consider the publication of an annual corruption situation report as a tool in monitoring the effectiveness of anti-corruption measures.	• Introduce money laundering as a separate criminal offence in the Criminal Code and adopt specific money laundering legislation. • Extend the criminalisation provisions to foreign and international officials. • Consider the publication of annual reports on the corruption situation in the country as a tool in monitoring the effectiveness of anti-corruption measures.	• Finalise and implement the draft amendments to the Criminal Code that will criminalise active and passive bribery of foreign and international officials. • Improve money-laundering legislation by making all crimes predicate offences, introducing the concept of negligent money laundering, and making failure to report a separate criminal offence. • Review the confiscation and provisional measures regime by ensuring that the concept of "proceeds" is interpreted broadly in accordance with the Council of Europe convention, reconsidering the level of proof required to obtain confiscation orders, and ensuring a wider and earlier availability of provisional measures to secure proceeds. • Consider the publication of annual reports on the corruption situation in the country as a tool in monitoring the effectiveness of anti-corruption measures.

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Specialised units					
• Enhance specialisation within the prosecution and police, including the creation and strengthening of specialised units.	• Strengthen the Entities' Prosecutors' Offices through additional human and financial resources in order to increase their effectiveness. • Continue the reform of the police and the further development of the State Border Service; support further specialisation of the financial police. • Consider the establishment of a central co-ordination mechanism with investigative and executive powers independent from other governmental agencies. Institutionalise co-operation between the entities and enhance co-ordination with and among the international community to ensure greater efficiency and complementarity of action at state and entity level.	• Establish the Office for the Prevention of Corruption and Organised Crime. • Enhance inter-agency co-operation, in particular between prosecutors and the criminal police, and specialised units carrying out their functions with due regard for human rights.	• Establish the National Commission for the Prevention of Corruption (as foreseen in the draft Law on Corruption) and ensure that it is a multi-disciplinary body independent of any particular ministry, and that it has investigative and executive powers. • Create a co-ordinating body to enhance co-operation between the prosecutors and law enforcement agencies. • Create a Financial Intelligence Unit as foreseen in the draft Law on Money Laundering.	• Support for the further development of the structure and the activities of the new Agency for Anti-Corruption should be provided through international technical assistance programmes, including through training for the agency's staff. • Consider the establishment of specialised units within other government agencies, the prosecution service, the police, the judiciary and financial institutions, and provide them with sufficient inter-agency co-operation facilities and well-qualified and trained staff who exercise their duties with due respect for human rights.	• Establish the National Commission for Preventing and Counteracting Corruption or a similar mechanism to ensure co-ordination and co-operation among the various institutions involved in combating corruption. Close monitoring by the National Commission of the implementation of anti-corruption policies and strategies would be required to ensure that plans and strategies are translated into concrete actions and tangible results. • Improve the co-ordination between the different specialised units, which are to carry out their functions with due respect for human rights.

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Investigative capacities					
• According to the new implementing acts, there is a need to further enhance the legal framework and to establish the institutional framework introducing the concept of witness protection and support to persons who collaborate with justice agencies. • Enhance and improve the legal and institutional framework for the application of special investigative means with due respect for human rights. • Further promote specialised anti-corruption training for prosecutors, police and the judiciary, as well as for financial intelligence officers.	• Institutionalise and enhance co-operation between different agencies, notably through task forces of police and prosecutors. • Strengthen witness protection legislation and/or adopt special legislation on this subject. • Enhance the legal framework on the use of special investigative means with due regard for human rights. • Continue specialised training for prosecutors and the police, and enhance training on corruption for the judiciary.	• Improve the co-operation between the different agencies, notably following the establishment of the Office for the Prevention of Corruption and Organised Crime. Intensify co-operation between the Croatian National Bank and the law enforcement services of the Ministry of Finance. • Ensure available measures protecting collaborators of justice and witnesses are fully applied in cases of corruption, and adopt new draft witness protection legislation. • Improve the use of special investigative techniques with due regard for human rights. • Improve systematic and ongoing specialised training of police officers, prosecutors and judges. Design a training programme for the Office for the Prevention of Money Laundering.	• Take measures to ensure an effective co-ordination/ exchange of information between the police and the judiciary and set up a clear and more efficient division of labour and competencies between the investigative judges, prosecutors and police officers, in particular through adoption of the draft amendments to the Law on the Public Prosecutor's Office. • Improve witness protection and collaboration with justice agencies by adopting relevant legislation and setting up effective structures. • Establish the legal framework for the use of special investigative measures and ensure their application in corruption cases with due respect for human rights. • Establish regular and effective anti-corruption training programmes for prosecutors, the police, the judiciary and financial intelligence officers.	• Enhance inter-agency co-operation. • Take measures (including introducing a legal framework) to ensure protection of witnesses and collaborators with justice and ensure their effective application in corruption cases. • Use special investigative means with due respect for human rights. • Establish regular and effective anti-corruption training programmes for prosecutors, police, judiciary and financial intelligence officers.	• Improve inter-agency co-operation by providing the necessary structural and logistical framework. • Enact witness protection legislation. • Expand the legal framework for the use of special investigative means (including undercover operations) and ensure its use in investigation of corruption offences, while providing necessary control mechanisms and the oversight of the judicial authority. • Enhance specialised anti-corruption training for prosecutors, the police and the judiciary.

Pillar IV: Promotion of transparency and integrity in business operations

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Preventing bribery of public officials in business transactions					
• Review the elements of the offence of active bribery of public officials, including defences that could be used to circumvent liability by a defendant, in light of international instruments and take remedial action where necessary; broaden the prohibition to bar bribery of all public officials, including foreign public officials, in accordance with international standards. • Provide for adequate criminal, civil or administrative responsibility for companies bribing public officials, including procurement sanctions to enterprises that are determined to have bribed public officials, and ensure that the bribery of a public official is punishable by effective, proportionate and dissuasive criminal penalties. • Provide to the public all information concerning the number of investigations, prosecutions, court	• Use appropriate concepts with regard to the offence of bribery of public officials in business transactions. • Broaden the bribery prohibition to bar bribery of all public officials, including foreign public officials. • Provide for adequate criminal, civil or administrative responsibility for companies bribing public officials and apply procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials. • Ensure the effectiveness of jurisdiction between the two entities and make sure that the hiding of the bribe and its proceeds in the framework of business transactions is effectively sanctioned. • Provide to the public all information concerning the number of investigations, prosecutions, court cases and convictions, and collect and compile court decisions related to active and passive bribery of public	• Streamlining legislation, in particular by using appropriate concepts for the offence of bribery of foreign public officials in business transactions. • Review the level of sanctions for natural persons regarding the offence of active bribery and provide for adequate criminal, civil or administrative responsibility for companies bribing public officials; in particular, apply procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials. • Ensure that the hiding of the bribe and its proceeds in the framework of business transactions are effectively sanctioned. • Review the statute of limitations applicable to the bribery offence to allow for an adequate period of time for investigation and prosecution. • Submit, on a regular basis, a public report to the parliament, presenting the aims and results of the govern-	• Provide for adequate criminal, civil or administrative responsibility for companies bribing public officials, including procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials, and ensure that the bribery of a public official is punishable by effective, proportionate and dissuasive penalties. • Make sure that complaints of bribery of public officials in business transactions are seriously investigated by competent authorities and that prosecution is effective. • Develop and issue regular statistical reports on bribery offences in compliance with international standards. • Simplify procedures for mutual legal assistance in bribery matters involving corporations. • Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent	• Broaden the bribery prohibition to bar bribery of all public officials, including foreign public officials, according to international standards. • Provide for adequate criminal, civil and/or administrative responsibility for companies bribing public officials and apply procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials in accordance with international standards and practices. • Make sure that complaints of bribery of public officials in business transactions are seriously investigated by competent authorities and that prosecution is effective in accordance with international anti-bribery standards. • Provide to the public all information concerning the number of investigations, prosecutions, court cases and convictions; and collect and compile court decisions related to active and	• Broaden the active bribery prohibition to bar bribery of all public officials, domestic and foreign. • Provide for adequate responsibility for companies bribing public officials in the framework of the forthcoming amendments to the penal code; apply procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials. • Ensure that complaints of active bribery of public officials in business transactions are seriously investigated and prosecuted by competent authorities, free of political or other influence in compliance with international anti-bribery standards; review the two defences that are specific to the bribery offence and may present a potential for misuse. • Develop in compliance with international standards regular statistical reports on bribery offences. • Further tailor the laws and institutions on mutual legal

cases and convictions, and collect and compile court decisions related to active and passive bribery of public officials in business transactions for the same public information purpose. • Explore and undertake means to improve the efficiency of mutual legal assistance in bribery matters in the framework of international business transactions. • Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.	officials in business transactions for the same public information purpose. • Tailor the laws on mutual legal assistance to permit co-operation with countries investigating cases of active bribery of public officials in business transactions (country of the briber and country where the act occurred). • Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.	mental anti-corruption policy, and containing all information concerning the number of investigations, prosecutions, court cases and convictions, as well as a summary of judicial decisions related to bribery of public officials in business transactions.	administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.	passive bribery of public officials in business transactions for the same public information purpose. • Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.	assistance to permit full co-operation with countries investigating cases of bribery of public officials in business transactions (country of the briber and country where the act occurred). • Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.

Albania	Bosnia and Herzegovina	Croatia	FYROM	FRY/Montenegro	Romania
Promoting integrity in business					
• Strengthen financial, criminal and civil provisions aimed at prohibiting the use of "off-the-books" or secret accounts, and further develop banking, financial and other measures to ensure that adequate records are made available for inspection and investigation. • Further promote changes in business conduct, in particular through accounting and fiscal education of the business community.	• Strengthen enforcement rules aimed at sanctioning the use of "off-the-books" or secret accounts. • Enact legislation providing for auditing by independent professional auditors of the accounts of economically significant enterprises. • Develop banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation. • Promote changes in business attitudes and high corporate governance standards.	• Ensure that corporate fines can be imposed concerning violations of accounting crimes, and further develop banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation. • Further promote changes in business attitudes and high corporate governance standards. Consider establishing the full offence of commercial, private-to-private bribery.	• Ensure that corporate fines are imposed concerning violations of accounting crime. • Strengthen banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation. • Promote continuous changes in business conduct through training and public/private dialogue.	• Strengthen financial, criminal and civil provisions aimed at prohibiting the use of "off-the-books" or secret accounts. • Adapt to international standards the legislation providing for auditing by independent professional auditors of the accounts of economically significant enterprises and develop additional banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation. • Promote changes in business conduct, in particular through accounting and fiscal education of the business community.	• Strengthen banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation. • Hold regular consultations with the private sector in the framework of the SPAI National Anti-Corruption Team to give an opportunity to businesses to discuss with the SPAI Senior Representative organisational and other defects that are conducive to corruption from the business perspective.

2. Albania

2.1. Overview

Located in the western part of South-eastern Europe, in close proximity to Italy and Greece, the opening up of Albania in the early 1990s raised high expectations. However, legislative and institutional reforms did not keep up the pace, opening the way for widespread corruption.

According to an analysis carried out by the World Bank (*Anti-Corruption in Transition: A Contribution to the Policy Debate,* 2000) based on a 1999 survey of more than 3000 enterprise owners and senior managers in 22 transition countries, Albania scored relatively low among other east and South-east European transition countries regarding corruption issues. Certain forms of corruption were especially highlighted by firms doing business in Albania. The most important form, for almost half of the firms questioned, was the payment of bribes to public officials to avoid taxes and regulations. Other corrupt practices, which also influenced the firms' business, were the sale of court and arbitrage decisions (for more than 20% of the firms), the contribution by private interests to political parties (25%), the sale of parliamentary votes as well as the sale of presidential decrees (almost 10%). Furthermore, a large part of the firms (40%) stated that there were numerous cases of public officials appointing friends and relatives to official positions.

However, the past five years have witnessed a process of growing understanding of the damages that corruption can cause. In 1997, the newly elected government launched an anti-corruption initiative with donor support. This initiative involved both governmental and non-governmental actors and culminated in 1998 when the government developed a "comprehensive programme to combat corruption", which focused on civil service, customs and judicial reforms and opened the way to substantial legal reforms. A revised Anti-Corruption Plan was adopted in April 2000. Furthermore, in 1998, Albania adopted its first post-communist constitution. The new constitution establishes and secures a wide range of freedoms and democratic institutions, and received positive comments from the international community.

Legal and institutional developments

Over the past four years or so, Albania has undertaken a number of measures to curb corruption, focusing first on improving the legislative framework. Reforms include the adoption of a new Criminal Code (1995), a new Criminal Procedure Code (1996), a Budget Law (July 1998), a Law on the Organisation and

Note: This report was adopted by the SPAI Steering Group via the ten-day written procedure, which expired on 21 May 2001.

Functioning of the Judiciary in the Republic of Albania (1998), a Law on State Police (November 1999), a Law on Civil Service (January 2000), a Law on the Judicial Police (November 2000), a Law on the Prevention of Money Laundering (May 2000), a Law on the Organisation and Functioning of the Bailiff Service in Albania (January 2001), a Law on the Organisation and the Functioning of the Ministry of Justice (June 2000), a Law on the Creation of the Financial Police (December 2000) and a Law on the Organisation and Functioning of the Prosecution Office (2001). Additional laws and amendments to existing laws have been passed since 1997, and others are planned or being drafted, including a law on witness protection. As part of these efforts, Albania has become party to multilateral legal instruments containing anti-corruption related provisions.

Parallel to this legislative effort, Albania has become more aware of the importance of coherent institutions directed at both preventing and sanctioning corruption. From 1998 to 2000, Albania passed substantial reforms on the judicial police system and established, among other things, a judicial inspectorate at the High Council of Justice and a section of economic and financial crime at the Ministry of Public Order. An inter-ministerial Anti-Corruption Commission has also been established to ensure co-ordination between government institutions. In addition, an Anti-Corruption Monitoring Group (ACMG) has been established in the Office of the Minister of State. The task of the ACMG (which consists of high-ranking civil servants from different governmental institutions and independent state bodies) is to ensure the implementation of the Anti-Corruption Plan through monitoring and advice.

Public management measures aimed at promoting and upholding the integrity of public officials are being developed as well. For instance, some important steps have been undertaken to establish a system of government hiring of officials that would assure more openness, equity and efficiency and would promote hiring of more competent individuals. Albania has also adopted laws, management practices and auditing procedures with the aim of promoting the detection of corrupt activity.

The way ahead

In view of the political, social and economic impact that corruption has in Albania, the government understands the importance of further improving the legal and institutional framework for fighting corruption. The annex to the final Declaration of the Zagreb summit of 24 November 2000 indicates with regard to Albania that "the Union has commended the progress made (…) and it calls on the country's leaders to continue their efforts. The Union has decided to step up its co-operation and to spell out the reforms to be carried out. To this end, it has been agreed that a high-level EU/Albania steering group will be set up. A report will be submitted to the Council before the middle of 2001 in preparation for the negotiation of a stabilisation and association agreement".

2.2. Adoption and Implementation of European and Other International Instruments

Accession to international agreements

In 2000, Albania undertook efforts to accede to relevant international agreements and to participate in international co-operation and evaluation mechanisms.

In addition to the signing of the Council of Europe Criminal Law and Civil Law Conventions on Corruption in 1999 and 2000 and of the United Nations Convention against Transnational Organised Crime and the two protocols in 2000, Albania ratified the Council of Europe Civil Law Convention on Corruption in September 2000. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime was signed in April 2000 and according to information provided by the Albanian authorities, the instrument of ratification is soon to be deposited. The Council of Europe Criminal Law Convention on Corruption was ratified by the Albanian Parliament at the end of April 2001. Accession to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is under discussion. Albania is also part of the "OCTOPUS" programme jointly developed by the Council of Europe and the European Commission.

Albania is also party to two follow-up programmes to monitor and promote the full implementation of appropriate measures to combat corruption – the Council of Europe's Select Committee for the Evaluation of Anti-Money Laundering Measures (PC-R-EV), in the framework of the Financial Action Task Force on Money Laundering (FATF), and the Stability Pact Anti-Corruption Initiative's Steering Group. Albania also expressed its willingness to join GRECO.

Albania also participates in the Stability Pact Initiative against Organised Crime (SPOC).

Mutual assistance in criminal matters

In the field of international legal assistance, Albania is party to some key international instruments: the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition, European Convention for the Transfer of Proceedings in Criminal Matters, the European Convention on the Transfer of Sentenced Persons and some of the additional protocols to these conventions.

Bilateral agreements concluded with Greece, "the former Yugoslav Republic of Macedonia", Turkey, Italy, Egypt and Croatia contain provisions on mutual legal assistance in criminal matters. The recent adoption of several important laws (such as the Law on State Police in November 1999 and the Law against Money Laundering) has also improved the ability of Albania to co-operate internationally.

The Department of Jurisdictional Affairs and International Treaties at the Ministry of Justice is, in principle, the only competent body in the field of international

legal assistance, although direct contacts between judicial authorities are increasing.

The International Department within the General Prosecutor's Office serves as a contact point to support and speed up mutual legal assistance with judicial institutions abroad and in particular with the countries of the region. Following the first meeting between the representatives of Public Prosecution Offices of South-east Europe held in October 1999, the Public Prosecution Offices of "the former Yugoslav Republic of Macedonia" and Albania organise regular bilateral thematic meetings, allowing, *inter alia,* to deal with concrete cases. Direct contacts with prosecutors from Switzerland, Germany and Italy, and "the former Yugoslav Republic of Macedonia" have also been established.

Extradition is permitted if the extradited person will not be subject to proceedings in a third state (in some cases this restriction does not apply). Albania can also refuse extradition, *inter alia,* if the person is already the subject of proceedings in Albania or if there is no double incrimination. Except where international agreements provide otherwise, Albania does not extradite its own nationals, although they can be prosecuted in Albania for offences committed abroad. Co-operation in this area met some difficulties in the past when the death penalty was still applied in Albania. Today, difficulties occur in the co-operation with states with which no specific agreements exist.

The transmission of proceedings is regulated by the conventions to which Albania is a party. Co-operation in this field could be improved through better knowledge of foreign judicial systems and bodies.

In general, Albania is working to conclude more bilateral agreements and to designate contact points to facilitate international legal assistance in criminal matters.

The existence of European data protection standards is usually a pre-condition for the exchange of sensitive data among European countries. In Albania, the protection of personal data is regulated by the constitution and the Law on the Protection of Personal Information of 1999.

International co-operation in financial investigations and money laundering cases

The main institutions responsible for the investigation of economic crime are the Prosecution Office and the judicial police. There is an ongoing process to improve their ability and capacity to co-operate with other international partners in financial investigations and money laundering cases (new legislation in different fields is enhancing these efforts).

The law on money laundering prevention – which has been incorporated into the penal code – contains provisions promoting closer international co-operation between the Financial Intelligence Unit and other relevant international bodies in this field.

Recommendations for reform

1. Promote the actual application of existing instruments on bi- and multilateral co-operation by adopting secondary legislation, institutional reforms and training programmes.
2. Continue with efforts to make co-operation mechanisms more effective by further promoting direct contacts with judicial institutions abroad and, in particular, with other countries of the region, establishing a network of contacts and training officials who will be responsible for international co-operation with and in relevant institutions.
3. Establish information systems – in accordance with European data protection standards – to facilitate international information exchange.

2.3. Promotion of Good Governance and Reliable Public Administrations

Since 1997, the Albanian commitment to public administration reform has been supported by the international community's co-ordinated Programme and Assistance to State Institutions and Public Administration Reform. Since 1998, the Department of Public Administration at the Prime Minister's office has been reinforced. In 1999, this department developed a comprehensive, inter-ministerial public administration reform strategy that encompasses the main public governance areas, including local government. Numerous key achievements in terms of legislation can be identified, such as the adoption of a new Civil Service Act, the creation of the Supreme Audit Institution and the adoption of the Organic Budget Law. However, the implementation gap between the existing legal framework and public management practices remains a source of concern.

Public procurement system

Legal framework

The Public Procurement Law No 7971/1995 is largely based on the UNCITRAL Model Law, but also contains influences from other sources, such as the World Bank, the WTO Government Procurement Agreement and the European Directives on public procurement. It has been amended twice since 1995. Three regulations (Nos. 1, 3 and 12), all effective from January 1996, have been adopted by the Council of Ministers to support the application of the law. They define the thresholds governing the use of the various procurement methods, the size of tender and performance securities, the various time limits, the role and mandate of the procuring entity, the composition and role of Tender Evaluation Commissions and the award criteria and tender evaluation procedures.

The Public Procurement Law applies to public procurement and covers all public sector entities, central, regional and local authorities, funded by the state or local budget, including public undertakings within the utility sectors. The law does not contain any provisions on domestic preferences. The Public Procurement Law establishes a central Public Procurement Agency, whose role and responsibilities are described in Section 2 below.

Open Tendering with or without pre-qualification is the preferred method. The other methods, to be used in well-defined situations or in exceptional cases, are Restricted Tendering, Two-stage Tendering, Request for Proposals, Request for Quotations and Direct Procurement (as defined in the UNCITRAL Model Law). An interesting and unusual feature in the Public Procurement Law is the introduction of special rules for international tendering, which are triggered by the nature and not the value of the contract. It is also interesting to note that the Request for Proposals procedure has been fully adapted to facilitate the procurement of services, which is a deviation from UNCITRAL.

Other significant features of the Public Procurement Law and supporting regulations are: (i) the thresholds for the application of Open Tendering, which are 5 million Lek for works contracts, 3 million Lek for goods, and 1 million Lek for services;[1] (ii) the requirement for procuring entities to publish invitations for tenders and pre-qualification proceedings in the *Public Procurement Bulletin;* (iii) the requirement for the Public Procurement Agency to establish a Tender Evaluation Commission that is responsible for the opening, examination and evaluation of tenders. This Commission is composed of no less than five members; the Chairman is the Deputy Head of the procuring entity. The commission has the authority to make award decisions; (iv) the award criteria of lowest price or most economically advantageous tender; (v) a two-step award procedure, the first step being the establishment of a ranking list of the tenders by the Tender Evaluation Commission, which is officially announced to the participating tenderers, and the second step the confirmation of the award recommendation, if no objection from the tenderers on the ranking list has been received within ten days of the tender announcement; and (vi) the complaints review procedure, which closely follows the administrative review procedure laid down in the UNCITRAL Model Law, but is not compatible with the EU Directives.

Institutional framework

The role, main functions and mandate of the Public Procurement Agency are defined in Article 8 of the Public Procurement Law. The Public Procurement Agency reports to the Council of Ministers, with the Director of the Public Procurement Agency being appointed by the Prime Minister. The Prime Minister is also responsible for appointing an inter-disciplinary Consultative Board, composed of representatives from major procuring entities at central and local government level. The role of the Board is to comment and provide advice on the overall functioning of the procurement system and on proposals prepared by the Public Procurement Agency for the consideration of the Council of Ministers.

The main responsibilities of the Public Procurement Agency are to draft legislation and regulations, monitor procurement activities, administer the Procurement Bulletin, perform administrative reviews of complaints, and assist procuring entities with advice and other support for a correct application of the Public Procurement Law. The agency has nine employees whose job descriptions are defined in Regulation No. 496 establishing the Public Procurement Agency.

As part of the amendments proposed to the Council of Ministers, the Public Procurement Agency has requested the establishment of an internal statistical function in order to strengthen its monitoring capacity. The procuring entities will be obliged to report to the Public Procurement Agency on specific elements in their procurement operations.

At a formal level, the position of the Public Procurement Agency as a quasi-independent authority is established by Government regulations. These regulations are

1. European Union thresholds are 200 000 euros for goods and services and 5 million euros for construction works contracts.

broadly satisfactory. However, at a practical level, there are strong indications that the Public Procurement Agency has insufficient capacity to ensure proper enforcement of the Public Procurement Law.

Public expenditure management system

Legal framework

The Organic Budget Law on the Preparation and Execution of the State Budget was passed in July 1998. This comprehensive piece of legislation, which is based on an IMF Model Law, contains general principles and definitions of public finance; budget preparation, presentation and approval; budget execution; government borrowing and debt; budget accounting, inspection and auditing; and violations and penalties. Other relevant legislation includes laws on accounting, debt management and local government finance. Some of these laws, however, need to be updated, and made compatible with the Organic Budget Law.

Secondary legislation, however, is generally unsatisfactory. Many of the regulations required to implement the Organic Budget Law have either not been drafted or need updating to bring them in line with good international practice.

Institutional framework

The Ministry of Finance has a staff of approximately 400 persons, about 220 of which are in the Treasury Department (mostly in 36 district offices). Employees working on budget-related or fiscal issues are located in the departments dealing with fiscal analysis, macroeconomic policy, accounting and internal control.

Although the professional quality of many of the staff seems to be quite high, the working culture of a centrally planned economy with a "Ministry of Accounting" remains strong in many areas. Many staff in the budget and treasury departments are highly qualified but undertake essentially routine tasks. The present allocation of staff between different areas and responsibilities is also questionable. For example, it may be advantageous to redeploy the employees currently working for the Budget Department in district offices into more analytical tasks. The possibility of merging the Fiscal Analysis and Macroeconomic Departments should be considered. Staffing of the Internal Control Department will need to be expanded and retrained as new control procedures are introduced. Modernisation of the Treasury Department over the next few years will also have significant resource implications for staff and information systems.

As noted above, important reforms are already taking place – the establishment of a Medium-Term Budget Framework – and reforms of key areas such as accounting systems, treasury, integration of capital and operational budgeting and internal control are under active consideration. However, organisational restructuring of the Ministry of Finance should also be considered.

Financial control

Legal framework

The responsibilities, roles and functions of financial control are not set out in existing legislation in a coherent and comprehensive way although several components are defined in different laws and decisions (Civil Service Law, Organic Budget Law, Law on Accounting, Law on the State Audit Institution, Law on Organisation and Function of Local Authorities, Law on Procurement, Laws on Taxes and Customs). These laws provide a good standard of legislation, but many of them have not yet been fully implemented. They need to be supplemented by implementing regulations and well established procedures.

The Law on Internal Audit has not yet been enacted. In consequence, there is no legislation on the co-ordination of standard setting and quality control responsibility of the Ministry of Finance in financial control, financial management and management/internal control systems, including internal audit mechanisms at the central and local government level.

Institutional framework

In May 2000, the Council of Ministers decided to establish internal audit sections at the level of central and local governments, including the 309 communes. The reorganisation of financial control is based on the Constitution of the Republic of Albania and the Law for Local Budget, the Law for Prefectures, the Law for the State Audit Institution, as well as Decision No. 248 of 1998 and its revision of 25 January 2001.

Under the above decision, each budget holder is now responsible for organising its internal audit unit. The Internal Audit Department of the Ministry of Finance should be responsible for the regulation, co-ordination and supervision of the internal audit of the central and local government institutions. At present, however, the three members of staff of the Department cannot fulfil these functions.

The internal audit mechanism described above needs further strengthening. A new Law on Internal Audit is in a preparatory phase. There are not enough staff available to provide an adequate internal audit solution in the Ministry of Finance, line ministries and other central and local government bodies. There is no tradition in the area of internal audit. There are no standards and manuals elaborated in line with international practices. The shortcomings of management controls and internal audit are not offset by the external audit performed by the State Audit Institution.

Civil service capacities

Legal framework

Article 107 of the constitution outlines the main characteristics of the civil service by establishing that: public employees apply the law and are at the service of the people; employees in public administration are selected through examinations; and guarantees of tenure and legal treatment of public employees are regulated by

the law. At the same time, the constitution requires that the status of the civil service shall be regulated by an organic law (Article 81). In March 1999, the Albanian Department of Public Administration prepared a draft Law on Civil Service to better align the civil service legal framework with constitutional requirements and with European civil service practices. Eventually, a new Law on Civil Service was adopted by the Albanian Parliament in November 1999. The law entered into force in January 2000.

The scope of the new law includes civil service positions exercising public authority or directly involved in policy making at the central and local self-government levels. The law draws a rather clear dividing line between political and professional civil service positions.

Institutional framework

The implementation of the Law on Civil Service has begun, albeit at a slow pace, which is mainly due to the resistance of line ministries to lose their powers to recruit and dismiss staff, as these competencies shall be closely monitored by the Department of Public Administration and are liable to be reviewed by the Civil Service Commission, an independent body created by the Law on Civil Service. Another obstacle is raised by a number of local governments, dominated by the political party in opposition until October 2000, that have boycotted the Civil Service Commission.

Public sector external audit system

Legal framework

The State Audit Institution (*Kontrolli i Larte i Shtetit*) of the Republic of Albania was established in 1992 as a parliamentary institution independent from government. In 1995, the State Audit Institution was given the power to fine auditees. When the Audit Act was adopted in December 1997, the institution became a collegiate authority to be governed by a board of three members. At the end of 1998, the current constitution was adopted, but its provisions do not indicate the type of State Audit Institution it should be (a court model or an office model).

Institutional framework

Following the latest amendment of the 1997 Audit Act in April 2000, the State Audit Institution is now a monocratic, office model, audit institution. Internal reorganisation took place accordingly. The audit activities are being led by the heads of the four audit departments.

The staff include some 300 people, 200 of whom are engaged in audit activities. However, the regional delegations are to be transferred to the Ministry of Local Affairs, so that audit of the financial management of the local government units is under the authority of the prefects (regions, urban municipalities and rural communities). This transfer will leave the State Audit Institution with a staff of some 140, 80 of whom will be engaged in audit activities.

Recommendations for reform

Public Procurement System

1. Review the Public Procurement Law and its implementing regulations in order to bring the legislation fully into line with the WTO Government Procurement Agreement and EU Directives. Draft new guidance documentation and standard tender documents.
2. Strengthen the Public Procurement Agency.
3. Develop a public procurement training programme for civil servants.

Public Expenditure Management System

4. Implement the Organic Budget Law, adopt the necessary secondary legislation, undertake an organisational review of the Ministry of Finance and implement the necessary changes. Integrate the procedures for preparing current and capital expenditure budgets.

Financial Control

5. Enact a Law on Internal Audit in order to define the objective, the scope and remit of internal audit and the rights and duties of internal auditors.
6. Establish a Government Audit Committee in order to increase the effectiveness of the decentralised internal audit units and help safeguard their functional independence.
7. Complete the preparation of the new Chart of Accounts and coding system in line with the requirements of international standards related to functional and economic budgetary classification.
8. Establish relevant structures and resources for control of revenues from taxes and customs.
9. Elaborate national internal auditing guidelines based on international standards (Standards for the Professional Practice of Internal Auditing published by the Institute of Internal Auditors and INTOSAI Guidelines as Internal Control Standards).

Civil Service Capacities

10. Strengthen the institutions for the management and control of the civil service (Department of Public Administration, Civil Service Commission and heads of personnel at institutions and ministries, including the Register of Personnel) and the salary system. Create a School of Public Administration and develop a training strategy for public managers at state and local government levels.

Public Sector External Audit System

11. The State Audit Institution should ensure that the legislative framework for audit strengthens its institutional, financial and operational independence. It should consider the updating of the strategic development plan setting out its position and future needs regarding the adequacy of the legal

framework, the adoption and implementation of auditing standards, the management of the State Audit Institution, staff training and development, and its role in encouraging internal control.

12. Parliament should consider its arrangements for dealing with audit reports, preferably instituting an impartial and non-politicised Audit Committee and formal requirements for government response to parliamentary and State Audit Institution recommendations. It should also develop an appropriate interest in ensuring that the State Audit Institution establishes itself as a credible and impartial institution.

2.4. Strengthening Legislation and Promotion of the Rule of Law

The SPAI Compact requires that countries create an appropriate legal framework by criminalising corruption and money laundering, ensuring appropriate remedies for victims and effective enforcement. Countries also commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence and protection in the exercise of their functions and which have the capacity to protect collaborators. Furthermore, countries are required to strengthen investigative capacities by fostering inter-agency co-operation, the use of special investigative means – while respecting human rights – and providing appropriate training.

Albania has made progress towards acceding to relevant international instruments and bringing its legislation in line with European standards. An Anti-Corruption Monitoring Group was recently established to monitor the implementation of the government's anti-corruption plan. However, the actual implementation and enforcement of legislation remains a challenge. Institutional capacities to investigate and prosecute corruption cases need to be strengthened, in particular through enhanced inter-agency co-operation and the specialisation of prosecutors and criminal and judicial police.

Criminalisation of corruption and money laundering

Criminalisation of corruption

Albania has recently taken further steps to bring its legislation in line with European and international standards, including several amendments made and which are still scheduled to be made in the Criminal and Criminal Procedure law. The latest amendments of the Criminal Code of Albania (adopted in February 2001) include a number of provisions that improved the criminalisation of organised crime, money laundering, drug trafficking, and economic crime. These amendments also expanded the scope of criminalisation in cases where perpetrators are public officials. The Criminal Code of Albania (Articles 244, 245 and 257-260) makes certain forms of corruption a criminal offence, including active and passive bribery of domestic public officials, trading in influence, etc. Punishments range from fines to between three and five years' imprisonment for passive bribery to seven years for active bribery. Cases of bribery of criminal justice officials may be punished by imprisonment of between three and ten years.

The Albanian Criminal Code (Article 45) provides for the responsibility of legal persons, though not specifically for corporate criminal liability. The Criminal Code is very precise on impunity. Sanctions for commercial companies are deregistration and confiscation. Provisions on economic crimes, including offences relating to customs fraud, taxation, counterfeiting, bankruptcy and illegal gambling, are contained in the Criminal Code Chapter II on criminal offences against property and in the economic field (Articles 134-200). However, some new forms of economic crime that have occurred in Albania recently are not covered.

