



**ANTI-CORRUPTION
POLICIES AGAINST
STATE CAPTURE**



ANTI-CORRUPTION POLICIES AGAINST STATE CAPTURE

In this tenth Corruption Assessment Report, the Center for the Study of Democracy provides an overview of the state of corruption and anti-corruption in Bulgaria in 2013 – 2014. The report is produced within the framework of the Southeast Europe Leadership for Development and Integrity (SELDI), which provides a comparative perspective for nine countries in Southeast Europe. CSD has cooperated with Friedrich Ebert Foundation in Sofia for a fifth consecutive year to deliver the anti-corruption benchmarks. The report's findings are based on the state-of-the-art Corruption Monitoring System, and are complemented with recommendations on anti-corruption policies. The report argues that Bulgaria needs bold institutional anti-corruption reforms and personal commitment at the highest level in the judiciary and the executive to tackle state capture and wide-spread administrative corruption.



SELDI is an anti-corruption and good governance initiative created by civil society organisations from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Turkey. SELDI contributes to a dynamic civil society in the region, capable of participating in public debate and influencing policy and decision-making process in the area of anti-corruption and good governance. The civil society initiative raises public awareness and advocates reformist policies through Regional Good Governance and Anti-Corruption Policy Forums. SELDI is coordinated by the Center for the Study of Democracy.



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LIST OF ABBREVIATIONS

| | |
|--------|---|
| AFCOS | Protection of the European Union Financial Interests Directorate |
| BORKOR | Center for Prevention and Countering Corruption and Organised Crime |
| CCB | Corporate Commercial Bank |
| CMS | Corruption Monitoring System |
| CPCC | Commission for Prevention and Combating of Corruption |
| CSD | Center for the Study of Democracy |
| CSO | Civil Society Organization |
| CVM | Cooperation and Verification Mechanism |
| HPP | Hydro Power Plant |
| GDCOC | General Directorate for Combating Organized Crime |
| GDP | Gross Domestic Product |
| GI | General Inspectorate |
| GRECO | Group of States against Corruption |
| EU | European Union |
| Mol | Ministry of Interior |
| MP | Member of Parliament |
| NGO | Non-governmental Organization |
| NPP | Nuclear Power Plant |
| NRA | National Revenue Agency |
| OP | Operational Program |
| PFIA | Public Financial Inspection Agency |
| PM | Prime Minister |
| PPA | Public Procurement Agency |
| SANS | State Agency for National Security |
| SATO | State Agency for Technical Operations |
| SDOTO | Specialized Directorate for Operative-Technical Operations |
| SEE | Southeast Europe |
| SELDI | Southeast Europe Leadership for Development and Integrity |
| SIMs | Special Intelligence Means |
| SJC | Supreme Judicial Council |
| TPP | Thermal Power Plant |
| VAT | Value Added Tax |

KEY POINTS

In 2014, the Corruption Monitoring System has recorded the **highest levels of involvement** of the Bulgarian population in corruption transactions **in the last 15 years**. In the past year Bulgarians have conceded to being involved on average in roughly 158 thousand corruption transactions monthly.

- **Most corruption transactions have been initiated by the administration** through exerting corruption pressure on those seeking public services. The public's susceptibility to corruption in 2014 is similar to 1999 despite the increase of intolerance to corrupt behaviour. The fact that most Bulgarian citizens reject corruption but are inclined to participate in it shows that the Bulgarian society has a structural governance problem: **corruption has become an additional price for access to administrative services**. In the business sector corruption's effectiveness for solving problems has grown in 2014. Most companies do not trust public organisations and do not consider they are treated equally in courts. This seems warranted, as fiscal prudence in all levels of government and in key state-owned sectors as energy has continued to deteriorate, pushing public debt by estimated further 10pp up, while public procurement waste has continued to surface.
- The very high levels of corruption involvement of the Bulgarian population make **criminal law enforcement initiatives ineffective and inadequate**. First, because the scale of the problem is much larger than the capacity of criminal law enforcement. Second, because law enforcement is often captured by private business and political interests, thus incapacitating and delegitimising its actions.
- In 2014, the Bulgarian public saw the **formidable scale of political corruption**, too. The rise and fall of the Corporate Commercial Bank has demonstrated indisputably that **state capture** has firmly gripped even the most powerful law enforcement public institutions such as the public prosecution, the financial intelligence, as well as the central bank. The South Stream saga at the same time has revealed the depth of corruption corrosion of public institutions, as third country interests have been able to dictate terms on the Bulgarian parliament and the Bulgarian government at the expense of Bulgaria's financial and European interests.
- The **twin peaks of administrative and political corruption** in 2014 have risen at the backdrop of the continuing failure of the Supreme Judicial Council to rise to the challenge and ensure that public prosecution and courts adequately tackle corruption and state capture. The structure of the judiciary still does not provide guarantees for fast, just, and transparent enforcement of the law. The adequate distribution of workload in courts and the prosecution has not been achieved yet; this creates possibilities for delays and increases corruption risks. Still unresolved is the issue of neutralizing political and other influence in the work, recruitment, and appointment of judiciary officials.

INTRODUCTION

The Corruption Assessment Report 2014 follows the model of the Anti-Corruption Action Plan – *Clean Future* – published in 1998, and assesses the progress of anti-corruption in the country by exploring the relationship between government anti-corruption policies, the institutional setup of governance and the levels of corruption victimization of the population and the business sector. The rationale behind such approach is that the governance institutional design determines the legitimate rules for all society sectors. Corruption is a violation of these rules aiming at private benefit and is often described as particularistic governance favouring private interests, as opposed to universalistic governance in favour of the public interest. It occurs when established rules are dysfunctional (i.e. prescribe behaviour that contradicts the legitimate structure of interests of various stakeholders in society), or when public officials deliberately violate institutional norms, laws, etc. in order to benefit and/or ensure privileges for others.

Corruption Assessment Methodology

The Corruption Assessment Report focuses on three principle areas:

1. The **results** from the operation of the governance regime and the adopted set of anti-corruption policies. The principle method used to assess results is to measure the dynamics of administrative corruption prevalence among the general population (18+) and the business sector.
2. The specific **anti-corruption policies** of the government. These policies address corruption related violations from the legal-institutional setup of governance and are aimed at safeguarding and enforcing the compliance with established governance mechanisms.
3. The legal and institutional structure of the governance regime from the point of view of its potential to counter corruption and/or generate corruption.

I. LEVELS OF CORRUPTION AND IMPACT ON SOCIETAL SECTORS

Two problems exist when attempting to assess the spread of corruption. First, the problem of definition, registration and prosecution of the cases of corruption. Second, measuring the actual incidence of corruption transactions (registered or not) for a certain period of time. As shown below, these two aspects of accounting for levels of corruption provide results which differ in magnitude. Cases of corruption which enter the realm of law enforcement are a tiny fraction of corruption transactions occurring on a daily basis. The main reason for this is the high latency rate of corruption victimization (victims have no interest in reporting the offence). This sets limits to the extent in which the efforts of the judiciary could be effective in countering corruption.*

CMS Methodology

The *Corruption Monitoring System* (CMS) developed by the Center for the Study of Democracy is the first of its kind in the post-socialist countries and has been successfully applied for 15 years. CMS has been recognised by the UN as the best national system for corruption monitoring. The methodological features of CMS guarantee comparability of data for Bulgaria with data for other European countries. CMS incorporates a system of empirical studies and analytical reports, and provides data on the frequency and dynamics of corruption practices affecting the population at large and the business sector. CMS registers the actual level and trends of corruption, as well as the public attitudes, assessments and expectations in relation to corruption. Nationally and internationally tested indicators are used to measure the actual involvement in corruption transactions and public perceptions of corrupt behaviour.

The CMS' major outputs are the *Corruption Indexes*.¹ They are based on surveys of the general population and the businesses and summarise the most important aspects of corruption behaviour patterns. The main indicators of the CMS describe corruption (as a social phenomenon) using three groups of sub concepts: experience, attitudes and perceptions (*Figure 1*).

In terms of definition, administrative corruption includes the extension of benefits (money, gifts, and favours) by citizens in exchange for services they obtain by public officials.² The experience aspect of administrative corruption is decomposed into two indicators:

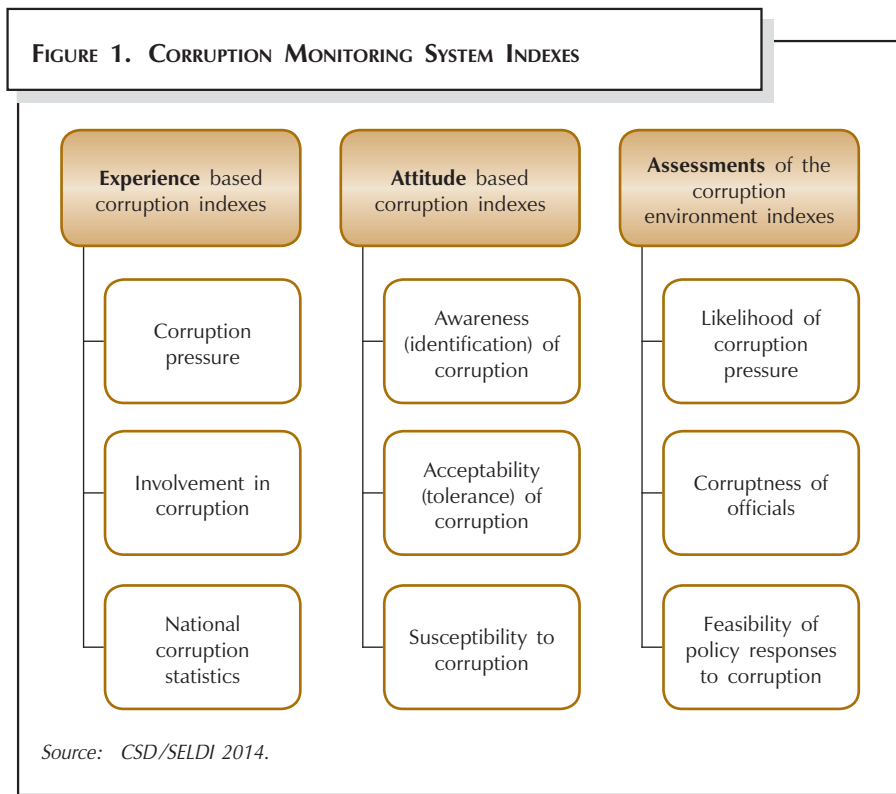
* This chapter, as well as the following four chapters, is based on CSD's Policy Brief No. 46: Corruption and Anti-Corruption in Bulgaria (2013 – 2014) published in November 2014 with the support of Friedrich Ebert Foundation, Office Bulgaria.

¹ Every index is based on the aggregation of data from several variables (research questions).

² An extended technical description of CMS indexes can be found in the Methodological Appendix of Center for the Study of Democracy (2014) *Anti-Corruption Reloaded: Assessment of Southeast Europe*. Sofia: CSD pp. 135-145.

Involvement in corruption captures the instances when citizens make informal payments to public officials. The concrete questions used to gather information about this indicator are victimization questions and reflect experience in the last year. The index summarizes citizens’ reports and divides them into two categories: people without corruption experience (have not given bribes) and people with **corruption experience** (have given bribes at least once in the last year).³

Corruption pressure reflects instances of initiation of bribe seeking by public officials: directly, by asking for an informal payment or indirectly, by “hinting” that informal payment would lead to a positive (for the citizen) outcome. CMS results have shown that pressure has been a decisive factor for involvement. Most corruption transactions occur after the active solicitation of payments by officials.



