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

The assessments of the changes, which have or have not taken place in terms of institutional and legal improvement, could be used as a starting point to outline the dynamics of corruption over the past year and highlight the future objectives. The emphasis is laid on one of the spheres most vulnerable to corruption, *i.e.* public administration, and on the development of its regulatory framework. In addition, attention will be drawn to the interweaving of the public and the private sectors and the search for mechanisms to distinguish between them and improve the transparency of their dialogue.

A.1. Public Administration Reform and the Role of the State - Legislative Framework

The fundamental goal of the administrative reform is to turn transparency and accountability into essential characteristics of all structures of power, especially the administration. Thus, citizens would have a larger and better regulated access to public services, while the risks of abuse of power and discretion by the civil servants would be restricted.

After a certain delay, the yearend of 1998 and the whole 1999 saw a large-scale process of adopting pieces of legislation designed to govern the organization of public administration and its functioning. As a follow-up, 2000 had to be the year of completing the legislative framework, putting in place the required instruments of secondary legislation and successfully launching the enforcement of the new rules aimed at curbing corruption.

However, **numerous difficulties have impeded the enforcement of the laws passed in 1999** (intended to be the legal basis for the public administration reform) and of the regulations adopted later in order to elaborate on and specify the existing fundamentals. The regulatory framework as a whole could be qualified as flawed to a certain extent. Hence, it is difficult to ensure its practical enforcement. Other obstacles relate to the inherited inertia of the governmental structures, the conservative mentality of civil servants, the fact that the changes introduced lacked transparency and the ensuing insufficient public support to the entire process of reform. **One thing has proven true in every main area of the reform, namely that the initial stage has not provided enough details to enable a straightforward conclusion on whether the level of corruption has been affected by the new measures, or not.**

Thus, in implementation of the *Law on Administration* (adopted at the year-end of 1998), Rules of Organization and Procedure were drafted and

later adopted for each of the administrations in the executive branch. These are intended to better the transparency of administrative work and to narrow down the possibilities for corrupt behavior within the state institutions. However, the process of bringing those administrations in line with the Law (which has to take place within one year of its effective date) has not been sufficiently open and public. This is also valid for the numerous state agencies and commissions the administrative structure of which is governed by the same requirements. Working mechanisms to ensure the accountability to or information for the public concerning the operation of different institutions were not created in due course. A Register on administrative structures and on the acts of the administrative bodies recently established (with the *Regulation of the Council of Ministers No. 89/2000*) and accessible online via the web site of the government could have a positive impact in that respect. The maintenance of the Register would give an overview on which administrative body is responsible for the implementation of concrete engagements and on the process of re-structuring of the administration.

In parallel to the general negative effects, **the slow pace of the public administration reform** and the lack of clarity about it bear directly on the efficient implementation of the *Law on Administrative Services for Natural and Legal Persons* (passed at the yearend of 1999). This Law stipulates a set of Rules of Organization and Procedure of the respective administrations to regulate the procedures for providing and organizing the administrative services and that the problems not covered by those Rules should be dealt with in „internal regulations approved by the competent administ-rative secretary". It is vital to ensure the disclosure of any such internal regulations, as this would enhance both the awareness of citizens of their own rights and the fulfilment by civil servants of their duties.

The prevention of the existing arbitrariness and abuses of individual interests requires **thorough and limpid rules on the organization and control of administrative services. In addition, procedural guarantees will have to be introduced.**

For example, the *Law on Administrative Services for Natural and Legal Persons* lays down a general procedure for the provision of administrative services. At the same time, other laws also lay down general administrative procedures to deal with applications and complaints relative to the work of the administration and, which is worse, these same laws refer to different authorities and deadlines. As the different laws provide for different deadlines and authorities, the individuals are really frustrated in trying to defend their rights.

In order to overcome the inconsistency of the existing regulations, **all procedures relative to administrative applications and complaints should be channeled in a single law** on the basis of a general procedure for issuing and appealing against individual administrative acts, in line with the *Law on Administrative Procedure* and while taking account of the good solutions embedded in the *Law on Administrative Services for Natural and Legal Persons*. Such, though limited, codification of administrative proceedings could provide the indispensable legal guarantees for the rights and obligations of citizens in their interaction with the administration. It could also enhance the transparency and control of the conduct of administrative authorities and discourage the resort to „unregulated"

practices in the context of administrative services.