Criminalisation of money laundering

Amendments to the Criminal Code from February 2001 introduced a separate criminal offence of money laundering. The Law on the Prevention of Money Laundering (No. 8610 of 17 May 2000) entered into force at the end of November 2000. Its focus is on prevention and not on incrimination of the offence or prosecution. The Criminal Code foresees confiscation of proceeds of crime to some extent; additional provisions are understood to be included in the revised Criminal Code, but the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, which was ratified in April 2000, is nevertheless directly applicable in Albania.

Effectiveness of legislation

The effectiveness, appropriateness and dissuasive nature of the legislation and sanctions are improving with the adoption of the new legislation, but are still limited as insufficient control mechanisms exist. The actual enforcement of anti-corruption legislation remains a major challenge. There is a lack of available data on the prosecution of bribery and other corruption cases, but research conducted indicates that bribery is very pervasive. Furthermore, there is no evaluation system to analyse the effectiveness of legislation. There are plans to establish a Central Statistics Office in the Ministry of Justice, which would enable collection of data in the field of the criminal justice system and enhance the possibility for the monitoring of the criminal justice system.

Specialised units

National co-ordination mechanism

An inter-ministerial Anti-Corruption Commission has been established under the Council of Ministers. The commission is to ensure co-ordination between government institutions. In April 2000, the government adopted the anti-corruption plan prepared by this commission. In practical terms, the Minister of State, who is at the same time the SPAI Senior Representative, manages this commission.

Specialised anti-corruption units

Following recommendations made by the Stability Pact Anti-Corruption Initiative and a SPAI technical assistance mission in September 2000, the Government of Albania established the Anti-Corruption Monitoring Group (ACMG). It consists of a Board and permanent unit that are expected to be fully operational by the end of 2001. A director was appointed in mid-February, but the ACMG is still experiencing difficulties finding staff for its permanent unit. The group will report through the Minister of State to the Prime Minister and the inter-ministerial Anti-Corruption Commission.

The main role of the ACMG is to ensure the implementation of the anti-corruption plan adopted in April 2000 through monitoring and advice, but it does not have investigative or executive powers. It therefore co-operates with a range of institutions that are obliged to provide information to the ACMG. The ACMG also sup-

ports the Minister of State in the implementation of the Stability Pact Anti-Corruption Initiative.

Specialised prosecutors

In order to strengthen the investigation and prosecution of economic crime, as well as to prevent it, the organisation of the work within the Prosecution Office was changed, including through the establishment of a specialised structure dealing with economic crime (including corruption). This consists of a group of senior prosecutors specialised in this field. The members of this structure have been trained in Norway and they will also undergo training in Denmark. However, the level of specialisation and capacities for corruption-specific investigations require further strengthening. According to the Albanian authorities, an important step towards this goal has been accomplished with the adoption of a new Law on the Prosecutor's Office and the new Law on the Judicial Police.

The new Law on the Organisation and Functioning of the Prosecutor's Office in Albania (March 2001) creates space for the establishment of special bureaux on the national level to prosecute serious crime, organised crime, trafficking and corruption cases. Also, new legislation has been under consideration for some time to establish specialised courts' sections on serious crime (including corruption related offences) that would be complemented by specialised prosecutors and specialised judicial police officers. Once this law has been adopted, a number of practical problems will need to be dealt with.

Specialised police units

Following the adoption of the Law on State Police in November 1999, numerous by-laws and other texts on police issues have been adopted or are under preparation. In January 2001, a decision was adopted by the government on the structure of the Ministry of Public Order and of the General Directorate of the Police. According to this new structure, the Section on Economic and Financial Crime will be responsible for combating financial crime and money laundering, fraud, and forgery and corruption.

The creation of an internal investigation service dealing with corruption and abuse of office within the police has been under consideration for some time but is still awaiting the adoption of a legal basis.

However, the Law on the Judicial Police (No. 8677 of November 2000) should help to strengthen the investigative capacities of the police and their co-operation with the prosecution, as it establishes specialised services within the judicial police dealing, for example, with economic crime. The Law on the Creation of the Financial Police (No. 8720 of 26 December 2000) establishes a specialised police service dealing with economic crimes, which should become operational by July 2001.

Financial intelligence units

The Law on the Prevention of Money Laundering provides for a Financial Intelligence Unit. The setting up process of this unit has already started and is still going on.

Investigative capacities

Interagency co-operation

The greatest difficulty encountered by Albanian prosecution bodies and the judiciary is the lack of specialisation and experience with inter-agency co-operation and multidisciplinary approaches. Efforts are underway to enhance co-operation between the prosecution services and the police, in particular in corruption cases. There are signs that inter-agency co-operation is improving (also due to a better legal framework). Much remains to be done, however. According to the Albanian authorities, inter-agency co-operation, in particular between the police and the prosecution, has already improved with the adoption of the new Law on the Prosecutor General and the Law on the Judicial Police.

Collaboration with justice and witness protection

The protection of witnesses and other vulnerable targets is of major concern in Albania, but at the same time protection structures are lacking. No legal basis exists regarding the protection of collaborators of justice, witnesses and victims, though a draft text on "protection and special benefits for persons helping the police" was submitted to parliament in January 2001. Special provisional measures will need to be drafted and/or followed in order for information provided by informers and collaborators of justice to be valid as evidence during the trial.

The Criminal Code and the Criminal Procedure Code regulate the application of measures encouraging collaborators of justice. In particular, Article 28 of the Criminal Code provides for the possibility of a reduction of sentences, a decision which can only be taken by a judge.

In practice, there is a lack of public confidence in the judiciary, and it is frequently impossible to find a witness for even the most serious criminal offences. Citizens are afraid to report complaints and suspected cases.

The general principle to compensate damages caused to a third party applies. There is no specific legislation in this field at the moment.

Use of special investigative means

Electronic surveillance, interception of telephone communications and searches are exercised and legally regulated. Bugging, undercover operations, controlled deliveries, pseudo-purchases or other pseudo-offences, observation and agents provocateurs are regulated by certain provisions of the Criminal Code, and other legislation provides for the competent organs to authorise such actions. Only some provisions in the Criminal Procedure Code and under specific sections of the Penal Code provide for standards and controls for the use of special investigative means.

Extensive amendments to the Criminal Procedure Code (approximately 100 articles), and other special laws are being drafted and will further regulate some types of special investigative means.

Specialised training

Systematic and specialised training for judges, prosecutors, police and other law enforcement officers in the investigation and prosecution of corruption-related cases is not yet available in Albania.

Recommendations for reform

Criminalisation of corruption and money laundering

1. Enhance the effectiveness of the confiscation and provisional measures regime.
2. Consider the publication of regular reports on the corruption situation and measures taken in the country.

Specialised units

3. Enhance specialisation within the prosecution and police, including the creation and strengthening of specialised units.

Investigative capacities

4. According to the new implementing acts, there is a need to enhance further the legal framework and establish the institutional framework introducing the concept of witness protection and support to persons who collaborate with justice agencies.
5. Enhance and improve the legal and institutional framework for the application of special investigative means with due respect for human rights.
6. Further promote specialised anti-corruption training for prosecutors, police and the judiciary, as well as for financial intelligence officers.

2.5. Promotion of Transparency and Integrity in Business Operations

The Stability Pact Anti-Corruption Initiative requires countries of South-east Europe to free business deals of corrupt practices through, inter alia: enactment and effective enforcement of laws aimed at combating active and passive bribery in business transactions, open and transparent conditions for domestic and foreign investment, the development of adequate external and internal company controls, and other measures aimed at strengthening the efforts of corporations themselves to combat bribery.

In a country where more than half of the firms admit they pay bribes to public officials, Albania's authorities are making determined efforts to prevent bribery of public officials and promote integrity in business operations. They have set out their priorities to review legislation aimed at preventing bribery of public officials, further improve the effectiveness of enforcement, and further instil an anti-bribery culture among companies. A new constitution, adopted in 1998, which lays the foundations for the establishment of democratic institutions and effective implementation of the principle of separation of powers, has provided renewed impetus for reform. Furthermore, there is wide acceptance within the country that Albania's future is a part of a democratic Europe.

Preventing Bribery of Public Officials in Business Transactions

Preventing and deterring bribery of officials in business deals require first of all making bribery of public officials a crime, levying significant penalties on those who bribe, including companies, and ensuring that jurisdiction, investigation and prosecution are effective. It is also essential that measures be taken to help companies to overcome pressure for bribes from officials. This includes the prohibition of passive bribery and the development of open and transparent conditions for investment.

Active bribery and the responsibility of companies

The offence of active bribery

Bribing an Albanian official with a view to obtaining or retaining business or any other improper advantage is a criminal offence in Albania. The offence is defined as the act of promising or giving a remuneration, a gift or any other benefit to an official in order for him to act or refrain from acting in relation to the performance of official duties.

The public official who may not be bribed is defined in the Albanian Criminal Code as any person "holding state functions or public service". The term is not further clarified in the Criminal Code. A definition of public officials is provided under specialised legislation such as the Criminal Military Code, the Law on Civil Service, laws on the judiciary, the Law on the Prosecutor's Office and other laws, as well as in the constitution. Thus, pursuant to Article 69 of the constitution, persons holding public duties would include: judges and prosecutors; military ser-

vicemen on active duty; staff of the police and of the national security; mayors of municipalities and communes as well as prefects; and the President of the Republic and high officials of the state administration contemplated by law. According to the Albanian authorities, additional legislation could be drafted to provide new elements, which should include the foreign public officials as persons who may not be bribed.

Pursuant to Articles 244 and 245 of the Criminal Code, bribing an official would be prohibited whatever the purpose of the bribe is (that is, obtaining a business, being awarded a public contract, obtaining a permit, etc.) and regardless of the form of the bribe – as long as it constitutes a "remuneration", "gift" or other "benefit". The prohibition would also apply whether the remuneration, gift or other benefit is only proposed or actually given to the official. Attempt, complicity and incitement (including authorisation) to bribe also constitute criminal offences.

Mitigating circumstances are provided for under Albanian law when the act is committed due to certain circumstances as defined by law or by the unified judicial practice, or committed under the instructions of a superior. According to international anti-bribery standards, bribing a public official should be an offence irrespective of perceptions of local customs, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage.

Corporate responsibility and sanctions of companies

International anti-bribery and anti-corruption standards require that countries at least establish effective, proportionate and dissuasive non-criminal sanctions for legal persons that bribe public officials. Albanian criminal law so far provides for general sanctions against legal persons pursuant to Article 45 of the Criminal Code, which provides that "if during a judicial investigation the court proves that a legal person exercises activity that constitutes criminal work, it may rule the total or partial cessation of the [criminal] activity and the confiscation of the earnings, means and every other property resulting from that activity". Imposing fines on legal persons, or conducting sequestration or confiscation are actions that are provided by other specific legislation.

However, the fact that a legal person cannot be subject to criminal prosecution in Albania does not mean that bribing public officials can be committed with impunity via corporations. As criminal liability applies to natural persons, a director, a manager, an administrator or a simple employee of a business entity would all be punishable in principle. Sanctions are either fines or imprisonment of up to five years, in a way that is consistent with sanctions for similar criminal offences in the Criminal Code such as theft, fraud and embezzlement.

Other criminal sanctions include the confiscation of the bribe and its proceeds (Article 36). Albania's Criminal Code also includes new provisions on money laundering.

Enforcement

International instruments call upon countries to establish broad jurisdiction over bribery acts in business transactions. Pursuant to Articles 6 and 7 of the Criminal Code, jurisdiction is exercised on both a territorial and a nationality basis in Albania. Albania can prosecute bribery offences by its nationals from abroad and by foreigners bribing from its territory. An additional jurisdiction is established in relation to criminal offences committed against the interests of Albania and its citizens by foreigners from abroad, in cases concerning human rights. In the absence of precedents, it is not clear whether this additional jurisdiction applies or not to the offence of bribery of public officials.

International instruments also require that investigation and prosecution of bribery offences shall not be influenced by considerations of national economic interests, the potential effect upon relations with another state or the identity of the natural or legal persons involved. The prospects for change have improved following the ratification of the new constitution, as it provides a foundation for judicial independence and high professional standards. New laws (amending those that have been passed since 1990) on judicial organisation and on the High Council of Justice have introduced further improvements into the existing system. External support for reform is being provided by the World Bank, the Council of Europe and the EU. Furthermore, the statute of limitations (five years from the date the offence of bribing a public official was committed), which is similar to the statutes applicable to the active bribery offence in most OECD countries, would allow an adequate period of time for the investigation and prosecution of the offence.

Mutual legal assistance in bribery matters is also an essential tool for enabling states to investigate and obtain evidence in order to prosecute cases of bribery of public officials in the framework of business transactions, as this form of crime most often involves two or more jurisdictions. Mutual legal assistance is provided either pursuant to the provisions of an international treaty or, in the absence of such treaties (which is most often the case in Albania), according to the principle of dual criminality, pursuant to the provisions of the Criminal Procedure Code. Extradition may be permitted only when it is expressly provided for in international agreements to which the Republic of Albania is a party, and only by judicial decision, and, as in many EU and OECD countries, extradition may be refused if the offender is a national (namely, an Albanian citizen).

The Albanian authorities stress the need and the importance of having mutual legal assistance agreements with a larger number of countries in order to improve further judicial co-operation.

Curbing pressure for bribes from officials

Extortion/solicitation

Albania has taken steps to help companies overcome pressure for bribes from domestic officials. Article 259 of the Criminal Code ("Asking for Kickbacks") provides that "a person holding state functions or public service who asks for or demands remuneration to which he is not entitled or which exceeds the amount

allowable by law, is punishable by a fine or up to seven years of imprisonment". Article 260 of the same code ("Receiving a Bribe") provides that "receiving remuneration, gifts or other benefits by a person holding state functions or public service and during their exercise, in order to carry out or to avoid carrying out an act related to the function or service, or to exercise his influence toward different authorities in order to provide to any person favours, gratuities, jobs and other benefits, is punishable by three to ten years of imprisonment".

Transparency of the regulatory system for doing business

According to an analysis carried out by the World Bank based on a 1999 survey of more than 3 000 enterprise owners and senior managers in 22 transition countries, at the end of the 1990s less than 20% of the firms were of the opinion that the government was "helpful" to their business. However, concerning the predictability and consistency of regulations, this indicator had slightly progressed from 1996-98. The percentage of firms doing business in Albania of the opinion that the legal system was able to uphold their property rights had increased between 1996 and 1998.

The Albanian authorities recognise that additional efforts are required to enhance the legal environment for businesses. Laws are sometimes inconsistent, leading to unreliability of interpretations and inconsistency in application, thus opening opportunities for pressure for bribes from officials. The government is tackling these issues to enhance the legal environment in terms of consistency and transparency. The Stability Pact's Investment Compact provides a framework for actions needed.

Promoting integrity in businesses

If governments have major responsibility in controlling bribery of public officials in business transactions, they have the corresponding responsibility to introduce sound internal and external company controls and to strengthen the efforts of corporations themselves to combat extortion and bribery.

Detecting suspicious payments

Accounting and auditing requirements

International standards require that within the framework of their laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, countries prohibit the making of falsified or fraudulent accounts, statements and records for the purpose of bribing public officials or hiding such bribery. International instruments also call for the provision of persuasive, proportionate and dissuasive penalties in relation to such omissions and falsifications.

Albanian accounting standards are based on Law No. 7661 "On Accounting", dated 19 January 1993. This law regulates the general conditions of bookkeeping principles, timing and procedures relating to inventories, asset and liability valua-

tion, profit and loss calculation, financial statement formats and auditing requirements.

Although all individuals or entities carrying out business or economic activities in Albania are subject to this law, and although penalties for non-compliance are provided for by the Criminal Code, company control is said to be often ignored and financial statements frequently falsified. Institutions that are expected to be a paragon of professional practice are also said to participate in the falsifying of company accounts as no dissuasive sanctioning of authorised auditing bodies regarding the falsifying of financial documents exists. Because of the absence of relevant principles and the lack of actual enforcement, national and international corporations in Albania do not meet the accounting and auditing standards. Acknowledging the importance of adequate accounting records for the overall effectiveness of the fight against bribery in business transactions, the government soon plans to tackle the issue of the accounting records of companies that import goods.

Tax treatment of suspicious payments

Effective taxation systems are in the relatively early stages of development. Current legislation does not qualify bribes to a public official as a deductible expense and public and private companies that falsify tax documents are subject to criminal sanctions. Falsification of tax documents has been minimised over the past year due to, among other factors, a new recruitment policy and training of tax officers. The authorities recognise that further measures are needed for optimising sanctions, law enforcement and tax examination to create an environment where bribery in business transactions is shunned. For this reason, the Albanian authorities expect assistance from the international community, in particular from the OECD, to improve tax administration and the efficiency and extent of tax control.

Instilling and anti-bribery corporate culture

Any lasting measures to counter corruption must be accompanied by the creation of a political coalition with the private sector that will defend the values of integrity. The government has already taken some important steps towards this goal. Thus, recently, the government took initial steps to solicit the ideas and views of business leaders: the Ministry of Economic Co-operation and Trade formed a business advisory council comprised of business representatives to discuss reforms with the government. The active participation of civil society representatives in the development of the country's anti-corruption programme is also a major pillar of such a coalition.

In order to further promote the participation of the private sector in the government's efforts to defend the values of integrity and the development of an anti-bribery corporate culture, the government is also working on new legislation on ethics dealing with specific professions such as auditors and public notaries. Albania's criminal legislation also already includes some sort of trading in influence offence and the 2000 law on political parties prohibits any kind of financial support to political parties from the business community. Furthermore, pursuant to

Article 9 of the 1998 Constitution, the sources of financing of parties as well as their expenses are always made public.

Government efforts to promote more transparent business practices are underway and are supported by the European Bank for Reconstruction and Development (EBRD), the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) and the Swiss Agency for Development and Co-operation.

Recommendations for reform

Preventing Bribery of Public Officials in Business Transactions

1. Review the elements of the offence of active bribery of public officials, including defences that could be used to circumvent liability by a defendant, in light of international instruments, and take remedial action where necessary; and broaden the prohibition to bar bribery of all public officials, including foreign public officials, in accordance with international standards.
2. Provide for adequate criminal, civil or administrative responsibility for companies bribing public officials, including procurement sanctions to enterprises that are determined to have bribed public officials, and ensure that the bribery of a public official is punishable by effective, proportionate and dissuasive criminal penalties.
3. Make all information concerning the number of investigations, prosecutions, court cases and convictions available to the public; and collect and compile court decisions related to active and passive bribery of public officials in business transactions for the same public information purpose.
4. Explore and undertake means to improve the efficiency of mutual legal assistance in bribery matters in the framework of international business transactions.
5. Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.

Promoting Integrity in Business

6. Strengthen financial, criminal and civil provisions aimed at prohibiting the use of "off-the-books" or secret accounts, and further develop banking, financial and other measures to ensure that adequate records are made available for inspection and investigation.
7. Further promote changes in business conduct, in particular through accounting and fiscal education of the business community.

3. Bosnia and Herzegovina

3.1. Overview

Bosnia and Herzegovina, one of the five successor states of the former Yugoslavia, is certainly one of the countries of the region that has experienced the most dramatic and chaotic history since the beginning of the transition in the early 1990s. Putting an end to a three-and-a-half year long war waged in Bosnia and Herzegovina, the Dayton Peace Accords (DPA), signed in Paris in December 1995, provided for the creation of two entities, the Federation of Bosnia and Herzegovina (FBiH), which covers 51% of BiH's territory and the Republika Srpska (RS).

While corruption already existed before the 1992-95 war, the breakdown in governmental structures that occurred during the war created an environment in which corruption could thrive. Bank fraud, custom fraud, tax fraud, procurement fraud, bribery and extortion flourished, hindering the development of a free market economy and the transition to democracy. Even though losses resulting from corruption are believed to be massive, they cannot be quantified accurately due to the lack of reliable data.

According to an analysis carried out by the World Bank (*Anti-Corruption in Transition: A Contribution to the Policy Debate,* 2000) based on a 1999 survey of more than 3000 enterprise owners and senior managers in 22 transition countries, all corruption indicators appeared to be higher in Bosnia and Herzegovina than in other east and South-east European transition countries. The forms of corruption particularly pointed out by almost half of the firms doing business in Bosnia and Herzegovina were the paying of bribes to public officials to avoid taxes and regulations, as well as the contribution by private interests to political parties. Other corrupt practices influencing the firms' business were the sale of court and arbitrage decisions and the sale of presidential decrees and of parliamentary votes (for almost 30% of the firms). Furthermore, 45% of the firms indicated that there were numerous cases of public officials appointing friends and relatives to official positions.

Although the authorities did make some effort to investigate and combat corruption, much of this effort was in vain due to the lack of political will of many government officials. In 1997, the Federation House of Representatives created a commission to address the problem and identify corruption-prone areas, but the commission lacked the power to work efficiently and was unable to obtain cooperation from governmental agencies. A second commission, created by the Chairman of the BiH Presidency, never became operational.

Note: This report was adopted by the SPAI Steering Group via the ten-day written procedure, which expired on 21 May 2001.

In view of the widespread endemic fraud and corruption in Bosnia and Herzegovina, and of the unsuccessful attempts of public authorities to counter the extension of corruption in the entities, the international community reacted by establishing an Anti-Fraud Unit within the Economic Department of the Office of the High Representative (OHR) in April 1998. In February 1999, the Anti-Fraud Unit presented its "Comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina" based on four strategic pillars: the elimination of opportunities for corruption, fostering greater transparency in public institutions, strengthening controls and penalties, and raising public awareness. This strategy opened the way to substantial legal and institutional reforms.

Legal and Institutional Developments

Over the past three years, Bosnia and Herzegovina and its two entities – under the leadership of the OHR – have undertaken a number of key measures to curb corruption, focusing first on improving the legal framework. Reforms include the adoption of new Criminal Codes for both FBiH and RS (adopted in 1998 and 2000, respectively), of a new Criminal Procedure Code for FBiH (adopted in 1998) and of money-laundering legislation (adopted in 2000) for FBiH. Additional laws or amendments to existing laws are being drafted, including a revised Criminal Procedural Code for RS.

Parallel to this legislative effort, the OHR has led the work on developing more coherent institutions directed at both preventing and sanctioning corruption. Thus, in co-operation with the entity prosecutors, the OHR has developed the concept of anti-corruption task forces composed jointly of prosecutors and police officers. The establishment of additional multi-agency task forces are envisaged in the anti-corruption strategies of the two entities.

Public management measures aimed at promoting and upholding the integrity of public officials are also being developed. For instance, some important steps have been taken to establish a system of government hiring of officials, including those in the judiciary, that would assure more efficiency and promote hiring of more competent individuals. The two entities are also beginning to adopt laws, management practices and auditing procedures with the aim of simplifying the detection of corrupt activity.

As part of these efforts, the country is now considering becoming party to multilateral legal instruments containing anti-corruption related provisions. Much remains to be done in this area, however, as Bosnia and Herzegovina is a signatory of only the Council of Europe's Criminal and Civil Law Conventions on Corruption and the United Nations Convention against Transnational Organised Crime, signed in March and December 2000, respectively.

The way ahead

In view of the political, social and economic impact that corruption has in BiH and the two entities, the political leaders must continue to improve the legal and institutional framework for fighting corruption. The annex to the final Declaration of

the Zagreb Summit of 24 November 2000 states, with regard to Bosnia and Herzegovina, that "the Union calls on the authorities of this country to continue their efforts, on the basis of the progress made, to enable Bosnia and Herzegovina to fulfil by the middle of 2001 all the conditions laid down in the 'road map' drawn up in spring 2000, so that the Commission can undertake a feasibility study". Using the impetus from the election of the new government of the BiH, it would be reasonable to undertake some additional activities, such as writing a letter encouraging the central government in its efforts to fight corruption and organising a high-level mission to all three prime ministers (of the BiH and both entities).

3.2. Adoption and Implementation of European and Other International Instruments

Accession to international agreements

The country has started to consider becoming a party to multilateral legal instruments containing anti-corruption and other related provisions (money laundering, international co-operation, etc.). Much remains to be done in this area however, as Bosnia and Herzegovina is only a signatory of the Council of Europe's Criminal and Civil Law Conventions on Corruption and to the United Nations Convention against Transnational Organised Crime and the two protocols, signed in March and December 2000, respectively. Among other key existing international instruments not signed by Bosnia and Herzegovina are the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the European Convention on Extradition and its additional protocols, and the European Convention on Mutual Legal Assistance in Criminal Matters and its additional protocol.

The country is party to two follow-up programmes to monitor and promote the full implementation of appropriate measures to combat corruption – the Council of Europe's GRECO programme and the Stability Pact Anti-Corruption Initiative's monitoring mechanism.

Bosnia and Herzegovina also participates in the Stability Pact Initiative against Organised Crime (SPOC).

Mutual assistance in criminal matters

Bosnia and Herzegovina has signed neither the European Convention on Extradition and its additional protocols nor the European Convention on Mutual Legal Assistance in Criminal Matters and its additional protocol.

Mutual legal assistance is covered by the Criminal Procedure Code of the Federation of BiH. Assistance is provided upon request through diplomatic channels, and, in urgent cases, through the Ministry of Justice. The legislation comprises a number of provisions regarding legal assistance, enforcement of foreign criminal judgments and extradition. The federation refuses to extradite nationals of Bosnia and Herzegovina, though they can be prosecuted in Bosnia and Herzegovina for offences committed abroad.

However, plans are underway to improve provisions on mutual legal assistance during the current reform of the criminal legislation in both entities.

International co-operation in financial investigations and money-laundering cases

Bosnia and Herzegovina has signed neither the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime nor the United Nations Convention against Illicit Traffic in Narcotic Drugs and

Psychotropic Substances. Its ability to co-operate internationally in financial investigations and money-laundering cases is very limited.

Recommendations for reform

1. Accede to relevant European and other international instruments, in particular ratify the Council of Europe's Criminal and Civil Law Conventions on Corruption, and accede to the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime.
2. Adopt legislation and accede to relevant European instruments in the field of mutual legal assistance in criminal matters/extradition, take measures to make international co-operation, and in particular mutual legal assistance, more effective by promoting direct contacts and communication between judges and prosecutors, specialising and training staff, and by supporting judicial networking at European and international levels.
3. Adopt legislation on data protection as a basis for enhanced international exchange of information in line with the standards set by the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) and Recommendation R (87) 15 regulating the use of personal data in the police sector.

3.3. Promotion of Good Governance and Reliable Public Administrations

Corruption in some of the state institutions of Stability Pact countries detracts from the efforts to promote economic growth and engender popular support for democracy. Poorly defined professional requirements and roles, inadequate accountability practices, weak control mechanisms, and low wages make public servants and politicians susceptible to improper conduct and foster poor administration. Practices inherited from the days of one-party rule inhibit development of and adherence to high ethical standards in the administration.

Public procurement system

Legal and institutional framework

The Decree of Procurement of Goods, Servicing and Contracting No. 175/98 (published in the *Official Gazette No. 31/08.10.1998*) constitutes the legal framework of the public procurement system in FBiH. This decree, however, has no authority in many of the cantons of the federation. No public procurement specific legislation exists in RS (some issues are mentioned in the very general Law on the Republika Srpska Government).

The decree is based and correlated on the Law on Allocation of Public Revenues and Law on the Budget of the FBiH. Many of the solutions are also based on the UNCITRAL Model Law.[1] The Decree has a limited scope (it does not cover defence and police procurement), applies only when budgetary funds are used and is not detailed enough to allow strong implementation. Secondary legislation would therefore be needed. Tenders are to be published, among others, in the FBiH *Official Gazette*. There are no provisions concerning dispute resolution and appeal possibilities.

A procurement law is currently being drafted by a group of domestic and World Bank experts. The draft Public Procurement Law is due to be presented shortly to the government by the experts' group.

Public expenditure management system

Legal framework

The Budget of Bosnia and Herzegovina is unique owing to the arrangements of the Dayton Agreement. This agreement established a multiple-level government. The highest level is the State of Bosnia and Herzegovina, which is composed of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. The federation is divided into cantons and both entities are divided, at their lowest levels, into municipalities.

Article 8.1 of the constitution states that "The Parliamentary Assembly shall each year, on the proposal of the Presidency, adopt a budget covering the expenditures

1. The UNCITRAL Model Law on Procurement of Goods, Construction and Services was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1994.

required to carry out the responsibilities of the institutions of BiH and the international obligations of BiH". However, the execution of the budget is dependent on the contributions of the two entities based on their revenue collection.

At the entity level, the Federation of Bosnia and Herzegovina has an Organic Budget Law and a Law on Treasury. The Treasury is established within the Ministry of Finance (Article 5 of the Budget Law).

The Federation Budget Law recognises the cantonal Ministries of Finance and establishes a treasury in each of these ministries. Cantonal legislation must be consistent with entity legislation, which in turn must be consistent with state law.

Institutional framework

At the state level, and until the second half of 2000, the operational budget was managed by the Ministry of Civil Affairs and Communications, whereas foreign aid and associated debt service were managed by the Ministry of Foreign Trade and Economic Relations. There is no Ministry of Finance per se although the Budget Division of the Ministry of Civil Affairs and Communications had established core budget procedures, such as revenue collection and funding releases. At the end of 2000, the Ministry of Treasury was created and took over the respective treasury management functions that pre-existed in the Ministry of Civil Affairs and Communications, and in the Ministry of Foreign Trade and Economic Relations.

In 1999, the International Monetary Fund (IMF) recommended combining all budget functions in one unit and strengthening this unit in stages by adding functions associated with treasury operations. It also recommended a number of improvements in budget preparation and budget execution, including the establishment of a treasury single account and a treasury general ledger accounting system. It was decided that the Central Payments Bureaux system would be abolished throughout the state at cantonal, entity and state levels and replaced with a direct treasury system from 1 January 2001.

It is agreed that there is a need to develop a medium-term fiscal strategy for both entities and the cantons. During 2000, an IMF team examined taxation issues but the expenditure aspect of such a strategy has not been addressed. Revenue collection is a major problem in the cantons. Furthermore, there is a lack of expertise in fiscal management by the Ministries of Finance at entity and cantonal level. In Brcko, emphasis has been placed on the establishment of a District Revenue Agency. It is, however, unclear as to how well this body is working.

Financial control

Legal framework

No information is available at the moment regarding the legal framework of financial control.

Institutional framework

The Treasury will be responsible for regulating the accounting, budget and payment procedures for all public institutions at either entity or state level. There is an ongoing effort to establish internal audit units at the ministries of finance at the cantonal level in the federation.

Civil service capacities

Legal framework

The draft Law on Civil Service, which is being prepared for the State of Bosnia and Herzegovina, defines civil servants as individuals appointed to a civil service position through an administrative act in accordance with the Law on Civil Service. The law defines civil service positions: senior executive managers, assistant ministers, executive managers, senior advisers and officials, and specialists. All these positions are within the scope of the civil service if they are located at the Council of Ministers or at ministries.

Public sector external audit system

Legal framework

The Constitution of Bosnia and Herzegovina (Annex 4 of the 1995 Dayton Agreement) does not regulate the mandate, organisation or funding of public external audit.

Three similar audit laws were drafted in 1998/99 and passed by the respective parliaments in 1999. The audit laws establish three audit institutions: the Office for Auditing the Financial Operations of the Institutions of Bosnia and Herzegovina (SAIBiH); the Supreme Audit Institution for Auditing of the Public Sector in Republika Srpska (SAIRS); and the Office for Auditing the Budget of the Federation of Bosnia and Herzegovina (SAIFED).

These audit offices were established in 1999 as parliamentary institutions independent from the government. The set up of these offices is the office model, as opposed to the court model. The duties are carried out under the law. The offices are obliged to carry out an annual audit of public accounts and have the power to carry out audits of economy, efficiency and effectiveness. The audit reports are submitted to the respective parliament, with a copy to the Presidency, the Minister of Finance and the concerned ministers. The offices have the right to table the reports in parliament whenever decided. In addition to this, the offices are obliged to report annually to parliament on their activities. The offices may carry out audits at the request of parliament.

Institutional framework

Supreme audit institutions have been created in the entities of Bosnia and Herzegovina and for the joint institutions of the state. The institutional setting comprises the Office for Auditing the Financial Operations of the Institutions of Bosnia and Herzegovina (SAIBiH), the Supreme Audit Institution for Auditing of

the Public Sector in Republika Srpska (SAIRS), and the Office for Auditing the Budget of the Federation of Bosnia and Herzegovina (SAIFED). The Auditor General in Republika Srpska was appointed on an acting basis in August 1999 and the appointment was finalised by the parliament in October 2000. The Auditor General and his deputies for the SAIBiH were appointed in May 2000. The Auditor General at SAIFED and his deputy were appointed in September 2000. All three state audit institutions are in the process of recruiting staff and purchasing the necessary equipment in order to carry out their legal mandate. Due to the general lack of budgetary resources in BiH, the audit offices have serious budgetary difficulties.

A special co-ordination committee has been set up comprising the Auditors General of the three state audit institutions. The main functions of the committee are to establish consistent audit standards, ensure consistent audit quality, assign audit responsibility for joint activities and determine representation on international bodies. The SAIBiH has applied for membership of the International Organisation of Supreme Audit Institutions.

Recommendations for reform

Public Procurement System

1. Revision of the existing decree in order to increase the transparency and efficiency of the public procurement system.
2. Set up an independent policy-making/supervising Public Procurement Agency.
3. Introduce an independent appeals procedure accessible to all potential suppliers.
4. Develop and introduce a Public Procurement Law in the Republika Srpska. Introduce secondary legislation and standard forms and documents to be used by both procuring entities and suppliers.

Public Expenditure Management System

5. An in-depth assessment of public expenditure management system at state and entity level is required before a definitive list of priorities can be identified. However:
6. All budget functions should be combined in one unit and this unit should be strengthened in stages by adding to its functions those associated with treasury operations.
7. A Treasury Single Account (TSA) and a treasury general ledger accounting system should be established.
8. The abolition of the Central Payments Bureaux at state, entity and cantonal levels should be finalised and they should be replaced with a direct treasury system.