Direct involvement in corruption transactions is accompanied by the prevalence of specific **attitudes towards corruption** and corruption behaviour and by **perception of the spread of corruption** in society. Ideally, low levels of involvement in corruption would be paired with negative attitudes towards corrupt behaviour and perceptions that corruption is rare and unlikely. This does not mean that perceptions and attitudes directly determine the corruption behaviour of citizens. Rather, they could influence behaviour to a certain degree, but they essentially express the general social and political atmosphere in society related to corruption. The following indexes capturing different aspects of attitudes towards and perceptions of corruption are included in the CMS:

Different aspects of attitudes towards and perceptions of corruption are included in the CMS:

Awareness (identification) of corruption is an index accounting for the level of understanding of citizens about corruption behaviour patterns. The index differentiates between three categories of awareness: high (citizens who identify most common corruption behaviour patterns as

³ Over the years, the wording of questions has been preserved in order to ensure comparability of data. However, calculation methodology has been modified. Prior to 2013, indexes were calculated based on normalization procedure, and their values ranged from 0 to 10. While this is a standard procedure, it has created difficulties in the concrete interpretation of index values. To overcome this difficulty the aggregation procedure has been modified and uses direct recoding of response groups. This makes it possible to position respondents into distinct and directly interpretable categories referring to different aspects of corruption behaviour patterns.

corruption), moderate (many corruption practices are identified, but some forms of corruption are considered “normal behaviour”), low (few corruption patterns are identified as corruption).

Acceptance (tolerance) of corruption behaviour. While awareness captures the knowledge component, acceptability of corruption captures tolerance (or lack of tolerance). It summarizes citizens’ assessments of acceptability for members of parliament or the government, as well as officials at ministries, municipalities and mayoralities to take gifts, money, favours, or receive a free lunch (get “a treat”) in return for solving someone’s personal problems.

Susceptibility to corruption reflects the tendency of the respondents to react in two hypothetical situations – one involves being in the role of a public official and accepting or denying a bribe that has been offered, the other situation asks about giving a bribe to a corrupt public official if one had a major problem to solve and was asked explicitly for a bribe (cash). Denying a bribe in both situations is interpreted as being not susceptible to corruption, accepting/giving a bribe in both situations is interpreted as susceptibility, while giving/taking a bribe in one of the situations and not in the other is considered “mixed behaviour”.

Likelihood of corruption pressure is an index measuring expectations of citizens for the likelihood to face corruption pressure in interaction with public officials. Overall, this is an index gauging perceptions of the corruptness of the environment. In principle, corruption theory⁴ considers that people would be more likely to “use” corruption patterns if they think the environment is corrupt.

Feasibility of policy responses to corruption is an indicator capturing the “public thinking” about policy responses to corruption. More specifically, it evaluates potential public support for anti-corruption policies.

Corruptness of officials is an index reflecting perceptions of the corruption reputation of different groups of public officials. The interpretation of this index is specific, as it is an assessment of political attitudes of citizens towards public officials, rather than a measure of the prevalence of corruption. The added value of this index lies in the fact that it helps identify top ranking sectors affected by corruption.

Experience with Corruption

In addition to CMS diagnostics, information about the prevalence of corruption is available in institutional statistics (police, judiciary). The problem in this respect is latency (prevalence of crime cases that are not reported to authorities) and/or the inability of law enforcement to process corruption cases. Regarding corruption, crime statistics proves difficult, as different institutions dealing with such cases work with differing classifications. Except for the Prosecutor’s Office, none of the

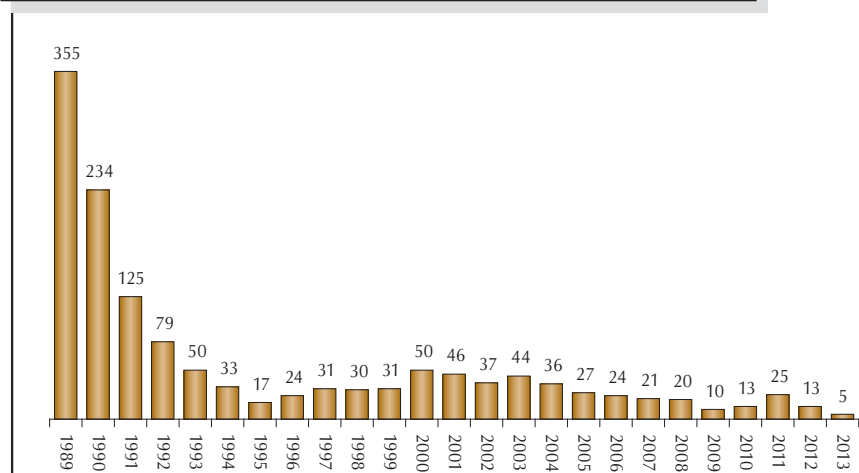
⁴ See Rothstein, B. (2007) Anti-Corruption – A Big Bang Theory. Quality of Government Institute Working Paper Series 2007:3, no. May (2007).

other judicial or law enforcement authorities is collecting data specifically on corruption.⁵ Based on the available data, the most reliable indicator for the enforcement of anti-corruption legislation is the number of persons sentenced for the most typical corruption crimes such as bribery and abuse of office (*Figure 2* and *Figure 3*).

CMS estimates of the prevalence of corruption (*Figure 4*) sharply contrast to publicly available official data on cases/persons investigated, accused and sentenced on charges of corruption. The values of the principle corruption experience indicators – **involvement in corruption** and **corruption pressure** – point to a serious problem, as there is a difference in magnitude in crime statistics and CMS diagnostics data: while crime statistics show that law enforcement is able to process (investigation, pre-trial, trial, etc.) several hundreds of cases per year, **actual prevalence of corruption transactions over the years ranges from about 9% to 29% of the adult population of the country⁶ (i.e. hundreds of thousands of cases)**. These findings point to two important aspects of measuring prevalence of corruption behaviour:

- Based on the number of cases, involvement in corruption transactions is a mass phenomenon. Prevalence of corruption is comparable to overall crime victimization in the country registered by crime statistics and victimization surveys.
- It is obvious that, given the scale of corruption prevalence, it is not possible to effectively counter corruption only/predominantly through criminal law enforcement measures.

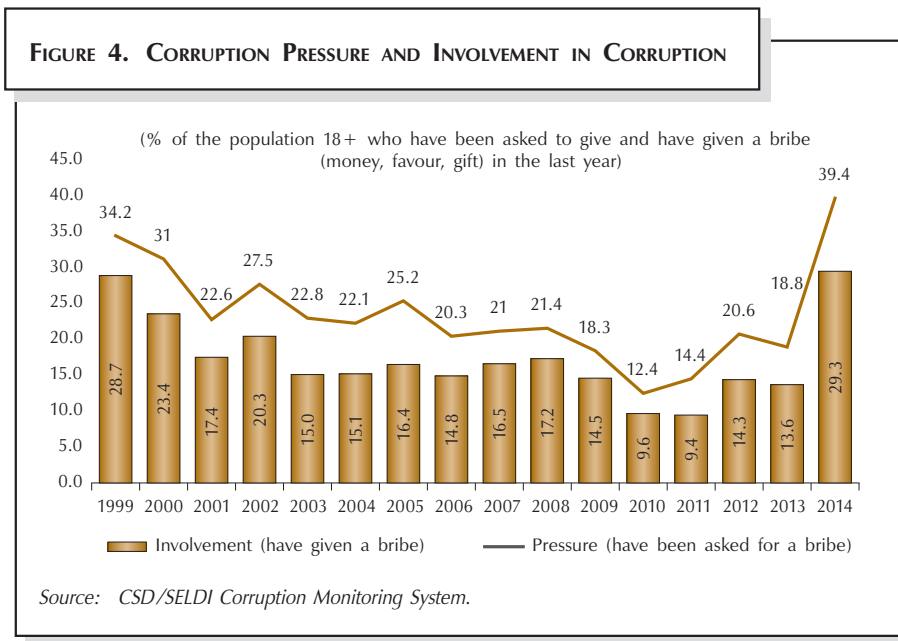
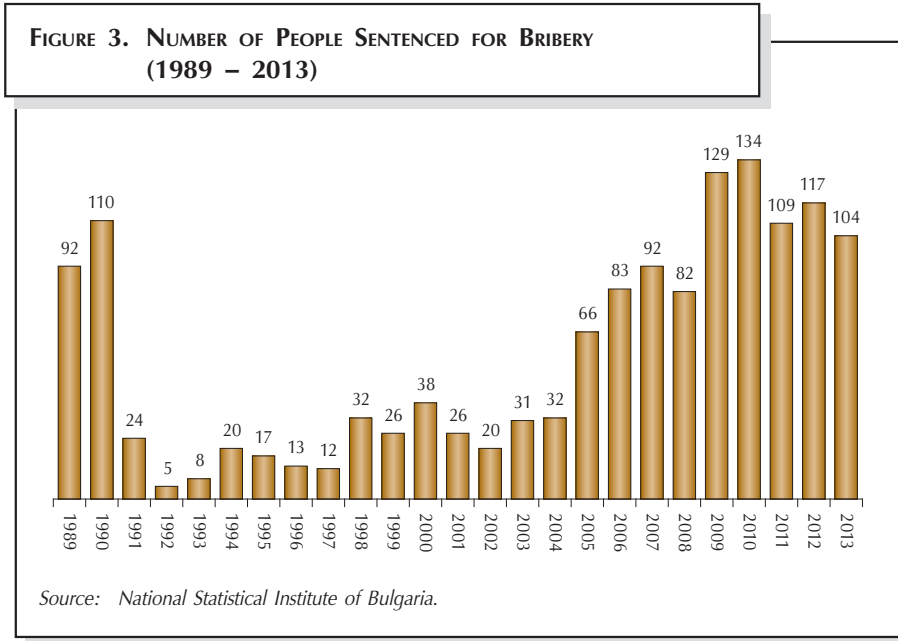
FIGURE 2. NUMBER OF PEOPLE SENTENCED FOR ABUSE OF OFFICE (1989 – 2013)



Source: National Statistical Institute of Bulgaria.

⁵ The institution has its own definition of corruption, according to which corruption behaviour has three basic elements: (1) abuse of power or violation of official duties for personal gain at the expense of the public interest; (2) making the performance of official duties conditional on obtaining a personal gain; and (3) unlawful redistribution of resources for personal gain and to the detriment of the public interest.

⁶ Based on the population of the country 18+, 1% of the sample would represent about 65,000 persons.