- The *Law on Civil Servants* (in effect from August 28th, 1999) is already being enforced. Some of its implementing regulations have been issued, *e.g. Ordinance on the Official Status of Civil Servants* (in force from March 22nd, 2000), *Ordinance No. 1 of the Documents Required to Take up Position in the Civil Service* (of March 21st, 2000), *Ordinance, setting up the uniform classification of administrative positions*. The State Administrative Commission is in the process of being set up (*Regulation of the Council of Ministers No. 152 of July 28th, 2000 on the Organization and Activities of the State Administrative Commission*, in force from August 1st, 2000). By virtue of the *Law on Civil Servants*, that Commission is given the task to exercise the overall supervision for compliance with the civil servant status and for the fulfillment of the ensuing obligations. It is currently hard to predict how efficient that supervision would be, given that the Commission only *may* but *is not under an obligation* to give mandatory instructions to the appointing authorities to rectify the violations relative to the civil servant status. Currently, the *Rules of Organization and Procedure* of the Commission are under preparation.

  The Law has one drawback in that it has unduly restricted the circle of persons to which it applies. In particular, excluded from its personal scope remain the members of political cabinets, the deputy regional governors and the deputy mayors. Such an approach is at odds with the European standards, which require that the whole public administration be de-politicized.

  In the meantime, an Institute of Public Administration and European Integration was set up which is mainly entrusted with improving the professional skills of civil servants. A *Draft Code of Conduct* for civil servants including rules with anti-corruption effect has been prepared. The measures aimed at promoting the status of civil servants and improving their professional skills should be accompanied by mechanisms preventing the conflicts of interest and reinforcing the internal controls.

  The prohibition for civil servants to make statements on behalf of the administration needs to be made more specific on the basis of a differentiated approach. The point is that compliance with the rule as it is would result in isolating the public administration and encouraging the lack of transparency which, in turn, would certainly give food for suspicions and invite media allegations. In this respect, as well, there is a clear need for rules governing the dialogue with the public and especially the communications with the media.

- **The rules on the financial and property standing of persons occupying senior positions in public authorities has undergone a substantial legislative development.** Their practical implementation would be of key importance for curbing corrupt practices at the highest level of political power. First, the civil servants have been explicitly obliged to declare their property and later, the *Law on Property Disclosure by Persons Occupying Senior Positions in the State* was adopted (in effect of May 13th, 2000). Such persons are required to declare their property on an annual basis, as of May 31st every year, and this obligation extends to any person occupying a senior official position. They should declare not only their own income and property acquired during the respective previous year but also the income of their spouses and

children under 18 years of age.

The Public Register of persons obliged to declare their property under the Law should be kept by the President of the Court of Auditors. The Law has also defined the group of persons entitled to have access to the data contained in that register and lays down the procedure for getting such access.

Though this particular Law contains primarily what could be labeled „wishful" provisions, the disclosure of compliance or failure to comply with the rules is expected to entail strong moral effects. These expectations have already been met in the first months after the Law had come into effect: even **the mere disclosure of the names of persons who failed to declare their income on time has brought about a public response that could be regarded as a deterrent to corruption.** Nevertheless, the need to monitor the enforcement of the Law, and sanction those who have encroached on it, is still there.

MAIN FACTORS INFLUENCING THE SPREAD OF CORRUPTION *

	April 1999	Sep 1999	Jan 2000	Sep 2000
Desire for fast enrichment of those in power	52,9	54,8	57,0	57,8
Low salaries	51,5	43,6	47,2	41,6
Poor legislation	38,8	37,8	35,1	40,5
Overlap of official obligations and personal interest	25,8	28,3	28,3	32,6
Lack of strict administrative control	36,4	33,8	30,8	32,3
Inefficient judiciary	19,6	27,5	24,7	22,2
The moral crisis in the period of transition	19,4	19,4	18,2	17,0
The problems inherited from the communist past	6,8	7,4	7,3	7,8
The specific characteristics of Bulgarian culture	6,9	4,7	5,9	4,2

Source: *Coalition 2000*

* Notes: 1) % of those citing each factor;
2) respondents marked up to three factors, which is why the sum total of percentages exceeds 100.