Financial Control

9. Set up a treasury system ensuring the possibility of aggregating account data and working towards more transparency and exchange of information between different administrative levels.

10. Create uniform budget and accounting legislation and regulations for all the entities.

11. Create a better understanding of financial management and accountability among public officials, in particular among those with budgetary responsibility. Invest in training, thus reducing the lack of adequate competence constituting high risk for misuse of funds or for simply mistakes.

Civil Service Capacities

12. Adopt the state Law on the Civil Service. The managing institution for the civil service foreseen in the draft law should be made operational.

Public Sector External Audit System

13. The Council of Ministers should adopt the Salary Rule Book so as to allow the SAIs to assume their audit responsibilities. The budget allocated to the SAIs must be commensurate with the objectives and mission of the institutions. All SAIs must adopt their internal rules and procedures and staff training programmes.

3.4. Strengthening Legislation and Promotion of the Rule of Law

The SPAI Compact requires that countries create an appropriate legal framework by criminalising corruption and money laundering, ensuring appropriate remedies for victims and effective enforcement. Countries also commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence and protection in the exercise of their functions, and which have the capacity to protect collaborators. Furthermore, countries are required to strengthen investigative capacities by fostering inter-agency co-operation, the use of special investigative means – while respecting human rights – and providing appropriate training.

Both entities of Bosnia and Herzegovina have taken steps to improve their legislative frameworks. The establishment of specialised anti-corruption services is still in its infancy, while inter-agency co-operation is increasing, and training programmes are being expanded. Both entities have adopted anti-corruption strategies based on the original anti-corruption strategy developed by the OHR. However, it remains to be seen to what extent these strategies will be implemented.

Criminalisation of corruption and money laundering

Criminalisation of corruption

Bosnia and Herzegovina has made significant progress in the past few years in the area of legislative reform, but it has not yet taken sufficient legal steps to enable it to ratify relevant European and international conventions. A revised Criminal Code and Criminal Procedure Code entered into force in the Federation of Bosnia and Herzegovina in November 1998, and the Federation is currently considering further amendments. The Republika Srpska started a review procedure in 1998 and a new Criminal Code was adopted in June 2000. Amendments to the Criminal Procedure Code are still under discussion, and the RS Public Prosecutor proposed special draft legislation on corruption to his Ministry of Justice in 2000, but it seems that discussions on this text have not progressed within the government. The OHR is trying to ensure as much harmonisation as possible in the complete field of a penal law on the whole territory of BiH.

Articles 358 to 371 of the Federation Criminal Code deal with "offences against official duty or other responsible duty". In the new RS Criminal Code, there are fourteen articles in total dealing with corruption offences. The Criminal Codes of both entities of Bosnia and Herzegovina make active and passive bribery of domestic public officials as well as in the private sector a criminal offence. Sanctions range from fifteen days to five years for active bribery in the Federation (Article 363 of the FBiH CC) and six months to five years in the RS (Article 342 of the RS CC), one year to ten years for passive bribery in the federation (Article 362 of the FBiH CC) and one year to eight years in the RS (Article 341 of the RS CC). The bribe is subject to confiscation (Article 362 of the FBiH CC). Trading in influence is punishable by between six months and five years (Article 364 of the

FBiH CC) and up to three years in the RS (Article 341 of the RS CC). Participation in corruption offences is criminalised in both entities through the provisions on complicity (Articles 23 and 25 of the FBiH CC and Articles 23 and 24 of the RS CC).

In order to enhance the fight against customs frauds in Bosnia and Herzegovina, the entities have adopted laws on customs service providing for more powers to the customs officers. Entities Criminal Codes were amended for the regulations on criminalisation of customs frauds and evasion.

Criminalisation of money laundering

Although the revised RS Criminal Code adopted in June 2000 contains a provision on money laundering, its scope of application remains unclear since no implementing agency has been specified. It seems that not every crime is a predicate offence for money laundering.

The Federation of Bosnia and Herzegovina enacted money laundering prevention legislation in March 2000. Although the law specifies who is responsible for its implementation, it only provides for reporting and co-ordination requirements and establishes a set of civil and administrative penalties. It does not make money laundering a criminal offence and does not permit the seizure and confiscation of criminally derived assets. Temporary seizure (Article 200 of the FBiH Criminal Procedure Code) and the confiscation of instrumentalities or proceeds from crime are, however, possible under existing criminal legislation in the entities (Articles 68 and 110 to 113 of the FBiH CC, Articles 482-492 of the FBiH CPC). It is, however, unclear whether the latter is sufficiently used in corruption cases, owing apparently to a high burden of proof to be established by the confiscating agency. There are no provisions concerning corporate criminal liability, but this issue is under discussion in the current process of reform of criminal legislation in both entities.

Effectiveness of legislation

It is difficult to assess the effectiveness of the current legislation. No official statistical data are available on the anti-corruption work of the police, the state prosecution service and the judicial system. According to the OHR, in 1998, 1999 and the first six months of 2000, eleven cases of active bribery were registered in the federation and three in the RS. Twenty-four cases of passive bribery were registered in the federation and three in the RS. As regards other corruption-related offences, including abuse of office, 169 cases were registered in the federation and 159 in the RS.

Factors compounding the difficulty in assessing the effectiveness of legislation and other measures are related to a still endemic problem in Bosnia and Herzegovina, namely the insufficient separation of powers, which leads to undue politicisation of most aspects of daily life. Legislation relating to the financing of political parties in Bosnia and Herzegovina was adopted in July 2000, and provides for more transparent regulations. It remains to be seen whether this legisla-

tion will be properly implemented. However, as soon as the Protocol on Financing Political Parties is agreed at the GMC/F group, it seems that Bosnia and Herzegovina will act accordingly.

The lack of independence of the judiciary has been of particular concern in the country. Recently, steps have been taken to increase the independence of the judiciary by the adoption or imposition (by the High Representative) of judicial service laws providing for an independent selection and appointment process for judges and prosecutors. It appears from reports by international organisations monitoring this process that the provisions of the new laws may not always be correctly applied by the new Judicial and Prosecutorial Service Commissions. The laws also provide for increased salaries of judges and prosecutors, but in some regions of the country, the lack of funding has prevented their comprehensive application. The Judges' and Prosecutors' Associations of both entities have adopted codes of ethics, which specify, inter alia, that judges and prosecutors are not to hold public positions in political parties.

Laws strengthening the Office of the Federation Prosecutor and adding a separate first instance jurisdiction to the Federation Supreme Court, thus enabling both to deal with federal offences, including corruption and inter-cantonal crime, were imposed in June 1999. However, little progress has been made with regard to their implementation, owing to political obstructionism and lack of funding (see also below).

Both the Federation and the Republika Srpska have drafted legislation establishing independent financial administrations for courts and prosecutors offices, but these drafts are still being revised. Draft legislation establishing permanent judicial training institutes is also currently under discussion in both entities.

Attempts have also been made to tackle the politicisation of the police forces, notably by the International Police Task Force, which has been reviewing the professional competences of all police officers over the past five years or so, and has established permanent professional training institutions. A revision of the Criminal Procedure Codes of the entities providing an enhanced role for prosecutors in relation to the police is also currently under discussion. It seems that the modernisation of the Criminal Procedure Code (modernise rule of evidence, strengthen the role of the prosecutor, changing of the role of the investigating judge, introducing modern investigation techniques, etc.) to enable more efficient combating of money laundering, corruption and organised crime is a high priority in Bosnia and Herzegovina and its entities.

Specialised units

National co-ordination mechanisms

Under the Stability Pact Anti-Corruption Initiative, a Senior Representative was appointed by the Ministry of Foreign Affairs as the focal point for the country with regard to international contacts. The Senior Representative is, however, not responsible for co-ordinating actual action taken by the executive and its law enforcement agencies or the judiciary in the fight against corruption, such as

investigations, court proceedings, etc. Consequently, there appears to be no national co-ordination mechanism having investigative or executive powers.

In 1998, the Federation House of Parliament established a commission of inquiry into corruption. However, it lacked the powers to order the compliance of authorities, the attendance of witnesses or access to documents, and thus seems to have had little effect. A similar commission proposed by the Chair of the BiH Presidency has not become operational.

The OHR created an Anti-Fraud Unit (now Department) in 1998, which has been dealing with corruption and money-laundering offences both on an individual case level as well as on a systemic level. It developed an Anti-Corruption Strategy for BiH in 1999, and has been co-operating with other international organisations, including the Council of Europe, OSCE, the United Nations and NGOs such as Transparency International, in assistance and training programmes relating to the fight against corruption. The OHR also created an Anti-Corruption Co-ordination Group composed of senior representatives of all organisations involved in anti-corruption efforts in the country. This group meets regularly to exchange information and develop joint strategies.

The European Union's Customs and Fiscal Assistance Office (CAFAO) has been carrying out a programme of legislative and technical assistance to the BiH authorities in the field of customs and fiscal controls in taxation over the past few years, and has in this context also investigated organised fraud and corruption.

The United Nations Mission in Bosnia and Herzegovina's International Police Task Force (UNIPTF) has specialised units dealing with organised crime, drugs, corruption, public order and crisis management. It has been advising and supervising local police forces and the ministries of the interior of the entities regarding measures to be taken to combat corruption.

Specialised anti-corruption units

The existence of specialised investigative units has not yet been formalised in legislation. However, in co-operation with the entity prosecutors, the OHR has developed the concept of anti-corruption task forces composed jointly of prosecutors and police officers (see also below).

Specialised prosecutors

There are at present no specialised prosecutors dealing exclusively with corruption cases. However, the RS and the federation's anti-corruption strategies adopted in May by the RS National Assembly and in June 2000 by the Federation Parliament respectively stipulate that the Offices of the Federation and RS Public Prosecutors are to be the lead agencies co-ordinating the fight against corruption.

Laws were imposed in 1999 strengthening the Federation Prosecutors Office to enable it to deal with federal crimes provided for in the Criminal Code for which no jurisdiction had been competent at the time. Thus, offences relating to corruption and inter-cantonal crime can now be dealt with directly by the office. The law

was also meant to ensure that cases could be withdrawn from cantonal prosecutors offices by the Federal Prosecutor's Office, to ensure independence and reduce the risk of political interference at the lower level. However, as noted above, the implementation of the law, which would have provided for an additional five prosecutors, has been hampered by political and financial obstructionism.

Specialised ministry of the interior/police units

The police structures in both entities differ, notably due to the fact that the federation's ten cantons each have their own ministries of the interior and are thus more autonomous than the RS, whose ministry is responsible for police both at the entity level and at the local level. There are criminal police departments within the police forces of both entities, and IPTF has provided advice on their operation. More sustainable salary structures have been put in place for both entities to reduce opportunities for corruption.

The BiH State Border Service was set up in 2000, and its members are currently deployed at twelve state borders, which, however, still seems insufficient as the number of legal and illegal border crossings is considerably higher.

Fiancial intelligence units

In the federation, the Financial Police is an agency reporting to the Ministry of Finance and it co-operates closely with the OHR. Its establishment and the training of its members have been supported by CAFAO, and future legislative changes should provide for even greater independence. Customs Assistance and the Fiscal Administration Office of the European Commission (CAFAO) supported the establishment of the intelligence units within the Customs Enforcement Sections in both entities' customs administrations. CAFAO continues providing technical and expert support for the establishment of a similar structure for combating tax evasion within the entities' tax administrations.

Investigative capacities

Inter-agency co-operation

Multi-agency task forces are envisaged in the anti-corruption strategies of the entities. Inter-agency co-operation is practised on an ad hoc basis, but not institutionalised, though it is being used more regularly, with the help of OHR, UNMiBH/IPTF and others. UNMiBH/IPTF has also established regular monthly meetings between the entity ministries of the interior to discuss all relevant issues, including corruption.

Collaboration with justice and witness protection

The High Representative imposed the federation Law on Witness Protection in 1999. However, it only provides for the protection of witnesses' identity in court while giving testimony, and does not foresee other measures such as relocation or identity changes of witnesses. The witness protection law has been used in recent cases involving charges of murder and organised crime.

There are no special provisions for witness protection in the federation Criminal Procedure Code, but it is hoped that provisions will be included during the current review process, as well as in the revised RS Criminal Procedure Code.

Use of special investigative means

Electronic surveillance and interception of telephone communications are permitted under the criminal legislation of the federation (Articles 205-210 of the FBiH Criminal Procedure Code) and are currently being used (conditioned by a judicial warrant) in a number of cases monitored by OHR. The current reform of the Criminal Procedure Codes in both entities should address the issue of how the use of special investigative means can be further enhanced while respecting human rights standards.

Specialised training

Following the adoption of the federation Criminal Code and Criminal Procedure Code in 1998, special training on the new legislation was provided to members of the legal professions, including the judiciary, prosecutors and defence lawyers, as well as police officers. The programme was organised and sponsored by the US Department of Justice in co-operation with ABA/CEELI, following consultations with the OHR, Council of Europe and OSCE. No such training programme has yet been organised in the RS as the Criminal Procedure Code is still being revised.

In the meantime, a series of specialised study visits, seminars and training on anti-corruption measures have also been organised mainly for prosecutors and police officers by the OHR, UNMiBH, the Council of Europe, ABA/CEELI, OSCE in co-operation with the Swedish Prosecutor General's Office, the Marshall Centre and the UK Serious Fraud Office. CAFAO has also organised specialised training for customs and tax officials and financial police officers. USAID has also provided training for officials in the bank supervision agencies of both entities as well as to commercial banks. There are plans to continue this specialised training. However, in general, more sustainable training structures should be established; this could be one of the tasks of the new Training Institutes for Judges and Prosecutors, and it should also be a subject taught regularly at the two entities' police academies.

Recommendations for reform

Criminalisation of corruption and money laundering

1. Criminalise bribery of foreign and international officials and money laundering, and adopt specific criminal money-laundering legislation establishing also an effective confiscation and provisional measures regime.
2. Ensure the implementation of anti-corruption strategies adopted by the entities and implement the framework policy for the State of BiH. Consider the publication of annual reports on the corruption situation in the country, among other tools, to monitor the effectiveness of anti-corruption measures.
3. Pursue the institutional reform of the judiciary and the police, in particular by adopting relevant legislation providing for greater independence and establishing sustainable and independent structures for the administration, training and funding of these important powers.

Specialised units

4. Strengthen the entities' Prosecutor's Offices through additional human and financial resources in order to increase their effectiveness.
5. Continue the reform of the police and the further development of the State Border Service; support further specialisation of the financial police.
6. Consider the establishment of a central co-ordination mechanism with investigative and executive powers independent from any ministry or other governmental agencies. Institutionalise co-operation between the entities and enhance co-ordination with and among the international community to ensure greater efficiency and complementarity of action at the state and entity levels.

Investigative capacities

7. Institutionalise and enhance co-operation between different agencies, notably through task forces of police and prosecutors.
8. Strengthen witness protection legislation and/or adopt special legislation on this subject.
9. Enhance the legal framework on the use of special investigative means with due regard for human rights.
10. Continue specialised training for prosecutors and the police, and enhance training on corruption for the judiciary.

Miscellaneous

11. Organise a high-level SPAI mission to all three prime ministers (of the BiH and both entities) to give additional impulse to their efforts in fighting corruption.

3.5. Promotion of Transparency and Integrity in Business Operations

The Stability Pact Anti-Corruption Initiative requires countries of South-east Europe to clean-up business deals through, inter alia, enactment and effective enforcement of laws aimed at combating active and passive bribery in business transactions, open and transparent conditions for domestic and foreign investment, the development of adequate external and internal company controls, and other measures aimed at strengthening the efforts of corporations themselves to combat bribery.

In Bosnia and Herzegovina, the fight against illicit payments in business transactions is within the competence of the entities. Bribing a public official with a view to obtaining or retaining business or other improper advantage is, as a general principle, a criminal act. Penalties range from six months to five years of deprivation of liberty for the person who bribes. The RS has also partly established the offence of bribing a foreign public official, which is punishable by imprisonment of up to five years. At present, both entities neither establish criminal liability for companies nor adequately provide for non-criminal responsibility of corporations. Preventive measures applicable to companies include accounting requirements much in line with international standards, although not enforced.

Preventing bribery of public officials in business transactions

Preventing and deterring bribery of officials in business deals require first of all making bribery of public officials a crime, levying significant penalties on those who bribe, including companies, and ensuring that jurisdiction, investigation and prosecution are effective. It is also essential that measures be taken to help companies overcome pressure for bribes from officials. This includes the prohibition of passive bribery of public officials and the development of open and transparent conditions for investment.

Active bribery and the responsability of companies

The offence of active bribery

Bribing a public official with a view to obtaining or retaining business or other improper advantage is a criminal offence in both the federation and RS. The offence is defined in the two entities as the act of offering, promising or giving intentionally a gift or any other benefit to an official, so that the official performs or does not perform an act within the scope of his/her official duties. Attempt, complicity (participation) and incitement to bribe also constitute criminal offences and they include authorisation. One specific defence is provided when the giver of the bribe has been solicited by the official and has informed the authorities about the bribery transaction before its discovery. International practices indicate that such a defence may present a potential for misuse, as the briber could benefit from a favourable decision, as a result of the bribery, and at the same time avoid any punishment and be given back the bribe.

Thus, in both entities, bribing a public official is prohibited whatever the purpose of the bribe (obtaining a business, a public contract or a permit), and regardless of the form of the bribe as long as it constitutes a "benefit". The officials who may not be bribed are broadly defined to include, in both entities, any person who holds, at all levels and subdivisions of government and administration within the territory of the entity and the State of Bosnia and Herzegovina, a legislative, administrative or judicial office. The prohibition also applies to any person who continuously or occasionally exercises official duties, including in a company, or another legal person such as institutions, financial bodies, funds and other public agencies. In addition, under the RS law, no bribes may be paid to an official exercising duties for an international organisation of which RS and Bosnia and Herzegovina are members.

While international anti-bribery instruments call for the establishment of the offence of bribing a foreign public official, there is no such provision under the legislation of both entities. As the authorities in Bosnia and Herzegovina expressed their interest in getting closer to OECD anti-bribery standards, they should consider introducing the full offence of bribing a foreign public official in their domestic legislation.

Corporate responsibility and sanctions of companies

The entities' law does not recognise the criminal responsibility of legal persons. There is also no provision under the entities' legislation providing for fines to be imposed on legal entities. The absence of criminal liability for business entities does not mean, however, that bribery offences can be committed with impunity via corporations. First, in both entities, criminal liability applies to natural persons, which would include persons such as a director, a manager, an administrator or a simple employee of a business entity. Penalties include a deprivation of liberty of six months to five years (Article 363 of the Criminal Code of FBiH and Article 341 of the Criminal Code of RS), in a way that is consistent with sanctions for similar criminal offences in the two Criminal Codes such as theft, fraud and embezzlement. Second, in FBiH, sanctions apply when an enterprise or another legal person has acquired some gain by committing a crime. Penalties consist of the confiscation of the gain resulting from that criminal activity (Article 113 of the Criminal Code). Third, civil sanctions may apply.

Other punitive measures include the seizure and confiscation of the bribe and its proceeds in both entities. Confiscation cannot be achieved, however, when the defence is successfully invoked; in that case, the bribe is returned to the giver. Although the revised RS Criminal Code adopted in June 2000 contains a provision on money laundering and FBiH enacted money-laundering prevention legislation in March 2000, there are currently no legal provisions comprehensively covering the hiding of bribes and their proceeds through money-laundering techniques.

Enforcement

Bribery of public officials in business transactions is investigated and prosecuted in accordance with the general rules and principles that apply to criminal matters in each entity. The two entities exercise jurisdiction over bribery offences on both

a territorial basis and a nationality basis. Thus, the federation and RS can prosecute bribery offences committed by their nationals abroad and by foreign persons on the entities' territory. Furthermore, an additional jurisdiction, established in relation to several criminal offences committed by non-citizens abroad, apply to the offence of bribery in the two entities, making it possible to curb the penetration of foreign crime into the national economy.

The statute of limitations for investigation and prosecution of active bribery offences in business transactions is very much in line with the statutes that are applied in OECD countries. It is five years from the date the offence of bribing a public official was committed, with the possibility of extending the period under certain conditions. However, considerations of national economic or political interest or the identity of the natural persons involved seriously impede the effectiveness of investigation and prosecution in both entities. No official statistical data are available. According to the OHR, in 1998, 1999 and the first half of 2000, only eleven cases of active bribery were recorded in FBiH and three in RS.

Mutual legal assistance in bribery matters is an essential tool for enabling states to investigate and obtain evidence in order to prosecute cases of bribery of public officials in the framework of business transactions, as this form of crime most often involves two or more jurisdictions. Assistance in bribery matters, in the context of business transactions, is provided mostly on a case-by-case basis as the State of Bosnia and Herzegovina is party to few bilateral treaties and not party to any major convention such as the European Convention on Extradition and its additional protocols and the European Convention on the Transfer of Proceedings in Criminal Matters.

General provisions on co-operation are completed in FBiH by new rules on extradition, which represent a starting-point for international legal co-operation, even though they forbid the extradition of nationals and do not make all categories of bribery of public officials in business transactions an extraditable offence. However, dual criminality is not a condition for extradition. In RS, the government is working, with the assistance of the Council of Europe and other international expert agencies, including the US Department of Justice, on a new Criminal Procedure Code that will replace the existing code, which dates back to 1977.

Curbing pressure for bribes from officials

Extortion/solicitation

Steps have been taken by both entities to help companies to overcome pressure for bribes from domestic officials. Any public official of Bosnia and Herzegovina, the federation or RS who solicits or accepts a gift or any other benefit, or who accepts the promise of a gift or any other benefit, in order that he or she acts or refrains from acting in relation to the performance of official duties, commits a criminal offence under the two Criminal Codes.

Transparency of the regulatory system for doing business

Steps are being taken by the entities to create a more transparent business regulatory regime that facilitates investment. The entities' governments are promulgating a wide range of new laws and the international community (OHR) is playing a co-ordinating role to ensure that new entity legislation is essentially similar and to avoid instances where companies feel pressure for bribes from officials.

The results of the analysis carried out by the World Bank, on the basis of a 1999 survey of more than 3 000 enterprise owners and senior managers in 22 transition countries, showed that more than 60% of the firms were satisfied with the predictability and consistency of regulations and found that the legal system is able to uphold their property rights. However, only 15% of the firms doing business in Bosnia and Herzegovina were of the opinion that the government is "helpful" to their business.

Promoting integrity in companies

Governments not only have major responsibility in sanctioning bribery of public officials in business transactions but they also have the corresponding responsibility to introduce sound internal and external company controls and to strengthen the efforts of corporations themselves to combat extortion and bribery.

Detecting suspicious payments

Accounting and auditing requirements

Both entities have their own laws that regulate accounting: in RS, the Law on Accounting, effective since 1993, and in FBiH, the Accounting Law, which has been in force since 1 January 1995 and was amended in 1998. According to the authorities of RS and FBiH, the two laws comply with the international codex and standards of accounting, which have been in use since 1 January 1999. Under this legislation, the establishment of "off-the-books" accounts, the making of "off-the-books" or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents are generally prohibited.

Persons infringing accounting principles and standards laid down in the laws are subject to criminal or other sanctions in both entities. For example, failing to maintain the company's records in compliance with the accounting principles laid down in the RS Law on Accounting is a criminal offence under Article 264 of the RS Criminal Code. In the federation, establishing "off-the-books" accounts or making "off-the-books" or inadequately identified transactions, recording non-existent expenditures or entering liabilities with incorrect identification of their objects are subject to fines pursuant to the Law on Accounting.

The entering of false data, or the failure to enter important information into an official or business document, book or record, or the certification of a false business document by a "responsible person" in a company are also subject to criminal sanctions. Penalties consist of a deprivation of liberty for up to five years in the

two entities (Articles 366 and 368 of the RS and FBiH Criminal Codes). The authorities recognise that "off-the-books" transactions hiding suspicious payments are frequent in the country and that remedial actions are called for. Regarding external company controls, the development of professional auditing started two years ago in the Federation of Bosnia and Herzegovina, and USAID has organised training sessions for professional auditors.

Tax treatment of suspicious payments

Taxation is within the competence of the entities. Under the entities' legislation, bribes do not qualify as a deductible expense and the two Criminal Codes incriminate several acts aimed at hiding suspicious payments under Articles 272 and 277, respectively. Refusal to present accounting documents to the control authorities, and incomplete or false accounting paperwork and documentation represent criminal offences. Sanctions include, in FBiH, imprisonment for up to five years and fines, and in RS, imprisonment for between two and twelve years and fines.

Instilling an anti-bribery corporate culture

Socially responsible business practice in Bosnia and Herzegovina has still to be established. Corporate governance legislation in both entities remains a patchwork of laws and regulations, dating back mostly to the Socialist Federal Republic of Yugoslavia and to war-time administrations, encouraging informal activity. Furthermore, if the legislation in force contains the criminal offence of trading in influence, it seems that it contains no categories of active and passive bribery applicable to the private sector. Self-implementation of efficient anti-corruption management practices is also lacking among private and public companies in the two entities. Efforts are underway – supported by the European Bank for Reconstruction and Development (EBRD), the European Commission's PHARE Programme, the Gesellschaft für Technische Zusammenarbeit (GTZ), the OHR, OECD, the Swiss Development Agency and the World Bank Institute – to promote fair and more transparent business practices.

In addition, the private sector is still not sufficiently involved in the general reform process regarding corruption issues. Regular consultations should be organised with the business community in order to provide an opportunity to hold discussions with the authorities and alert them to the organisational and other defects that are conducive to corruption.

Recommendations for reform

The fight against bribery and dishonesty in business operations requires simultaneous action in many areas and by many national institutions. If the two entities have taken the important step of strengthening penal law, essential complementary measures must now be taken in order to further comply with international anti-bribery standards and good practices and this includes:

Preventing Bribery of Public Officials in Business Transactions

1. Use appropriate concepts with regard to the offence of bribery of public officials in business transactions.
2. Broaden the bribery prohibition to bar bribery of all public officials, including foreign public officials.
3. Provide for adequate criminal, civil or administrative responsibility for companies bribing public officials and apply procurement and other dissuasive sanctions to enterprises that are determined as having bribed public officials.
4. Ensure the effectiveness of jurisdiction between the two entities and make sure that the hiding of the bribe and its proceeds in the framework of business transactions is effectively sanctioned.
5. Make all information concerning the number of investigations, prosecutions, court cases and convictions available to the public; and collect and compile court decisions related to active and passive bribery of public officials in business transactions for the same public information purpose.
6. Tailor the laws on mutual legal assistance to permit co-operation with countries investigating cases of active bribery of public officials in business transactions (country of the briber and country where the act occurred).
7. Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.

Promoting Integrity in Business

8. Strengthen enforcement rules aimed at sanctioning the use of "off-the-books" or secret accounts.
9. Enact legislation providing for auditing the accounts of economically significant enterprises by independent professional auditors.
10. Develop banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation.
11. Promote changes in business attitudes and high corporate governance standards.

4. Croatia

4.1. Overview

Located in the western part of South-eastern Europe, south of Slovenia and north of Bosnia and Herzegovina, Croatia, one of the five successor states of the former Yugoslavia, has experienced a slow transition to a free market economy and to a genuine democracy during the past ten years.

Under the past leadership, political and administrative power remained highly centralised and contributed to maintaining a favourable political climate for the survival of old corruption practices. Few administrative reforms were carried out and the media remained closely controlled. As in many countries of the region, the lack of transparency of the privatisation process created an economic environment in which fraud and corruption flourished.

In spite of the development of rampant corruption in the 1990s, the Croatian authorities undertook only a limited number of actions to address the problem. In 1997-98, the parliament did, however, adopt a new Criminal Code, a new Criminal Procedure Code, a money-laundering law, and good governance-related laws. Implementation of the legislation, however, often remained insufficient. Furthermore, the judicial system suffered from political interference and bureaucracy.

According to an analysis carried out by the World Bank (*Anti-Corruption in Transition: A Contribution to the Policy Debate,* 2000) based on a 1999 survey of more than 3000 enterprise owners and senior managers in 22 transition countries, Croatia scored the average of other east and South-east European transition countries. This analysis showed that the forms of corruption most frequently reported (almost 30%) by the firms doing business in Croatia in 1999 were the paying of bribes to public officials to avoid taxes and regulations, as well as the contribution by private interests to political parties. Other corrupt practices mentioned as influencing the firms' business were the sale of court and arbitrage decisions, of presidential decrees and of parliamentary votes (for between 20 and 30% of the firms). Furthermore, a large part of the firms (almost 40%) stated that there are numerous cases of public officials appointing friends and relatives to official positions.

However, political changes that took place in 2000 have marked the beginning of a new transition period in Croatia and an important change in the mode of political governance. Since early 2000, significant and very useful efforts have been made by the new government to fight corruption, adjust legislation related to corruption matters and accede to international anti-corruption instruments and mechanisms. Various laws related to the modernisation and adaptation of the legal

Note: This report was adopted by the SPAI Steering Group at the Tirana meeting on April 20 2001.

system are currently under parliamentary procedure. In addition, following "the former Yugoslav Republic of Macedonia", Croatia is the second South-eastern European country to have signed, on 14 May 2001, a Stabilisation and Association Agreement with the European Union.

Legal and Institutional Developments

Efforts have been made recently by the Croatian authorities to address the problem of corruption and adjust the legislative and institutional framework. Amendments to existing laws related to the fight against corruption have been passed or are being drafted, including changes in the Criminal Code to comply with international standards. The bulk of the reform is the National Anti-Corruption Programme and Action Plan, which has been developed in consultation with civil society organisations actively involved in the fight against corruption and has been endorsed by all major political forces. This programme, currently under examination by parliament, provides for the establishment of an Office for Combating Corruption and Organised Crime, called "USKOK", which will be in charge of the co-ordination of all governmental actions related to corruption.

As part of its new commitment to fight corruption, Croatia has also joined some key multilateral legal instruments containing anti-corruption related provisions and relevant to an effective fight against corruption.

The way ahead

Much work remains to be done, however, to develop coherent institutions directed at both preventing and sanctioning corruption. At the moment, for example, there are no special prosecutors for corruption cases. Inter-agency co-operation remains weak. Additional efforts are also required in the area of public procurement, public expenditure management systems, and financial control and civil service capacities.

In view of the political, social and economic impact that corruption has in Croatia, the country must continue to improve the legal and institutional framework for fighting corruption in the same way as it does at present.

4.2. Adoption and Implementation of European and Other International instruments

Accession to international agreements

Croatia has begun to join some key multilateral legal instruments containing anti-corruption related provisions relevant to an effective fight against corruption. After ratifying, in 1997, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, Croatia ratified the Council of Europe Criminal Law Convention on Corruption in September 2000. Croatia also signed the United Nations Convention against Transnational Organised Crime and the two protocols in Palermo in December 2000 and intends to ratify the Council of Europe Civil Law Convention on Corruption and the UN Convention against Transnational Organised Crime with the protocols in the year 2001.

The country has also decided to join programmes of systematic follow-up to monitor and promote the full implementation of appropriate measures to combat corruption. Thus, Croatia has recently joined the Council of Europe's partial agreement "Group of States against Corruption" (GRECO), the Council of Europe's Select Committee for the Evaluation of Anti-Money Laundering Measures (PC-R-EV), in the framework of the Financial Action Task Force on Money Laundering (FATF), the *Ad hoc* Group of Non-members of the OECD Working Group on Bribery in Business Transactions, and the Stability Pact Anti-Corruption Initiative's Steering Group.

Croatia also participates in the Stability Pact Initiative against Organised Crime (SPOC).

Mutual assistance in criminal matters

Croatia has ratified the European Convention on Extradition with its additional protocols as well as the European Convention on Mutual Legal Assistance in Criminal Matters with its additional protocol.

International co-operation in criminal matters is based on international and bilateral agreements and the Criminal Procedure Code. Co-operation takes place on the basis of reciprocity and proportionality. However, practical experience is limited and the classical channels of co-operation are considered to be slow. Croatia will enhance its international mutual assistance in criminal matters with a new Law on International Legal Assistance and Co-operation.

Assistance is provided upon request through diplomatic channels, and in urgent cases, through the Croatian Ministry of the Interior. Legal assistance is refused if it would lead to dual punishment, and if Croatian public order were endangered. When executing a request for legal assistance, either simply a court approval is required or, in the case of a request related to a crime for which extradition is not allowed, a court approval is required together with a ruling from the Ministry of Justice. Extradition remains possible without agreements on the basis of reciprocity. The Supreme Court decides upon refusal of extradition, on the basis of

preliminary information and examination provided by the authorities to the Ministry of Justice. Croatia does not extradite its nationals, though they can be prosecuted in Croatia for offences committed abroad.

Transmission of proceedings is based on existing bilateral agreements and the Council of Europe Convention of 1983.

The transfer of sentenced persons takes place on the basis of the European Convention on the Transfer of Sentenced Persons, ratified by Croatia in 1995.

The Interpol Bureau within the Croatian police/Ministry of the Interior is the main contact point for direct police co-operation and is used for the exchange of information. Staff are trained in foreign languages and the bureau is operative twenty-four hours a day. However, the exchange of (mainly operational) information through Interpol remains slow.

The existence of European data protection standards is usually a pre-condition for the exchange of sensitive data among European countries. The draft Law on the Protection of Personal Data has been completed and its adoption will improve data protection standards in Croatia in conformity with the Council of Europe Convention of 1981 and Recommendation R (87) 15 and the EU Directive 95/46/EC.

International co-operation in financial investigations and money laundering cases

Legal assistance can be provided even in cases where the money laundering offence abroad would not be an offence in Croatia. The execution of foreign confiscation orders and execution of provisional measures on behalf of foreign states are possible. The Office for the Prevention of Money Laundering (AMLD) can exchange information with anti-money laundering authorities of foreign states regardless of whether they are judicial or police-type units. Furthermore, Croatia is a member of the Egmont Group. The AMLD also assists the State Prosecutor's Office in preparing requests for international assistance in this field.