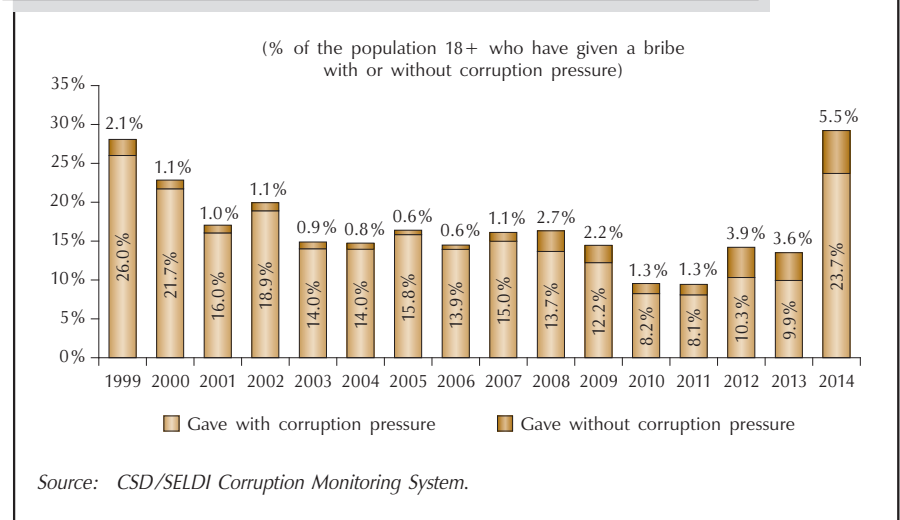
In 2014, the observed **levels of corruption are the highest in the last 15 years**. CMS data (collected since 1999)⁷ shows that more than one in every four Bulgarian citizens admit to have given a bribe at least once in the last year (*Figure 4*). Progress over the years has been moderate and has changed dynamically based on the political cycle: prevalence drops in the first 1-2 years of every new government and then bounces back to higher levels. Reduction of prevalence levels in the first years of governments is mainly the result of initial anti-corruption efforts combined with administrative restraint; at a later stage, these factors are replaced by established corruption channels, clientelism and favouritism. The main reason for such developments is that the governance model in the country has not been and is not being effectively redesigned

⁷ See: Center for the Study of Democracy (1998) *Clean Future*. Sofia: CSD.

to counter corruption among public officials at all levels. The sharp deterioration of the corruption environment observed in 2013 – 2014 is just another indication of the validity of such a conclusion; observed corruption levels in the country are much higher than the EU average levels registered by Eurobarometer surveys.⁸

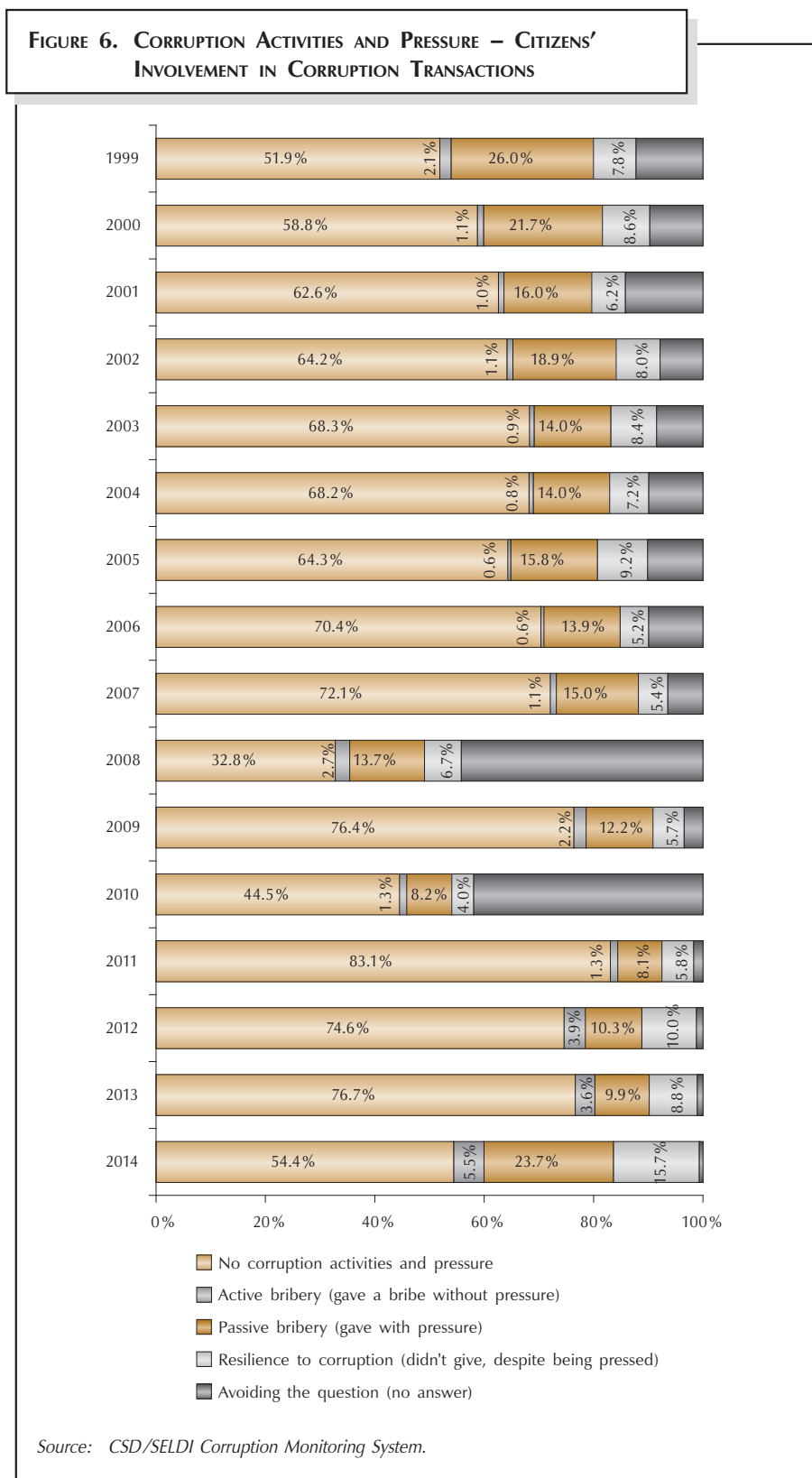
Analysis of micro-level corruption experience indicators shows that factors which precondition citizens' involvement in corruption transactions are contained in the immediate interaction between officials and clients of public organizations.⁹ Practically, this means that most corruption transactions occur after officials attempt to solicit an informal payment or benefit. When citizens are asked by public office holders to give a bribe, provide a service or a gift, on average between 50% and 70% of them comply and enter into a corruption transaction (*Figure 5, Figure 6*). A specific development was observed in the period 2008 – 2014. On the one hand, fewer citizens have yielded to corruption pressure, with the share of those giving a bribe after they have been asked to going down from 70% to below 50%. On the other hand, the share of people who enter into corruption transactions without corruption pressure has been rising. Bribes are offered to public sector officials even when they are not explicitly demanded. In 2014, only 53% of those who resorted to bribes have been pressured by the recipients of bribes to do so, while in 2007 the respective share was over 90%. Thus, pro-active corruption behaviour on the part of citizens has increased based on the belief that a bribe is expected, even when it is not explicitly demanded.

FIGURE 5. INVOLVEMENT IN CORRUPTION WITH OR WITHOUT CORRUPTION PRESSURE

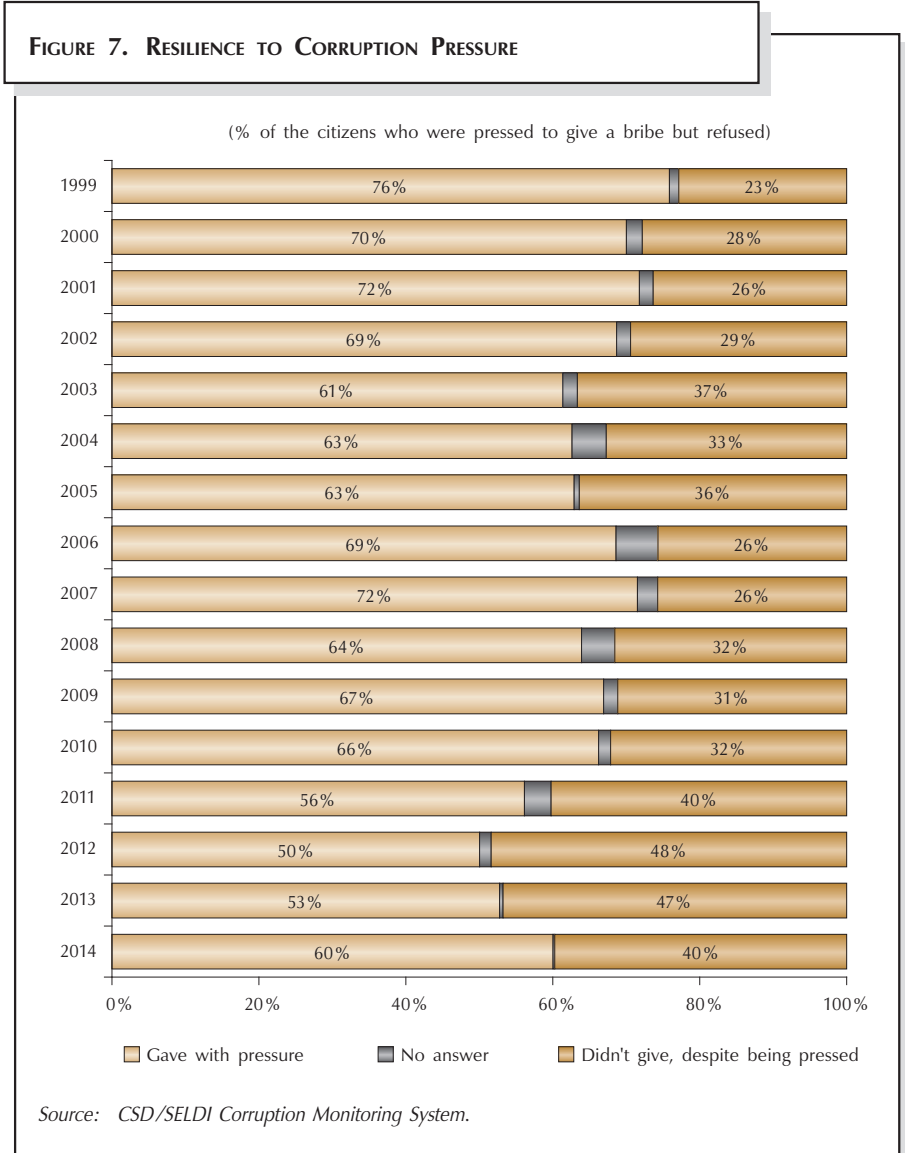


⁸ See: TNS Opinion&Social. Corruption. Special Eurobarometer 374. Brussels: Directorate-General Home Affairs, European Commission, 2012. TNS Opinion&Social. Corruption. Special Eurobarometer 397. Brussels: Directorate-General for Home Affairs, European Commission, 2014.

⁹ The two monitored indicators in this respect – corruption pressure (incidence of officials asking or hinting they expect “something”) and involvement in corruption (incidence of citizens giving money, gifts or favours in exchange for public services – legitimate or illegitimate) – show high level of statistical association: Kendal $t > 0.5$, which is statistically significant ($p < 0.01$).



Over the period 1999 – 2014, **resilience to corruption pressure has marginally increased** (Figure 7). This has been both a result of civil society action against corruption and the introduction of more controls and transparency in the administration. Progress, however, has been both uneven and insufficient.

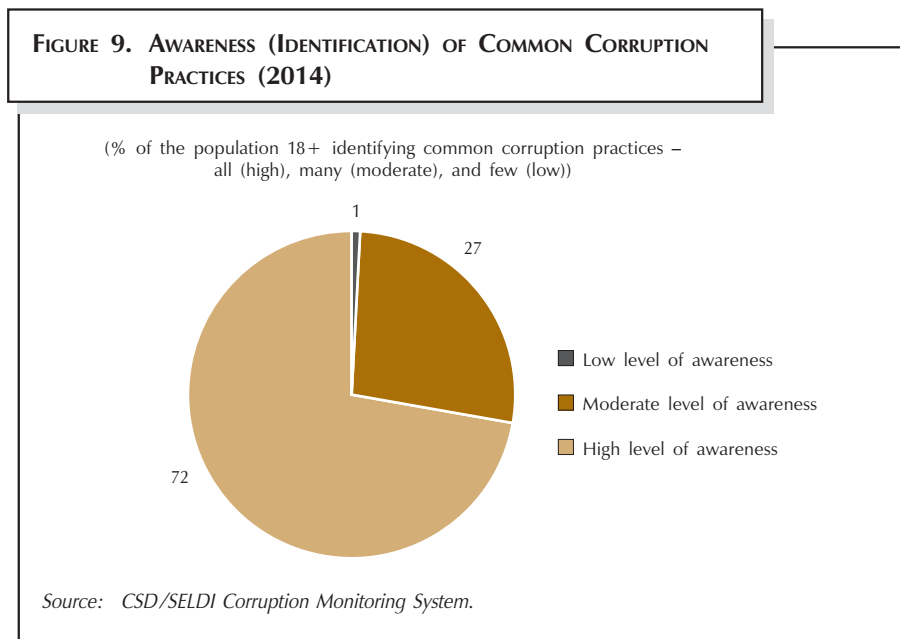
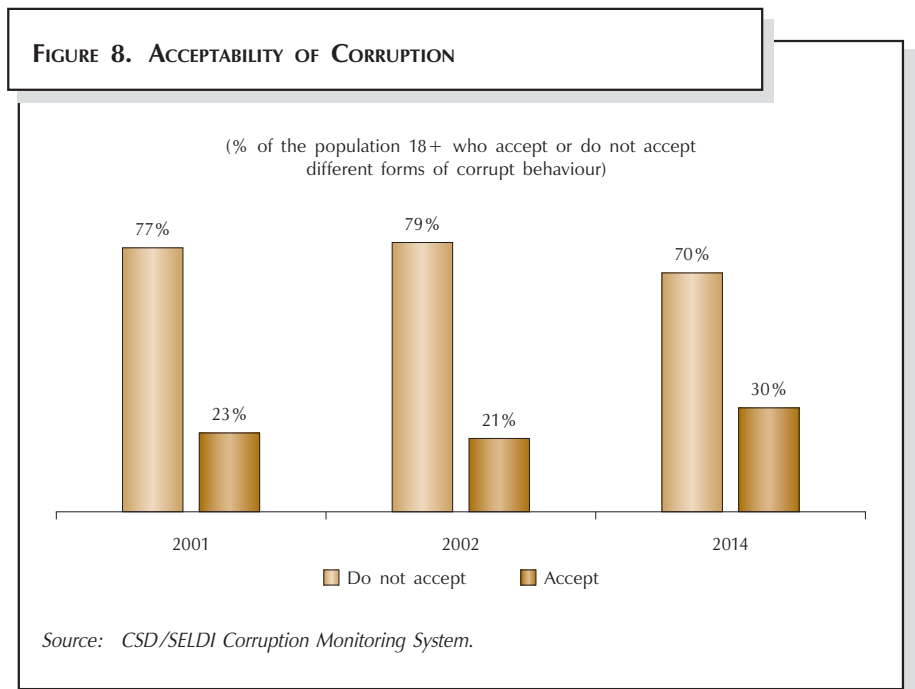