The long-awaited ***Law on Access to Public Information*** was passed and came into effect on July 11th, 2000. It is expected to furnish the legal prerequisites for the transparent functioning of the public administration. Its adoption, however, has not automatically put in place all the technical, organizational and legal conditions required for that purpose. **First of all**, the existing registers are incomplete, often contain mistakes and have not been kept with the idea of providing general access to them. There are almost no general information systems in the spheres most liable to corruption: real estate transactions, customs, taxes, etc. **Besides**, the access to public information goes hand in hand with the Law on Personal Data Protection and the Law on Official Information, but none of these has been passed to date.

If concepts such as „official secret" are not clearly defined and are not regulated by a law, the public authorities would not lose their freedom to make subjective assessments. This, in turn, could impede the access to public information or could reproduce certain corrupt practices and actions.

In addition, it is impossible to guarantee the protection of the individual against the abuse of personal data by the state or by third parties until stringent rules on the collection of and access to personal information have been set out in a special law. The *acquis communautaire* also requires that personal information should be collected and processed only in strict accordance with a law. In Bulgaria, various secondary regulations are in force, which provide for registration, permission and licensing regimes and require that personal data be gathered and processed. Numerous entities operating under private law - e.g. banks, the Bulgarian Telecommunications Company, the National Electricity Company, the district heating companies, etc. also collect the personal data they need in the course of their business. The overall result is that the domestic legislation in force fails to offer protection of those data and information by virtue of a law. The passing of a law on personal data protection becomes even more important in view of the growing use of electronic data exchange and communication in business relations and in the daily contacts between private persons or between them and the administration. The government has drafted **a bill on personal data protection** which was publicly discussed at the end of September, 2000 (the debate was organized by the Legal Directorate of the Council of Ministers and the Information Centre of the Council of Europe in Sofia with experts from the Council of Europe and the Bulgarian Government, NGOs and the media).

- The *Code of Tax Procedure* was passed which became effective on January 1st, 2000. It contains a number of **measures aimed at preventing and detecting tax offences and reducing corruption in the tax authorities.** An Agency for State Receivables was set up with powers, which could be efficiently used to resist corruption. Internal audit units have been set up as well.

  The measures already in place form a sound basis for a better operation of the tax administration. However, they have not yielded the expected anti-corruption results despite the wide powers given to the tax control authorities. Interestingly, the wide scope of powers has even kindled a discussion as to whether they could be abused and if wider guarantees would be necessary to prevent such abuses. If the tax legislation is amended as envisaged and the applicable tax rates are reduced, the tax burden on private operators and individuals would be eased and the collection rate would certainly improve. Indirectly, this would also limit the number of cases of tax evasion by way of corruption.

- It is still necessary **to reinforce the role of the State Financial Control,** including that of the Court of Auditors, which is the highest governmental institution vested with independent supervisory powers in this area.

  A new *Law on State Financial Control*, in force since January 1st, 2001 was adopted. They introduce a modern system of financial control, based on the preliminary internal control that is combined with the external control, exercised by the Court of Auditors. The institutions in charge of that control would carry out audits and internal inspections at the stage before the Court of Auditors has stepped in, in order to screen the expenditure of funds allocated from the budget. It is necessary also to control the way in which proceeds from privatization

deals are spent. The rules on both types of liability proposed - administrative penalties and financial liability - *must* be improved. In the meantime, in June this year the government presented to the National Assembly a Draft Law on the Court of Auditors but later withdrew it as neither that draft, nor the Draft Law on State Financial Control (mentioned above) contained any rules on the economic, financial and accounting expert opinions delivered in court. At present, there are 28 services for expert opinions, which are attached to the district (second-level) courts but are subordinated to the Ministry of Finance. Their operation is anything but transparent and does not create conditions for the selection of competent experts. The pending proposal is that expert opinions, in cases involving serious financial crime, should be submitted by the Court of Auditors, while in all other cases the court chamber hearing a particular case should be able to choose witness experts from a list of experts authorized by the Court of Auditors. If the reform goes ahead as proposed, it would surely hit back at the possibility for corrupt practices.