Recommendations for reform

1. Accede to the Council of Europe Civil Law Convention on Corruption.
2. Improve national data protection legislation and standards as a basis for enhanced international exchange of information fully in line with the standards set by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) and Recommendation R (87) 15 regulating the use of personal data in the police sector.
3. Take measures to make international co-operation and in particular mutual legal assistance more effective by promoting direct contacts and communication between judges and prosecutors, specialising and training staff, and by supporting judicial networking at European and international levels.

4.3. Promotion of Good Governance and Reliable Public Administrations

Corruption in some of the state institutions of Stability Pact countries detracts from the efforts to promote economic growth and engender popular support for democracy. Poorly defined professional requirements and roles, inadequate accountability practices, weak control mechanisms and low wages make public servants and politicians susceptible to improper conduct and foster poor administration. Practices inherited from the days of one-party rule inhibit development of, and adherence to, high ethical standards in the administration.

The Croat Government is committed to reform its state administration within the framework of its "Plan for Croatia in the twenty-first century" where public administration reform takes a prominent place. Initiatives have been launched to modernise core governmental functions such as: public procurement, public expenditure management, financial control, civil service, local government and oversight.

Public procurement system

Legal and institutional framework

A Public Procurement Law has been in force since 1998. The Public Procurement Law succeeded a government decree that was prepared with the support of the World Bank as from 1995. The current law is based on the UNCITRAL Model Law. Public procurement functions in Croatia are decentralised. The system supervision is allocated to the Public Procurement Department of the Ministry of Finance. The Public Procurement Law applies to: central and local government entities, entities owned by the state, agencies using public funds and entities using financing from extra-budgetary funds such as the pension, health insurance and employment funds. The Public Procurement Law is not applicable to: procurement under international agreements, grant-funded procurement, procurement relating to defence and national security and emergencies. The Public Procurement Law provides for conditional national preferences for goods (15%), works (7.5%) and services (5%). The legal framework is not yet complete. No independent public procurement agency exists. The system lacks trained officials, a training system, standard forms and documents, and a single platform for announcements of procurement opportunities and award notices (bulletin – paper and electronic).

Public expenditure management system

Legal framework

The Budget Law was passed in December 1994. This is a comprehensive piece of legislation, based on an IMF model, which contains: general provisions and definitions of public finance, budget content and planning, budget drafting and passage, budget implementation, borrowing and public debt, and budget accounting control and audit. This law covers both central and local government. The budget

has a number of weaknesses and should be updated to strengthen budget formulation, budget execution and cash management, and internal control and auditing. Other relevant legislation includes the Law on Accounting (passed in December 1994) and the Law on Financing of Local Self-Management and Administrative Units (passed in 2001). The Law on Financing of Local Self-Management and Administrative Units deals with revenue and expenditure assignment to local government units.

There is a great deal of secondary legislation, most of which has not been fully implemented and needs to be updated to bring it into line with international practices. It includes regulations on: the General Ledger System and Maintenance of the Treasury Single Account, Budget Accounting, and Budget Supervision and Internal Control. There are also by-laws on: Payments from the Treasury Single Account, Accounting and the Chart of Accounts of the Budget, Financial Reporting for Budgets and Budget Users, the Application of the Budget Accounting Plan, and Criteria for Using Budget Beneficiaries Revenues Generated on the Market by Performing Core and Other Activities. Finally, there are Instructions for Assessing the Half-Year Financial Report of the Budget and Budget Users.

Institutional framework

The Ministry of Finance has a staff of approximately 183. This number does not include the staff of the Tax Administration, Customs Administration and Financial Police, which are agencies under the Ministry of Finance. There are approximately forty-nine employees working on budget-related or fiscal issues located in the following sections: Macroeconomic Analysis and Forecasting, Budget Preparation and Consolidation (which has units for Budget Preparation, Budget Consolidation, Extra-budgetary Funds and Local Budgets, and Capital Projects), and a State Treasury, which consists of a Budget Execution Unit, a Cash and Debt Management Unit and a Government Accounting Unit.

The general characteristics of the current national public finance system in Croatia are: (i) a cash-based national budget and accounting system; and (ii) a decentralised financial management system, even though some aspects are being centralised. The primary role of formulating budgets, planning, and improving the efficiency and effectiveness of public spending is decentralised to each ministry. Budget execution remains centralised, and cash management is being centralised into a Treasury Consolidated Fund (single treasury account). Responsibility for internal control and auditing is decentralised to each ministry.

Generally, the decentralised processes mean limited Ministry of Finance capacity to develop budget options, push public finance reforms, monitor and control spending, and enforce current laws and regulations.

Decentralisation also allows non-standard methods to be employed, varying degrees of quality in spending unit data and procedures, and uncertainty regarding spending, accounting, and programme results. The current public finance system

has very limited mechanisms for accountability, whether over finances, policy or actual spending programme results.

Financial control

Legal framework

Article 38 of the Budget Law establishes a decentralised structure for internal control and auditing functions. The Regulation on Budget Supervision and Internal Control issued in October 1996 by the Ministry of Finance establishes more detailed requirements for internal control and auditing, and assigns the Ministry of Finance's responsibility for budget supervision (internal auditing) to the Budget Execution Department.

Institutional framework

The Ministry of Finance currently has a Budget Supervision Office that acts as the government-wide internal auditor. The office was founded in 1996 with the issuance of the Regulations on Budget Supervision and Internal Control. The Budget Supervision Office is currently organised under the Assistant Minister for Budget Execution in the Ministry of Finance, and employs four auditors (including the head of the office).

The purposes of the office are: to monitor legal usage of budget revenues and expenditures, and to advise on regulations affecting state expenditure. The office inspects accounting and financial documents. Coverage of audits includes all revenues, including the ministry's own revenues, transfers, budget funds, fees, etc. The responsibility of the budget inspector's office encompasses local governments, extra-budgetary funds and public enterprises. Currently, there are too few Budget Supervisory Office staff to cover local governments and public enterprises.

The office co-operates with the State Audit Office, and frequently consults with them. Whereas the State Audit Office looks only at overall operations or spending for the past year, the Budget Supervision Office looks at current spending, usually one line item at a time in great detail.

The Budget Supervisory Office does not currently assess the adequacy of ministry internal controls. Among the ministries and extra-budgetary funds visited, none had a functional internal audit or control office. These offices have been established, but have no staff. Ministries did report that they had initiated some internal control mechanisms, such as separation of duties in issuing payment orders, but lacked any guidance as to what adequate steps should be taken.

Civil service capacities

Legal and institutional framework

The Law on Civil Servants and Employees was adopted by the Croatian Parliament in March 2001.

According to Article 2 of this law, civil servants are persons having high, higher or secondary education and working in state administration or judiciary bodies, offices and expert services of the government or in expert services of the Croatian Parliament (hereinafter: governmental bodies). They shall be appointed to professional positions or official positions. High government officials are appointed for a limited duration while specialists are tenured. They shall, as part of their regular professional activity, perform duties regulated by the constitution or by some other law within the scope of a given body.

This law concerns employees in state administration bodies, expert services and governmental offices, expert services of the Croatian Parliament, in the judiciary, law enforcement agencies, in the Constitutional Court, the Ombudsman's Office, in the State Audit Office, in the Office of the President of the Republic and other state bodies responsible for state administration. Employees in local self-government units shall be bound by the provisions of the Law on Administration. The Government of the Republic of Croatia has prepared the draft Law on Employees in Local Self-Government, which shall be adopted as part of the local government and local self-government reform.

Public sector external audit system

Legal framework

The Croatian State Audit Office has been established by a State Audit Act promulgated by the parliament in 1993 and amended in 1999. The Croatian State Audit Office is defined as an independent body, directly responsible to the Croatian State Parliament (Sabor). The Croatian Constitution has no provision concerning the Supreme Audit Institution.

Institutional framework

The State Audit Office is a monocratic, office-type (as opposed to a court-type) model with the Auditor General being nominated by parliament for a term of eight years. The State Audit Office comprises approximately 250 staff, of whom 180 are professional auditors recruited by competition by the Auditor General. The office itself is organised with headquarters in Zagreb and has twenty county offices.

The extent of auditing is defined in the annual audit programme of the State Audit Office and is adopted by parliament (Article 3.4 of the State Audit Act). The budget of the State Audit Office is provided for by the state budget (Article 13 of the State Audit Act).

Recommendations for reform

Public Procurement System

1. Revise the existing Public Procurement Law in order to increase the transparency and efficiency of the public procurement system. Introduce secondary legislation and standard forms and documents to be used by both procuring entities and suppliers. Set up an independent policy-making/supervising public procurement agency.

Public Expenditure Management System

2. Strengthen both the Budget Law and supporting legislation and the central organisations (especially their enforcement mechanisms) overseeing budgeting, treasury functions and internal control.
3. Develop standardised accounts, budgets, and procedures for public financial management.
4. Move all revenues and spending on budget to allow management of public finances at a national level.

Financial Control

5. Amend the Budget Law to formally establish the Budget Supervision Office within the Ministry of Finance, strengthen the penalties for overspending budgeted resources and violating the Budget Law. The Budget Supervision Office should be strengthened with additional staff and resources to properly carry out its duties.
6. The Budget Supervision Office should focus on ex post audits, with particular attention to evaluating the internal control and audit functions within each ministry until such time as these functions are well established and operating effectively. The Budget Supervision Office should also develop and issue guidance and standards for ministry internal control and audit functions to assure quality and consistency. The Budget Supervision Office could also assist in developing professional standards of training for ministry auditors.

Civil service capacities

7. Secure consistent implementation of the Civil Servants Act so as to professionalise recruitment and career advancement practices. Strengthen the central civil service management capacity.
8. Develop a training strategy for all civil servants at state and at local government levels with the objective of promoting the required cultural change and enhancing managerial capacity. Strengthen public administration's training capacities.

Public Sector External Audit System

9. Croatia should have a constitutional provision guaranteeing the financial and functional independence of the Croatian State Audit Office as recommended in the INTOSAI Lima Declaration.
10. The Audit Office should develop a strategic development plan, adopt its own (national) auditing guidelines and develop its permanent training programme.

4.4. Strengthening Legislation and Promotion of the Rule of Law

The SPAI Compact requires that countries create an appropriate legal framework by criminalising corruption and money laundering, ensuring appropriate remedies for victims and effective enforcement. Countries also commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence and protection in the exercise of their functions, and which have the capacity to protect collaborators. Furthermore, countries are required to strengthen investigative capacities by fostering inter-agency co-operation, the use of special investigative means – while respecting human rights – and providing appropriate training.

Croatia has improved its existing legislative framework, and is in the process of establishing specialised anti-corruption services. The focus is also on further enhancement of inter-agency co-operation and the development of training programmes.

Criminalisation of corruption and money laundering

Criminalisation of corruption

Croatia has recently taken further steps to bring its legislation into line with European and international standards, in particular the Council of Europe's Criminal Law Convention on Corruption as well as the OECD Convention on Combating Bribery in International Business Transactions.

In the absence of a legal definition, corruption is broadly defined as the abuse of public power for personal benefit. The Croatian Criminal Code (Articles 294, 337, 338, 343, 347 and 348) includes the main criminal offences relating to corruption, including active and passive bribery, trading in influence, etc., which are generally sanctioned by a prison sentence of between three months and five years. The provisions on complicity (Articles 35-38) deal with participation in corruption offences.

Amendments to the Criminal Code were adopted in December 2000 and entered into force in January 2001. According to these amendments (Article 19), the notion of an "official" as stipulated in Article 89 now also includes the notion of a foreign or international public official.

Criminalisation of money laundering

Money laundering is included in the Criminal Code (Article 279), with penalties normally ranging from six months' to five years' imprisonment, but from one year to ten years for money laundering as a member of a criminal organisation. In accordance with the recent amendments to the Criminal Code (Article 48), all crimes are now predicate offences under Article 279, which constitutes an improvement on the previously used system of a list of predicate offences that had to be reviewed regularly.

The 1997 Law on the Prevention of Money Laundering creates a wide range of institutions subject to anti-money laundering obligations. However, its relationship with Article 279 of the Criminal Code does not always appear to be very clear.

As for the confiscation of proceeds from crime, there are a number of provisions in different legal texts. Articles 80 and 82 of the Criminal Code deal with forfeiture of instrumentalities and confiscation of pecuniary benefit from crimes. It is, however, unclear whether indirect proceeds are covered by this definition, and it seems that the restrictive interpretation of the term "pecuniary" is not in line with the wide interpretation of proceeds under the convention, and is thus likely to prove ineffective. It is also unclear whether the confiscation measures referred to in Article 279 are provisional measures or mandatory confiscation measures for laundered money and property. It also appears that the regime is seldom used generally and almost never in money-laundering cases. Different provisions regarding provisional measures appear in Articles 184-186, 218-221 and 467 of the Criminal Code. The time limit for the freezing of financial transactions is two hours, which is far too short. The majority of these loopholes in the field of corruption will be resolved with the adoption of a new Law on the Office for the Prevention of Corruption and Organised Crime and amendements to the Criminal Procedure Code and the Law on the Prevention of Money Laundering.

Effectiveness of legislation

In general, it is difficult to measure the effectiveness of the current legislation. All law enforcement agencies collect statistics, but there is no central evaluation mechanism. In 1998-99, according to the Croatian State Prosecutor's Office, 101 cases of active bribery were registered, resulting in 17 investigations, 81 court proceedings and 57 convictions. In 1998-99, 93 cases of passive bribery were registered, 42 cases investigated, 69 resulted in court proceedings of which 22 resulted in convictions. In the year 2000, 39 cases of passive bribery were registered, 15 cases investigated, 26 resulted in court proceedings of which 12 resulted in convictions. In the same period, 71 cases of active bribery were registered, 3 of which were investigated, 64 resulted in court proceedings and there were 51 convictions.

The confiscation regime is not considered very effective. The main reason is that confiscation is conviction based. Criminal investigations are not systematically accompanied by financial investigations. Judges are reluctant to order the freezing of assets during preliminary investigations as it involves the risk of compensation claims.

Specialised units

National co-ordination mechanism

There is no national body co-ordinating the fight against corruption, organised crime or money laundering and responsible for designing and monitoring relevant

strategies. The Senior Representative appointed under SPAI does not have investigative or executive powers.

Croatia is considering the idea of establishing a national body at the parliamentary level for co-ordination of the strategic anti-corruption efforts of all relevant operational agencies and for control of their activities.

Specialised anti-corruption units

As part of a national anti-corruption programme that is being drafted and in line with Article 20 of the Criminal Law Convention on Corruption, the Government of Croatia is preparing for the establishment of an Office for the Prevention of Corruption and Organised Crime. This office will have preventive and also intelligence and investigative functions. It is to have a multi-disciplinary composition including specialised prosecutors, investigators, accountants and other specialists. This office will co-ordinate the work of agencies on a national level and will play an important role in the international exchange of information on investigations relating to corruption and organised crime.

Specialised prosecutors

At present there are no special prosecutors for corruption cases. However, at municipal level there are prosecutors in charge of economic crime who also deal with corruption cases. At the district level, an informal division of work exists whereby some prosecutors deal with cases of economic crime and corruption more than others do. Specialised training for prosecutors in anti-corruption matters is not available. There are no prosecutors specialised in the use of special investigative methods.

Specialised police units

Within the Ministry of the Interior and its Criminal Police Sector, a section that is part of the Department of Organised Crime handles corruption cases. The Economic Crime Department deals with other cases of economic crime. Changes within this structure are under consideration, which would strengthen the unit dealing with corruption matters. According to the new Law on Police of 1 January 2001, specialised units – departments for economic crime and corruption – will deal with corruption, beginning on 1 July 2001 at the latest.

Financial inteligence unit

A specialised division for special criminal matters has been set up within the criminal police (Ministry of the Interior); it is responsible at national level for the use of special investigative methods and for receiving and centralising relevant information.

The Office for the Prevention of Money Laundering (AMLD) is an independent body within the financial police of the Ministry of Finance. The AMLD serves as the Financial Intelligence Unit. Its task is to gather, analyse, classify and maintain data received from all entities obliged to report suspicious transactions, to furnish

information to all authorised state bodies, and together with them, to undertake measures for the prevention of money laundering.

Investigative capacities

Inter-agency co-operation

Multi-disciplinary teams are established on an ad hoc basis. Co-operation between the Prosecutor's Office and the law enforcement agencies should be improved after the creation of the Office for the Fight against Organised Crime and Corruption, which should bring together the work of the police, the financial police, the customs and the tax administration and others. One of the reasons for creating this office is to strengthen the role of the Public Prosecutor in the pre-criminal phase of the proceedings, namely his/her more active involvement in this phase in cases under the jurisdiction of the office. Exchange of information between services is based upon the Criminal Procedure Code (Articles 171 and 174).

Collaboration with justice and witness protection

The charges against members of organised criminal groups can be dropped if they collaborate to reveal these groups before committing a criminal offence. Total or partial dropping of charges is not possible if witnesses have already committed a criminal offence, except drug offences. There is no formalised agreement between criminal justice bodies and collaborators of justice.

The Criminal Procedure Code provides for the following protection measures: physical protection, use of testimony through audio-video equipment, dissimulation of face and voice, and exclusion of the media, public or defendant from the trial. The protection is initiated by an endangered person or by the Ministry of the Interior. Specially trained police agents are in charge of implementation of protection measures. However, the legislation does not regulate relocation, change of identity and professional placement assistance. The possibility to have anonymous witnesses does not exist but the witness can refuse to answer questions on himself/herself if this would endanger his/her life, likewise communication of documents can be restricted. There are special provisions to ensure that the identity of undercover agents is not revealed to the defendant and his/her legal counsel.

Although these measures are available, it is not clear to what extent they are actually applied to witnesses providing evidence in corruption cases.

A new law on protection of witnesses is under elaboration. It is foreseen that it will permit direct videoconferences and therefore allow the court and the defence counsel to directly ask questions to the witness.

Use of special investigative means

The Criminal Procedure Code, in force since 1 January 1998, is the legal basis for the use of special investigative methods. The law provides that, on certain conditions, measures which temporarily restrict constitutional rights and freedoms may

be taken for the purpose of obtaining information and evidence for a trial (Articles 180-183). Such measures may be used when traditional investigative measures are unsatisfactory, the offence is serious (punishable by 5 years' imprisonment) or connected with organised crime, and the persons in respect of whom the measures are ordered are under strong suspicion of having committed the offence. The Prosecutor General initiates the use of such investigative measures by the police. The decision to use them is taken by the investigating judge. If no decision is possible, the Counsel of the County Court has jurisdiction to resolve the matter. The measures shall be determined by a written and motivated court order for a period of four months, which can be prolonged, upon the request of the Prosecutor General, for another three months.

Information obtained by means of investigative methods, which comply with the legislation, may form the basis of a judicial decision. Undercover operations, electronic surveillance, observation, bugging, interception of communications, pseudo-purchases, pseudo-offences (for example, simulated bribery), controlled deliveries, collaborators of justice and search may be used within the framework described above.

A Department for Special Criminal Matters was set up within the criminal police sector of the Croatian Ministry of the Interior to implement special measures approved by court order. The same department is authorised to keep records of ordered measures as well as records of persons against whom the measures are used.

It is unclear to what extent these special investigative means are considered proportionate and appropriate in cases related to corruption and are authorised and used in practice.

Specialised training

Systematic and specialised training for judges, prosecutors, police and other law enforcement officers in the investigation and prosecution of corruption-related cases is not available to the full extent yet, despite the creation of a new centre for the education of judges.

The Croatian Prosecutor's Office has proposed to the Ministry of Justice to organise the training of both prosecutors and police officers, taking into consideration the working visits of representatives of the Prosecutor's Office to the Italian Anti-Mafia Office in Rome.

Recommendations for reform

Criminalisation of corruption and money laundering

1. Review the confiscation and provisional measures regime to make it fully operational.
2. Consider the preparation of annual reports on the corruption situation in the country, among other things, as a tool to monitor the effectiveness of anti-corruption measures.

Specialised Units

3. Establish the Office for the Prevention of Corruption and Organised Crime.
4. Enhance inter-agency co-operation, in particular between prosecutors and the criminal police, and specialised units carrying out their functions with due regard for human rights.

Investigative Capacities

5. Improve the co-operation between different agencies, notably following the establishment of the Office for the Prevention of Corruption and Organised Crime. Intensify co-operation between the Croatian National Bank and the law enforcement services of the Ministry of Finance.
6. Ensure available measures protecting collaborators of justice and witnesses are fully applied in cases of corruption, and adopt new draft witness protection legislation.
7. Improve the use of special investigative techniques with due regard for human rights.
8. Improve systematic and ongoing specialised training of police officers, prosecutors and judges. Design a training programme for the Office for the Prevention of Money Laundering.

4.5. Promotion of Transparency and Integrity in Business Operations

The Stability Pact Anti-Corruption Initiative requires countries of South-east Europe to free business deals of corrupt practices through, inter alia: enactment and effective enforcement of laws aimed at combating active and passive bribery in business transactions, open and transparent conditions for domestic and foreign investment, the development of adequate external and internal company controls, and other measures aimed at strengthening the efforts of corporations themselves to combat bribery.

Cleaning up business deals constitutes a priority objective for the governmental coalition in power since early 2000. Under Croatian law, bribing a domestic official with a view to obtaining a business deal or another improper advantage is a criminal act. Croatia amended its Criminal Code in December 2000 to partly establish the offence of bribery of foreign public officials and is now considering establishing criminal liability for companies to further comply with OECD and Council of Europe conventions. Croatia's Criminal Code has also provisions aimed at helping companies to overcome pressure for bribes from domestic officials through the prohibition of solicitation of bribes by officials. The legislation in force also criminalises non-compliance with accounting regulations, does not qualify bribes as a deductible expense for tax purposes and contains provisions aimed at promoting socially responsible business practice. Active bribery of a public official is also now a predicate offence for the purpose of the application of Croatia's money-laundering legislation.

Preventing bribery of public officials in business transactions

Preventing and deterring bribery of officials in business deals require first of all making bribery of public officials a crime, levying significant penalties on those who bribe, including companies, and ensuring that jurisdiction, investigation and prosecution are effective. It is also essential that measures be taken to help companies to overcome pressure for bribes from officials. This includes the prohibition of passive bribery of public officials and the development of open and transparent conditions for investment.

Active bribery and the responsibilty of companies

The offence of active bribery

Bribing a public official with a view to obtaining a business deal or other improper advantage is a criminal offence under Article 348 of the Criminal Code. The offence consists of promising or conferring, directly or through intermediaries, a gift or other benefits to an "official" or "responsible person", so that the "official" or "responsible person" acts or refrains from acting in relation to the performance of official duties. The offence applies to any person and attempt, complicity, and aiding and abetting to bribe also constitute criminal offences. Croatian law provides for one defence, when the person who promises or confers the bribe has been solicited by the public official and has reported the deed to the competent law

enforcement authority before the crime was detected. International practices indicate that such a defence may present a potential for misuse, as the briber could benefit from a favourable decision, as a result of the bribery, and at the same time avoid any punishment and be given the bribe back. However, according to the Croatian authorities, the Criminal Procedure Code provides the possibility for the judge to deny the briber the benefit of the favourable decision or material gain obtained through the bribery.

Thus, bribing a public official would be sanctioned whatever the purpose of the bribe (obtaining a business, being awarded a public contract or obtaining a permit), and regardless of the form of the bribe as long as it constitutes a "benefit". The official who may not be bribed is any person who is an official elected or nominated to a representative body, any person who exercises a public function in a legislative, administrative or judicial office or who exercises a public function, including a public agency. The official who may not be bribed is also any "responsible" person, namely any person who is entrusted with particular tasks from the field of a legal entity (enterprises, public and other companies, funds, institutions, etc.), a government body, or a body of local self-government and administration.

Since the entry into force on 31 December 2000 of the Law on Amendments to the Criminal Code, the offence of bribing a foreign public official is also sanctioned under Article 348. In defining the foreign public official who may not be bribed, Croatia's legislation refers directly to the national definition of the public official of the foreign country, in compliance with the provisions of the Council of Europe's Criminal Law Convention on Corruption. However, as Croatian authorities expressed the wish to accede to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Croatia's legislation should provide for an autonomous definition of the foreign public official in compliance with this convention.

Corporate responsibility and sanctions of companies

Under current legislation, there is no regulation comprehensively covering corporate responsibility. However, a draft Law on Criminal Liability of Legal Persons for Criminal Offences is being prepared by the government, which, if passed by parliament, should introduce the criminal liability of legal persons for criminal offences such as bribery. This new law should introduce the possibility of imposing fines on companies that bribe public officials.

The current absence of criminal liability for business entities does not mean that bribery offences can be committed with impunity via corporations. Croatia sanctions natural persons who bribe public officials and this would include a director or a senior manager of a company. Administrative penalties, based upon the fault of senior management (the "responsible persons"), may also apply to companies' senior staff bribing a public official (Article 16 of the Administrative Offences Act).

However, the level of sanctions on natural persons is somewhat lower than penalties applicable to similar offences in the Criminal Code such as fraud and

embezzlement. Whereas fraud and embezzlement are punished by deprivation of liberty for five to ten years, bribing a public official is subject to imprisonment of three months to three years, depending on the nature of the offence (Article 348 of the Criminal Code, hereinafter "CC"). Concluding a prejudicial contract is subject to imprisonment of up to five years (Article 294 CC) and putting the company in a more favourable position after obtaining favours is subject to imprisonment of up to eight years (Article 292 CC).

Other punitive measures include the confiscation of the bribe and its proceeds or any other pecuniary advantages. However, confiscation of the bribe and/or its proceeds cannot be achieved where the defence is successfully invoked by the bribe-giver.

There is also a provision in the Criminal Code (Article 279) aimed at sanctioning money laundering. Following the December 2000 amendments to the Criminal Code (Article 45), active bribery of a public official is now a predicate offence for the purpose of money-laundering legislation in compliance with international standards.

Enforcement

Jurisdiction, investigation, prosecution and international co-operation over active bribery offences must be effective. Although Croatia establishes a broad jurisdiction over bribery offences and investigates and prosecutes them in accordance with the rules and principles that apply to criminal matters in the country, it is difficult to see a clear trend in the effectiveness of investigation and prosecution of bribery cases. Statistics from the Ministry of Justice reveal that the number of offenders convicted for active bribery of public officials has not been more than thirty per year over the past three years. For instance, in 1998-99, out of 101 recorded cases of active bribery, 57 resulted in convictions. In 2000, out of 71 cases of active bribery, 51 resulted in convictions. Research results on corruption in Croatia indicate that bribery is broader than what the official criminal statistics show.

As jurisdiction is exercised on both a territorial and a nationality basis, Croatia can prosecute bribery offences by its nationals from abroad and by foreigners bribing from its territory. Furthermore, an additional jurisdiction, established in relation to crimes committed by non-Croatians abroad against the Republic of Croatia or its citizens, including a Croatian state official or a civil servant, apply to the offence of bribing a public official.

The statute of limitations for the offence of active bribery is three years from the date the offence was committed and, as such, somewhat lower than in OECD countries where most statutes are in the range of about five years. The Croatian authorities intend to review the statute of limitations applicable to the offence of bribery of a public official in order to guarantee an adequate period of time for the investigation and prosecution of the offence.

The Criminal Procedure Code provides for prosecutorial discretion in launching proceedings (principle of opportunity) as do the Criminal Procedure Codes of

many OECD countries. Under current legislation, the decision of the prosecutor to launch or to interrupt proceedings is submitted to a judicial control. In order to avoid any improper influence on the independence of prosecution, the Croatian authorities have drafted the final proposal of a new Law on the Public Prosecution, which provides for the independence of the State Attorney and states that the State Attorney is obliged to launch criminal proceedings in any case where there are grounds for suspicion that a criminal offence has been committed. This draft law proposal is currently undergoing the parliamentary legislative procedure.

Mutual legal assistance in bribery matters is an essential tool for enabling states to investigate and obtain evidence in order to prosecute cases of bribery of public officials in the framework of business transactions, as this form of crime most often involves two or more jurisdictions. Assistance in bribery matters is provided either pursuant to the provisions of an international treaty (such as bilateral treaties on mutual legal assistance), or, in the absence of such international treaties, pursuant to the provisions of the Criminal Code.

Bribery of a public official in business transactions is deemed to be an extraditable offence under Croatian law as well as under bilateral extradition treaties with foreign countries, unless the criminal offence has been partly or fully committed on the territory of the republic or committed against the republic's or citizens' interests. As in many OECD countries, Croatia makes extradition conditional on the existence of dual criminality and, as a general principle, no Croatian national may be extradited to a foreign country (Article 512 of the Criminal Procedure Code). In that case, the competent Croatian authorities will take proceedings against the person accused of the offence.

Curbing pressure for bribes from officials

Extortion/solicitation

Croatia has taken steps to help companies to overcome pressure for bribes from domestic officials. Any public official or "responsible person" who solicits or accepts a gift or some other benefit, or who agrees to accept a gift or some other benefit, in order that he/she acts or refrains from acting in relation to the performance of official duties, commits a criminal offence under Article 347 of the Criminal Code. Soliciting or accepting a bribe is punishable by imprisonment of six months to five years, according to the nature of the offence.

Transparency of the regulatory system for doing business

There have been numerous and substantial changes made in Croatia's regulatory system, reflecting the transition from a socialist to a western-type market economy system. As the bulk of these changes have been completed, the Croatian regulatory system is expected to become more stable. Inconsistencies and loopholes are being eliminated as they occur. As part of these efforts, Croatia recently passed new legislation on investment that treats both foreign and domestic capital equally.

As a consequence, according to the analysis carried out by the World Bank on the basis of a 1999 survey of more than 3 000 enterprise owners and senior managers

in 22 transition countries, more than 25% of the firms doing business in Croatia are of the opinion that the government is "helpful" to their business, which is significantly higher than in other east and South-east European transition countries (15%). Furthermore, a large majority of the firms seem to be satisfied with the predictability and consistency of regulations (60%) and find that the legal system is able to uphold their property rights (65%).

Efforts co-ordinated by the OECD under the Investment Compact for South-east Europe to further enhance the legal and institutional environment in terms of stability, consistency and transparency are under way.

Promoting integrity in businesses

Not only do governments have major responsibility in sanctioning bribery of public officials in business transactions but they also have the corresponding responsibility to introduce sound company controls and to strengthen the efforts of corporations themselves to combat extortion and bribery.

Detecting suspicious payments

Accounting requirements and auditing standards

The regulatory framework for accounting and auditing consists of the Accounting Law and Audit Law, both published in the Official Gazette of the Republic of Croatia No. 90 of 1992. Both laws have been in force since 1 January 1993 and have not been amended since then. Croatia's accountancy development is being closely linked to international accounting and audit standards (International Federation of Accountants (IFAC), International Accounting Standards Committee (IASC), INTOSAI, etc.). The entering of false data into an official or business document, book or record, or the certification of a false business document, are subject to criminal sanctions under Chapter 23 and Article 287 of the Criminal Code.

In addition, financial statements of all large entrepreneurs and of all medium-sized entrepreneurs organised as joint stock companies, are subject to audit once a year, while small entrepreneurs organised as joint stock companies are subject to an abridged audit (namely, insight into operations) every third year.

Tax treatment of suspicious payments

Under Croatia's tax law, bribes do not qualify as a deductible expense. If the Criminal Code incriminates several acts aimed at tax evasion under Article 286, it contains no provisions specifically needed for ensuring the identification by tax authorities of suspicious payments that could be bribe payments by companies to public officials. However, the Croatian authorities intend to enhance co-operation and information sharing between the financial police and the Office for Combating Corruption and Organised Crime ("USKOS"), which will be soon established.

Instilling anti-bribery corporate culture

The authorities have taken steps to promote socially responsible business practice in the country. Legislation in force contains provisions aimed at combating trading in influence (Article 343) and at forbidding the conclusion of a prejudicial contract by a representative or agent of a company (Article 294). Croatia's Criminal Code also contains some sort of passive private-to-private bribery offence under Article 294. Although all normative aspects regarding the financing of political parties are regulated by the Political Parties Act, last amended in 1998, the law does not contain any specific provision prohibiting contributions to political parties to obtain a business or other undue advantage.

In order to promote self-implementation of efficient anti-corruption management practices among private and public companies, the government has been holding regular consultations with business associations. In particular, a private foundation, the Integra Foundation, established in Slovakia, is implementing a project aimed at helping small- and medium-sized enterprises in Croatia to develop business codes of conduct. Furthermore, the Croatian Chamber of Commerce, which participates in the Anti-Corruption Office (USKOK), intends to draft a model Code of Ethics for Croatian companies. The Croatian authorities should continue to further involve the private sector, for example by the organisation of regular consultations between the business community and the government, in the framework of the Anti-Corruption Office.

Recommendations for reform

The fight against bribery and dishonesty in business operations requires simultaneous action in many areas and by many national institutions. If Croatia has taken important steps aimed at combating bribery in business transactions, essential complementary measures now must be taken in order to further comply with international anti-bribery standards and good practices and this includes:

Preventing Bribery of Public Officials in Business Transactions

1. Streamlining legislation, in particular by using appropriate concepts for the offence of bribery of foreign public officials in business transactions.
2. Review the level of sanctions for natural persons regarding the offence of active bribery and provide for adequate criminal, civil or administrative responsibility for companies bribing public officials; in particular, apply procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials.
3. Ensure that the hiding of the bribe and its proceeds in the framework of business transactions are effectively sanctioned.
4. Review the statute of limitations applicable to the bribery offence to allow for an adequate period of time for investigation and prosecution.
5. Submit, on a regularly basis, a public report to parliament, presenting the aims and the results of governmental anti-corruption policy, and containing all information concerning the number of investigations, prosecutions, court cases and convictions, as well as a summary of judicial decisions related to bribery of public officials in business transactions.