Attitudes towards Corruption

Explanations of corruption behaviour tend to stress on macro-level criteria. Theories focusing on moral and normative factors do not seem to explain involvement or non-involvement of citizens in corrupt transactions. The main reason for this is that moral dimensions of corruption and normative restraints against corrupt behaviour do not seem to work in the same way in different settings. In societies where corruption is systemic, two preconditions seem to exist and influence individual decision making: 1) the expectation that corruption is widespread almost forces actors to the choice of being corrupt to achieve their ends; 2) moral and social negation of corrupt behaviour is more or less belittled by the wide usage of corruption by others. This gives corrupt behaviour the status of “necessary evil”, i.e. a widely used, but morally and normatively rejected pattern of behaviour. The consequences from the above relationship is that society and individual actors reject corruption, but cannot do much to counter it because too many actors are engaged in this type of behaviour on a daily basis.

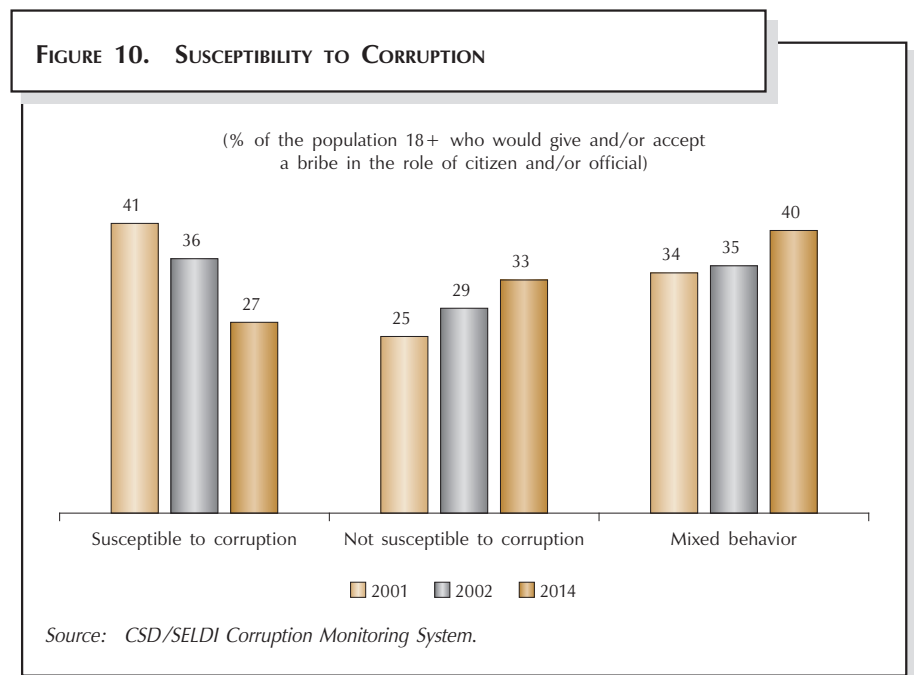
The evolution of the Bulgarian corruption situation in the last 15 years vividly confirms this explanatory framework, as it includes a combination of relatively high levels of intolerance and rejection of corruption behaviour on the one hand, combined with high levels of involvement in corruption transactions on the other hand. Several details in this respect are worth mentioning:

- **Most Bulgarians are intolerant of corruption behaviour** (Figure 8). This attitude changes marginally after 2001, but in the negative direction. The share of those who are intolerant of corruption behaviour decreases, while the number of people tolerant of different forms of corruption behaviour increases.



- Despite legal difficulties in defining the exact content of corruption transactions (necessary to start prosecution of offenders), the majority of the population at large does not have substantial difficulties in identifying common, widely known corruption patterns as corruption behaviour (Figure 9). The **high level of awareness** among the majority (72%) of the population shows that no specific socio-demographic group could be identified as less aware and hence more susceptible to corruption because of ignorance.

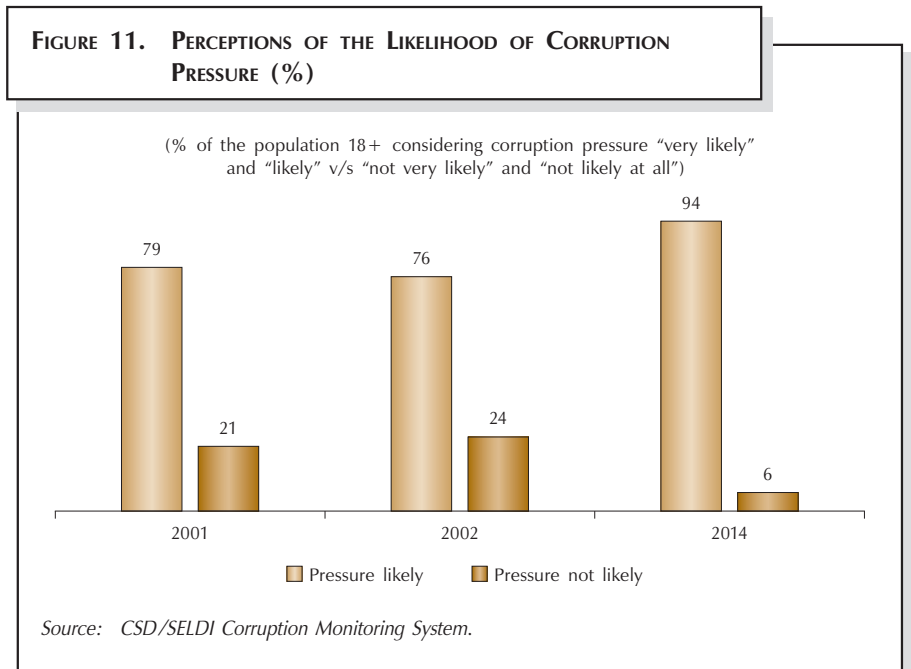
- Despite intolerance and high awareness of corruption behaviour, a **substantial number of Bulgarians (18+) would readily engage in giving/accepting bribes** (Figure 10). “Full” susceptibility to corruption (both give and accept bribes) decreases marginally over the years. However, “mixed behaviour” attitudes (either give but not accept, or vice versa) have increased. In 2014, people who are more or less susceptible represent close to 70% of the adult population of the country. From 2001 to 2014, the share of people adhering to high moral standards (would never engage in corrupt behaviour) increases marginally from 25% to 33% of the adult population. Obviously, it is not awareness and attitudes towards corruption that predetermine the concrete decisions people make in situations of interaction with public officials. Rather, it is people’s perceptions of the environment and their rational judgement on how to cope with existing realities. This is probably one of the reasons why tolerance of corrupt behaviour tends to marginally increase over the years.



Assessments of the Corruption Environment

Judgements of the level of corruptness of the Bulgarian society consolidate in the period 2001 – 2014. Corruption has become part of the price for public services. In 2014, practically **all Bulgarians (94%) consider corruption pressure on behalf of authorities as likely** (Figure 11). This is a prerequisite for the reinforcement of corruption behaviour patterns and explains why they are resilient to countering measures.

Statistical analysis of the interrelation (correlation) between the indicators measuring perceptions and attitudes towards corruption has not been able to identify any meaningful dependence: people who are well aware and intolerant of corruption are not substantially different in their susceptibility to corruption from people who are less aware and tolerant of corruption. In addition, the sets of perceptions and attitudes change only marginally for the period 2001 – 2014.



While there might be some differences in ranking, the corruption reputation of groups of public officials has not changed substantially in the period 2001 – 2014. The top ranking groups in 2014 are members of the legislature, the political class, and members of the executive with substantial discretionary powers (Figure 12). What should be noted is that the corruption reputation for the top ranking groups of officials has actually deteriorated. Only customs officers mark a marginal improvement (within the margin of stochastic error). It is also important to note that most of the top ranking groups mark the largest negative change in the period 2002 – 2014 (Figure 13).

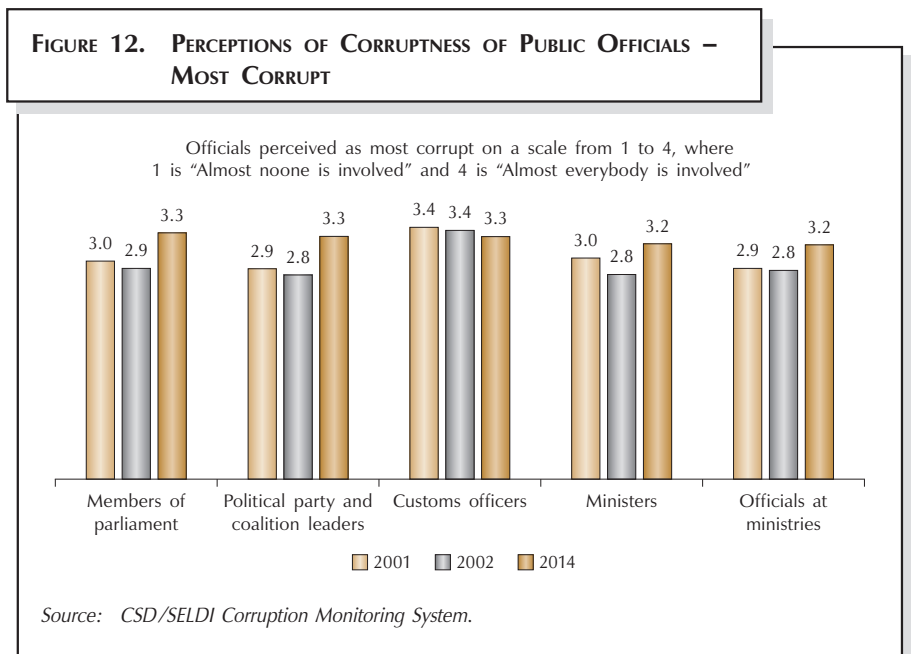
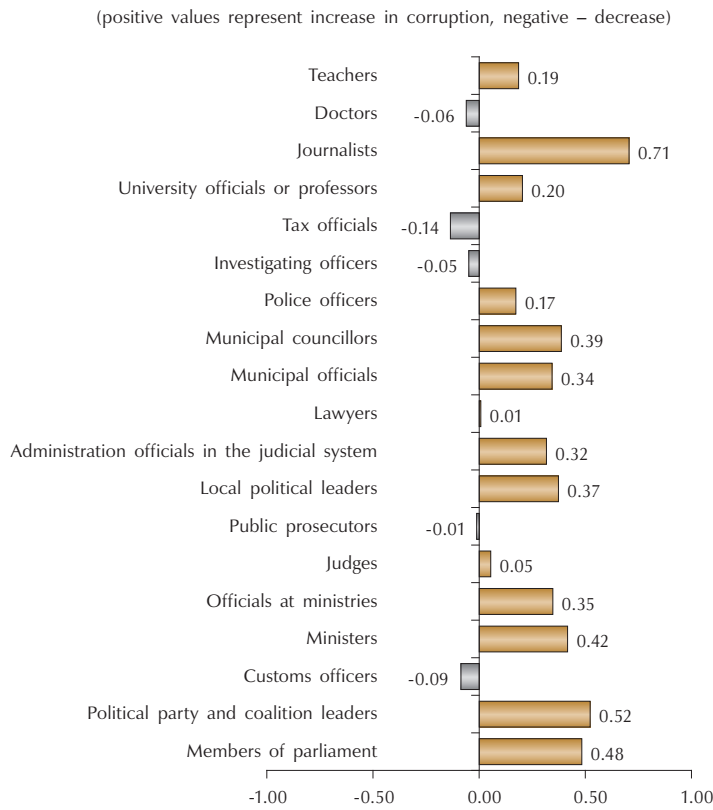