- **The application of the *Law on Public Procurement*** (in force from July 5th, 1999) **has invited criticism** in the sense that the indispensable organizational, regulatory (secondary legislation) and administrative prerequisites do not exist yet in order to enforce the principles enshrined in the Law: openness and transparency, free and fair competition, equal participation opportunities for all candidates. One of the negative reactions has actually come from representatives of the private business who believe that the Law, as it is, and its incompetent implementation by the contracting authorities do not encourage the business and prompt abuse and corruption instead. Thus, **it has been proposed to modify the law so as to meet a number of essential targets:**
  - better transparency of the procedure of awarding public contracts and controlling their performance;
  - faster and more efficient appeal procedures;
  - refined relations among the Court of Auditors, the State Financial Control and the Public Procurement Directorate at the Council of Ministers;
  - accelerating the setting up of the Public Procurement Register; the information obtained from that register must be fit to be used as evidence in court (an *Ordinance on Keeping the Public Procurement Register* was issued);
  - fixed minimum level of deposits for participation in tenders;
  - setting up a body (*e.g.* a Public Procurement Agency) which should operate as an out-of-court instance to settle disputes between contracting authorities and contractors;
  - gradual transition to online procurement, to take account of the new information and communication technologies and of the pending proposals for two EC Directives (of May, 2000) on electronic public procurement (the expectations are that the share of on-line procurements should reach 20 per cent by the year 2003).
- **The new foreign exchange legislation** - the *Law on Foreign Exchange* (in effect from January 1st, 2000) and *its implementing ordinances* - **has**

considerably liberalized the foreign exchange transactions and contributed to the free movement of capital and current payments while **conforming to the standards and measures against money laundering**. A more systematic, flexible and differentiated framework has been created which relies mainly on registration combined with minor elements of authorization and a few prohibitions, the latter only being applicable in the cases expressly listed in the Law. The foreign exchange control has also been organized more consistently.

However, the practice of enforcing the new foreign exchange rules so far has shown that further streamlining would be needed. The procedures to apply for and obtain from BNB the authorizations prescribed, the collection of information from the existing registers, etc., are still quite complicated and cumbersome.

- **The *Law on Measures against Money Laundering* is to be amended and supplemented.** This is necessary in order to bring the Bulgarian law fully into line with the Directive of the Council of the European Community on prevention of the use of the financial system for money laundering. The amendments should enlarge the control mechanism used to check compliance with the Law, extend the powers of the Financial Intelligence Unit, and regulate its relations with the tax and other State authorities. Besides, the data provided to the Financial Intelligence Unit should be better protected.

- As early as 1999 a *Draft Law on Combating Corruption and Financial Crime* was prepared and presented to Parliament. The controversial issue in the law is the status of the proposed new entity - Government Agency for Combating Financial Crime and Corruption (*i.e.* financial police) - which should be a specialized body with the Council of Ministers. The different views on this body, however, should not prevent the search for more appropriate solutions in this sphere as well.

- In September, 2000 the Council of Ministers adopted *Rules on the New Information System,* which is to link the data of the customs, the Ministry of Interior and the judicial system. The system shall be set up with the National Statistical Institute in order to concentrate all the activities in combating crime that are undertaken by the Ministry of Interior, the Ministry of Defense, the investigation services, the courts and the public prosecution offices. The project is in its initial phase. The technical prerequisites for its full implementation do not exist yet, though technical improvement is especially needed in the courts in order to enable the registration of all court files and the processing of information on their closing. Though an inter-institutional group has been set up for that purpose, the register is expected to become partially operational only in the spring of 2001. At the same time, there are no legislative rules on the official information or the protection of personal data and, hence, there are no guarantees against the abuse of data. This entails a substantial risk of corruption, especially when data on serious crimes are at stake.

  In conclusion, the development of the legislative framework for the public administration reform and the role of the state during the past year have revealed the need for legal prerequisites of a sufficient range that could efficiently deter corruption. **Regardless of the progress on paper, the sectors most exposed to corrupt practices have not been affected tangibly.**

A.2. The Institutions and the Public

The defects of the legislative framework of the reform and the lack of sufficient, sustainable legal prerequisites preventing corruption impact immediately on the functioning of governmental institutions and of the civil society, and render the building up of an anti-corruptive institutional environment virtually impossible.