Promoting Integrity in Business

6. Ensure that corporate fines can be imposed concerning violations of accounting crimes, and further develop banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation.
7. Further promote changes in business attitudes and high corporate governance standards. Consider establishing the full offence of commercial, private-to-private bribery.

5. "The former Yugoslav Republic of Macedonia"

5.1. Overview

While it managed to secede from the former Yugoslavia without a war, "the former Yugoslav Republic of Macedonia" suffered for many years from regional disputes that contributed to the creation of a favourable environment for the development of corruption.

Regional instabilities led many officials to develop contraband activities and to collect bribes from materials smuggled across the Serbian, Bulgarian, Albanian and Greek borders. As a consequence, public and private corruption has been widespread and bribes have been part of the citizens' everyday life, and it took a few years for the country's authorities to undertake specific initiatives to counter the problem. It is only in 1996/1997 that new criminal legislation was adopted. The government also drafted laws on the prevention of corruption and money laundering. However, these laws have not yet been adopted.

According to an analysis carried out by the World Bank (*Anti-Corruption in Transition: A Contribution to the Policy Debate,* 2000) based on a 1999 survey of more than 3000 enterprise owners and senior managers in 22 transition countries, "the former Yugoslav Republic of Macedonia" obtained a relatively high score compared to other east and South-east European transition countries. However, certain forms of corruption were more particularly pointed out by the firms doing business in "the former Yugoslav Republic of Macedonia". For almost 30% of the firms, the most important form of corruption was the paying of bribes to public officials to avoid taxes and regulations. Other corrupt practices, also influencing the firms' business, were the sale of court and arbitrage decisions, of presidential decrees and of parliamentary votes (for 10% to 20% of the firms).

"The former Yugoslav Republic of Macedonia" has made progress in the creation of a basis for the fight against corruption and bribery. It has ratified and signed several international conventions. The country is also actively involved in promoting regional co-operation and is a partner to the Stability Pact initiatives on corruption and organised crime.

The European Union signed a Stabilisation and Association Agreement with "the former Yugoslav Republic of Macedonia" in April 2001. It is the first country in the western Balkans to enter into such an agreement with the European Union.

Note: This report was adopted by the SPAI Steering Group via the ten-day written procedure, which expired on 21 May 2001.

Legal and Institutional Developments

As in many countries of the region, the legal framework of "the former Yugoslav Republic of Macedonia" is in the process of transformation. Relevant legislation remains a patchwork of laws and regulations, some of them dating back to pre-wartime Socialist Yugoslavia. This often opens the door for interpretations of legislative intent.

As part of its commitment to fight corruption, "the former Yugoslav Republic of Macedonia" has begun a process aimed at joining multilateral legal instruments containing anti-corruption related provisions or those relevant to an effective fight against corruption.

Among legislation relevant to the fight against corruption that has been passed by parliament over the past five years are: a new Criminal Code, a new Criminal Procedure Code, a Law on the Execution of Sanctions, a Law on Courts and a Law on the Public Prosecutor's Office. Conditions for more responsible business practice are also being developed in the framework of the 1996 Commercial Companies Law, amended several times since then. Accounting and auditing standards that apply to companies are also in the process of being harmonised with international standards.

Additional laws are being drafted or considered by parliament. These include a Law on Money Laundering and a Law on Corruption, which, among other things, foresees the setting up of a special National Commission against Corruption to monitor and co-ordinate political and professional law enforcement activities in fighting corruption. As a consequence, coherent institutions directed at both preventing and sanctioning corruption are at a developmental stage. At present, specialised anti-corruption units with sufficiently trained staff and legal and budgetary means to effectively investigate and prosecute corruption cases are not in place. There is also no national body co-ordinating the work on corruption and inter-agency co-operation is rather weak.

The way ahead

By promulgating some important amendments to laws related directly or indirectly to corruption and working on improving the institutional framework, "the former Yugoslav Republic of Macedonia" has so far proved its commitment to curbing corruption.

In view of the political, social and economic impact that corruption still has in the country, the government, together with civil society, must continue to improve the legal and institutional framework for fighting corruption.

5.2. Adoption and implementation of European and Other International Instruments

Accession to international agreements

"The former Yugoslav Republic of Macedonia" has begun to join some key multilateral legal instruments containing anti-corruption related provisions relevant to an effective fight against corruption. It was the first country to ratify the Council of Europe Criminal Law Convention on Corruption in July 1999, while the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime was ratified in May 2000. The Council of Europe Civil Law Convention on Corruption has been signed and implementing legislation has been adopted. The ratification is expected shortly. The country is also a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It signed the United Nations Convention against Transnational Organised Crime and its two protocols in Palermo in December 2000.

The country is party to three follow-up programmes to monitor and promote the implementation of appropriate measures to combat corruption: the Council of Europe's partial agreement "Group of States against Corruption" (GRECO); the Council of Europe's Select Committee for the Evaluation of Anti-Money Laundering Measures (PC-R-EV), in the framework of the Financial Action Task Force on Money Laundering (FATF); and the Stability Pact Anti-Corruption Initiative's Steering Group.

"The former Yugoslav Republic of Macedonia" also participates in the Stability Pact Initiative against Organised Crime (SPOC).

Mutual assistance in criminal matters

In the field of international legal assistance, "the former Yugoslav Republic of Macedonia" has ratified some key international instruments: the European Convention on Extradition with its additional protocols, the European Convention on Mutual Legal Assistance in Criminal Matters with its additional protocol, and the European Convention on the Transfer of Sentenced Persons and its additional protocol. In contrast, the European Convention on the International Validity of Criminal Judgments of 1970, and the European Convention regarding the Transfer of Proceedings in Criminal Matters of 1972 have not been signed. Agreements in force with Croatia, Slovenia, Bulgaria and Albania on mutual legal assistance and agreements under negotiation with Romania and the Federal Republic of Yugoslavia include, however, provisions regarding recognition and enforcement of foreign verdicts.

The legislation comprises a number of provisions regarding legal assistance, enforcement of foreign criminal judgments and extradition as well as a possibility for direct police co-operation. The Criminal Procedure Code (CPC) and relevant international treaties regulate international legal assistance in criminal matters. The CPC provides for the transmission of requests for legal assistance by

diplomatic channels, involving the Ministry of Foreign Affairs, the Ministry of Justice and local courts. In case of emergency and if there is reciprocity, requests for legal assistance can be delivered directly to the Ministry of the Interior. In case of a crime committed on the national territory by a foreigner, criminal records for prosecution and trial can be transmitted to the foreign country concerned. Although the European Convention on the International Validity of Criminal Judgments of 1970 has been neither signed nor ratified, the enforcement of foreign confiscation orders seems to be possible under the CPC. The conditions for the recognition and enforcement of a foreign criminal verdict are the following: the existence of a treaty in force with the requesting state, reciprocity and double incrimination. Agreements in force with Croatia, Slovenia, Bulgaria and Albania on mutual legal assistance and agreements under negotiation with Romania and the Federal Republic of Yugoslavia include also provisions regarding recognition and enforcement of foreign verdicts.

The legal conditions applying to extradition are established in the CPC and international agreements. "The former Yugoslav Republic of Macedonia" refuses extradition of its nationals, though they can be prosecuted in "the former Yugoslav Republic of Macedonia" for offences committed abroad.

The Criminal Code applies to the citizens of "the former Yugoslav Republic of Macedonia" for crimes committed by them abroad. Corruption and money-laundering offences are extraditable on the condition that the person concerned is not a national and the crime has not been committed on the territory of "the former Yugoslav Republic of Macedonia".

The main obstacles hindering mutual assistance seem to be delays in the procedures, insufficient information supporting the extradition requests, contradictions in legislation and language problems.

The existence of European data protection standards is usually a pre-condition for the exchange of sensitive data among European countries. In "the former Yugoslav Republic of Macedonia", the constitution and the Law for Personal Data Protection of 1994 regulate the protection of personal data. The Law for Personal Data Protection foresees a supervisory authority, which to date has not been established.

International co-operation in financial investigations and money laundering cases

Prosecution of money laundering on the basis of a predicate offence committed abroad requires proof of a conviction abroad. Proof of conviction abroad is also required to give effect to foreign legal assistance requests seeking confiscation and would not be possible in relation to legal persons. Although the enforcement of foreign confiscation judgments is possible according to the Criminal Code, conditions imposed are relatively restrictive (existence of a treaty in force with the requesting state, reciprocity and double incrimination). It is unclear whether "the former Yugoslav Republic of Macedonia" authorities would be able to give effect to a legal assistance request where the requesting state is seeking the identification,

freezing, seizure of the proceeds of money laundering or of the predicate offence or of the property or corresponding value. Receipt of confiscated assets from abroad seems to be possible. It would be equally important to allow asset sharing when confiscated assets would have to be returned abroad. The draft Law on Money Laundering will additionally address the exchange of information relating to money laundering with the bodies in charge of preventing money laundering and the corresponding bodies of foreign countries and international organisations.

The basis for conducting international investigations is laid down in the CPC. Police co-operation is carried out in the framework of bilateral agreements (Albania, Turkey, Slovenia, Croatia, Romania, Russian Federation, Greece and Ukraine) or through Interpol. Direct contacts with foreign police forces are possible and frequently used. There are foreign liaison officers in "the former Yugoslav Republic of Macedonia", but no officers of "the former Yugoslav Republic of Macedonia" abroad.

The Public Prosecution Office started to develop direct co-operation with counterparts from neighbouring states. In October 1999, it hosted a meeting between the representatives of Public Prosecution Offices of South-east Europe. Following that event, the representatives of the Public Prosecution Offices of "the former Yugoslav Republic of Macedonia" and Bulgaria as well as Albania initiated regular bilateral thematic meetings, including those on actual cases. With a view to realising this co-operation, the Association of Public Prosecutors in the Republic of Macedonia organised a working meeting in September 2000 with the participation of prosecutors of neighbouring districts from "the former Yugoslav Republic of Macedonia" and Bulgaria.

The National Bank, following the most recent amendments to the National Bank Act, is entitled to provide and receive supervisory information of internationally active banks even if such information is a business secret.

Recommendations for reform

1. Accede to the Council of Europe Civil Law Convention on Corruption.
2. Take measures to make mutual legal assistance more effective by promoting direct contacts and communication between judges and prosecutors, specialising and training staff, and by supporting judicial networking at European and international levels.

5.3. Promotion of Good Governance and Reliable Public Administrations

Corruption in some of the state Institutions of Stability Pact countries detracts from the efforts to promote economic growth and engender popular support for democracy. Poorly defined professional requirements and roles, inadequate accountability practices, weak control mechanisms and low wages make public servants and politicians susceptible to improper conduct and foster poor administration. Practices inherited from the days of one-party rule inhibit development of, and adherence to, high ethical standards in the administration.

Public procurement system

Legal framework

The Public Procurement Law, effective since 1998, generally follows EU Directives and the UNCITRAL Model Law. It covers: entities that are recipients of state budget funds, municipalities, state and local government non-budget funds and other state-founded institutions and entities, as well as state-owned public enterprises. It does not cover privately owned utilities.

The law is not mandatory for certain procurements concerning national defence and security. A special Governmental Decision (23-1882-1 of 6 July 1998) determines the list of exempted goods and services. Open tendering is the preferred method. Thresholds are not related to the category of procurement activity (goods, works, services) but to the procedure used.

Institutional framework

The system of public procurement is essentially decentralised and the Ministry of Finance has responsibility for supervising the implementation of the law and for its enforcement. The responsibility for drafting public procurement legislation, initiating policy changes, assisting contracting entities with advice and guidance, co-ordinating training activities and monitoring procurement operations, including collection of statistics, lies with individual employees of the Ministry. The Law on Public Procurement was adopted in 1998 and a secondary legislation for its implementation is in place. However, an expert group was created in the Ministry of Finance for further improvements in the procurement legislation.

Employees of the Ministry of Finance are required to participate in tender commissions as non-voting members. Their role is limited to ensuring that the procedures used conform to the legal requirements of the Public Procurement Law. The number of contracting entities exceeds 1 400 units. No unified data on the number or value of contracts exists.

Plans for creating an independent public procurement organisation would require changes in a number of laws and is still under discussion. The absence of such an organisation is a serious constraint on the effective implementation and enforcement of the Public Procurement Law.

Public expenditure management system

Legal framework

The 1991 constitution empowers the government to propose the budget of the republic (Article 91), which must be approved by parliament if it is to be enacted (Article 68). There are no other references to budgetary procedures in the constitution. The main piece of legislation on public finance is the 1993 Organic Budget Law, which took effect in January 1994.

Parliament recently approved some important amendments to the Organic Budget Law aimed at strengthening the budgetary process by: (i) bringing forward the start of the budgetary cycle from July to April; (ii) including specific dates for completion of key aspects of the budget cycle; (iii) aligning the preparation of budgets for the extra-budgetary funds with the normal budget calendar; (iv) preventing extra-budgetary funds and local authorities from running budget deficits; (v) bringing the execution of the budgets of extra-budgetary funds within the general framework of the new treasury system; (vi) exerting greater budgetary control over special revenues; (vii) creating a common system of classification and controls, subject to regulation by the Minister for Finance, that applies to the state budget, extra-budgetary funds and local authorities; (viii) more clearly defining the responsibilities of the users of the budget, including second-line users; and (ix) widening the definition of contravention of the Organic Budget Law.

Other public finance provisions are included in separate pieces of legislation, such as the State Audit Law (1997), the Law on Accountancy, the Law on Public Procurement (1998), the Regulation for Classification of Revenues and the Book of Rules for the Register of Budgetary Users.

Institutional framework

The Ministry of Finance is responsible for implementing the state budget. In the case of adverse fiscal or economic developments, however, the Ministry of Finance cannot block or reduce appropriations. This can only be done by parliament through the adoption of a supplementary budget.

Under the Budget Law, only the government, acting on a proposal of the Minister of Finance, may make reallocations among different budget users. Information on such reallocations is included in the supplementary budget presented to parliament. Budget users themselves have no authority to make any reallocations within their budgetary provision. This highly restrictive provision causes serious practical problems for line ministries and other spending units.

Under Article 36 of the Organic Budget Law, unused funds may not be carried over from one year to the next. There are also strong sanctions in the event of articles of the Organic Budget Law being contravened.

The Social Accounting and Payment Service (ZPP) operates the treasury system for the state budget under the direction of the Ministry of Finance. The position of every expenditure line in the budget is monitored by the ZPP. It records each payment from the treasury account to the first-line users, who in turn transfer funds to

the second-line users and so on. Each expenditure transaction is given an organisational and economic classification corresponding to the classifications in the budget. Budgetary entities receive daily information on their payments and positions. The revised balance in the main treasury account and in each budget user's account is sent to the Ministry of Finance every day so that it can ascertain whether requests for payment can be approved. Before a payment is made, checks are carried out to ensure that funds are available for the payment. A number of other reports are given to the Ministry of Finance relating to balances and transactions in the budget user accounts. Data is also available on the special revenue accounts. In June 2001, a change will be implemented so that all transfers in the treasury system will go though the banks and no longer though the ZPP.

Financial management is weak. Although it is improving in the Ministry of Finance, some key ministries (for example, education) appear to have virtually no internal control or internal audit procedures that are applied systematically. Cash management is very much day to day and there is no emphasis on forecasting aggregate expenditure or revenues. There is no standard routine for initiating discussions of problematic appropriations in the Cabinet at an early stage so that well considered prioritisation can be made. Although information is available, there is no emphasis on using it, possibly due to the fact that there is no requirement for frequent reporting under the Organic Budget Law. Furthermore, there are only weak procedures for ensuring that post-budget policy proposals are properly costed before being submitted to the Cabinet even though this is required under the Organic Budget Law (Article 31).

All legal entities are obliged to maintain an account with the ZPP. Therefore, it is technically possible to track expenditures of the extra-budgetary funds to the same level of detail as state budget transactions.

Proposals are under way to make a substantial reform of the cash management and debt management systems. It is anticipated that a new system will be fully operational by 1 June 2001 and that it will be operated by the Ministry of Finance instead of the ZPP. The main features will include: creating a new treasury department within the Ministry of Finance, with a staff of about eleven (already completed); establishing a general ledger and treasury single account; linking the payments and receipts of the extra-budgetary funds to this system, which will also provide a rich source of information for monitoring the activities of these funds; introducing new information technology systems for the treasury and debt management functions; revising the accounting standards and classification of expenditures and revenues (including the special revenues); and (eventually but not immediately) introducing commitment accounting.

Salaries make up about 40% of the budget. Until the recent establishment of an employee central register, there was no reliable information available to the Ministry of Finance as regards numbers of employees or actual payments made to individuals.

Financial control

Legal framework

In the year 2000, the legal framework for the responsibilities, roles and functions of financial control has been changed with the aim of increasing control, functioning and effectiveness of the financial control system (Law on Budgets, Law on the Execution of the Budget, Law on Accountancy, Law on Changing and Amending the Law on Accountancy, Decree for Prescribing the Form and Content of Financial Statements, Law on Corporate Audit, Law on External Audit, Public Procurement Law, and amendments to above-mentioned laws, for example revisions of the Law on Budget in 2000).

Institutional framework

The Internal Audit Division in the Ministry of Finance was created in September 2000. After the amendments to the Law on Budget in 2000, a special Code of Ethics was adopted for persons conducting audit procedure. By March 2001, the Internal Audit Division had conducted and finalised twelve audits in different institutions and the reports were submitted to the government. The payment system is well regulated and the Social Accounting and Payment Service (ZPP) operates the system based on payment orders received from the users.

The Ministry of Finance is, according to the Organic Budget Law, responsible for inspecting the financial probity of public administration. The control is, however, limited to some aspects of compliance audit.

Civil service capacities

Legal framework

The 1991 constitution is laconic concerning a civil service. The political organisation and activities of bodies of state administration are to be regulated by law, which requires the support of a special majority in the Assembly (Article 95). It contains no systematic provision concerning public employment. However, a Law on Civil Service and a Law on Government were adopted by parliament in July 2000. The secondary legislation for the implementation of these laws has also been adopted.

An action plan for the adoption of a series of laws in 2001 was prepared by the Ministry of Justice and includes the drafting and adoption of a number of laws relating to public administration; among others, the Law on Administrative Procedure, the Law on Administrative Inspection and the Law on Access to Public Information as well those relating to the reform of the courts.

Institutional framework

Since August 2000, the Agency for the Civil Service foreseen in the Law on Civil Service has been created and has taken over the competencies of the former Commission for Human Resource Development. The agency now has a staff of about twenty.

Public sector external audit system

Legal framework

The State Audit Office of "the former Yugoslav Republic of Macedonia" was established as a legal entity in May 1998 with the appointment of the first Auditor General under the Law on State Audit (*Official Gazette of RM, No.65/97*). The State Audit Office is an independent supreme audit institution and the Auditor General is appointed for a ten-year term (Article 13). In February 1999, most of the employees of the Directorate for Economic-Financial Audit within the Social Accounting and Payment Service (ZPP) were transferred to the State Audit Office.

Institutional framework

Until its abolishment under the Audit Law, the Directorate for Economic-Financial Audit had been responsible for external audit under the Law concerning the Public Bookkeeping Service. Following the resignation of the first Auditor General in May 1999, the State Audit Office was without a replacement until mid-February 2000. The State Audit Office is still understaffed and lacks budgetary resources.

Recommendations for reform

Public Procurement System

1. Draft and adopt amendments to the Public Procurement Law, and related secondary legislation, that will bring the legislation fully into line with EU and other international requirements.
2. Building up the central policy-making capacity in public procurement, and reinforcing capacity in the contracting entities.

Public Expenditure Management System

3. Further develop medium-term economic forecasting and budgetary models and a medium-term expenditure framework.
4. Strengthen capital investment budgetary procedures in areas such as priority setting, integrating capital investment in the overall budget and investment appraisal techniques.

Financial Control

5. Establish relevant structures and resources for control of revenues from taxes and custom.
6. Decide on the intended overall structure of financial control in the public administration.

Civil Service Capacities

7. Make the Agency for the Management of the Civil Service operational as well as create human resource management capabilities at ministry and institutional levels.
8. Adopt a strategy for redeployment and training for civil servants and public employees at state level. Create a School of Public Administration. Adopt a fair salary scheme for civil servants and public employees.

Public Sector External Audit System

9. The State Audit Office should consider the preparation of a strategic development plan setting out their position and future needs regarding the adequacy of the legal framework, the adoption and implementation of auditing standards, the management of the State Audit Office, and staff training and development, and their role in encouraging internal control and information technology developments.

5.4. Strengthening Legislation and Promotion of the Rule of Law

The SPAI Compact requires that countries create an appropriate legal framework by criminalising corruption and money laundering, ensuring appropriate remedies for victims and effective enforcement. Countries also commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence and protection in the exercise of their functions, and which have the capacity to protect collaborators. Furthermore, countries are required to strengthen investigative capacities by fostering inter-agency co-operation, the use of special investigative means – while respecting human rights – and providing appropriate training.

"The former Yugoslav Republic of Macedonia" is currently considering the adoption of several laws that would improve its existing legislative framework. This legislation would also establish specialised anti-corruption services. Appropriate inter-agency co-operation and training programmes still need to be developed.

Criminalisation of corruption and money laundering

Criminalisation of corruption

"The former Yugoslav Republic of Macedonia" has recently taken some steps to bring its legislation further into line with European and international standards. The Criminal Code, which came into effect in November 1996, criminalises corruption under Section 30 entitled "Crimes against official duty". Penalties for active bribery (Article 358) range from fines to imprisonment of up to five years, and for passive bribery (Article 357) from three months to ten years. The property or gain given or acquired shall be confiscated. Unlawful mediation (Article 359) is punished with a fine or imprisonment of up to ten years. Amendments to the Criminal Code adopted in December 1999 now include provisions for corruption in the private sector as well as provisions on the bribery of foreign officials and trading in influence.

A draft law against corruption has been in the making for some time but has not yet been submitted to parliament for adoption. The draft law is aimed at preventing political corruption and conflict of interests. It provides for the establishment of a National Commission for the Prevention of Corruption and foresees other important measures, including the protection of witnesses.

Criminalisation of money laundering

The Criminal Code includes money laundering as a specific offence (Article 273) and foresees penalties of up to ten years. All crimes are considered predicate offences. A draft Law on Money Laundering has been prepared but was withdrawn from the legislative procedure and now a special task force in the Ministry of Finance together with a number of outside experts is preparing a new draft on money laundering. The adoption of this law would provide the necessary legal basis for the prevention and control of money laundering.

Several articles of the Criminal Code are related to the confiscation of proceeds (Articles 61, 68, 97-100 and 273(5)). In the context of money laundering, confiscation is compulsory. Further provisions on confiscation or temporary seizure are contained in the CPC (Articles 203, 485 and 489) and the Law on Executing Proceedings (Articles 264-276). The rather large number of provisions and their complexity make it difficult to assess the effectiveness of confiscation provisions and their application in practice, in particular as they have apparently not yet been used in the context of money laundering.

Effectiveness of legislation

In general, it is difficult to measure the effectiveness of the current legislation. All law enforcement agencies collect statistics, but the methodology differs. According to available data, in 1999, 43 investigations into active bribery resulted in 47 convictions. Also in 1999, 13 investigations into passive bribery led to 4 convictions. However, the statistics of cases at different stages of the criminal procedure is not harmonised (police, prosecutors, courts). In October 1999, when an evaluation team of the Council of Europe visited the country, only one money-laundering case was under investigation.

Another major reason, however, appears to be the lack of mechanisms to detect and report suspicious transactions possibly constituting money laundering. An additional issue is that special investigative means – such as undercover operations, wire-tapping, bugging and others – cannot be legally used by law enforcement agencies. Furthermore, the awareness in the private sector and the public at large of the need to counter money laundering seems to be limited.

Specialised units

National co-ordination mechanism

In "the former Yugoslav Republic of Macedonia", there is no national body co-ordinating the fight against corruption, organised crime or money laundering and responsible for designing and monitoring relevant strategies. The Senior Representative appointed under SPAI does not have any investigative or executive powers.

Specialised anti-corruption units

The draft Law on Corruption provides for the creation of a National Commission for the Prevention of Corruption, which is to be an independent body and which, among other things, is to initiate procedures before competent bodies for discharge, penal sanctions or other measures against officials. However, this body will not have investigative, prosecutorial or executive powers.

At present, specialised anti-corruption units with sufficiently trained staff and legal and budgetary means to effectively investigate, prosecute and adjudicate cases of corruption and enjoying appropriate independence, autonomy and protection in the exercise of their functions are not in place in "the former Yugoslav Republic of Macedonia".

Specialised prosecutors

At present, there are no special prosecutors for corruption cases. However, several prosecutors have specialised in economic crime. Prosecutors do not seem sufficiently specialised in the field of money laundering.

The amendments to the Law on the Public Prosecution that have already entered into force have strengthened the role of prosecutors. They include the possibility for a prosecutor to request that one or more police inspectors be put at his/her disposal for a specific case (serious criminal offences, offences involving several perpetrators or other specially justified reasons) and for a certain period of time. However, in practice this possibility seems to be used rarely.

Specialised police units

The department in charge of organised crime in the Ministry of the Interior comprises a unit responsible for violent crime, prostitution, extortion and money laundering. This department also includes a unit dealing with financial and economic crime and a unit dealing with corruption (staff of 5-6). Within the Ministry of the Interior, a special department deals with drug trafficking.

Financial intelligence units

There is no financial intelligence unit in "the former Yugoslav Republic of Macedonia". The creation of such a unit is envisaged in the draft Law on Money Laundering. The authority under which the unit would be placed remains to be determined.

Investigative capacities

Inter-agency co-operation

Investigations against corruption and money laundering require a level of inter-agency co-operation that is presently not available in "the former Yugoslav Republic of Macedonia". The adoption of draft amendments to the Law on the Public Prosecutor's Office should allow for better co-operation between the prosecution and the police.

Collaboration with justice and witness protection

Draft amendments to the CPC, which would include certain types of witness protection measures, are under consideration. At present measures designed to reinforce collaboration with the judicial authorities by former members of criminal organisations are in place. However, the fact that a suspect has collaborated with the judicial authorities can be used as a mitigating circumstance at trial. Victims are entitled to compensation in cases of both material and physical damage. No State fund is available to provide financial compensation to victims when compensation is not available from the offender. Once protection measures become available, it would be important to ensure their use in corruption cases.

Use of special investigative means

Use of informants, searches, interception of written communications as well as pseudo-purchases and other pseudo-offences are legally possible and subject to a judicial warrant. There is no information as to what extent special investigative means apply to corruption cases. Other covert investigative techniques such as interception of telephone communications, controlled delivery (with the exception of controlled deliveries on the basis of the United Nations Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances related to drug and drug money), undercover operations and electronic surveillance are not legally regulated. Their use would be in contradiction with Articles 17 and 18 of the constitution (right to freedom and confidentiality of correspondence and other communications). Without changing the constitution there seems to be no possibility to include these measures in the criminal procedure legislation.

Specialised training

Systematic and specialised training for judges, prosecutors, police and other law enforcement officers in the investigation and prosecution of corruption-related cases is not yet available.

Recommendations for reform

Criminalisation of corruption and money laundering

1. Finalise the drafting, adoption and implementation of the Law on Corruption and the Law on Money Laundering that would ensure the establishment of compulsory reporting systems.
2. Review provisions concerning confiscation and provisional measures to ensure that general and specific provisions are consistent, enhancing their effectiveness.
3. Consider the publication of an annual corruption situation report, among other tools, to monitor the effectiveness of anti-corruption measures.

Specialised Units

4. Establish the National Commission for the Prevention of Corruption (as foreseen in the draft Law on Corruption) and ensure that it is a multi-disciplinary body independent of any particular ministry, and having investigative and executive powers.
5. Create a co-ordinating body to enhance co-operation between the prosecutors and law enforcement agencies.
6. Create a Financial Intelligence Unit as foreseen in the draft Law on Money Laundering.

Investigative Capacities

7. Take measures to ensure an effective co-ordination/exchange of information between the police and the judiciary and set up a clear and more efficient division of labour and competences between the investigative judges, prosecutors and police officers, in particular through adoption of the draft amendments to the Law on the Public Prosecutor's Office.
8. Improve witness protection and collaboration with justice agencies by adopting relevant legislation and setting up effective structures.
9. Establish the legal framework for the use of special investigative measures and ensure their application in corruption cases with due respect for human rights.
10. Establish regular and effective anti-corruption training programmes for prosecutors, the police, the judiciary and financial intelligence officers.

5.5. Promotion of Transparency and Integrity in Business Operations

The Stability Pact Anti-Corruption Initiative requires countries of South-east Europe to free business deals of corrupt practices through, inter alia: enactment and effective enforcement of laws aimed at combating active and passive bribery in business transactions, open and transparent conditions for investment, the development of adequate external and internal company controls, and other measures aimed at strengthening the efforts of corporations themselves to combat bribery.

Under the law, bribing a domestic official, as well as certain categories of foreign officials, with a view to obtain an improper advantage, including a business deal, is a criminal act. Penalties consist of either a fine or a deprivation of liberty for up to five years. While there is no regulation comprehensively covering corporate responsibility, the country has taken steps to help companies to overcome pressure for bribes from officials. Any official who solicits or requests a bribe can be punished by imprisonment. The law further criminalises non-compliance with accounting and tax regulations applicable to corporations.

Preventing bribery of public officials in business transactions

Preventing and deterring bribery of officials in business deals require first of all making bribery of public officials a crime, levying significant penalties on those who bribe, including companies, and ensuring that jurisdiction, investigation and prosecution are effective. It is also essential that measures be taken to help companies overcome pressure for bribes from officials. This includes the prohibition of passive bribery and the development of open and transparent conditions for investment.

Active bribery and the responsibility of companies

The offence of active bribery

Bribing a public official in business transactions is a criminal offence under Article 358 of the Criminal Code. The offence consists of promising or intentionally giving a gift or other benefit to an official in order to perform or not to perform an act within the framework of his/her official duties. Preparation, attempt, complicity and incitement to bribery also constitute criminal offences and they include authorisation (Articles 18-19 and 22-24). The law provides that the punishment of the person who promises or gives the bribe after being solicited by the public official and has reported the deed before it was discovered or before knowing the deed was discovered can be waived.

Thus, bribing a public official in business transactions is prohibited whatever the purpose of the bribe (obtaining a business, being awarded a public contract, obtaining a permit or a licence), and regardless of the form of the bribe as long as it constitutes a gift or benefit.

The officials who may not be bribed are broadly defined to include: any person who holds a legislative, administrative or judicial office in the country, whether appointed or elected, or who exercises a public function, including in a public agency and other agencies, on behalf of the republic; and any "authorised person" in a legal entity (such as associations, financial organisations and enterprises registered as legal entities), which by law or by other regulation is entrusted with the performance of official duties. The prohibition also applies to any person representing a foreign country or an international organisation on the territory of the republic.

Corporate responsibility and sanctions of companies

At present, if companies can be held liable under civil and administrative regulations, the applicable law does not establish criminal liability for legal persons. Only a natural person bribing an official is subject to criminal penalties. They consist of either a fine or a deprivation of liberty for up to five years. Although the law provides for a range of fines, it is unclear whether monetary sanctions would comply with international requirements according to which sanctions have to be effective, proportionate and dissuasive.

Additional criminal sanctions include the confiscation of the bribe and the proceeds of the bribery (Articles 357-8 of the Criminal Code). Clear regulations for the seizure, confiscation and handling of confiscated proceeds of crime are, however, lacking in the CPC. Adequate investigating institutions are also lacking.

There is also a provision aimed at sanctioning money laundering that may apply to the hiding of bribes and their proceeds in business transactions. Article 273 of the Criminal Code punishes anyone who, in banking, financial or other business operations, receives, exchanges, distributes or in some other way covers up the origin of money or other property, knowing that it was at least partially obtained through some criminal activity. Punishment is up to ten years of imprisonment. A specific Law on Money Laundering, which foresees the establishment of a Financial Intelligence Unit under the Ministry of Finance to control suspicious transactions, is still being drafted by a working group in the government.

Enforcement

Jurisdiction, investigation and prosecution over active bribery offences in business transactions must be effective.

The country exercises jurisdiction and investigates and prosecutes bribery of public officials in business transactions along the general rules and principles that are elaborated in laws such as the CPC, the Law on Execution of Criminal Sanctions, as well as in other by-laws of the Ministry of Justice and the Ministry of Internal Affairs. As jurisdiction is exercised on both a territorial and a nationality basis, the authorities may prosecute bribery offences by their nationals from abroad and by foreigners bribing from its territory. Criminal law is also applicable to everyone who commits a crime on a domestic ship, regardless of where the ship is at the time the crime has been committed, and to everyone who commits a crime on a

domestic civil aircraft during flights regardless of where the aircraft is at the time the crime has been committed.

An additional jurisdiction, established in relation to crimes committed by non nationals abroad whereby the crimes have been directed against the interests of the republic or of its citizens apply to the offence of bribery of public officials. Provided the authors of the offence are found on the territory of, or have been extradited to, the republic. This additional jurisdiction is an important tool to curb the penetration of foreign crime into the national economy.

Pursuant to Article 150 of the CPC, an investigation is initiated against a person upon request by the Public Prosecutor when there is justified suspicion that the person has committed a crime. The statute of limitations is similar to the statutes applicable to the active bribery offence in most OECD countries and the Law on the Courts provides that no influences, pressure, threats, or interventions, direct or indirect, may be imposed upon the judge by any entity and for any reason. In practice, the investigation and prosecution of bribery cases are often influenced by political or other considerations or the identity of the natural person. Among other problems related to enforcement are weak inter-agency co-operation in the investigation phase and the fact that the legislation and sanctions related to bribery of public officials are insufficiently applied.