FIGURE 13. PERCEPTIONS OF CORRUPTNESS OF PUBLIC OFFICIALS – CHANGE IN PERCEPTIONS BETWEEN 2002 AND 2014

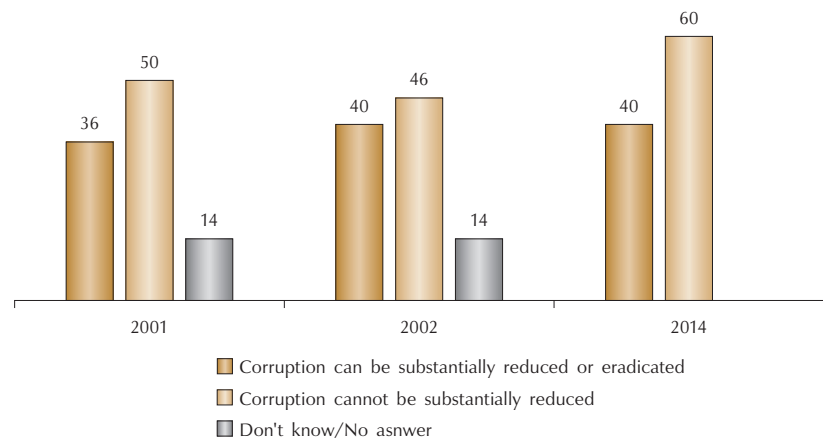


Source: CSD/SELDI Corruption Monitoring System.

Perceptions of corruptness of officials and the overall corruption environment in the country explain some of the aspects of the problem of **anti-corruption ineffectiveness**: the institutions that should lead counteraction efforts are among those with the worst corruption reputation. In this respect, they face two contradicting challenges: to counter corruption through criminal law enforcement (identify and prosecute) and policy measures, and at the same time to resist to corruption behaviour in their own ranks. CMS diagnostics points to the conclusion that citizens consider these same institutions so corrupt that they do not expect them to be able to perform their anti-corruption functions properly.

It is against this background that public pessimism about the feasibility of countering corruption has increased and is dominant (Figure 14).

FIGURE 14. PERCEPTIONS OF FEASIBILITY OF POLICY RESPONSES TO CORRUPTION (%)



Source: CSD/SELDI Corruption Monitoring System.

II. ANTI-CORRUPTION POLICY INSTRUMENTS IN BULGARIA (2009 – 2014)

Integrated Strategy for Prevention and Countering Corruption and Organised Crime

The centrepiece policy document with regard to anti-corruption policy in Bulgaria is the *Integrated Strategy for Prevention and Countering Corruption and Organised Crime* (Strategy) adopted in 2009. The Strategy attempts to set recommendations for limiting the spread and impact of corruption and organised crime on multiple levels of governance (central, regional and local), while also including the business sector and civil society in the process.¹⁰ The responsibility for its coordination lies with the General Inspectorate (GI) and the Commission for the Prevention and Combating of Corruption with the Council of Ministers. Also responsible for the implementation of the Strategy are the inspectorates with ministries and government agencies and regional administrations; they have to propose individual action plans for a certain period and consequently produce implementation reports.¹¹ Action plans need to develop measures focused on six priority lines:

- Implementation of a unified approach to planning and reporting activities in the area of anti-corruption policy. Measures include review of related legislation; stronger general cooperation of the activities for prevention and countering of corruption; application of anti-corruption mechanism for reporting the results in the area of anti-corruption; implementation and periodic update of corruption risk assessment methodologies within the GI and the ministries; increasing the analytical capacity of the GI; increasing the cooperation with the Center for Prevention and Countering Corruption and Organised Crime (BORKOR); review and control of declaration for conflict of interests, etc.
- Sector-specific approach for prevention and countering of corruption. Depending on the sector, analyses and revision of laws and regulations, internal rules, ethical codes, as well as procedures for personnel selection and promotion are among the measures often included in this priority of the action plans.
- Measures aiming at strengthening of the anti-corruption environment.
- Measures for increasing transparency in public administration and raising awareness of anti-corruption measures.

¹⁰ Министерски съвет, Интегрирана стратегия за превенция и противодействие на корупцията и организираната престъпност [Integrated Strategy for Prevention and Countering Corruption and Organised Crime] Adopted by Council of Ministers Protocol No. 4532 of 18.11.2009, <http://anticorruption.government.bg/downloads/Normativni-aktove/strategy-KPPK.pdf>

¹¹ Протокол от заседание на Комисията по превенция и противодействие на корупцията към Министерски съвет, проведено на 11 септември 2013 г. [Protocol from meeting of the Commission for the Prevention and Combating of Corruption from 11 September 2013]. Available in Bulgarian at: <http://anticorruption.government.bg/pdocument.aspx?d=k3BdzV0I3jxTQNRbOc%2FINw%3D%3D>

- Cooperation between governmental institution, civil society, media and the business sector.
- Analysis and assessment for identification of areas with high corruption risk, which often include introduction and/or revision of mechanisms for increased control.¹²

Reports on the implementation of the Strategy are available for 2010, 2011 and 2012. For 2013, the government had an approved action plan and report¹³ only for the final quarter of the year. No plan has yet been adopted and publicly available for 2014. In general, the reports should comment on the results of activities undertaken by ministries, governmental agencies and regional administrations with regard to (1) analysis and identification of areas with high corruption risk; (2) regulatory measures; (3) revision and application of mechanisms for prevention and countering of corruption, more specifically regulatory, administrative, control and punitive instruments; (4) cooperation between governmental institutions, civil society, media and the business sector; (5) transparency in governance and public services; (6) information policy; (7) measures for increasing administrative capacity; and (8) measures to be implemented in central government.¹⁴

Transparency. Due to the unstable political environment, lack of coordination and delays in implementation, the publication of the action plans has so far been sporadic – on central level such are available for the period of July 2011 – July 2012, for August – December 2012, as well as for October – November 2013. Since the adoption of the Strategy (2009), anti-corruption measures have not been available for a substantial period of time without any specific justifications.¹⁵

Evaluation. Overall, there is no clear indication of how the action plans, more specifically their measures and associated indicators, should impact the general anti-corruption environment and contribute to the implementation of the Strategy. The availability of associated indicators for each anti-corruption measure also varies, leaving a considerable portion of measures without a base to be assessed against. So far, a total

¹² Министерски съвет, Интегрирана стратегия за превенция и противодействие на корупцията и организираната престъпност [Integrated Strategy for Prevention and Countering Corruption and Organised Crime] Adopted by Council of Ministers Protocol No. 4532 of 18.11.2009, <http://anticorruption.government.bg/downloads/Normativni-aktove/strategy-KPPK.pdf>

¹³ Доклад за дейността на Комисията по превенция и противодействие на корупцията към Министерски съвет за периода 01.01.2013 – 31.12.2013 [Report for the Activity of the Commission for the Prevention and Combating of Corruption at the Council of Ministers for the period 01.01.2013 – 31.12.2013.] Ref. No. 03.16-1/26.03.2014, <http://anticorruption.government.bg/downloads/--2014-08-15-08-43-18--ДОКЛАД.pdf>

¹⁴ Министерски съвет. Отчет за 2011 г. – Институционален подход за реализиране на антикорупционната политика на правителството [Report for the year 2011 on the institutional approach for the realisation of the government's anticorruption policy]. Available at: <http://anticorruption.government.bg/downloads/Normativni-aktove/2011-Strategy-KPPK.doc>

¹⁵ Протокол от заседание на Комисията по превенция и противодействие на корупцията към Министерски съвет, проведено на 11 септември 2013 г. [Protocol from meeting of the Commission for the Prevention and Combating of Corruption from 11 September 2013]. Available in Bulgarian at: <http://anticorruption.government.bg/pdocument.aspx?d=k3BdzV0I3jxTQNRbOc%2FINw%3D%3D>

of 119 indicators are produced, leaving 78 measures with no indicators to assess progress and implementation.

Assessment of effectiveness. Results provided by the implementation reports generally include examples of activities undertaken by administrative bodies without integrated analysis of their contribution to the implementation of the action plans. Results are not linked to specific measures, there is no analysis of the effectiveness and impact of activities or of the status of implementation of anti-corruption measures.

Regional level implementation. Information on the activities undertaken on regional/local level is scarce. Although the majority of regional administrations have adopted separate action plans and produced implementation reports, the provided information is limited and there are virtually no indications to confirm concrete impacts. There is only one attempt to consolidate the activities on local level, with regard to the Strategy: the audit report for 2011.¹⁶

High level corruption. Countering high level corruption has not been specifically addressed in the action plans and in the reports on implementation. The lack of a track record with respect to high level corruption cases remains a major obstacle to Bulgarian citizens' trust that serious action is being taken against corruption.

Overall evaluation. While the Strategy is a comprehensive anti-corruption document, it has not been operationalized into matching action plans, regional level implementation, transparency, evaluation, and reporting mechanisms. It is therefore difficult to assess whether all priorities have been adequately translated into appropriate measures (and action plans) and whether plans and measures have been fulfilled/adopted. The Strategy has no in-built assessment tools that would evaluate progress in achieving its main objective – to reduce corruption. As anti-corruption gradually becomes a top priority of the European Union, it remains unclear how incumbent Bulgarian governments will address this problem.¹⁷ In 2014, the Commission for the Prevention and Combating of Corruption published a Methodology for Corruption Risk Assessment which is based on identified patterns of corruption in the public administration. There have not been reports on the implementation of the methodology so far. While this has been a positive step forward, it does not address the main recommendation of the European Commission under the CVM for an independent external assessment of corruption risks. The methodology will be implemented by the inspectorates.

¹⁶ Министерски съвет. Отчет за 2011 г. – Институционален подход за реализиране на антикорупционната политика на местно ниво [2011 Report on the institutional approach for the realisation of the anticorruption policy on local level]. Available at: <http://anticorruption.government.bg/downloads/File/municipalities-report.pdf>

¹⁷ Министерски съвет. Пламен Орешарски: Откритост, отчетност и диалогичност ще са основни принципи в работата на правителството [Plamen Oresharski: the government will work along the key principles of openness, accountability and dialogue]. Council of Ministers Press Service, 20.09.2013. Available at: <http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0213&n=480&g=>

Specialised Anti-Corruption Bodies and Other Institutions with Anti-Corruption Potential

There are several specialised bodies mandated to drive the country's anti-corruption agenda within the legislature, the executive, and the judiciary, as well as a number of institutions whose activities may have a strong anti-corruption potential.