SPREAD OF CORRUPTION IN PUBLIC INSTITUTIONS *

	April 1999	Sep 1999	Jan 2000	April 2000	Sep 2000
Customs	8,78	9,10	9,02	9,10	8,90
Privatization Agency	7,46	7,86	7,96	8,28	8,06
Court system	7,62	7,88	7,68	7,68	7,60
Foreign Aid Agency	-	-	-	7,78	7,54
Tax Offices	7,10	7,98	7,68	7,56	7,54
Governmental Departments	6,94	7,40	7,24	7,44	7,50
Government	6,58	7,12	6,94	7,10	7,44
Parliament	6,78	7,16	6,96	7,24	7,42
Police	7,16	7,54	7,30	7,24	7,14
Committee on Energy	6,40	6,84	7,00	7,10	7,00
Local authorities	6,90	7,32	7,02	7,04	6,94
B T C	-	-	-	6,28	6,60
Municipality Administration	6,64	7,24	6,82	6,74	6,54
Commission for the Protection of Competition	6,14	6,40	6,18	6,68	6,54
Securities and Stock Exchange Commission	6,24	6,28	6,22	6,50	6,46
National Audit Office	5,74	5,86	5,54	5,84	5,98
Bulgarian National Bank	5,34	5,32	5,34	5,16	5,72
National Statistics Institute	4,80	4,54	5,00	4,68	5,02
Army	4,88	5,06	5,06	5,08	4,98
Presidency	4,46	4,50	4,28	4,52	4,52

Source: *Coalition 2000*

* Note: the maximum value of the index is 10,0 and indicates the highest possible level of corruption. The minimum value is 0,0 and indicates the practical absence of corruption in the respective institution.

- State institutions still manifests a stronger reflex of defensiveness and self-preservation rather than of developing mechanisms to protect the citizens and the society against the abuse of power. The democratic decentralization of the state has not taken place yet. Though the private business prevails as a result of the privatization process, the traditional major role and functions of the state in the sphere of economy have not been replaced by an adequate mechanism or by new functions. **The issue of the relationship between public administration and the private sector in the economic area has remained unsolved.**

The newly-established market relations have resulted in a predominantly private sector in the economy. This necessitates a change in the functions of the administration, especially in the line ministries dealing with the economic sector, and requires that a new type of communication be established among them. The lack of norms regulating that communication paves the way for corruption and feeds the public suspicions that corruption flourishes**. The relations in question should be based on clear rules.** This could not only enhance the business development and the building up of a modern and efficient administration, but would also curtail the opportunities for corruption.

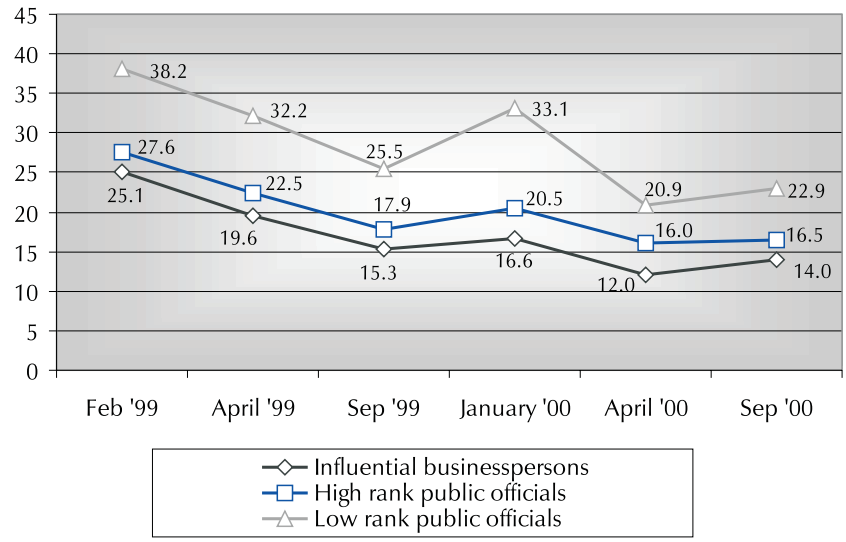
No progress has also been made in terms of **transferring some public functions onto private entities**, despite the repeated requests of the private sector and the pressure it exerts to that effect. A curious example

here is the proposal of the professional guilds to be endowed, by virtue of a law, with the power to issue authorizations to practice any trade or activity, except those bearing on national security or public health, or regulated by international instruments.