Enhancing the co-operation between countries, be it on a bilateral or multilateral basis, is also important in strengthening the ability of national institutions to fight bribery of public officials in business transactions as this form of crime most often involves two or more jurisdictions. However, assistance in bribery matters lacks effectiveness in the republic. Of course, as in many OECD countries, mutual legal assistance from bribery offences in business transactions is provided either pursuant to the provisions of an international treaty or, in the absence of such treaties, on the basis of reciprocity pursuant to the provisions of the CPC. Procedures for international co-operation in this specific field remain, however, rather complex; as a consequence judicial co-operation is slow. The country also refuses assistance – in contradiction with international anti-bribery standards – on the basis of bank secrecy and the law forbids the extradition of nationals. The planned revision of the Criminal Procedure Code should simplify the procedures for legal assistance.

Curbing pressure for bribes from officials

Extortion/solicitation

The republic has taken steps to help companies overcome pressure for bribes from domestic officials. Any domestic official who solicits or requests a bribe (a gift or other benefit) in order to perform or not to perform an official act within the framework of his/her official duties commits an offence under the Criminal Code. The official is punishable by imprisonment of between three months and ten years, according to the type of offence.

Transparency of the regulatory system for doing business

The country has made substantial progress in liberalising the investment regime. However, further efforts are needed to enhance the legal environment in terms of stability, consistency and transparency. In particular, rules prejudicial to foreign investment in the pre- and post-establishment phases still need to be addressed. According to an analysis carried out by the World Bank based on a 1999 survey of more than 3 000 enterprise owners and senior managers in 22 transition countries, less than 15% of the firms doing business in "the former Yugoslav Republic of Macedonia" were of the opinion at the end of the 1990s that the government was "helpful" to their business. Only half of the firms were satisfied with the predictability and consistency of regulations and found that the legal system was not able to uphold their property rights.

Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery. Efforts co-ordinated by the OECD under the Investment Compact for South-east Europe to enhance the legal environment in terms of stability, consistency and transparency are under way.

Promoting integrity in companies

Not only do governments have major responsibility in sanctioning bribery of public officials in business transactions but they also have the corresponding responsibility to introduce sound internal and external company controls and to strengthen the efforts of corporations themselves to combat extortion and bribery.

Detecting suspicious payments

Accounting and auditing requirements

The regulatory framework for accounting and financial reporting consists of the Accounting Law of 1993 (amended in 1995, 1996, 1998 and 1999). The law establishes requirements for maintaining accounting records and for presentation of financial information about the enterprise. All types of organisations are subject to the Accounting Law: business enterprises, public sector entities and non-profit organisations. Persons infringing the General Accounting Law and other applicable regulations are subject to a prison sentence of between six months and five years together with a fine. False statements – such as the making of "off-the-books" or inadequately identified transactions, the recording of non-existing expenditure or the entering of other false information – are also prohibited by the Criminal Code under Articles 280 and 361.

Some general accounting and financial requirements are also established in the Law on Trade Companies of 1996 (with amendments in 1997, 1998 and 1999). All companies incorporated under the Law on Trade Companies are required to comply with its requirements relating to the maintenance of proper accounting records and the preparation and submission of audited accounts for statutory purposes. For specialised industries, other applicable regulations are in force such as the Law on the National Bank of the Republic of Macedonia of 1992 (a new law is being

drafted), the Insurance Law of 1997 (amended in 2001), the Law on Banks of 2000 and the Law on Securities of 2000. Furthermore, a number of business entities (joint stock and so-called public limited companies; banks, insurance and other financial institutions and certain limited liability companies) are subject to statutory audit requirements under the Law on Auditing of 1997 as amended in 2000.

In practice, the control of finances and accounts is made very difficult by the fact that most payments are made in cash.

Tax treatment of suspicious payments

The country's tax legislation is in the process of transformation. The tax regime is in part inherited from the former Yugoslavia and in part from the new legislation introduced over the past eight years by the government. The country's tax legislation does not contain provisions allowing companies to claim tax deductions for bribe payments to public officials. In addition, the Criminal Code incriminates several acts aimed at tax evasion, in different forms, under Article 279. Refusal to present accounting documents to control authorities, incomplete or false accounting paperwork and documentation and double-accounting documents aimed at tax evasion represent criminal offences. Sanctions include either imprisonment or fines, depending on the level of fraud.

Instilling an ant-bribery corporate culture

The conditions for socially responsible business practice in the Republic are in the making. Although a new law on companies came into force in 1996 and has been amended several times since then, rules governing corporate governance are in part inherited from the former Yugoslavia and in part from the new legislation introduced by the government. For this reason, the country does not yet have corporate governance standards that fully match international standards. Self-implementation of efficient anti-corruption management practices is also lacking among private and public companies.

Recommendations for reform

Preventing Bribery of Public Officials in Business Transactions

1. Provide for adequate criminal, civil or administrative responsibility for companies bribing public officials, including procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials, and ensure that the bribery of a public official is punishable by effective, proportionate and dissuasive penalties.
2. Make sure that complaints of bribery of public officials in business transactions are seriously investigated by competent authorities and that prosecution is effective.
3. Develop and issue regular statistical reports on bribery offences in compliance with international standards.
4. Simplify procedures for mutual legal assistance in bribery matters involving corporations.
5. Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.

Promoting Integrity in Business

6. Ensure that corporate fines are imposed concerning violation of accounting crime.
7. Strengthen banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation.
8. Promote continuous changes in business conduct through training and public/private dialogue.

6. FRY – Republic of Montenegro

6.1. Overview

The Republic of Montenegro is one of the two Republics of the Federal Republic of Yugoslavia (FRY), the other entity being the Republic of Serbia. As a result of the internal corruption of the former regime and sanctions imposed on the whole country, corruption has flourished in the Republic of Montenegro over the past decade. Regional instability has also led many individuals to develop contraband activities and to collect bribes from materials smuggled across the Serbian and Albanian borders. As a consequence, public and private corruption has been widespread.

Significant efforts have been made recently by the Montenegrin authorities to promote anti- corruption initiatives and adjust certain parts of legislation. In respect to the political, social and economic impact that corruption has in Montenegro, the authorities must continue to improve the legal and institutional framework for fighting corruption.

Legal and Institutional Developments

The republic's legal framework is in the process of transformation. Legislation relevant to the fight against corruption is in part inherited from the former Socialist Federal Republic of Yugoslavia and in part from the new legislation introduced by the republican government since the break-up of Yugoslavia. Both the republic and the federal state hold the legislative power regarding criminal matters. While the federal state is the sole competent body for enacting laws in criminal procedure matters, the competence in criminal matters is shared between the republic and the federal state. As a consequence, the republic has a patchwork of laws and regulations and legislation often appears insufficient, both internally and with respect to other relevant legislation. This opens the door for interpretations of legislative intent and often for unpredictable decisions by those in charge of implementing the legislation.

Two Criminal Codes apply in the republic: the Republic of Montenegro's Criminal Code of 1993, which regulates republican crime in the territory of the republic, and the Criminal Code of the Socialist Federal Republic of Yugoslavia of 1977, which regulates federal crime on the entire territory of the Federal Republic of Yugoslavia. The criminal procedure in the entire territory of the Federal Republic of Yugoslavia is regulated by the Criminal Procedure Code of the Socialist Federal Republic of Yugoslavia of 1986, but also by the Law on the Courts of the Republic of Montenegro of 1995.

Note: This report was adopted by the SPAI Steering Group at the Tirana meeting on 20 April 2001.

The republic's institutional framework is also at an early stage of development. There is no public sector audit institution, limited financial control of government bodies and the public expenditure management system is yet to be established. However, the government has undertaken a sweeping reform of its legal system and the judiciary as well as the central and local public administration. It has also prepared a draft proposal Law on Courts, which has not yet been submitted to parliament, and intends to adopt a new Criminal Code. All these reforms have been postponed for several months due to the April 2001 elections.

The way ahead

As a member of the Stability Pact Anti-Corruption Initiative, the Republic of Montenegro has so far proved its commitment in contributing to the international effort of fighting bribery and corruption in South-eastern Europe. Urgent legislative and institutional reforms are required in view of the political, social and economic impact that corruption has in the republic.

6.2. Adoption and Implementation of European and Other International Instruments

Accession to international agreements

The Republic of Montenegro is part of the Federal Republic of Yugoslavia (FRY) and as such it is not an international legal subject capable of acceding to international agreements and other mechanisms.

However, the Federal Republic of Yugoslavia signed the United Nations Convention against Transnational Organised Crime and the two protocols in Palermo in December 2000.

The Republic of Montenegro is party to one follow-up programme to monitor and promote the implementation of appropriate measures to combat corruption: the Stability Pact Anti-Corruption Initiative's monitoring mechanism.

The Republic of Montenegro also participates in the Stability Pact Initiative against Organised Crime (SPOC).

The Republic of Montenegro signed the Declaration against Trafficking in Human Beings in Palermo in December 2000.

The Anti-Corruption Agency of the Republic of Montenegro has prepared the list of priorities, which includes also the implementation of internationally recognised principles in the field of fighting corruption, money laundering, etc. Following the adoption of this list by the Government of the Republic of Montenegro the time limit for its implementation is 31 December 2002.

Mutual assistance in criminal matters

[N/A]

International co-operation in financial investigations and money-laundering cases

[N/A]

Recommendations for reform

1. Despite the constraints on the Republic of Montenegro's capacity to accede to international agreements, it should consider making a particular effort to apply all other relevant international standards. These include the 40 recommendations of the Financial Action Task Force on Money Laundering (FATF), the Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials signed at the 1999 Global Forum on Fighting Corruption, and the experience of the European Union in the field of combating corruption.
2. Take measures to make mutual legal assistance more effective by promoting direct contacts and communication between judges and prosecutors, specialising and training staff, and by supporting judicial networking at European and international levels.

6.3. Promotion of Good Governance and Reliable Public Administrations

Corruption in some of the state institutions of Stability Pact countries detracts from the efforts to promote economic growth and engender popular support for democracy. Poorly defined professional requirements and roles, inadequate accountability practices, weak control mechanisms, and low wages make public servants and politicians susceptible to improper conduct and foster poor administration. Practices inherited from the days of one-party rule inhibit development of, and adherence to, high ethical standards in the administration.

Public procurement system

Legal framework and institutional framework

A draft Public Procurement Law has recently been prepared by experts from a major international consulting company and USAID, and has been submitted to the government.

Public expenditure management system

Legal framework

The final draft Government Budget Law was agreed in February 2001 and, once adopted by parliament, will come into force in 2001. This law, produced with the assistance of the European Commission and USAID, is a comprehensive piece of modern legislation that covers: budget content, records and managing; budget preparation, development and approval; government budget execution; government borrowing and debt; budget accounting and auditing; government treasury; and internal audit and internal control.

In addition to the central government budget, the draft legislation also covers extra-budgetary funds and the municipalities within the country. The Minister for Finance will issue detailed financial regulations and instructions under the law.

Institutional framework

The Ministry of Finance currently has forty-one staff. The reorganisation of the public expenditure management system in Montenegro is based on a comprehensive financial management system located in the Ministry of Finance. The precise level of staffing is still being worked on, but key elements of the ministry will be: a Budget Office, a Treasury and an Internal Audit Unit, each under an Assistant Minister. According to preliminary estimates, the Treasury should have a staff of thirty-one people. It was planned that staff would be recruited in April 2001 with training commencing immediately thereafter.

The Budget Office will issue guidelines for the preparation of the budget to line ministries and co-ordinate the results. It will match spending proposals against revenue estimates and make the necessary adjustments when preparing the Annual Budget Law. The main Government Budget Law provides for a balanced revenue budget each year.

The Treasury will be responsible for all government payments, accounts, financial control, financial reporting, cash, debt and asset management and the government's financial management information system. This will be achieved through a commitment-based budgeting, accounting and financial control computer system, which should be installed during mid 2001, with testing in the autumn and then going "live" on 1 January 2002.

The Internal Audit Unit will have unrestricted access to all activities undertaken within the government so that it can review, appraise and report on the adequacy and effectiveness of the government's systems of risk management and internal control.

Financial control

Legal framework

The Government of the Republic of Montenegro is in the process of developing its own laws. In the field of financial control, only the Annual Budget Law and Central Bank Law have been enacted up to now. External assistance is being provided to the Central Bank staff in developing their role and all government staff in the area of procurement are being given training.

The main piece of financial control legislation will be the Government Budget Law. It will operate in conjunction with an Annual Budget Law, which determines permitted annual recurrent and capital spending for all ministries, extra-budgetary funds and municipalities.

The Annual Budget Law for 2001 was developed using a new Chart of Accounts agreed between US Treasury advisers and the Montenegrin Ministry of Finance. This Chart of Accounts enables any necessary analysis (for example, in IMF Government Financial Statistics format) and permits detailed financial control. At present, the Annual Budget Law provides only one column of figures (the actual permitted spending for 2001). It is anticipated that the 2002 Annual Budget will also include the 2001 figures for comparison, and for 2003 it will further include the actual expenditure figures for 2001 and the estimated out-turn figures for 2002.

The draft Government Budget Law will also provide for internal control. The Minister for Finance will be responsible for issuing instructions on the methods to be used for all government spending units and extra-budgetary funds.

In addition to the Government Budget Law, legislation is also proposed in 2001 to unify the Tax and Customs Administration into a Government Revenue Agency (currently underway) and to establish a National Audit Institution.

Institutional framework

There is currently a small Budget Office within the Ministry of Finance, headed by an Assistant Minister, who is responsible for the preparation of the Annual Budget Law, basic financial control and account preparation.

There is no financial control unit. Budget users are informed of the limit approved by parliament, request transfer to their bank accounts with the Payments Bureau and spend money by instructing the Payments Bureau to transfer money from their bank account to the recipient's account. Apart from this authorisation, which is merely filed after processing, there is no documentation in the payment process and no control over expenditure.

As part of the process of moving to a formal treasury-based system, in 2001 the authorities are expected to develop an interim financial control system using, as a minimum, a payment voucher.

The Government Budget Law will require each ministry to have an Accounting and Control Section, which will be responsible for ensuring that the financial regulations issued by the Minister for Finance are put into practice especially in the areas of income, commitments, expenditure, and financial and other assets and liabilities. The Internal Audit Unit – when created – will be responsible for ensuring that these measures are effectively implemented.

Civil service capacities

Legal and institutional framework

The Civil Service Act regulates the status of civil servants and is complemented by the Labour Code for elements that are not specified in the Civil Service Act.

The scope of the law includes civil service positions in the ministries, in government organisations, in regular courts, in public prosecutors' offices, in other government services and in the local self-government.

The act distinguishes between managers and civil servants. Managers are appointed for a duration of four years while civil servants are tenured. Managers are nominated by the government and their contracts can be renewed upon satisfactory execution of the work.

Vacancies in public institutions and government are publicly announced, and open competitions are organised to select new staff. Each institution is its own appointing authority. The Ministry of Justice plays a pivotal role in the education and training of civil servants.

Public sector external audit system

Legal framework

At present, there is no public sector audit institution in the Republic of Montenegro. The government is aware of the need for such a body and is currently approaching various aid agencies with a view to obtaining technical assistance in drafting legislation and setting up an independent National Audit Institution.

The draft Government Budget Law requires the Minister for Finance to submit signed annual accounts statements to the National Audit Institution and for the head of that institution to report to parliament on those accounts.

Institutional framework

The Government of the Republic of Montenegro has been advised by both the European Commission and USAID that any such National Audit Institution must be truly independent and must not be involved in any routine internal control functions of government. It has been told that the role of the National Audit Institution should be to undertake the independent examination of, and public reporting on, any of the financial transactions, financial statements or physical operations of the Government.

It has been further advised that any "pre-audit" (the receipt of all payment orders and supporting documentation, checking that the transaction has been authorised, that it is legal and regular and that there is sufficient provision in the budget) is a process best left to internal controls.

The National Audit Institution should limit itself to confirming that the payment and collection systems are sound and, by sample testing, ensure that they are operating as specified. The National Audit Institution would thus, as part of its mandate, examine the presence and effectiveness of the government's internal controls but would not be a routine part of any system. Its mandate should be drawn as widely as possible to enable the institution to report not only on the accuracy of the government's annual accounts but also on the economy, efficiency and effectiveness with which government has spent its funds. The institution should report directly to an impartial, non-politicised parliamentary committee. It should follow INTOSAI standards of operation and be able to meet the conditions laid down by INTOSAI's Lima Declaration.

Recommendations for reform

Public Procurement System

1. Adopt the Public Procurement Law including provisions for an independent appeals procedure and introduce secondary legislation, and standard forms and documents to be used by both procuring entities and suppliers, including the Procurement Manual and guidelines. All public servants should be made aware of the operation of the Procurement Law to ensure that the government reaps the maximum benefit from effective purchasing policy.

Public Expenditure Management System

2. The Government of the Republic of Montenegro should adopt a draft Government Budget Law as soon as is practicable and, thereafter, immediately begin the process of enactment by restructuring the Ministry of Finance. Detailed financial regulations and instructions should be prepared as soon as possible after the passing of the Government Budget Law and brought into force by ministerial decree, as provided for in the law.
3. Detailed training manuals should be prepared for all aspects of financial management and staff trained in the new systems. In addition, internal audit guidelines and standards should be issued by the Minister for Finance, based on the appropriate international standards.

Financial Control

4. Establish a control structure comprising the legal and institutional basis (financial control unit and internal control unit).
5. The Central Bank should continue to act effectively as the fiscal agent of the government.
6. Seek to improve the data provided in the Annual Budget Law.
7. The Minister for Finance should issue detailed instructions for internal control once the Government Budget Law has been passed.
8. All ministries should develop effective accounting and control sections to work in harmony with the Budget Office and Treasury.
9. Legislation to establish the proposed Government Revenue Agency should be drafted and enacted during 2001.

Civil service capacities

10. Create a central civil service management capacity and develop a civil service training strategy and associated institution.

Public Sector External Audit System

11. Prepare the necessary legislation to establish an independent National Audit Institution at an early date. Such an institution must be independent of government and not be involved in routine government financial management operations.

6.4. Strengthening Legislation and Promotion of the Rule of Law

The SPAI Compact requires that countries create an appropriate legal framework by criminalising corruption and money laundering, ensuring appropriate remedies for victims and effective enforcement. Countries also commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence and protection in the exercise of their functions, and which have the capacity to protect collaborators. Furthermore, countries are required to strengthen investigative capacities by fostering inter-agency co-operation, the use of special investigative means – while respecting human rights – and providing appropriate training.

The Republic of Montenegro has limited scope for action in the legislative field, but it has just established a co-ordination mechanism, though specialised anti-corruption services are not yet available. Appropriate inter-agency co-operation and training programmes still need to be developed.

Criminalisation of corruption and money laundering

Criminalisation of corruption

Despite its inability to accede to international conventions, the Republic of Montenegro has taken some steps to enhance compliance with European and international standards dealing with the fight against corruption.

The Republic of Montenegro adopted its own Criminal Code in 1993. The regulation of criminal procedure is under the authority of the federal government, so the Federal Republic of Yugoslavia Criminal Procedure Code applies in the Republic of Montenegro. Many corruption offences have been made criminal offences and are sanctioned by imprisonment ranging from six months to ten years. Active and passive bribery in particular are criminal offences under Articles 220 and 221 of the Criminal Code. However, the legal definition of "official" does not explicitly cover foreign public officials. Trading in influence is criminalised under Article 222, with sanctions ranging from six to ten years.

Criminalisation of money laundering

The legislation does not provide for a separate criminal offence in respect of money laundering. The seizure or freezing of proceeds from crime is possible in the case of a grounded suspicion of a criminal offence. The confiscation of a bribe is also provided for under Article 221 of the Criminal Code of the Republic of Montenegro.

Effectiveness of legislation

The police, the prosecution service and the courts keep statistics on corruption-related offences in databases. However, there appears to be no coherent system for comparison and evaluation of those statistics, and it is therefore difficult to assess the effectiveness of the legislation. In 1998-99, 4 cases of active bribery, 12 cases

of passive bribery and 505 other corruption-related offences were registered. In total, 280 investigations took place, leading to 105 court proceedings and 33 convictions.

The Republic of Montenegro has recently taken some steps to adopt legislation in related areas and has drafted public procurement legislation with the help of international experts, which, however, still needs to be finalised.

There are no doubt other factors influencing the insufficient effectiveness of existing legislation, including a lack of specialised services and insufficient investigative capacity. Also, it appears that low salaries of police, customs officials and others are increasing the risk of corruption. In addition, concern has been expressed by civil society representatives about a lack of understanding of the concept of corruption and means to combat it.

Specialised units

National co-ordination mechanism

The Government of the Republic of Montenegro appointed a Senior Representative following the adoption of SPAI. He heads an Agency for Anti-Corruption, which became operational on 1 February 2001, having been established by government decree on 7 December 2000. This agency is responsible for drafting relevant legislation, activities aimed at the prevention of corruption, proposing and preparing the accession to European and international legal standards and mechanisms, improving business operations and taking any other measures required in combating corruption.

Specialised prosecutors

The draft Law on the Public Prosecution Service envisages the creation of a special anti- corruption group of prosecutors at the Prosecutor General's Office.

Specialised units within ministry of the interior/police

The Republic of Montenegro is planning to introduce specialised police units for the fight against corruption. Such specialisation is also included in the list of priorities to be adopted by the government.

Financial intelligence units

The Agency for Anti-Corruption will start work on drafting the Law on Prevention of Money Laundering in 2001.

Investigative capacities

Inter-agency co-operation

One of the tasks of the Anti-Corruption Agency is the enhancement of inter-agency co-operation between different authorities in the country.

Collaboration with justice and witness protection

The Criminal Procedure Code does not provide for any special advanced measures dealing with witness protection, namely changes of identity, relocation, etc.

Use of special investigative means

No comprehensive legislation for the use of special investigative means exists in the Republic of Montenegro.

Specialised training

Specialised training in anti-corruption measures and legislation has so far not been available on a regular basis in the Republic of Montenegro, though there are some plans to establish relevant programmes, namely with the help of international organisations or bilateral donors, once specialised services and enhanced investigative capacities have been created, and once new legislation, for example a new public procurement law, has been adopted.

Recommendations for reform

Criminalisation of corruption and money laundering

1. Introduce money laundering as a separate criminal offence in the Criminal Code and adopt specific money-laundering legislation.
2. Extend the criminalisation provisions to foreign and international officials.
3. Consider, among other tools, the publication of annual reports on the corruption situation in the country to monitor the effectiveness of anti-corruption measures.

Specialised Units

4. Support for the further development of the structure and the activities of the new Agency for Anti-Corruption should be provided through international technical assistance programmes, including through training for the agency's staff.
5. Consider the establishment of specialised units within other government agencies, the prosecution service, the police, the judiciary, and financial institutions, and provide them with sufficient inter-agency co-operation facilities and well-qualified and trained staff who exercise their duties with due respect for human rights.

Investigative Capacities

6. Enhance inter-agency co-operation.
7. Take measures (including introducing a legal framework) to ensure protection of witnesses and collaborators with justice and ensure their effective application in corruption cases.
8. Use special investigative means, with due respect for human rights.
9. Establish regular and effective anti-corruption training programmes for prosecutors, police, judiciary and financial intelligence officers.

Miscellaneous

10. Organise an international technical assistance mission with the aim of supporting domestic authorities to analyse in detail the loopholes in the anti-corruption legislation, in the necessary institutional building and in the necessary operative measures for the successful fight against corruption.

6.5. Promotion of Transparency and Integrity in Business Operations

The Stability Pact Anti-Corruption Initiative requires countries of South-east Europe to free business deals of corrupt practices through, *inter alia:* enactment and effective enforcement of laws aimed at combating active and passive bribery in business transactions, open and transparent conditions for investment, the development of adequate external and internal company controls, and other measures aimed at strengthening the efforts of corporations themselves to combat bribery.

Under the applicable law in the Republic of Montenegro, bribing a domestic official at both the republican and federal level with a view to obtaining a business deal or another improper advantage is a criminal act. Penalties that are levied on those who bribe a public official consist of the deprivation of liberty for up to five years. The Criminal Codes of the Republic of Montenegro and of the Federal Republic of Yugoslavia also contain provisions aimed at helping companies to overcome pressure for bribes from public officers through the prohibition of solicitation of bribes by officials. Other laws contain provisions relevant to the fight against bribery of public officials in business transactions and the promotion of integrity in corporate operations. They include the Law on Public Officials of the Republic of Montenegro, the Criminal Procedure Code of the Federal Republic of Yugoslavia and the Law on Courts of the Republic of Montenegro, the Federal Law on Accounting and the Law on Audit of Financial Statements.

Preventing bribery of public officials in business transactions

Preventing and deterring bribery of officials in business deals require first of all making bribery of public officials a crime, levying significant penalties on those who bribe, including companies, and ensuring that jurisdiction, investigation and prosecution are effective. It is also essential that measures be taken to help companies to overcome pressure for bribes from officials. These include the prohibition of passive bribery of public officials and the development of open and transparent conditions for investment.

Active bribery and the responsibility of companies

The offence of active bribery

Bribing a public official in order to obtain a business deal or other improper advantage is a criminal offence under Article 221 of the Criminal Code of the republic. The offence consists of promising or intentionally giving a present or any other material gain to a public officer so that the official performs or does not perform an act in relation to the performance of official duties. A bribe can thus be a present, a gift or any other advantage, as long as it constitutes a "material gain". The offence applies to natural persons and aiding, complicity and incitement – but not attempt – to bribe also constitute criminal offences.

The law provides for one defence, when the briber has been solicited by the official and has informed the authorities of the corrupt transaction before its discovery. International practices indicate that such a defence may present a potential for misuse, as the briber could benefit from a favourable decision, as a result of the bribery, and at the same time avoid any punishment and be given the bribe back. According to the Montenegrin authorities, the favourable decision or material gain obtained through the bribery could be denied to the briber, on the legal basis of unfounded enrichment.

The prohibition against active bribery applies to public officials of both the Republic of Montenegro and the federal institutions. There are two definitions of a public official that apply respectively to cases of corruption of an official of the republic and to cases of corruption of an official of the federation.

Thus, pursuant to Article 3 of the Criminal Code of the Republic of Montenegro, as complemented by Article 1 of the Law on Public Officials of the Republic of Montenegro, an official of the Republic of Montenegro is: any person who holds an administrative, judicial or executive office at the republican, municipal or other level of government, whether appointed, nominated or elected; any person who performs official duties in the public service and in the administration, from republican to local; and any person exercising a public function, including for a public agency or public enterprise. Exceptions to these rules are any person "elected by the Parliament of the Republic of Montenegro", any active military staff who perform duties for a government agency, and any person appointed in jurisdictional bodies (Article 1 of the Public Officials Law). As international standards call for a more comprehensive definition of the public official, the Montenegrin authorities should consider enlarging this definition.

Pursuant to Article 113 of the Criminal Code of the Federal Republic of Yugoslavia, a public officer at the federal level is: any person holding an office, whether elected or appointed, in the federal parliament, federal executive council, federal administration bodies and other federal bodies, as well as in federal organisations that perform administrative, expert and other functions within the rights and obligations of the federation; any person who continuously or occasionally executes an official duty in federal bodies or in federal organisations; and any military person.

There is, under current legislation, no criminalisation of bribing a foreign public official. The Republic of Montenegro should consider introducing the offence of bribing a foreign public official in its legislation in order to conform to international standards.

Corporate responsibility and sanctions of companies

There is no regulation comprehensively covering the responsibility of legal persons. There is also no possibility under the Republic of Montenegro's legislation to impose non-criminal sanctions on legal persons who bribe public officials. The absence of adequate criminal, civil or administrative liability does not mean, however, that bribery offences can be committed with impunity via corporations. First,

under the law of the Republic of Montenegro, criminal liability for the offence of active bribery applies to natural persons, which would include persons such as directors, managers or simple employees of a business entity. However, penalties, which consist of imprisonment of up to five years, are not fully consistent with sanctions for similar criminal offences in the republic's Criminal Code such as fraud and embezzlement, which are punishable by imprisonment for up to ten years.

Second, the Criminal Code contains two provisions that may apply to the offence of active bribery of a public official via corporations. Article 123 prohibits the conclusion of a prejudicial contract by any executive personnel in a company; penalties consist of imprisonment for up to five years. Article 120 punishes any executive personnel in a company who, with the intention of obtaining unlawful material benefit for the company, places the company in a more favourable position by obtaining resources or other privileges that would not be recognised to the company under existing regulations. Penalties consist of deprivation of liberty for up to ten years.

Other punitive measures include the confiscation of the bribe under Article 221.5 of the republic's Criminal Code, except when the defence is successfully invoked (in that case, the bribe is returned to the giver), and under Article 85 of the federal Criminal Code. The seizure of frozen proceeds from crime is possible under the Criminal Code of the Republic of Montenegro in case of grounded suspicion of a criminal offence. Article 161 of the Republic's Criminal Code also provides for imprisonment when property goods obtained through a criminal act were concealed, transferred, etc. Legislation in force does not expressly establish the offence of money laundering. The authorities of the Republic of Montenegro have underlined that other provisions contained in the Criminal Code and in other pieces of legislation address the money-laundering issue.

Enforcement

International standards require countries to make sure that jurisdiction, prosecution and investigation are effective in the fight against bribery in business transactions. Effective mutual legal assistance is also fundamental, given the frequent use of international channels to hide bribery in business deals. Assistance in criminal matters is possible pursuant to the provisions of the Federal Republic of Yugoslavia Criminal Procedure Code and the Law on Courts of the Republic of Montenegro (*Official Gazette of the Republic of Montenegro No. 20/95*), unless an international treaty (bilateral and multilateral treaties or conventions on mutual legal assistance) provides otherwise. Extradition is granted under some prerequisites such as dual criminality. Rules on extradition forbid extradition of Yugoslav nationals.

The Republic of Montenegro exercises jurisdiction and investigates and prosecutes active bribery of public officials along the general rules and principles that apply to criminal matters under the Criminal Procedure Code of the Federal

Republic of Yugoslavia. Jurisdiction is exercised in the republic on both a territorial and nationality basis.

The State Prosecutor (or the public prosecutor in a court of first instance) brings criminal proceedings on behalf of the republic. The Criminal Procedure Code rules out discretion in launching proceedings: the Prosecutor is obliged to initiate proceedings as soon as he/she has knowledge of an offence. He/she can only decide to withdraw proceedings or refrain from launching proceedings in cases defined by law – for instance when the evidence required to establish the offence is lacking. The statute of limitations is similar to the statutes applicable to the active bribery offence in most OECD countries and, according to the authorities of the Republic of Montenegro, investigation and prosecution in the case of bribery of public officials cannot be influenced by considerations of a political or other nature.

Official statistics show that in 1998-2000, 651 persons were reported to the state prosecutors of jurisdiction *rationae materiae* and *rationae personae* in the Republic of Montenegro for alleged criminal acts of bribery. Following examination of the filed criminal charges, the prosecutors decided to dismiss charges against 92 persons and to file a request for investigation against 280 persons. The investigation was suspended against 68 persons due to lack of evidence. Following investigation, the prosecutors in charge brought charges against 105 persons for having committed criminal offences pertaining bribery elements. After bringing charges, proceedings were suspended against 2 persons due to prosecutor's abandonment of action. Over the same period, competent courts pronounced a verdict of guilty against 33 persons and a verdict of not guilty against 7 persons. Verdicts of dismissal were pronounced towards 4 persons.

Curbing pressure for bribes from officials

Extortion/solicitation

Steps have been taken by the Republic of Montenegro to help companies to overcome pressure for bribes from Montenegrin officials. Thus any public officer of the Republic of Montenegro who solicits or accepts a present or any other gain, or who accepts the promise of a present or any other gain, in order that he or she acts or refrains from acting in relation to the performance of official duties, commits a criminal offence (Article 220 of the Criminal Code of the Republic of Montenegro). Penalties range from three months to ten years of imprisonment. This provision mirrors Article 179 of the Criminal Code of the Federal Republic of Yugoslavia, which prohibits the solicitation or the acceptance of a bribe by a federal public officer. Penalties range from one to ten years of imprisonment. The Criminal Code of the Republic of Montenegro also contains a provision aimed at prohibiting the "collection of unlawful payments for acts by public officials". When what is collected is more than what is permitted or required by law or regulation or is not required by law, the official may be subject to either a fine or imprisonment of up to one year under Article 228 of Montenegro's Criminal Code. Montenegrin law also forbids a public official receiving any "facilitation payment"

that is made to induce a public official to perform his/her duties. Receiving a present or any other advantage on the basis of the official capacity of the public officer is a disciplinary offence pursuant to Article 37 of the Law on Public Officials of the Republic of Montenegro, punishable by termination of employment.

Another provision aims at sanctioning the abuse of an official position (Article 216 of the Criminal Code of the Republic of Montenegro). According to the republic's authorities, this provision encompasses all kinds of illegal activities of public officials benefiting from their position, and can be applied in all cases where other specific criminal offences would not be applicable.

Transparency of the regulatory system for doing business

Rules and administrative procedures applicable to businesses are in part inherited from the former Yugoslavia and in part from the more liberal investment regime introduced by the republic over the past few years. Fewer, simpler and more transparent administrative procedures are called for as complex rules and non-transparent administrative procedures encourage bribery, which remains common, especially in government procurement and in the implementation of the regulatory system. Efforts to enhance the legal environment in terms of stability, consistency and transparency, co-ordinated by OECD under the Investment Compact for South-east Europe, are underway.

Promoting integrity in businesses

Not only do governments have major responsibility in sanctioning bribery of public officials in business transactions but they also have the corresponding responsibility to introduce sound internal and external company controls and to strengthen the efforts of corporations themselves to combat extortion and bribery.