Parliamentary Commission on Fighting Corruption and Conflict of Interest. The Commission is responsible for accepting and registering the declarations under the *Conflict of Interest Prevention and Ascertainment Act* and, if requested, provides information to the Commission for Prevention and Ascertainment of Conflict of Interest. Due to political controversies in the 42nd Parliament the Commission has conducted only ten meetings and has provided two administrative violation reports under the *Conflict of Interest Prevention and Ascertainment Act*, as well as several comments/recommendations with regard to draft legislation.¹⁸ In addition, the hostile political environment has raised doubts that the Commission is often used to serve party agendas.

Standing Committee on Professional Ethics and Prevention of Corruption in the Judiciary with the Supreme Judicial Council (SJC). Its main responsibility is to perform inspections on specific signals about corruption and complaints, notify competent authorities and inform the SJC about the results; analyse the information on the existence of corruption practices in the judiciary; develop and propose for approval by the SJC specific measures for the prevention and countering corruption in the judiciary. The Committee is largely responsible for the implementation of the *Code of Ethical Behaviour of Bulgarian Magistrates*¹⁹ as well the *Strategy for Preventing and Combating Corruption in the Judiciary*. The Committee also cooperates with the Civil Council to the SJC and other anti-corruption structures within state authorities, including the Ombudsman.²⁰

Information with regard to registered signals and complaints is largely available and consistently reported by the Committee. Despite the large number of complaints, most of which general in nature, for the period of four years (2010 – 2013) there is not a single registered complaint containing concrete data of corruption, while the signals concerning controversial practices are only 23.

¹⁸ Parliamentary Commission on Fighting Corruption and Conflicts of Interest, <http://www.parliament.bg/bg/parliamentarycommittees/members/2083/sittings>

¹⁹ The Code of Ethical Behaviour of Bulgarian Magistrates was approved by the Supreme Judicial Council in 2009. In contrast to the preceding situation, where ethical rules for judges, prosecutors and investigative magistrates were found in three separate ethical codes, one for each of the professions, adopted by the respective professional organizations, this document covers all members of the judiciary. Moreover, it subsumes under the 'magistrate' category the members of the Supreme Judicial Council, as well as the inspectors in the Council's Inspectorate, thus subjecting magistrates and non-magistrates (members of the Council from the parliamentary quota are not necessarily such) performing judicial and practically non-judicial activity to the same ethical requirements. Although presenting a visible effort to regulate the ethical aspects of judicial activity, including the prevention of corruption, the Code does not discern the procedural roles of judges and prosecutors and their often different ethical duties and the different situations with corruption implications they may come into. Moreover, for a document, whose violation can lead to disciplining, it contains quite a few cases of overly general or insufficiently precise phrasing, which can put under serious doubt the foundation of sanctions imposed for the ethical rules' infringement.

²⁰ The Supreme Judicial Council's official webpage is: <http://www.vss.justice.bg/bg/start.htm>

TABLE 1. NUMBER OF COMPLAINTS (SIGNALS) FOR THE PERIOD 2010 – 2013

| Type of complaint (signal) | 2010 | 2011 | 2012 | 2013* |
|---|-------|------|-------|-------|
| General complaint | 1,856 | 767 | 1,124 | 613 |
| Complaints (signals) containing concrete data for corruption | 0** | 0 | 0 | 0 |
| Complaints (signals) for violations of ethical rules by magistrates | 19 | 16 | 31 | 61 |
| Complaints (signals) containing data for controversial practice | 11 | 5 | 6 | 1 |
| Complaints (signals) containing objections with regard to the initiation, progress and the timely completion of cases | 43 | 34 | 51 | 10 |

* No data available for August 2013.

** Assumed to be "0" as such complaints are not mentioned at all.

Source: Reports on the activities of the SJC and the SJC Inspectorate for 2010, 2011, 2012; monthly reports on the Committee on Professional Ethics and Prevention of Corruption to the SJC.

Standing Committee on Disciplinary Proceedings with the Supreme Judicial Council. Its responsibilities include disciplinary infringement and disciplinary sanctions against judges, prosecutors and investigators. The disciplining activity of the Council is still divided between, on the one hand, some cases of sanctioning violations of the Ethical Code and actions ruining the reputation of the judiciary, and, on the other hand, more cases of non-compliance with procedural deadlines and actions, unjustifiably slowing down proceedings. As admitted by the Council's own Review of Disciplinary Case-Law of 2009 – 2013, in the continuing absence of a clear vision or a generally acclaimed methodology for determining the workload of magistrates, putting an emphasis on disciplining magistrates primarily on the grounds of slow proceedings still steps on insufficiently clear grounds and can potentially diverge disciplinary efforts away from corruption-related cases. Moreover, the lack of disciplinary action in the face of serious corruption allegations allows the involved magistrates to resign without any review or penalty for their alleged actions. As regards statistics for disciplinary proceedings against magistrates on corruption-related grounds, no such data is publicly available.

The Commission for the Prevention and Combating of Corruption with the Council of Ministers (CPCC) was created in 2006.²¹ The organisation of CPCC's work and the administrative and technical services are carried out by the General Inspectorate of the Council of Ministers.²²

In theory, the functions and coverage of CPCC are close to a comprehensive body for anti-corruption policy. In practice, the CPCC lacks the necessary

²¹ Министерски съвет. Решение N 61 от 2 февруари 2006 година за създаване на Комисия по превенция и противодействие на корупцията [Decision N61 Establishing the Commission for the Prevention and Combating of Corruption]. Available at: http://anticorruption.government.bg/cms/files/mod_file/RMS61.doc

²² CPCC website: <http://anticorruption.government.bg/>

capacity to effectively perform its functions, especially implementing a synergetic approach against corruption. A lack of coordination is evident in the established 28 regional councils on anti-corruption. While the majority of regional administrations have adopted separate action plans and produced implementation reports, inconsistencies in reporting and limited information have determined the lack of results. Four annual reports have been published inconsistently. The last publicly available report is for 2013.²³

Centre for Prevention and Countering Corruption and Organised Crime (BORKOR). BORKOR is a specialised anti-corruption body, established at the Council of Ministers in 2010 to assess, plan and develop preventive anti-corruption measures. At the heart of the Centre is the BORKOR software, which aims at identifying weak spots and developing network measures against corruption. Since the establishment of BORKOR its efforts have been focused on acquiring a cyber-system of the type V-Modell XT claimed to be a unique highly-technological instrument with no analogue in the world, to be used in developing anti-corruption measures. The continuous lack of results has drawn repeated criticisms from civil society and the media. With a spending of BGN 10.3 million (over EUR 5 million) in a three-year period (2011 – 2013),²⁴ the BORKOR project has also been criticised for unjustified spending of public money.

Inspectorates are responsible for the prevention and elimination of distortions in the functioning of the administration, including independent and objective assessment of the public administration. For 2013, a total of 32 administrative bodies have reported the establishment of inspectorates, while inspectorates under special laws were created in 4 administrative units.²⁵ The reach of the inspectorates with regard to anti-corruption is relatively wide but restricted only to the specific administrative unit. Among other duties, the inspectors:

- perform check-ups of structures, activities and processes in the administration;
- assess the corruption risk and propose measures to limit it;
- ensure compliance with regulations and laws, including the Conflict of Interest Prevention and Ascertainment Act;
- propose disciplinary proceedings when violations of official duties are present.²⁶

²³ Доклад за дейността на Комисията по превенция и противодействие на корупцията към Министерски съвет за периода 01.01.2013 – 31.12.2013 [Report for the Activity of the Commission for the Prevention and Combating of Corruption at the Council of Ministers for the period 01.01.2013 – 31.12.2013.] Ref. No. 03.16-1/26.03.2014, <http://anticorruption.government.bg/downloads/--2014-08-15-08-43-18--ДОКЛАД.pdf>

²⁴ Министерски съвет – Център за превенция и противодействие на корупцията и организираната престъпност. Отчет за извършените разходи на ЦППКОП за периода 2011 г., 2012 и 2013 г. [Council of Ministers Center for Prevention and Countering Corruption and Organized Crime Report on expenses for 2011 – 2013.] <http://borkor.government.bg/document/138>

²⁵ Министерски съвет. (2014) Доклад за състоянието на администрацията 2013. [Report on the State of the Bulgarian Public Administration in 2013], http://www.government.bg/fce/001/0211/files/DSA_2013.pdf

²⁶ CPCC website: <http://anticorruption.government.bg/>

The General Inspectorate (GI) with the Council of Ministers is subordinated directly to the PM and is responsible for the coordination of the work of all inspectorates. The GI prepares methodological guidance on the functions and operating procedures of the inspectorates and their interaction with the specialised control bodies, as well as corruption risk assessment methodologies to be approved by the PM. Supervision of compliance with the *Conflict of Interest Prevention and Ascertainment Act* and examination of corruption signals in the executive are also part of the responsibilities of the GI.²⁷

The new **Commission for Illegal Assets Forfeiture**, which inherited the older illegal assets identification structure, was established in February 2013. The only tangible effect so far is a dwindling number of injunctions and ensuing forfeiture cases. This negative tendency could become a permanent downward trend if no concrete legal measures are undertaken. Several factors determine this institutional ineffectiveness. First, the wave of staff changes at all levels of the Commission has negatively influenced practical activities and undermined their outcomes. Second, the interpretative case in the Supreme Court of Cassation initiated by the National Ombudsman has led to the blocking of several cases which were built on legal hypothesis existing in the old Law and slowed the procedures under the new Law.

As for the procedures under the new Law, they also justified the concerns voiced by several experts back in 2012 that, instead of enhancing the efficiency of the Commission, the new Law will lead to its long-term decline. In 2013 for example, of the 3,348 signals and 2,951 checks carried out (i.e. even more than in 2012), only one forfeiture case was launched. This paradox is explained by the fact that the sum of BGN 250,000 as a discrepancy mark between declared and real assets of a person proved to be way too high to be used as an efficient tool.²⁸ This negative result indicates the likely outcome of the Commission activities in 2014: substantial amounts of investigative work with minimum effect, i.e. small number of injunctions in court and forfeiture cases completed.

National Revenue Agency. In 2012, the NRA published a detailed annual report (the latest publicly available one), which contains data on control and enforcement activity. The NRA has tried to come up with more complex efficiency and risk management indicators. According to NRA's annual report, the NRA has made 220,578 control checks in 2012, compared to 227,230 checks made in 2011, a decrease of around 3%. A particularly high growth has been witnessed (243.8%) in social security enforcement related checks, as this had been one of the priorities of NRA in 2012. The increase in hidden social security contributions in 2013 shown by the hidden economy monitoring indexes demonstrates that enforcement measures have not produced sustainable results. No evaluation of the burden of NRA inspections on businesses or of the efficiency of control measures has been made.

²⁷ Ibid.

²⁸ КОНПИ (2014) Доклад за дейността на КОНПИ за 2013 г. [Commission for Illegal Assets Forfeiture Annual Activity Report 2013], available at: <http://www.ciaf.government.bg/web/attachments/Page/56/385/52a5e2b923559.pdf>

Chief Labour Inspectorate. CLI's annual report is less detailed and less customer-friendly than NRA's. In 2013, CLI has made 55,952 checks on enterprises, or 479 more than the checks made in 2012. A total of 246,787 violations have been found of which 58.3% have been labour law violations and 41.3% – health and safety violations. Among the labour law violations, 17.4% are related to payment schemes (25,101 compared to 33,367 in 2012). The report does not provide assessment of the burden on businesses from the performed inspections or of the corruption risk, nor any explanation on the continuing large number of violations despite the introduced penalties.²⁹

National Customs Agency. The Agency's latest report (for 2013) contains no information about total budget or staff; it only states that a total of 85 new customs employees have been hired over the course of the year. Over that same period, a total of 5,698 proceedings have been started, and during that period 7,351 sanctions have been imposed for violations of the customs regime. Customs have consistently ranked among the most corruption prone institutions in the country. Since the beginning of 2013, there have been several "changes of the guard" at the leadership level in the Agency, which led to deterioration in its performance in 2013 and 2014. In 2013, the Agency fulfilled 96.1% of the budget plan (compared to 100.2% for the previous year), despite reporting higher revenues in absolute figures.³⁰ At the beginning of March 2014, the Bulgarian parliament approved the text of the amended *Law on Customs*. The draft law features an article that compels the Customs Agency and the Ministry of Interior to exchange information through shared databases, which is a much anticipated and necessary step.