The transfer of some functions of the state to non-governmental organizations is an outspoken feature of modern democratic countries. It is also **a must in the development of an anti-corruption model** of relations between the state and civil society in the countries in transition.

The envisaged amendments to the Constitution and the set of draft laws relative to local governments should make the municipalities much more independent in general and in respect of taxation. However, there is no well-defined view, substantiated in public, on the specific solutions and objectives to be implemented or pursued and this issue is rather mentioned in the context of the pre-election campaign.

EVALUATION OF THE COMMITMENT OF THE GOVERNMENT TO FIGHT CORRUPTION AMONG CIVIL SERVANTS AND BUSINESSMEN (RELATIVE SHARE OF RESPONDENTS INDICATING THAT „THE GOVERNMENT MAKES SERIOUS EFFORTS")



Source: *Coalition 2000*

- The system of political parties is not built along principles and models that would make it more transparent and independent of the state. Moreover, there have been ostensible attempts to subject the interests of the state to private political interests and priorities. The growing number of party-affiliated persons at the highest layers of the civil service clearly betrays the on-going merger between the governing party and the state apparatus.

There is no **legislative solution yet to the funding of political parties.** It is urgently needed to introduce state funding based on objective criteria and accountability and while observing strict rules to ensure the transparency of party finances as a whole and of the funds used during pre-election campaigns in particular, in order to curb corruption related to political parties and cut off the informal bonds between political parties and private interests.

A *Draft Law on Political Parties* has been presented to the National Assembly. It is the outcome of consultations among the political parties and would prohibit political parties from engaging in economic operations. In addition, parties represented in Parliament would receive an annual subsidy from the state budget. The development of rules on political parties is closely connected with the election laws, though the discussions on possible amendments to other pieces of legislation are still held at different levels and in an isolated manner.

- In the year 2000, as a result of the initiatives of *Coalition 2000*, not only the society but senior politicians have endorsed the idea of **setting up a specialized Ombudsman-type institution to supervise and monitor the work of the public administration.** Within the framework of *Coalition 2000*, a concept paper and a *Draft Law on the Ombudsman (Public Mediator)* have been developed and widely disseminated and discussed. Adequate public support already exists that such a mechanism is needed as an additional hurdle to corruption and arbitrariness on the part of the administration.

Such an institution, in one form or another, exists and functions well not only in Sweden, its native land, but also at the European Union level and in nearly all European countries, including almost all Southeast European countries.

The passing of a special law would make it possible to build up a nation-wide mechanism - as well as municipal level institutions - operating on the basis of high ethical standards and reputation in order to counteract abuses by the administration, to resist the blurring of the distinction between private and public sphere, and to protect the citizens and their rights. The Center for the Study of Democracy and the Center for Social Practices have launched experimental projects for introducing the position of *civic observer* and *public mediator* in several municipalities, and the results have reconfirmed how useful it would be for the society to have such mechanisms at its disposal.

After a delay of almost 10 years, in September, 2000 the *Law on Non-Profit Legal Entities* was passed (to become effective on January 1st, 2001). The law lists the types of non-profit legal persons: public benefit organizations (PBOs) and mutual benefit organizations (MBOs). Upon setting up, PBOs should be entered in the Central Public Register with the Ministry of Justice. They shall be controlled on an annual basis: a PBO should submit to the public register, until May 31st every year, information on its activities and on any changes registered in court, a list of the members of its governing body, certified annual financial statements or an audit report by a qualified chartered accountant, an annual report, a declaration of the taxes, fees, customs duties and other outstanding public debts, and any changes in the Articles of Association or an alternative constituent instrument. The openness and control of the operation and finances of PBOs would be important tools in resisting abuse and corruption.