Detecting suspicious payments

Accounting and auditing requirements

The accounting and auditing regime in the Republic of Montenegro has yet to be adjusted to European and international standards. Accounting and auditing in the Republic of Montenegro are regulated by the Federal Law on Accounting and the Law on Audit of Financial Statements, as well as regulations promulgated on the basis of these laws. Even if the latest version of both laws was promulgated in 1996 and 1999, respectively, these laws are not up to international standards related to accounting and auditing.

In principle, all legal entities carrying out business or economic activities as defined in the Accounting Law are required to maintain accounting records and present financial information about the enterprise. Financial statements have to be submitted to the Institute for Payment Transfers each year and the institute is entitled to control whether the accounting regulations are properly applied. However, this control is only formal and does not seem to be effective. Furthermore, if all large and medium-sized enterprises, as defined by the Law on Accounting, banks

and other financial institutions, insurance companies, stock exchanges and exchanges of intermediaries have an obligation to have their financial statements audited in accordance with the provisions of the Law on Audit of Financial Statements, the republic's authorities deplore the lack of competent auditors to carry out such regular audits.

General provisions aimed at prohibiting the making of false documents are contained in the republic's Criminal Code (Articles 207 and 227). Penalties include deprivation of liberty for up to five years.

Tax treatment of bribes

The fiscal and tax system in the Republic of Montenegro is not yet in compliance with international standards. The Ministry of Finance has prepared a reform of fiscal policy and taxes with the aim of harmonising the system with European standards, in particular by introducing VAT. Reducing tax evasion has been one of the most serious problems for the authorities over the past five years. In the framework of this reform process, the authorities of the Republic of Montenegro do not plan to introduce a provision that would allow companies to claim tax deductions for bribe payments to public officials, as the government considers that not allowing the tax deductibility of bribes serves as a strong and politically visible symbol of the republic's commitment to combat bribery.

A few associations, such as the Association of Accountants and Auditors in Montenegro, have been active in order to promote changes in the field of accounting requirements in compliance with international standards.

Instilling an anti-bribery corporate culture

The development and implementation of efficient anti-corruption management practices are virtually non-existent among private and public companies in the Republic of Montenegro. The republic does not yet have clearly defined corporate governance standards as, up until now, corporate governance was regulated by the federal Law on Enterprises (*FRY Official Gazette, Nos. 29/1996, 29/1997 and 59/1998*), nor does it have legal provisions aimed at forbidding contributions by businesses to political parties. Furthermore, if Article 123 of the republic's Criminal Code on "Concluding of Prejudicial Contract" seems to establish the offence of passive private bribery, the legislation of the Republic of Montenegro does not appear to prohibit active bribery between private companies.

The importance of the involvement of the private sector in the development of the anti-bribery reform process should also be stressed. The Montenegrin authorities should explore ways that would allow them to meet regularly with the business community. Such consultations would permit discussions with the authorities and alert them to organisational and other defects that are conducive to corruption from the business perspective. Furthermore, such a public-private partnership would contribute to further instilling responsible corporate practices and anti-bribery corporate culture.

Recommendations for reform

The fight against bribery of public officials in business operations and the promotion of integrity in corporate transactions require simultaneous action in many areas. However, the Republic of Montenegro's legislation dealing with bribery and integrity in business operations is not as yet at the European and international level. Essential complementary measures must now be taken in order to comply further with international anti-bribery standards. These include:

Preventing Bribery of Public Officials in Business Transactions

1. Broaden the bribery prohibition to bar bribery of all public officials, including foreign public officials, according to international standards.
2. Provide for adequate criminal, civil and/or administrative responsibility for companies bribing public officials and apply procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials in accordance with international standards and practices.
3. Make sure that complaints of bribery of public officials in business transactions are seriously investigated by competent authorities and that prosecution is effective in accordance with international anti-bribery standards.
4. Make all information concerning the number of investigations, prosecutions, court cases and convictions available to the public; and collect and compile court decisions related to active and passive bribery of public officials in business transactions for the same public information purpose.
5. Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.

Promoting Integrity in Business

6. Strengthen financial, criminal and civil provisions aimed at prohibiting the use of "off-the-books" or secret accounts.
7. Adapt to international standards the legislation providing for auditing of the accounts of economically significant enterprises by independent professional auditors and develop additional banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation.
8. Promote changes in business conduct, in particular through accounting and fiscal education of the business community.

7. Romania

7.1. Overview

As in Bulgaria, the drive for European integration has become the focus for democratic and economic reforms in Romania. While important progress has been achieved during the past decade in the field of rule of law, justice and pluralism, the Romanian political system is still in a transitional state; the legal system is not fully developed and corruption remains widespread throughout the society.

Aware of the extent of corruption in their country and of its consequences on the co-operation of Romania with the European Union, all governments since 1996 have made the fight against corruption one of their top priorities.

As a result of the anti-corruption actions undertaken by the government, perceptions of the general public and of foreign investors on the level of corruption in Romania slightly improved over the past few years. Romania scored the same average as other east and South-east European transition countries according to the analysis carried out by the World Bank (*Anti-Corruption in Transition: A Contribution to the Policy Debate,* 2000) based on a 1999 survey of more than 3000 enterprise owners and senior managers in 22 transition countries.

One form of corruption that was particularly highlighted in this survey – by more than 40% of the firms doing business in Romania – was the paying of bribes to public officials to avoid taxes and regulations. Other corrupt practices, which also influence the firms' business, were the Central Bank's mishandling of funds, the sale of parliamentary votes and the contribution by private interests to political parties (for more than 25% of the firms), as well as the sale of court and arbitrage decisions and of presidential decrees (for 10% to 20% of the firms). Furthermore, more than 40% of the firms stated that there are numerous cases of public officials appointing friends and relatives to official positions.

Legal and Institutional Developments

In 1997, Romanian leaders introduced in a three-year long programme to help fight corruption and government institutions in charge of combating corruption were re-organised. One of the priority fields of action of the programme was to sensitise citizens to the problem of corruption and to educate the people. An awareness campaign was launched with the aim of changing the people's perception of corruption and of promoting the active participation of citizens and of the mass media in the fight against corruption.

Note: This report was adopted by the SPAI Steering Group at the Tirana meeting on 20 April 2001.

In June 1998, another programme, the "Institution Building and Strengthening of Anti-Corruption Capacities in Romania", was signed by the Romanian justice authorities, together with the assistance of the international community. The programme aimed at assisting the justice system in fighting corruption and at supporting the immediate implementation of anti-corruption laws, and was based on four components: multi-disciplinary training for magistrates and law enforcement personnel; technical assistance on the elaboration of appropriate legislation; establishment of a National Anti-Corruption Commission; and organisation of a public awareness campaign.

As a consequence, Romania now has a variety of laws and regulations and institutions intended to prevent bribery and corruption. As such, it already has a fairly complete legal and institutional framework in place. Furthermore, Romania has begun a process aimed at joining multilateral legal instruments containing anti-corruption related provisions or those relevant to an effective fight against corruption. However, the practical results of the above-mentioned programme seem to be limited since they lack monitoring and follow -up assessment; also the actual implementation and enforcement of legislation remains a challenge.

The way ahead

In view of the political, social and economic impact that corruption has in Romania, the government, together with civil society and professional associations, must continue to improve the legal and institutional framework for fighting corruption. The 2000 report from the commission on Romania's progress towards accession indicates that although "a positive evolution has continued in the field of justice" and some positive measures have been undertaken on money laundering, progress in the fight against fraud and corruption has "been limited to the entry into force, in May 2000, of a new Law on Prevention and Punishment of Corruption".

7.2. Adoption and Implementation of European and Other International Instruments

Accession to international agreements

Romania has just begun a process aimed at joining multilateral legal instruments containing anti-corruption related provisions or those relevant to an effective fight against corruption. However, most of the key anti-corruption instruments have only been signed and not yet ratified: the Criminal and the Civil Law Conventions on Corruption in 1999, the United Nations Convention against Transnational Organised Crime and its two protocols in 2000, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime. The draft law for ratification of the latter was submitted to parliament in 2000. Romania is also part of the programme jointly developed by the Council of Europe and the European Commission, "OCTOPUS".

Romania has recently introduced a system where in each ministry there are two deputy ministers, one responsible for the legislation and another for European integration. It is expected that this setting will speed up the process of ratification of the signed international instruments and adoption of relevant implementing legislation.

Romania is party to four follow-up programmes to monitor and promote the implementation of appropriate measures to combat corruption: the Council of Europe's partial agreement "Group of States against Corruption" (GRECO); the Council of Europe's Select Committee for the Evaluation of Anti-Money Laundering Measures (PC-R-EV), in the framework of the Financial Action Task Force on Money Laundering (FATF); the *Ad hoc* Group of Non-members of the OECD Working Group on Bribery in Business Transactions; and the Stability Pact Anti-Corruption Initiative's Steering Group.

Romania also participates in the Stability Pact Initiative against Organised Crime (SPOC).

Mutual assistance in criminal matters

In the field of international legal assistance, Romania has ratified some key international instruments: the European Convention on Extradition with its additional protocols; the European Convention on Mutual Legal Assistance in Criminal Matters with its additional protocol; the European Convention on the Transfer of Sentenced Persons; the European Convention regarding the Transfer of Proceedings in Criminal Matters of 1972; and the European Convention on the International Validity of Criminal Judgments. The county is a party to a number of bilateral agreements regarding mutual assistance in criminal matters as well as extradition.

Romania has provisions in internal legislation dealing with "international mutual assistance in judicial matters" and extradition. Requests for legal assistance and extradition requests are executed according to the above-mentioned provisions,

unless an international instrument to which Romania is a party provides otherwise, or on the basis of reciprocity. According to the provisions of the bilateral conventions on extradition, the European Convention on Extradition and its second additional protocol, Romania uses the direct way for international legal assistance, either between the Prosecutor's Office, during the criminal investigation stage, or between the ministries of justice during the trial stage. The diplomatic channel, via the Ministry of Foreign Affairs, is not excluded. Romania refuses extradition of its nationals, though they can be prosecuted in Romania for offences committed abroad. Double incrimination is a requirement for extradition. Corruption offences as well as general money-laundering offences in addition to drug money-laundering offences are extraditable.

The transfer of sentenced persons takes place on the basis of the European Convention on the Transfer of Sentenced Persons, ratified by Romania in 1996, and in accordance with treaties concluded between Romania and other countries. To date only one agreement has been concluded, between Romania and Turkey.

Following the ratification in 1999 of the European Convention on the Transfer of Proceedings in Criminal Matters of 1972, direct communication is possible.

Romania has prepared three draft laws in the field of legal assistance in criminal matters (Law on Extradition, Law on International Legal and Judicial Assistance in Criminal Matters and Law on the Transfer of Sentenced Persons. All mentioned laws are already being discussed in the parliament and present new procedural instruments for the enforcement of different international instruments in the field.

Romania still has to adopt legislation on data protection in line with European standards, which is a pre-condition for the exchange of sensitive data among European countries.

International co-operation in financial investigations and money laundering cases

Romania has recently ratified the European Convention on the International Validity of Criminal Judgments. In order to be applicable in Romania, foreign confiscation decisions must be recognised nationally through a simplified judicial procedure if they satisfy the requirements of having been pronounced by a competent court and being in accordance with Romanian criminal law.

The National Office for the Prevention and Control of Money Laundering became a member of the Egmont Group and established co-operation relationships with foreign financial intelligence units. In 2000, the office has made ten requests for assistance to foreign FIUs (three addressed to the Ufficio Italiano dei Cambi) and has received ten requests from abroad (three each from Bulgaria and Belgium). The Romanian Office can provide international assistance based on reciprocity and mutual assistance principles even in money-laundering cases where the negligence standard applies.

The Squad for Countering Organised Crime and Corruption co-operates, often using direct contacts (for example, through liaison officers), with foreign counter-

parts in the field of combating corruption and money laundering. Usually, Interpol channels are used for police co-operation.

Romania initiated the project for a Regional Centre of the South-east European Co-operation Initiative. This centre is to co-operate with institutions involved in combating international organised crime, support the activity of contact officers, receive requests for assistance and organise its own databases.

Recommendations for reform

1. Ratify the European Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, Criminal Law Convention on Corruption and Civil Law Convention on Corruption, and adopt implementing legislation.
2. Ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and adopt national data protection legislation as a basis for enhanced international exchange of information in line with the standards set by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) and Recommendation R (87) 15 regulating the use of personal data in the police sector.
3. Finalise the draft legislation on international legal co-operation and, in particular, on mutual legal assistance and ensure its effective implementation.
4. Take measures to ensure an effective enforcement of foreign confiscation orders and provisional measures on behalf of other states. Consider measures to enable Romania to share, as well as receive, confiscated assets.

7.3. Promotion of Good Governance and Reliable Public Administrations

Corruption in some of the state institutions of Stability Pact countries detracts from the efforts to promote economic growth and engender popular support for democracy. Poorly defined professional requirements and roles, inadequate accountability practices, weak control mechanisms, and low wages make public servants and politicians susceptible to improper conduct and foster poor administration. Practices inherited from the days of one-party rule inhibit development of, and adherence to, high ethical standards in the administration.

Public procurement system

Legal framework

The Public Procurement Law (No. 83/1994) currently in force is largely based on the UNCITRAL Model Law. Utilities are not covered. Secondary legislation has been adopted on forms for tenders, but in general no model contracts, guidelines or instructions to tenders have yet been completed.

In August 1999, the government adopted a New Public Procurement Law (Ordinance No.118/1999). The law, whose entry into force has been postponed several times, is expected to come into effect in 2001.

The existing Public Procurement Law covers both central and local government entities. The procedures for public procurement prescribed by the law are open tendering with or without pre-qualification, restricted procedures and single source procedures. The Public Procurement Law provides for completely decentralised procurement. There is no public procurement bulletin. Procurement advertisements must be published in domestic and/or international newspapers. The contracting entity may apply domestic preference in the evaluation of tenders. However, there is no guidance on the maximum margin of preference acceptable. The vast majority of procurement transactions fall below the thresholds established in the Public Procurement Law. However, there are no guidelines or rules on how to carry out such transactions. The law has provisions concerning illegal actions by public sector employees in their implementation of the law. The Public Procurement Law is in conformity neither with best procurement practices nor with international standards.

The text of the new law is largely based on the text of the EU directives. It covers all public authorities and public institutions. Similarly, all utilities both public and private are covered. Open tendering is the basic procurement procedure authorised by the law, but other methods such as restricted procedure, negotiated procedure and request for quotations may be used under certain circumstances.

The new Public Procurement Law will apply to all goods and services contracts above 30000 euros and works contracts above 125000 euros exclusive of value added tax. The new Public Procurement Law sets standards for common advertising rules and notices will be published in the *Official Journal of Romania*.

Institutional framework

A Public Procurement Department, within the Ministry of Finance, is responsible for drafting procurement legislation, supporting policy development, providing procurement advice to contracting entities, training and capacity building and monitoring procurement operations, including the collection of statistics. Neither the Public Procurement Law nor any other legislation defines the authority of the Public Procurement Department.

The Public Procurement Department is understaffed in view of the scope of its responsibilities, the large number of contracting entities to be served (some 10000 in total) and the volume of procurement transactions. A review of the current structure and mandate of the Public Procurement Department should be prepared with the objective of presenting a proposal to the government for a new, independent or semi-independent central Public Procurement Organisation with specified tasks and responsibilities and expanded skilled personnel and other resources.

Public expenditure management system

Legal framework

The 1991 Constitution of Romania sets out the basic principles of public finance. The key piece of legislation is the Law on Public Finance, which was last amended in 1996. This law sets out both general principles of public finance and specific budget relationships and procedures. These include the respective roles and functions of parliament, the Ministry of Finance and spending ministries. However, the Law on Public Finance needs to be brought within a coherent framework and updated in line with modern principles of budgeting.

Other public finance provisions are included in separate pieces of legislation, such as the Law on Local Public Finance (1998), the Law of the Court of Audit (1992), the Treasury Law (1992), the Law on Public Debt (1998) and the Accounting Law. The public finance legal framework is changing rapidly, with new legislation already enacted or being drafted (for example, the Laws on Financial Control and Public Procurement).

Institutional framework

Input controls and ensuring compliance with financial regulations are the main objectives of the budget execution and monitoring system. These controls are carried out under the general supervision of the Ministry of Finance in conjunction with the spending agencies (three levels of credit orderers: ministries, general directorates and public entities such as hospitals and universities), the Treasury and the National Bank of Romania. The Treasury system, which comprises 300 sub-treasuries and some 4000 staff, was established in 1992, along with the creation of a single account held by the National Bank of Romania. The Treasury provides collection and payment functions for all public entities (namely, revenue-collecting departments), state budget institutions, special funds, local government and the Ministry of Finance (in relation to domestic borrowing and servicing external debt). However, the Treasury system is not fully comprehensive and some

public entities[1] carry out expenditure transactions through commercial banks. Recently, all 300 sub-treasuries were networked and linked to new software.

On the 25th day of each month, credit orderers in ministries inform the Ministry of Finance of their expenditure needs for the forthcoming month. The Ministry of Finance then establishes the expenditure limits for each spending agency, according to parliamentary appropriations[2], and informs the Treasury, which opens the credits. The Treasury receives payment orders from spending units, carries out the payment transactions (with different checks: authorised budget, cash ceilings, correctness of expenditure and control of the signature of the credit orderer), and sends them to the local office of the National Bank of Romania for cash disbursement. The Treasury is also required to comply with certain accounting and reporting requirements.

Spending agencies are allowed to redistribute their budget allocations during the budget year, provided that neither capital nor wage allocations are increased. However, this has not prevented the need for additional budgets (three such budget adjustments in 1996 and two in 1997), leading to divergences between the approved budget and the final out-turn.

The State Treasury Department within the Ministry of Finance is currently experiencing serious problems in forecasting the government's cash requirements and in managing the Treasury accounts, which display huge and unpredictable swings from day to day. This is partly a result of the 1999 banking crisis that doubled the domestic debt of Romania and has increased debt-servicing costs to 21% of GDP. The lack of horizontal co-ordination between the different departments concerned – budget, treasury, debt management, tax collection, etc. – exacerbates these problems.

Responsibility for debt management (within borrowing limits proposed annually by the government and approved by parliament) is shared between the Ministry of Finance (the General Directorate of Public Debt), the National Bank of Romania, and a commercial bank that acts as an agent of the Ministry of Finance in managing external and internal debt. The Law on Public Debt provides a modern legal framework for the management of debt and government guarantees.

Financial control

Legal framework

The statutory bases for financial control are the constitution and the 1992 Treasury Law, the 1992 Law on the Court of Audit as amended, Ordinances Nos. 66/1994 and 97/1998 on the formation and utilisation of the state Treasury resources and Ordinance No. 119/1999 on the internal audit and preventive financial control.

1. For instance, in the Bucharest area, the National Fund, created in order to manage funds transferred from the EU budget (Phare, ISPA and SAPARD), will also use commercial banks.
2. When opening credits, the Ministry of Finance also takes into account past results of budget execution and revenue collection in order to meet its overall budget targets. In the case of short-term credits, expenditures on remuneration of employees, pensions and certain healthcare priorities (for example, medicines and paediatric surgery) would normally have precedence.

This set of laws and regulations did not define the systems and principles of financial control operating in Romania in a consistent manner.

Institutional framework

Government Ordinance No. 119/1999 on internal audit and preventive financial control sets out the basis for the introduction of internal audit functions in every public institution. There should be one internal auditor for every twenty-five staff. In practice, most internal auditors in place have been recruited from the various "control corps", already operating in the entities concerned. This might satisfy the need for a quick implementation of the new legal provisions but might reproduce the type of control work formerly performed, especially if sufficient and appropriate training is not delivered.

The Ministry of Finance has the central responsibility for co-ordinating and monitoring the work of the new internal audit units. As in most other entities, the Ministry has been established by turning the existing financial control department into a "General Directorate of Internal Audit". With his Order 332 of 25 February 2000, the Minister of Finance issued methodological norms for internal audit. These norms need to be evaluated, as well as their actual implementation.

Internal audit is to a large extent still understood as the existing control/inspection function. According to the Ordinance, the remit of an internal audit goes beyond the entity to which it is attached, but also encompasses the activities of the subordinated entities and the use of public funds by third parties. The focus of the internal audit is put on the examination of individual transactions and on "proposal for solutions with a view to recover the damage and punish those in default". In addition, the internal audit is requested to carry out a task of quarterly and annual certification of financial statements and budget execution accounts, which can duplicate the current work of the external audit and can divert resources in unnecessary work.

Civil service capacities

Legal framework

The Law on Civil Servants (No.188/1999) was passed on 8 December 1999 and came into force as of 1 January 2000. Although the improved procedures introduced by the law will require secondary legislation coupled with training and information efforts before they are established in practice, civil servants are now formally acting under this law and are subject to its provisions on rights, duties and disciplinary liability. The transitional provisions were improved, and screening and examinations for at least high-ranking civil servants are provided for in the law, although the timeframes set out by the law for this and for other implementation measures are unrealistic.

Institutional framework

The National Agency for Civil Servants was formally established in February 2000 by Government Decision No.109/200, but did not exist until 5 May 2000,

when the President, the Vice-Presidents, the Secretary-General and several of the Directors were appointed.

Public sector external audit system

Legal framework

The Court of Audit of Romania (Curtea de Conturi) performs public sector external audits. Its legal basis is Article 139 of the 1991 constitution and Law 94/1992, with its subsequent modifications and completions. The Romanian Court of Audit regards itself as the continuation of the High Court of Audit of Romania, operative from 1864 until the establishment of the communist regime. A body exercising certain responsibilities of the High Court operated between 1973 and 1990. Like its predecessors, the Romanian Court of Audit is clearly a Supreme Audit Institution of the court-type, fully empowered with jurisdictional powers, and organised accordingly.

Institutional framework

The Romanian Court of Audit is attached to the Romanian Parliament. The Plenum of Romanian Court of Audit is formed by twenty-five Counsellors of Audit, including the President, appointed for six years by the parliament.

The Romanian Court of Audit has a staff of 1 857 out of which 1 083, are actually assigned to audit tasks (58.28%) and 377 to jurisdictional activities (20.3%). At central level, the Court of Audit of Romania is composed of two subsequent control sections (to which forty-one territorial control directorates are attached), of the Jurisdictional Section, of the Jurisdictional Board of the Romanian Court of Audit and of the General Secretariat. The Romanian Court of Audit also comprises forty-one territorial units (the county chambers of audit with 765 staff), each of them composed of a control department and a jurisdictional board. Attached to the court are the Financial Public Prosecutor General and financial prosecutors.

Recommendations for reform

Public procurement system

1. Complete work on implementing the new Public Procurement Law, and draft and adopt the necessary secondary legislation.
2. Strengthen the complaints review system, including drafting and adopting the required legislation.
3. Strengthen the capacity of the Public Procurement Department of the Ministry of Finance or, preferably, create an independent Public Procurement Office.

Public expenditure management system

4. Ensure that the draft Law on Public Finance is approved and arrangements put in hand for implementing its key provisions, namely multi-annual

budgeting, improved budget preparation, transparent budget documentation and performance budgeting.

5. Reduce the number of extra-budgetary funds, special funds and the use of earmarked revenues.
6. Develop an integrated and fully automated financial management information system covering all relevant procedures (budgeting, accounting and cash management through the Treasury) and users.

Financial control

7. Develop an overall concept of financial control built on the checking out of the impact and the effectiveness of the existing financial control system.
8. Draw up and put into effect an implementation plan for creation of an internal audit function.
9. Introduce appropriate internal audit methodologies and develop manuals.
10. Carry out pilot internal audits.
11. Review progress on – and accelerate as necessary – introduction of systems to prevent, and take action against, irregularities and to recover amounts lost.

Civil service capacities

12. Adopt a fair salary scheme for civil servants and public employees and a redeployment scheme as well.
13. Adopt a training strategy for public managers and civil servants at large to promote the necessary cultural change and the values contained in the new Civil Service Law.

Public sector external audit system

14. Elaborate and adopt a strategic development plan based on the peer review conducted in 2000.
15. Review the audit methodology in order to develop and disseminate the INTOSAI auditing standards, adapted to Romanian circumstances, and start work on audit manuals and the revision of audit methodology.
16. In order to build up a stable line of communication between the Romanian Parliament and the Romanian Court of Audit, and to make better use of the court's findings, the establishment of a specific standing committee in parliament, assigned to handle the reports of the court and other audit-related questions, should be considered.

7.4. Strengthening Legislation and Promotion of the Rule of Law

The SPAI Compact requires that countries create an appropriate legal framework by criminalising corruption and money laundering, ensuring appropriate remedies for victims and effective enforcement. Countries also commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence and protection in the exercise of their functions, and which have the capacity to protect collaborators. Furthermore, countries are required to strengthen investigative capacities by fostering inter-agency co-operation, the use of special investigative means – while respecting human rights – and providing appropriate training.

Romania has made progress in complementing its existing anti-corruption legislation, but the legislation is still not fully in compliance with the Council of Europe's Criminal and Civil Law Conventions on Corruption. Its co-ordination mechanism is now in place, and specialised anti-corruption services have been established. The focus is now on improving inter-agency co-operation and expanding existing training programmes.

Criminalisation of corruption and money laundering

Criminalisation of corruption

Romania has taken important steps to enhance compliance with the major European and international standards in the fight against corruption, but its legislation is not yet entirely compatible. The Romanian Criminal Code makes corruption a criminal offence (Articles 254-258) and includes active bribery of national public officials (Article 254) with punishments ranging from three to fifteen years imprisonment, as well as passive bribery, namely the "offering of bribes" (Article 255, with six months to five years), and "receiving undue benefits" (Article 256, from six months to five years). Also included are trading in influence (Article 257, from two to ten years), and participation in corruption offences (Articles 25 and 26 on complicity). None of the bribery provisions relating to foreign and international public officials have yet been made criminal offences. However, draft amendments to the Criminal Code that will introduce criminalisation of corruption offences committed by foreign and international officials are in their final stage of adoption.

In May 2000, Law No. 78 on Preventing, Detecting and Punishing acts of corruption was adopted, describing Articles 254-258 of the Criminal Code as corruption offences. This law regulates standards of conduct for several categories of officials, but does not include preventive mechanisms. Article 7 of the law provides for an increase in the already high existing sanctions in the Criminal Code by between two to three years or up to five years if there is an organised crime or international element. Active and passive bribery in the private sector are prohibited by Article 8, with punishments ranging from three to twelve years and six months to five years respectively. Law No. 78 also includes provisions on a number of other offences directly or indirectly related to corruption, such as forgery,

smuggling, fraudulent bankruptcy, misuse of subventions, misuse of confidential information, etc., all of which are already sanctioned by other legal provisions.

Other laws also include anti-corruption provisions, such as the Public Procurement Law No. 118/1999, Law No. 115/1999 on Ministerial Responsibility, and Law No. 115/1996 on the Obligation for Public Officials to Declare their Personal Wealth and on the Control Procedure for Wealth Obtained through Illicit Means.

Criminalisation of money laundering

Law No. 21/1999 on the Prevention and Punishment of Money Laundering (Article 23) makes money laundering a criminal offence and lists a wide range of predicate offences. Its Article 23 provides for sanctions of between three and twelve years' imprisonment or five to fifteen years in more serious cases, while Articles 21 and 22 provide for civil fines and disciplinary sanctions for infringements of the law in cases where prosecution under criminal provisions is not possible.

New legal regulations have been adopted recently, completing the current legislation. Thus, Law No. 78/2000 enlarges the list of predicate offences, including corruption-related offences. With the ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, a full harmonisation is envisaged. At the investigative stage the bank secrecy rules have also been reconsidered. When indications exist regarding the perpetration of a money-laundering offence, the prosecutor may decide to put the bank accounts and assimilated accounts under supervision, as well as to request certified documents or documents under individual signature, such as banking, financial or accounting documents. According to Law No. 58/1998 on Banking Activities, information on the amounts deposited and the transactions performed in the name of natural and legal persons shall be disclosed at the written request of the Public Prosecutor or the court.

The confiscation of proceeds or instrumentalities or equivalent value-based payment is provided for in the Criminal Code (Article 118, "special confiscation"), by the Law on the Prevention and Punishment of Money Laundering and by the Law on Preventing, Detecting and Punishing Acts of corruption. The measure of "special confiscation" can be ordered by the Prosecutor during the criminal investigation or by the judge during the trial. According to the Criminal Code and the Criminal Procedure Code provisional measures can be taken (Article 163 of the Criminal Procedure Code) to repair damage or as a guarantee for a fine, but only during the criminal investigation and not during the trial stage.

Effectiveness of legislation

It is difficult to assess the effectiveness of legislation owing to the fact that most of it has been introduced only recently. Statistics show that in 1998/99, 938 cases of active bribery were registered, 765 of which were investigated and 645 resulted in court proceedings. This resulted in 322 convictions (34%). There were 746 cases

of passive bribery registered, of which 602 were investigated and 482 taken to court. These resulted in 375 convictions (50%). Prosecutors have taken provisional measures in money-laundering investigations issuing eight seizure orders. At present, pre-trial proceedings are being conducted in 87 cases and 3 cases have been sent to trial. There have been no convictions for money laundering yet.

Specialised units

National co-ordination mechanisms

The anti-corruption strategy of Romania includes the goal of improving the legal framework relating to the prevention and sanctioning of corruption, development of the most appropriate infrastructure for fighting corruption and organised crime, continuous training of persons involved in the fight against corruption, and ensuring transparency.

Law No. 21/1999 provided for the establishment of the National Office for the Prevention and Control of Money Laundering, a multidisciplinary body subordinated to the government, which took some time to establish, but which is now the national focal point regarding money laundering.

Romania has appointed a Senior Representative to the SPAI.

Specialised anti-corruption units

Law No. 78 of May 2000 on Preventing, Detecting and Punishing Acts of Corruption establishes the National Department for Combating Corruption and Organised Crime within the General Prosecutor's Office attached to the Supreme Court of Justice. It centralises, analyses and uses the information received from all institutions concerned, thus setting up a new database. Technical staff, for example from the financial sector, working under the leadership and control of prosecutors, assist the department. Services for Combating Corruption and Organised Crime of the Public Prosecutor's Office attached to the county courts of appeal function at regional level. The Department for Combating Corruption and Organised Crime also contains a unit specialised in investigations of money-laundering offences.

Specialised prosecutors

Prosecutors working within the above-mentioned authorities are specialised in corruption cases.

Specialised police units

Within the Inspectorate General of Police, the Squad for Countering Organised Crime and Corruption has one unit, out of twelve, responsible for fighting corruption. However, all police officers are empowered to collect information on cases of corruption. The information is sent to the unit, and the unit or one of its district offices will take over the case.

The Police Inspectorate comprises five departments that are involved in the fight against money laundering: the Squad for Countering Organised Crime and Corruption, the Directorate for Countering Economic and Financial Crime, the Directorate for Firearms, Explosives and Toxic Substances, the Criminal Police Directorate and Interpol. The Squad for Countering Organised Crime and Corruption includes an anti-money laundering unit.

Fiancial intelligence units

Law No. 21/1999 provided for the establishment of the National Office for the Prevention and Control of Money Laundering, a multidisciplinary body subordinated to the government. The office collects information on suspicious transactions from relevant institutions, information on cash transactions exceeding the equivalent of 10 000 euros and reports on transactions made for money-laundering purposes. The office has the power to stop the execution of a transaction for twenty-four hours. An extension up to a maximum of three days may be obtained upon approval of the Public Prosecutor. If the office's request for an extension is unfounded, the office shall be liable for damages.

It seems that the office has consolidated its structure and registered improvements in the quality of reports received. In the year 2000, the office received 157 reports on suspicious transactions, 130 of which were passed to the National Department for Combating Corruption and Organised Crime within the General Prosecutor's Office attached to the Supreme Court of Justice. The National Office for the Prevention and Control of Money Laundering is to benefit from the Phare Programme in 2001, notably a twinning agreement to be concluded with Italy. Guidelines on the identification of suspicious transactions in the banking sector have already been drafted in 2000 and guidelines on the prevention of money laundering in the capital market and insurance sectors are currently under elaboration.

Investigative capacities

Inter-agency co-operation

The adoption of Law No. 78/2000 has improved the exchange of information between authorities involved in the fight against corruption and organised crime. However, an information system as a basis for enhanced co-operation between agencies is not available because of lack of equipment.

In order to strengthen co-operation against corruption, the Ministry of Justice has concluded a co-operation protocol with the Public Prosecution Office, the Ministry of the Interior, the Ministry of Finance and some other institutions.

Collaboration with justice and witness protection

Co-operation with judicial agencies is considered a mitigating circumstance and may result in reduction of sentences or suspension of legal proceedings by the court. Charges may be dropped entirely in cases of active corruption if a person concerned reports to the law enforcement authorities. Pressure, corruption and

intimidation used to prevent the participation in criminal, civil or other proceedings or to make false statements are penalised.

A draft amendment to the Criminal Procedure Code introducing a witness protection system is under discussion in parliament.

Use of special investigative means

Interception and recording of telephone conversations, searches, undercover operations and controlled deliveries are practised in Romania.

The Criminal Procedure Code (Articles 91-95) provides a legal framework for the use of special investigative means. Evidence obtained by the use of electronic surveillance can be used as evidence in court. In addition, the Law on Preventing, Detecting and Punishing Acts of Corruption (Article 27) provides that electronic surveillance and wiretapping can be used to investigate corruption-related offences. The Prosecutor authorises the use of all special investigative measures, supervises the legality of their use and ensures the co-ordination of investigations.

However, other types of special investigative means (undercover operations, agents provocateurs) are at the moment not legally regulated and information obtained in such ways cannot be used as evidence (except in drug cases).