Bulgarian Food Safety Agency. The agency was created in 2011 and employs a staff of 2,663.³¹ Although it has considerable power to influence the foods market, it has not produced a publicly available report on its activities and their impact yet. The agency also has a separate centre for risk analysis, which has not provided public information on its work yet (the latest available information is from October 2012).

Executive Forest Agency. The Agency has become known for authorizing hundreds of land-swaps at below-market prices, which have allegedly cost the state more than a billion³² in forgone revenues in the years 2006 – 2008. The Agency has published its first Annual Report³³ publicly in 2013, but it represents a simple table of enumerated measures and

²⁹ Доклад за дейността на Изпълнителна агенция „Главна инспекция по труда“ през 2013 година [Report on the activities of Chief Labour Inspectorate in 2013], May, 2014, available at: http://www.gli.government.bg/upload/docs/2014-05/Doklad_2013_IA_GIT.pdf

³⁰ Агенция Митници. Годишен доклад на Агенция „Митници“ за 2013 г. In: Митническа хроника БРОЙ 6/2013 [Customs Agency Annual Report 2013], available at: <http://www.customs.bg/bg/mag/90>

³¹ Bulgarian Food Safety Agency website: <http://www.babh.government.bg/>

³² CSD, (2009), *Crime without Punishment: Countering Corruption and Organized Crime in Bulgaria*, Sofia, 2009.

³³ Изпълнителна агенция по горите. Отчет на Годишната програма на ИАГ с цели и дейности за 2013 г. [Report on the Annual programme of the EFA with goals and activities for 2013], available at: http://www.iag.bg/data/docs/otchet-godishna_programa2013.pdf

statements of self-assessment of their implementation, which does not allow independent performance evaluation.

National Construction Control Directorate. Traditionally one of the most heavy-handed control bodies in the country overseeing an area of doing business, in which the World Bank has consistently ranked Bulgaria worse than in any other area.³⁴ The number of complaints to the directorate and respectively of follow-up checks on law infringements has increased in the last two years to nearly 100,000. With its 419 employees³⁵ it seems that the directorate is understaffed, but at the same time its work has apparently not deterred infringements. In 2013, the directorate undertook 27,082 checks, which resulted in 631 proceedings and 279 administrative sanctions, amounting to a total of BGN 914,050 in fines.³⁶

Regional Health Inspectorates. There are 28 inspectorates, one in each of the district centres of Bulgaria, which supervise pharmacies, medical activities, occupational health, etc. There is no publicly available annual report on the work of the inspectorates and independent evaluation of their efficiency. Some Inspectorates have recently started publishing weekly reports on conducted checks. For example, the Sofia Inspectorate, which according to the Official State Gazette has a staff of 363 people, stated that over the course of one week they have conducted over 1,200 checks which led to 45 proceedings and 29 sanctions for violations of various health regulations.³⁷

Bulgarian Drug Agency. The agency can impact significantly a number of medical businesses, including control over clinical trials. It publishes a detailed annual report on its web site. The report does not contain clear indicators of efficiency, but provides a statistical and narrative account of activities. In 2013, the Agency undertook a total of 1,654 checks, including market inspections (827 checks) and warehouses for wholesale (71) and retail (756) of medicinal products, which resulted in the issuing of 359 bills. Of the latter, 265 ended with fines or property sanctions amounting to a total of BGN 725,250.³⁸

Regional Inspectorates on the Environment and Waters. The drive for a greener economy in Europe increases the importance of such public bodies, including their impact on the cost of doing business. Inspectorates provide detailed monthly account of their activities online,³⁹

³⁴ The World Bank, (2012), *Doing Business 2013 Smarter Regulations for Small and Medium-Size Enterprises*, Washington, D.C., 2012.

³⁵ Public Administration Registry data, available on: <http://ar2.government.bg>

³⁶ Доклад за дейността на Дирекция за национален строителен контрол за 2013 г. [Report on the activities of the National Construction Control Directorate for 2013], 2014, available at: <http://www.dnsk.mrrb.government.bg/UI/Home.aspx?0ZKDwUgLUJoIGMALia%2bNv8hQnouB3tnen4mEaq%2fCBTRVE01UsvUJWEDeScAesAH%2b>

³⁷ Weekly information on population health and healthcare control in Sofia, Sofia Regional Health Inspectorate. Available in Bulgarian at: <http://srzi.bg/Pages/reports/49/>

³⁸ Годишен доклад за дейността на Изпълнителна агенция по лекарствата за 2013 година [Annual report on the activities of the Bulgarian Drug Agency for 2013], available at: http://www.bda.bg/images/stories/documents/annual_reports/doclad_2013.pdf

³⁹ The monthly reports are available in Bulgarian on the website of the Ministry of Environment and Waters: <http://www.moew.government.bg/?show=165>

which reveals a pattern similar to the other control agencies: very high inspection activity which leads to many, but fairly small penalties for companies and no apparent change in their behaviour.

The overview of these selected regulatory agencies has demonstrated that almost none of them have built up modern public accountability mechanisms. Some of them even do not publish an annual activity report. Most agencies do not provide a comprehensive analysis of efficiency and impact. In this respect, the example of NRA, which has started reporting on some impact indicators, should be lauded. Based on type of activities reported, the work of regulatory agencies greatly varies, but certain elements need to be present in order for transparency and quality control to be ensured, and for corruption risks to be reduced:

- details about staff, budget, type of governance;
- watchdog function details, including clear specification of public functions and institutions regulated;
- report on the service of information centre, including fraud signals by citizens;
- actions taken as a result of citizens' signals and complaints related to informal/illegal activities;
- report on auditing revisions and results of specific regulatory actions;
- actions taken, including results from court proceedings on decisions taken by the agency;
- assessments of effectiveness and impact based on concretely specified goals and objectives.

Risk Assessment and Processing of Complaints

Corruption risk assessment is implemented across the executive.⁴⁰ The majority of ministries have developed internal methodologies for assessing corruption risks. The assessment should be performed on an annual basis and be accompanied by reports, containing objective analysis of the performance of each indicator of corruption risk, as well as assessment of the overall level of risk of corruption. However, these are too general and are applied to all public administration bodies, regardless of their specific tasks. The risk assessments are based on self-evaluation by the personnel of respective ministries/bodies. Publicly available information about the effectiveness of the actual implementation of the risk assessment methodology is limited, with the one exception – the Ministry of Economy and Energy. It remains unclear to what extent ministries implement the risk assessment methodologies and, more importantly, with what level of detail and expertise. This has been noted in the first *EU Anti-Corruption Report*, published in 2014.⁴¹

⁴⁰ Министерски съвет. Методология за анализ и оценка на ефективността на дейността на администрацията [Methodology for analysis and assessment of the effectiveness of the work of the state administration], Adopted by Council of Ministers' Ordinance № P-180 of 29 September 2010, available at: <http://anticorruption.government.bg/downloads/Normativni-aktove/zapoved-p180.doc>

⁴¹ European Commission. (3 February 2014). EU Anti-Corruption Report, Annex Bulgaria. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_bulgaria_chapter_en.pdf

Nevertheless, there is an apparent increase in transparency and availability of other anti-corruption related documentation, not only on central, but also on regional and local level. A majority of the central and regional administrations have developed internal rules of conduct. In 2013, 510 administrations (87% of all structures) introduced or continued using a register of personnel declarations under the *Conflict of Interest Prevention and Ascertainment Act*.⁴² Corruption signals can be sent to virtually any administrative structure. The most preferred communication channels include e-mail, telephone, “corruption box”, webpages, etc. The majority of central and regional administrations also publish audit reports on the undertaken activities with regard to registered complaints.

A number of standard anti-corruption measures were implemented at municipal level, such as a “one-stop-shops” system to reduce the number of officials in direct contact with the public, enhancing transparency through municipal newsletters and websites, Codes of Ethics, and establishing systems for internal financial management and control. The impact of such measures is difficult to assess due to the large number and variety of local administration units.

Receiving complaints/signals in the public administration. The data from the 2013 report on the state of the public administration shows that the total number of received signals amounts to 98,081, marking a significant increase from the previous year (10,932 in 2012). This is almost entirely attributed to the total of 84,098 signals accounted for by Sofia municipality. A notable change, compared to the previous year 2012, is the number of signals with regard to illegal or wrongful acts or omissions – 3,583 in 2013, compared to 2,118 in 2012. Interestingly, there is a decrease in the corruption-related signals both for reporting civil servants` corruption (from 612 signals in 2012 to 445 in 2013) and executive bodies` corruption (from 11 to 5 respectively). More remarkable, however, is the reported continuing drastic increase in the public administration capacity to conduct inspections on received signals. According to previous reports on the state of the public administration, for a period of only two years, authorities managed to increase their workload more than three times, conducting 19,864 checks (from a total of 20,716 signals) in 2011 compared to 6,132 (from 9,325 signals) in 2009. The data for 2013 is even more dazzling, as administrations report the undertaking of 96,586 checks (98.48% of the total 98,081 received signals). While there has been a visible increase in civil society activity in 2013, the reported numbers most probably represent some sort of skilful presentation of data on checks by the public administration in order to show higher levels of impact.

The review of specialized anti-corruption bodies shows that they fail to drive the fight against corruption in a coordinated, cooperative manner. Despite the efforts to increase coordination capacity by establishing a Council for Coordination the Activities in the Fight against Corruption in

⁴² Министерски съвет. (2014) Доклад за състоянието на администрацията 2013. [Report on the State of the Bulgarian Public Administration in 2013], http://www.government.bg/fce/001/0211/files/DSA_2013.pdf

the Republic of Bulgaria⁴³ and by attempting to establish wide cooperation with BORKOR, there is little evidence to support the presence of concrete results. The European Commission has repeatedly stated, including in its latest report⁴⁴ under the Cooperation and Verification Mechanism (CVM) and the first edition of the *EU Anti-Corruption Report*,⁴⁵ that there is an apparent need for the establishment of “an independent institution to focus efforts, make proposals and drive action against corruption”.

Bulgaria continues to lack institutional independence in the area of anti-corruption, which limits the administration’s pro-activeness and delivery of independent monitoring. Political changes in Bulgaria generally lead to widespread changes at the administrative level and tend to negatively impact the fight against corruption.⁴⁶ Reactiveness and the presence of predominantly formal compliance continue to set the tone.⁴⁷ Despite the increased transparency due to the many good practices introduced within the general administration, their impact with regard to anti-corruption is limited.

Legislation Intended to Prevent and Counter Corruption

Effective implementation of anti-corruption policies requires appropriate legislation and regulations. Especially important in this respect are conflict of interest, lobbying, whistle blower protection, company and NGO registration legislation, etc.