Specialised training

As regards the training activity for its own staff and for the staff of reporting institutions subject to the Law No. 21/1999, the office has organised three training sessions in the year 2000. Representatives of the office also participated in seminars organised by the Ministry of Justice, the Romanian Banks Association and the National Commission for Securities, where they made presentations on money laundering.

The police and financial control bodies have organised training actions for their specialists in the field of the fight against money laundering, and have participated in seminars, workshops and exchanges of experience with similar foreign institutions.

According to Law No. 92/1992 on the Statute of Magistrates, magistrates are obliged, at least once every five years, to attend further training courses, including those on the analysis of the results and methods used to counteract and prevent corruption.

Further seminars and conferences on the fight against organised crime and corruption have been organised by, *inter alia,* the European Union, the Council of Europe and the United States.

Recommendations for reform

Criminalisation of corruption and money laundering

1. Finalise and implement the draft amendments to the Criminal Code that will criminalise active and passive bribery of foreign and international officials and thus make progress towards the ratification of the Criminal Law Convention on Corruption.
2. Improve money-laundering legislation by making all crimes predicate offences, introducing the concept of negligent money laundering, and making failure to report a separate criminal offence.
3. Review the confiscation and provisional measures regime by ensuring that the concept of "proceeds" is interpreted broadly in accordance with the Council of Europe convention, reconsidering the level of proof required to obtain confiscation orders, and ensuring a wider and earlier availability of provisional measures to secure proceeds.
4. Consider, among other tools, the publication of annual reports on the corruption situation in the country to monitor the effectiveness of anti-corruption measures.

Specialised Units

5. The National Commission for Preventing and Counteracting Corruption or a similar mechanism should be established to ensure co-ordination and co-operation among different institutions involved in combating corruption. Close monitoring by the National Commission of the implementation of anti-corruption policies and strategies would be required to ensure that plans and strategies are translated into concrete actions and tangible results.
6. Improve the co-ordination between different specialised units that are to carry out their functions with due respect for human rights.

Investigative Capacities

7. Improve inter-agency co-operation, inter alia, by providing the necessary structural and logistical framework.
8. Enact witness protection legislation.
9. Expand the legal framework for the use of special investigative means (including undercover operations) and ensure their use in investigation of corruption offences, while providing necessary control mechanisms and the overseeing of the judicial authority.
10. Enhance specialised anti-corruption training for prosecutors, the police and the judiciary.

7.5. Promotion of Transparency and Integrity in Business Operations

The Stability Pact Anti-Corruption Initiative requires countries of South-east Europe to clean-up business deals through, inter alia: enactment and effective enforcement of laws aimed at combating active and passive bribery in business transactions, open and transparent conditions for domestic and foreign investment, the development of adequate external and internal company controls, and other measures aimed at strengthening the efforts of corporations themselves to combat bribery.

Under Romanian legislation, bribing a domestic public official with a view to obtaining or retaining business or other improper advantage is a criminal act. Penalties range from six months to ten years of deprivation of liberty for the bribe giver. The country has also taken steps to help companies overcome pressure for bribes from officials. Officials who solicit, request or accept a bribe can be punished by imprisonment.

Steps have also being taken to promote greater transparency and integrity in business operations. The law criminalises non-compliance with accounting regulations applicable to corporations and companies cannot claim tax deductions for bribe payments to public officials. Active and passive bribery in the private sector is also prohibited. A draft law establishing criminal corporate liability for the bribery of public officials is under preparation.

Overall, over the past five years, Romania has developed a rather sophisticated legal and institutional framework for fighting corruption. However, effective implementation of existing laws has been limited so far and existing legislation needs to be streamlined. In particular, there are several gaps or loopholes for which remedial actions are called for. Furthermore, cumbersome and non-transparent bureaucratic procedures remain a major problem and as such lead to frequent demands for pay-offs by officials. The recently accepted state budget should give financial support to anti-corruption efforts. In 2001, an inter-ministerial commission will be established for the co-ordination of the fight against corruption in Romania.

Preventing bribery of public officials in business transactions

Preventing and deterring bribery of officials in business deals require first of all making bribery of public officials a crime, levying significant penalties on those who bribe, including companies, and ensuring that jurisdiction, investigation and prosecution are effective. It is also essential that measures be taken to help companies to overcome pressure for bribes from officials. This includes the prohibition of passive bribery of public officials and the development of open and transparent conditions for investment.

Active bribery and the responsibility of companies

The offence of active bribery

Bribing a public official in business transactions is a criminal offence under Article 255 of the Criminal Code. The offence is defined as the act of promising, offering or giving, by any natural person, directly or indirectly, of pecuniary or other benefits, to a public official in order that the official performs or does not perform or delays to perform an act related to his/her public duties or in order to perform an act contrary to his/her duties.

Thus, bribing an official would be prohibited whatever the purpose of the bribe (obtaining a business, being awarded a public contract, obtaining a permit), and regardless of the form of the bribe as long as it consists of a pecuniary or other benefit. The officials who may not be bribed are broadly defined to include any person who holds a public office in Romania, whether appointed or elected, or who exercises a public function, including a public agency or enterprise, and any person exercising duties or tasks to perform official duties. The officials who may not be bribed are also persons who participate in or influence decision-making within the public sector, in public companies, or other state-owned companies, co-operative product units and other companies.

Romanian law provides for two defences (constraint by the official and when the giver of the bribe has informed the authorities about the bribery transaction). Although international standards do not exclude the application of general defences as general provisions of the Criminal Codes, these two defences may go beyond the above-mentioned general defences and its application may present a potential for misuse.

Corporate responsibility and sanctions of companies

International standards require countries to take such measures as are necessary to establish the liability of legal persons for the bribery of a public official. Romanian legislation so far knows only limited administrative sanctions on companies for infringing the law. In such cases, companies may be sanctioned by administrative fines. However, it is unclear whether such administrative sanctions would apply to a company that has bribed a public official. According to the Romanian authorities, there is a draft law on the modification and completion of the Penal Code that intends to introduce the criminal liability institution on legal persons. It will be important that the new legislation guarantee adequate sanctions are imposed on companies that bribe public officials.

However, the current absence of criminal liability for business entities does not mean that bribery offences in business transactions can be committed with impunity via corporations. Any natural person bribing a Romanian public official is subject to imprisonment from six months to five years, with a possible increase of five years if the bribery offence is committed in favour of a criminal organisation, association or group or in order to influence negotiations in international transactions or international exchanges or investments.

Other punitive measures include the seizure and confiscation of the bribe and its proceeds. Seizure and confiscation of the bribe or any other goods that are the object of a bribe-taking offence are provided for in Article 254 of the Criminal Code. This article provides that if they are not found, the convicted party shall be obligated to pay their equivalent in money. The law also provides for measures of conservation to be taken with regard to the perpetrator's wealth, if any of the offences considered by the anti-corruption law are committed (Law No. 78/2000 on the Prevention, Finding and Punishing the Corruption Deeds). Furthermore, Law No. 21/1999 on the Prevention and Punishment of Money Laundering addresses the laundering of the bribe and the proceeds of bribing a public official by establishing the concealing, converting, transferring, etc., of property and goods derived from criminal activity as an offence. Laundering is punished by imprisonment from three to fifteen years and the confiscation of any goods related to the offence or its equivalent in money.

Enforcement

Jurisdiction, investigation, prosecution and international co-operation over active bribery offences must be effective.

Enforcement in Romania has so far been rather inconsistent with regard to bribery offences, although it is difficult to see a clear trend in the number of bribery cases. In 1997, the number of offenders tried for corruption (including taking or giving bribes, receiving undue benefits and traffic of influence) was 919 while the corresponding figure in 1998 was 631 – representing a decrease of around 30%. Statistics from the Ministry of Justice reveal that, in 1999, 57 persons were convicted by final court decisions for bribe giving. The recently accepted state budget should give financial support to the effectiveness of the country's anti-corruption efforts.

Romania exercises jurisdiction and investigates and prosecutes bribery of public officials in business transactions along the general rules and principles that apply to criminal matters in the country. As jurisdiction is exercised on both a territorial and a nationality basis (Articles 3 and 4 of the Criminal Code), Romania may prosecute bribery offences by its nationals from abroad and by foreigners bribing from its territory.

International standards also require that prosecutorial discretion should not be subject to improper influence or concerns of a political or other nature. Under Romanian law, criminal investigations are initiated against a person upon decision by a criminal prosecution authority *ex officio* or upon request. While the former procedure represents the rule for almost all criminal offences, the latter is an exception and is used for some specific offences. Bribery offences are investigated *ex officio*. According to information provided by the Romanian authorities, the decisions taken by the prosecutors during criminal investigations are not directly under the control of the judges. However, the Judicial Organisational Law with its recent changes would stipulate certain means of hierarchical control of the prosecutors. According to the Romanian authorities, these controls are periodical and

thematic viewing all the activities developed in the prosecutors' offices and, as a result of this, the unlawful and unbiased solutions of not sending a case to trial may be disabled. Introducing a judiciary control would, however, harmonise the Criminal Procedural Code with European and other international standards.

Mutual legal assistance in bribery matters is another essential tool for enabling states to investigate and obtain evidence in order to prosecute cases of bribery of public officials in the framework of business transactions, as this form of crime most often involves two or more jurisdictions. Assistance in bribery offences is – as in many OECD countries – provided either pursuant to the provisions of an international treaty (bilateral and multilateral treaties or conventions on mutual legal assistance) or, in the absence of such international treaties, on the basis of the relevant provisions of the Criminal Procedure Code (Articles 513-518). Bribery of a public official in business transactions is deemed to be an extraditable offence under Romanian law as well as under treaties with foreign countries. As in many OECD countries, Romania makes extradition conditional on the existence of dual criminality and, as a constitutional principle, no Romanian national may be extradited to a foreign country. In that case, the competent Romanian authorities will take proceedings against the person accused of the offence.

Curbing pressure for bribes from officials

Steps have been taken by the authorities to help companies to overcome pressure for bribes from domestic officials. Cumbersome and non-transparent bureaucratic procedures applicable to business transactions lead, however, to frequent demands for pay-off by mid- to low-level officials.

Extortion/solicitation

Article 254 of the Criminal Code prohibits the act of a person who performs public functions and who solicits or accepts, directly or indirectly, pecuniary or other undue benefits, or accepts the promise of such benefits without rejecting it, in exchange for performing, not performing or delaying to perform an act in relation to performance of official duties or in order to perform an act contrary to these duties. Article 256 prohibits receiving remuneration or a benefit by a public servant, directly or indirectly, after the performance of an act in relation to the performance of his/her official duties.

Soliciting, receiving or accepting the promise of a bribe is punished by imprisonment of three to twelve years and by the deprivation of certain rights (Article 254 of the Criminal Code). The same article provides for the aggravated form of bribe taking if committed by a public servant with control responsibilities and exercising judicial duties. The aggravated form is punishable by imprisonment of between three and fifteen years and by the deprivation of certain rights.

Pursuant to the provisions of Romania's Constitution, members of parliament cannot be retained, arrested, searched or sent to court without the approval of the chamber they belong to. Investigations against members of the government for acts committed in the exercise of official duties or magistrates cannot be launched

without an authorisation given by parliament and the president and the Minister of Justice, respectively.

Transparency of the regulatory system for doing business

Cumbersome and non-transparent bureaucratic procedures remain a major problem in Romania and as such lead to frequent demands for pay-off by mid- to low-level officials. The customs service, municipal zoning offices and local financial authorities are all affected to some degree by this problem, as well as the health and communication sectors and other sectors such as heavy industry, construction, transportation, banking and retailing.

According to the analysis carried out by the World Bank based on a 1999 survey of more than 3 000 enterprise owners and senior managers in 22 transition countries, only 10% of the firms doing business in Romania are of the opinion that the government is "helpful" to their business. Only half of the firms are satisfied with the predictability and consistency of regulations and find that the legal system is able to uphold their property rights.

Efforts co-ordinated by OECD under the Investment Compact for South-east Europe to enhance the legal environment in terms of stability, consistency and transparency are under way.

Promoting integrity in businesses

Not only do governments have major responsibility in sanctioning bribery of public officials in business transactions but they also have the corresponding responsibility to introduce sound internal and external company controls and to strengthen the efforts of corporations themselves to combat extortion and bribery.

Detecting suspiciuos payments

Accounting requirements and auditing standards

International standards require that within the framework of their laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, countries prohibit the making of falsified or fraudulent accounts, statements and records for the purpose of bribing public officials or hiding such bribery. International instruments also call for the provision of persuasive, proportionate and dissuasive penalties in relation to such omissions and falsifications.

Romanian accountancy development is being closely linked to European directives in the field of international accounting standards. The principles that apply to companies to ensure that they present a true financial picture and are aimed at prohibiting the establishment of "off-the-books" accounts, the making of "off-the-books" transactions, and the recording of non-existent expenditures and liabilities with incorrect identification of their object are therefore close to international accounting principles. Sanctions exist under Law No. 80/1991, which provides the legal framework for the accounting system and special laws such as

Law No. 31/1990 on trading companies, which provides for several offences connected with corrupt conduct, including the establishment of inexact or false accounting documents.

Romania has also been focusing on developing the accountancy and auditing professions in line with the Eighth European Directive and rules issued by the International Federation of Accountants (IFAC) and the Fédération des Experts Comptables Européens (FEE). Both professional bodies have co-operated with OECD countries in their reform efforts, and their evolution will be significantly aided by the introduction of enabling framework legislation by the government. The long-term plan recognises that improvements in financial reporting will only succeed if there are accompanying changes in auditing and in training of accountants generally. To this end, a training programme financed by the World Bank started in May 2000.

Tax treatment of suspicious payments

The tax code does not qualify bribes to a public official as a deductible expense. In addition, the Law on Combating Tax Evasion (No. 87/1994) incriminates several acts aimed at hiding suspicious payments and tax evasion in different forms, under Articles 9-16. Refusal to present accounting documents to control authorities, incomplete or false accounting paperwork and documentation, and double-accounting documents aimed at tax evasion represent criminal offences. Sanctions include either imprisonment or fines, depending on the specific case.

Instilling an anti-bribery corporate culture

Romania has made progress in encouraging socially responsible business practice. For instance, Chapter II of the Law on Preventing, Detecting and Punishing Acts of Corruption establishes standards of conduct that should be observed in order to preserve the integrity of a profession or an economic sector. Special laws, such as the Law on Trading Companies (No. 31/1990), provide for imprisonment or fines for non-ethical conduct in corporations. The Law on Prevention, Finding and Punishing of Corruption Deeds prohibits active and passive bribery in the private sector with punishments ranging from three to twelve years' imprisonment and six months to five years, respectively (Article 8 of Law No. 78/2000). The Law on Political Parties (Law No. 27/1996) prohibits contributions by corporations to political parties to obtain a business or other undue advantage. The Criminal Code also contains a provision (Article 257) aimed at combating trading in influence.

Further efforts are required, however. Although the government has periodic meetings with representatives of the private sector, the Romanian authorities should explore ways to further involve the private sector in the general reform process regarding corruption issues. One option would be to organise regular consultations on thematic issues of interest to the business community in the framework of the inter-ministerial commission soon to be established under the SPAI. A liaison committee could be established, in which businesses could discuss with the authorities and alert them on the organisational and other defects that are conducive to corruption from the business perspective.

The Romanian Government also understands the need to improve existing corporate governance legislation in order to promote more transparent and responsible business practices in the country.

Recommendations for reform

Preventing Bribery of Public Officials in Business Transactions

1. Broaden the active bribery prohibition to bar bribery of all public officials, domestic and foreign.
2. Provide for adequate responsibility for companies bribing public officials in the framework of the forthcoming amendments to the penal code; apply procurement and other dissuasive sanctions to enterprises that are determined to have bribed public officials.
3. Ensure that complaints of active bribery of public officials in business transactions are seriously investigated and prosecuted by competent authorities, free of political or other influence in compliance with international anti-bribery standards; review the two defences that are specific to the bribery offence and may present a potential for misuse.
4. Develop in compliance with international standards regular statistical reports on bribery offences.
5. Further tailor the laws and institutions on mutual legal assistance to permit full co-operation with countries investigating cases of bribery of public officials in business transactions (country of the briber and country where the act occurred).
6. Fewer, simpler and more transparent administrative procedures for businesses are called for as complex rules and non-transparent administrative procedures encourage bribery; efforts should be co-ordinated under the Investment Compact for South-east Europe.

Promoting Integrity in Business

7. Strengthen banking, financial and other measures to ensure that adequate company records are kept and made available for inspection and investigation.
8. Hold regular consultations with the private sector in the framework of the SPAI National Anti-Corruption Team to give an opportunity to businesses to discuss with the SPAI Senior Representative organisational and other defects that are conducive to corruption from the business perspective.

8. Appendix: Compact and action plan

8.1. Compact

Preamble

We, the members of the Stability Pact for South Eastern Europe, building on objectives identified at the Sarajevo Summit and subsequently at meetings of Working Tables I, II and III held in Geneva, Bari and Oslo, respectively, in the Autumn of 1999:

Acknowledge that corruption and other fraudulent and criminal activities:

– are highly detrimental to the stability of all democratic institutions, erode the rule of law, breach fundamental rights and freedoms guaranteed by the European Convention on Human Rights and other internationally recognised standards, and undermine the trust and confidence of citizens in the fairness and impartiality of public administration;
– undermine the business climate, discourage domestic and foreign investment, constitute a waste of economic resources and hamper economic growth, and, therefore;
– threaten the very objective of the Stability Pact;

Agree on the necessity to fight fraud and all types of corruption on all levels, including the international dimension of corruption, organised crime and money laundering;

Agree that priority measures to fight corruption include:

Taking effective measures on the basis of existing relevant international instruments, in particular those of the Council of Europe, the European Union, the Organisation for Economic Co-operation and Development, the United Nations and the Financial Action Task Force on Money Laundering;

Promoting good governance, through legal, structural and management reforms for better transparency and accountability of public administrations, through development of institutional capacities and through establishment of high standards of public service ethics for public officials;

Strengthening legislation and promoting the rule of law, by ensuring effective separation of executive, legislative and judiciary powers and the independence of investigative and judiciary bodies and by enhancing investigative capacities;

Promoting transparency and integrity in business operations, through, inter alia, enactment and effective enforcement of laws on accepting and soliciting bribes, ensuring open and transparent conditions for domestic and foreign investment,

establishing corporate responsibility and internationally accepted accounting standards;

Promoting an active civil society by empowering civil society and independent media to galvanise community action and generate political commitment, creating a pattern of honesty in business transactions and a culture of lawfulness throughout society;

Consider that participatory and proactive strategies can enhance anti-corruption efforts of all parties of the society;

Agree in particular that building private/public and government/civil society partnerships is critical to developing and sustaining reform measures and to monitor anti-corruption activities;

Recognise that international organisations, governments from outside as well as from inside the region and the business community can provide highly valuable support and assistance in the drawing up and implementation of such anti-corruption strategies;

Take note that donor organisations will provide technical assistance and will develop synergies in programme design and implementation on the basis of long-term partnership;

Are firmly resolved to ensure the reliability and integrity of the public institutions and to fight against corruption with high political determination and therefore agree to pursue the above-mentioned objectives and will look to the Special Co-ordinator to ensure and monitor, within his responsibilities, their fulfilment as a major step indispensable to a joint effort against corruption in the South Eastern European region.

Commitments

Without prejudice to existing international commitments, as well as to those accepted by the candidate countries to the EU, governments in the region will undertake the following steps:

Adoption and Implementation of European and Other International Instruments

Sign, ratify and implement the Council of Europe Criminal Law Convention on Corruption, the Civil Law Convention on Corruption, and the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime;

Apply the Twenty Guiding Principles for the fight against corruption adopted by the Committee of Ministers of the Council of Europe and participate actively in the Council of Europe's Group of States against Corruption – GRECO;

Implement the forty recommendations of the Financial Action Task Force on Money Laundering (FATF) and participate actively in the Council of Europe's Select Committee for the evaluation of anti-money laundering measures (PC-R-EV);

Take into consideration relevant instruments, legislation, standards and practices of the European Union;

Take measures to apply the principles proposed in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the recommendations of OECD;

Take into consideration the Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials signed at the 1999 Global Forum on Fighting Corruption held in the United States of America;

Endorse completion of negotiation of the United Nations Convention on Transnational Organised Crime and pay continued attention to global anti-corruption initiatives of the United Nations.

Promotion of Good Governance and Reliable Public Administrations

Strengthen national procurement legislation and procedures so as to promote an efficient, open and transparent procurement process that is in line with European and other international standards;

Improve effectiveness, transparency and accountability in budget preparation, execution and control so as to conform with good international practice including standards laid down by international organisations and, if relevant, by the European community;

Establish professional and stable public services with staff selected on merit and safeguard legality, integrity, transparency and accountability through effective legal frameworks as well as judicial review of administrative decisions in line with good international practice; and promote the implementation of recommendations on Public Service Ethics and Codes of Conduct;

Establish efficient external audit institutions and practices in line with good international practice and with standards developed jointly by the European Court of Auditors and EU member states; strengthen parliamentary oversight, for example through ombudsman institutions, allow investigative bodies to be backed by sufficient human and financial resources, and secure transparency in the funding of political parties and electoral campaigns.

Strengthening of Legislation and Promotion of the Rule of Law

Ensure that corruption and money laundering are criminalised in accordance with European standards. Legislation should clearly typify and punish corrupt behaviour in elected bodies, public administration, business and society at large; ensure that appropriate remedies are available for victims of corruption and that anti-corruption legislation is enforced effectively;

Set up specialised anti-corruption units, providing them with sufficiently trained staff and legal and budgetary means to effectively investigate, prosecute and adjudicate cases of corruption. Members of these units should enjoy appropriate independence, autonomy and protection in the exercise of their functions, be free from

improper influence and have effective means for gathering evidence and protecting those persons helping the authorities in combating corruption;

Further strengthen investigative capacities of criminal justice institutions by fostering inter-agency co-operation and joint investigations, focusing on financial investigations, taking into account links to fraud, tax evasion and economic crime, creating the conditions for the use of special investigative methods while respecting fundamental human rights and freedoms, and by providing appropriate training and resources.

Promotion of Transparency and Integrity in Business Operations

Take effective measures to combat active and passive bribery, including corruption of public officials through, *inter alia,* enactment and effective enforcement of laws on accepting and soliciting bribes, taking into account OECD, EU and Council of Europe instruments;

Provide for open and transparent conditions for domestic and foreign investment in line with the principles set out in the Investment Compact of the Stability Pact;

Promote corporate responsibility and liability on the basis of international standards and principles, including, *inter alia,* the development and implementation of modern accounting standards, adoption of adequate internal company controls, such as codes of conduct, and the establishment of channels for communication, and protection of employees reporting on corruption;

Encourage private/public sector partnerships to develop and sustain reform measures.

Promotion of an Active Civil Society

Develop appropriate regional/country and local anti-corruption actions with public officials, private sector and civil society representatives to share information and experience;

Conduct surveys of businesses, consumers and public opinion to provide feedback for delivery of public services and fostering competition;

Agree to organise, in co-operation with non-governmental and media organisations and the private sector, campaigns to raise public awareness about the economic and social harms of corruption;

Develop measures aimed at encouraging public officials, victims of corruption, business and members of the public to co-operate with the authorities in preventing corrupt practices and extortion;

Implement education programmes aimed at fostering an anti-corruption culture in society;

Strengthen media oversight through freedom of information laws, improve ethical and professional standards of journalists and promote training in investigative journalism and provide access to public information.

Implementation

In order to implement this comprehensive programme, countries of the region agree with the attached Action Plan and will fully comply with its terms. In particular, countries of the region commit themselves:

– to implement immediately the actions listed in Section 7 therein;

– to be monitored and to facilitate the task of the Special Co-ordinator and the Anti-Corruption Steering Group, participating actively in its activities;

– to report individually on progress in relation to their commitments under this Compact to the Anti-Corruption Steering Group and, if required, to the regular meetings of the members of the Stability Pact.

The Initiative should start by concentrating on a limited number of issues, including the Immediate Actions of the Action Plan, and such as sensitisation of authorities, business and civil society at country/regional and at local level; setting-up and training of anti-corruption units in law enforcement and justice; recruitment of officials and organisation of public services; definition of framework of rules and behaviour with business actors participating in the reconstruction.

8.2. Action Plan

Introduction

The objectives and principles of the Stability Pact Anti-Corruption Initiative for South Eastern Europe are presented in the Compact, which also serves as a support for political commitment. This Action Plan describes the implementation of the Initiative.

By building upon existing actions and through better co-ordination of all efforts, and relying on high-level political commitment, the Anti-Corruption Initiative intends to give an impetus to the fight against corruption in the region. The initiative is focused on a few key sectors and is action oriented. Rather than defining principles and standards, most of which are already well known, the Initiative emphasises the implementation "on the ground".

Although this Action Plan describes how the Initiative will be carried out in the coming months, it stays very open to all-constructive ideas and partners. The Managing Committee will update this Action Plan regularly.

The Initiative is based on four pillars:

– Institutional mechanisms;

– Initial assessments;

– Monitoring and policy dialogue;

– Technical assistance.

Countries and international organisations that wish to work jointly to implement the Anti-Corruption Initiative will be organised to optimise efficiency, share responsibilities and promote regional progress.

While the Compact recalls the need to fight corruption and sets priorities in order to streamline future activities, the situation in each country of the region is specific. In order to better address precise needs and remedies in each country, country-specific assessments will be carried out.

Real progress will come from permanent and intensive efforts of the public authorities of the countries of the region. In order to promote emulation and responsibilities, an effective monitoring mechanism needs to be installed, building upon existing systems.

Even though the main responsibility for fighting corruption lies with the public authorities and the civil society of each country, the international community has a key role to play in supporting these efforts through the organisation of programmes of technical assistance. Such programmes should aim at facilitating the adoption of new or amended legislation, training programmes, the setting up of appropriate institutions and other forms of assistance and joint work.

Finally, countries signing up to this initiative will take immediate actions to best convince the donor community as well as their own citizens of their high political determination.

Compact

See the document called Compact.

Institutional mechanims

In order to monitor the implementation of the Compact, the Special Co-ordinator of the Stability Pact will establish the Anti-Corruption Steering Group.

In addition, the Steering Group will also be a forum for making recommendations for enhancing the Anti-Corruption Initiative, and addressing any other issue that may arise in connection with the implementation of the Anti-Corruption Initiative.

The Anti-Corruption Steering Group will be chaired by a representative designated by the Special Co-ordinator and will be composed of the following members:

– the chairman;
– two members of the secretariat;
– one representative of each member of the Managing Committee;
– a representative of the EU Presidency with expertise in the field of justice and home affairs;
– two representatives from each country of the region;
– one representative from each other member of the Stability Pact actively involved in the implementation of the Anti-Corruption Initiative.

The Chairman of the OECD Working Group on Bribery in International Business Transactions, the President of GRECO, and the President of the Council of Europe's Select Committee on the evaluation of anti-money laundering measures (PC-R-EV) will participate in the work of the Steering Group as observers. The Managing Committee may also propose to the chairman to assign other observers to participate in the meetings of the Steering Group.

Meetings of the Steering Group will be convened regularly by its chairman, and at least every six months. A first meeting will immediately follow the April 2000 meeting of the South Eastern Europe Regional Table.

The Special Co-ordinator of the Stability Pact will be assisted by a Managing Committee composed of representatives of the Council of Europe, OECD, the European Commission, the USA, the World Bank and the Office of the Stability Pact. The Managing Committee will review priorities and recommend strategies.

The Council of Europe, OECD and the Office of the Special Co-ordinator will act as the Secretariat of the Anti-Corruption Initiative in close contact with the other members of the Managing Committee.

To facilitate the implementation and monitoring of the Anti-Corruption Initiative, countries of the region shall designate a Senior Representative appointed by the government. The Senior Representatives should have sufficient authority to oversee the fulfilment of the objectives and goals of the Compact and Action Plan on behalf of their respective governments.

The Senior Representatives must have adequate staff support and resources to accomplish the objectives laid out in the Initiative.

The South Eastern Europe Regional Table will periodically review the functioning of the institutional mechanism described in this section.

Assessments

The objective of the assessment phase is to enable both countries of the region and the Anti-Corruption Steering Group to take stock of anti-corruption performance, prospects and trends as well as policy implications for national governments and for the region.

The assessment phase will start immediately upon endorsement of the Compact by a country. Within their respective fields of expertise, members of the Managing Group will carry out an assessment of the situation in each of the beneficiary countries within a few months from the adoption of the Compact.

Taking due account of the evaluations conducted previously, in particular for the EU candidate countries, the assessment will allow analysing the needs and gaps of the countries in the region. Its objective will be to determine, country by country and for the issues mentioned in the five domains of the compact, to which extent policies, legislation and practices are similar or deviate from international standards and practices.

The assessment will be done against benchmarks derived from existing international instruments, European norms and good practices and will result in reports with findings, conclusions and country-specific recommendations, submitted to the Anti-Corruption Steering Group and, if requested, to the South Eastern Europe Regional Table. .

The assessment report will permit the setting of specific targets for reform, and commonly agreed progress indicators, that will serve for the monitoring. These indicators will put the countries in the situation to know when they have achieved international standards and practices.

The assessment will be done in co-ordination with international and national donor agencies actively involved in the region.

After an assessment, a policy-dialogue between the assessor and relevant country representatives will follow. The dialogue will aim at defining necessary actions by the country to meet the recommendations of the assessor. The dialogue will also aim at establishing realistic timetables for the implementation of those actions.

Monitoring of targets and policy dialogue

Countries of the region shall commit themselves to undergoing periodic, country-by-country monitoring of the progress made towards achieving the objectives of the Compact.

The monitoring procedure will comprise external, mutual and self-evaluations and will be conducted in the form of peer reviews. It will take due account of progress

already achieved by each individual country, of procedures already in place for the EU candidate countries, of already existing monitoring procedures (such as the OECD Working Group on bribery and the Council of Europe's GRECO). The objective of the monitoring evaluation is to determine whether the targets set by the assessment have been met and eventually what complementary measures and assistance are necessary.

Peer reviews will be conducted under the auspices of the Anti-Corruption Steering Group, which will determine the frequency and scope of each evaluation.

Countries of the region will report progress on institutional and policy reforms, which reduce opportunities for corruption, particularly through the use of common indicators and self-reporting mechanisms.

The Anti-Corruption Steering Group shall receive the monitoring reports, the regional/country reports and all other available information, including, but not limited to, those of the European Commission, OECD, the World Bank and the Council of Europe. Countries of the region will make available all information, personnel and relevant records necessary to conduct the reviews in accordance with national law.

Based on the reviews, the Anti-Corruption Steering Group will report progress and make recommendations on the attainment of the objectives and goals of the Compact. Information on evaluation procedures, review reports, as well as self-evaluations will be made public, in accordance with international practice, so as to empower civil society. To that end, and where possible, the Anti-Corruption Steering Group will disseminate the results from the assessments, and from the subsequent monitoring and self-reporting exercises by countries through all available means.

Technical assistance

The international organisations and governments from outside and inside the region involved in the Stability Pact's Anti-Corruption Initiative will endeavour to provide the assistance required in order to enhance the capacity of countries of South-east Europe to meet the policy objectives established under the Compact.

For that purpose, providers of technical assistance will organise, at the request of countries of South-eastern Europe, assistance programmes relating to the different policy objectives specified in the Compact.

Providers of technical assistance will co-ordinate their technical assistance programmes and initiatives under this Action Plan, building upon programmes and initiatives already in place, avoiding duplications and facilitating, whenever possible, joint ventures. The Anti-Corruption Steering Group established below will be kept regularly informed about current or future technical assistance programmes and initiatives under this Action Plan.

Countries of the region will make known their specific assistance requirements to meet the policy objectives under the Compact and will co-operate with the assistance providers in the elaboration, organisation and implementation of assistance

programmes and initiatives. The dialogue with assistance providers will be carried out with the Senior Representative appointed in each country.

Countries of the region have welcomed the offers already made by the international community, including programmes from the European Commission, OECD, the World Bank and the Council of Europe (such as the Programme against corruption and organised crime in South-east Europe – PACO).

Providers of technical assistance will ensure in their assistance programmes that, as far as possible, external financing is integrated within government budget.

Information on assistance programmes and initiatives will be adequately disseminated to all sectors concerned through the Anti-Corruption Ring set up under the auspices of OECD (www.oecd.org/daf/nocorruptionweb) and through which the Anti-Corruption Network for Transition Economies can be accessed. Governments of the region will adequately disseminate this information. Where possible, assistance programmes and initiatives will provide positive incentives for more rapidly reforming countries by publicising successes and other means.

Immediate actions

Countries of the region will undertake the following immediate actions:

Designation of a contact point. Designate a Senior Representative appointed by the government who will oversee the fulfilment of the Anti-Corruption Initiative.

Public dissemination of the Anti-Corruption Initiative. Publish and disseminate widely through all appropriate media the text of the Anti-Corruption Initiative and a statement of the government's commitment to comply with its provisions. The announcements should emphasise the government's recognition that civil society's participation is crucial for long-term accountability and transparency in the region.

Transparency in government procurement. Countries should announce a schedule of implementation for review of legislation related to transparency in government procurement, including establishing a national panel of experts to work with members of the Managing Group in order to review existing legislation for its conformity with relevant European and other international standards.

Initial steps against corruption in development assistance. Provide to the Stability Pact Special Co-ordinator, the names of experts who will review the effectiveness of measures against corruption in government institutions implementing foreign development assistance or co-operation activities. The report, submitted within ninety days, shall be examined by the Steering Group. The report shall be made public.

Public participation in the Anti-Corruption Initiative. Publish an invitation to the general public and to organisations in the business and non-profit communities, such as professional associations, trade unions and academic institutions, to participate in activities under the Anti-Corruption Initiative.

Access to government information. Announce plans to implement measures to provide meaningful public access to government information to the media.

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