Conflict of Interest and Related Areas of Lobbyism and Whistle-Blower Protection

Since Bulgaria’s EU accession, the European Commission through the CVM has been monitoring and has reported regularly on efforts to prevent and fight corruption and organized crime, and on reform of the judiciary including conflict of interests and related issues. Conflict of interests and asset disclosure were in the focus also of the first EU Anti-Corruption Report (2014). The main legal provisions in this respect are contained in the *Law on the Prevention and Ascertainment of Conflict of Interest*. There are a number of specific laws and regulations

⁴³ The Council for Coordination the Activities in the Fight Against Corruption in the Republic of Bulgaria includes the Heads of the Committee on Professional Ethics and Prevention of Corruption at the SJC, the Parliamentary Commission on Fighting Corruption and Conflicts of Interest and Commission for the Prevention and Combating of Corruption

⁴⁴ European Commission. (22 January 2014). Commission Staff Working Document Bulgaria: Technical Report. Accompanying the European Commission’s Report on Progress in Bulgaria under the Cooperation and Verification mechanism. {COM(2014) 36 final}. Available at: http://ec.europa.eu/cvm/docs/swd_2014_36_en.pdf

⁴⁵ European Commission. (3 February 2014). EU Anti-Corruption Report, Annex Bulgaria. Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_bulgaria_chapter_en.pdf

⁴⁶ European Commission. (22 January 2014). Commission Staff Working Document Bulgaria: Technical Report. Accompanying the European Commission’s Report on Progress in Bulgaria under the Cooperation and Verification mechanism. {COM(2014) 36 final}. Available at: http://ec.europa.eu/cvm/docs/swd_2014_36_en.pdf

⁴⁷ European Commission. (18 July 2012). Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism {SWD(2012) 232 final}. Available at: http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf

on certain groups – *Law on Civil Service*,⁴⁸ *Labour Code*, *Law on Public Procurement*, *Law on Local Self-Government and Local Administration*, as well as various internal ethical regulations on conflict of interests and assets disclosure.

It is important to note that, unlike many other professions and other branches of state power, **there are no ethical norms binding Members of the National Assembly** and no effective oversight mechanism over their integrity. There are no specific rules on conflict of interests applicable to public procurement officials, but they are explicitly asked to disclose potential conflicts of interests in each public procurement case.⁴⁹ The National Audit Office keeps a public register of the domestic and foreign incomes and assets. However, the asset declaration and verification system has not effectively tackled illicit enrichment.

Most of the cases decided by the Commission on Conflict of Interests (CCI) with a sanction have involved mainly low-profile public officials and have had to do with conflicts of interests at local and regional level (e.g. mayors). The number of investigations regarding top-ranking politicians and/or administrators is very limited, and such cases are moving particularly slow into their final decisions, with too little publicly available information. The former Chair of the Commission on Conflict of Interests Philippe Zlatanov, was charged with criminal breach and violation of his duties in the period December 2012 – July 2013. He was found guilty and sentenced by Sofia City Court (SCC) at first instance to 3 ½ years of imprisonment.

Given the shortcomings found in the work of the Commission, two draft laws were introduced by the end of 2013 in the National Assembly amending the *Law on the Prevention and Ascertainment of Conflict of Interest*. The proposed changes, which can be defined as positive, refer to: widening the circle of persons holding public office for whom the rules of the Law are applicable; introducing a procedure for removing a person holding public office in the presence of private interest; the opportunity for the person holding public office on suspicion of conflict of interests to approach directly the Commission, which is required to adopt an opinion within 14 days; expanding the Commission's rights to obtain information from third institutions including disclosure of bank secrecy; etc. However, they

⁴⁸ According to the *Law on Civil Service*, all public servants, upon starting employment, are required to declare their property possessions to the appointing authority. By April 30th of each year public servants are also required to declare property possessions, as well as any external payments, received from activities outside their official employment (reasons for such activities and the employer/sponsor, who has paid them) during the previous year. This Law lists the incompatibilities, but all relevant norms related to conflicts of interests are found in the *Law on the Prevention and Ascertainment of Conflict of Interest*. Statistics are not available.

⁴⁹ According to the *Law on Public Procurement*, public procurement officials should declare that they have no private interest as defined in the *Law on Prevention and Ascertainment of Conflict of Interests* as regards the respective public procurement they work upon. Also, officials may not be “related persons”, as defined in the Law on Prevention and Ascertainment of Conflict of Interests, with a candidate or a participant in the procedure or with subcontractors appointed by him/her, or with members of their management or control bodies.

do not provide sufficiently for ensuring effective and independent performance of the Commission's duties, neither do they contribute enough to preventing further violations of the CCP duties, such as registered in the case of its former chairman. The most inexplicable component of the amendments is the proposed sharp reduction of the penalties provided for violations of the law.

There is no specific legislation on **lobbying** in Bulgaria and a specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists. Every new government in office has put forward proposals, but such a law has not been adopted yet. The term "lobbyism" has already acquired negative connotation, as it is often associated with corrupt practices, public scandals of alleged immoral and/or undue influence of private interests on public policies and legislation, as well as with expedited preparation and adoption of laws, behind which lobbyist interests are seen. The lack of legislation on lobbying in Bulgaria has made it even more difficult to differentiate between positive and negative lobbying, which has contributed to the largely negative public attitude towards lobbyism.

Effective administrative arrangements for **whistle-blowing** are not yet in place. The *Administrative Procedure Code* and the *Law on Prevention and Ascertainment of Conflict of Interests* contain provisions on the protection of whistle-blowers' identities, while the *Criminal Procedure Code* requires citizens, and specifically public servants, to report crime. However, no adequate steps have been taken to strengthen the protection of whistle-blowers.

Company and NGO Registration

With the entry into force of the *Law on the Commercial Register* of January 1, 2008 a Central Electronic Commercial Register began operating, in which all traders are registered, including cooperatives and branches of foreign traders. The operation of the Commercial Register, despite periodic attempts of various lobbies to limit its publicity, showed the advantages of this system of company registration – accelerated registration procedures and other entries of different circumstances; access to information and security of the information received; freeing the courts from excessive workload; and reducing corruption in the judiciary.

Non-profit organizations, however, continue to be registered by district courts at the location of their headquarters. Registers are kept on paper, and the whole procedure remains non-transparent because there is no centralized database with information on all such organizations. The judicial nature of the registration and entry of changes makes the process time-consuming, expensive and unpredictable. There are contradictions in the practice of the various district courts. Many other legal persons, governed by private law, who are not established for non-profit purposes, are registered, depending on their nature, in different registers kept by various institutions according to various regulations.

The implementation of further reforms in the registration of non-profit and other organizations that will increase their transparency (including through publishing their financial reports) and narrow the possible areas for corruption and solve many of the problems of the existing decentralized, non-electronic records, is imperative.

Addressing Legislative Anti-Corruption Gaps

- Improvement of the legal framework on prevention and ascertainment of conflicts of interest, as well as of mechanism for publicity of the property of persons occupying high government positions;
- Adoption of legal provisions for transition from court to administrative registration and establishment of a Central Electronic Register of the NGOs and other legal persons governed by private law kept by the Registry Agency with the Ministry of Justice;
- Revisions in the legal framework for the financing of political parties;
- Legal regulation of lobbying;
- Legal provisions to strengthen the protection of whistleblowers.

III. ANTI-CORRUPTION POLICY ENFORCEMENT

Law Enforcement and the Security Sector

In mid-2013, the General Directorate for Combating Organized Crime (GDCOC) was moved into the State Agency for National Security (SANS). The step involved a transfer of functions and personnel from the Ministry of Interior to SANS. Another important consequence was restoring SANS' powers to conduct investigations. A third "innovation" was the provision that both the appointment and the discharge of SANS' director should be made by the National Parliament after a motion by the Prime Minister. The introduction of these changes was marred by the widely publicized scandal around the rushed appointment and subsequent withdrawal of a controversial Bulgarian MP and media mogul at this post. The introduced concentration of powers in SANS and the reduction in the requirements for the position of its director have confirmed initial fears that the changes have been carried out to appease specific political interests, and not to solve security sector challenges. Most likely, the future governments will undo these changes, further messing up attempts to reform the security sector and to enable bold anti-corruption actions.

The second significant change put into effect was the dissolution of the Ministry of Interior Specialized Directorate for Operative-Technical Operations (SDOTO) and the launch of a separate agency subordinated to the Council of Ministers – State Agency for Technical Operations (SATO). The main explanation given for this step was the need to shield this unit from undue influence in order to increase its independence and integrity. The reason for such a change was the increasing use of Special Intelligence Means (SIMs) and the frequent use of this unit by competing political groups for obtaining competitive advantages for their business ventures and political interests. Despite the intention to concentrate the use of SIMs within one single structure (even with the risk of infringing the Constitution), in practice SANS still uses them unilaterally, which is fraught with risks of misuse. In addition, the newly created Bureau for Control over SIMs has not yet provided any public information about its functioning, which confirms concerns of continuing lack of transparency in the control of SIMs.

Electoral fraud as political corruption. The last three election campaigns for national and European parliament (2013 – 2014) have made the problem of "political investments" (buying votes and controlling voters) a matter of high political importance. This is a form of political corruption with growing importance: comparing election results in different years has shown that the relative weight of controlled and bought vote has increased from about 9 – 9.5% in 2009 to about 12 – 13% in 2014.

CSD analyses of the last 10 years have shown that local and national level oligarchs are increasingly involved in "political investment", which

they seek to recover after elections by acquiring access to public funds and/or assets. Increasingly, political investors directly ask political parties to compensate the funds spent through procurement contracts, agricultural subsidies, EU funds and others. The negative effects of this process are numerous: disappointment with institutions and political parties, distortion of political representation, lack of trust in central and local government, decreasing quality of public services, and publicly funded construction projects. Overall, controlled and bought votes lead to political demotivation and lower voter turnout, which in turn increase the relative importance of political investment. The impact of political investment is probably most destructive for law enforcement institutions, e.g. the judiciary, Ministry of Interior, and SANS. The 2014 election experience has shown that officials from these institutions have suspended or restricted to a large degree all activities targeting vote buying and controlling voter behaviour.

The caretaker government (August – November 2014) made efforts to counter political investors and reverse the observed trends, announcing that its main goal would be to ensure fair elections and reduction of vote purchases. Regional Ministry of Interior (MoI) directorates were instructed to evaluate risks and present action plans aimed at countering political investors. The Inspectorate and the Internal Security Directorate of MoI received detailed instructions. Results reported by MoI were mixed: in some local directorates where actual work was done the bought and controlled vote was reduced by about 30 – 40%. However, some directorates remained passive, and in these areas of the country bought and controlled vote was visible and even reported in the media.

The social base of political investment is the growing number of marginalised groups/people especially among the Roma community. These groups form the “reservoir” of votes for sale. On the other hand, the increasing incidence of vote buying has made parties face the “prisoners’ dilemma” (if everybody suspects that others use fraud, every party has to buy votes or risk losing the competition). Supply and demand have in this way created a market in which Roma families offer the potential votes of the whole community (the reservoir) and all big parties compete to buy them. The market has three distinct levels of organization: 1) “privates”, or people who control/sell the votes of their immediate social circle (10 – 15 people); 2) “lieutenants”, or people who control 10 – 15 privates; 3) “brokers”, who control the access to political parties and lower levels of control over this market.

Buying Electoral Support: Main Participants and Roles

Mayors who control substantial part of the local economy. Usually, these are regions with inferior economic and demographic performance where municipal administration and municipal companies provide the main (or only) employment opportunity. The municipal economy ensures the bulk of procurement contracts

and/or subcontracts for public services, utilities, garbage collection, etc. The local administration is in practice the mayor's "private" administration and loss of elections usually leads to replacement of these officials by the new mayor.

Municipal councillors in smaller cities who have become the unavoidable middlemen. Some municipal councillors have migrated through several parties to remain in the municipal council. In order to boost their influence they make efforts to "keep" 200 – 300 supporters (up to 2,000 – 3,000 in bigger cities) from the Roma communities, poorer people, and party supporters. The votes of these people are used in local elections and are sold on national elections.

Local businesspersons (oligarchs) who are part of the municipal economy and part of the interest network together with local councillors and mayors. They usually offer the votes of their employees, but also provide funds for vote buying. Many of them personally communicate with the local Roma community leaders.

High-level officials in the administration (police, tax administration, inspectorates, etc.). These people are local level political appointees and dispose of additional resources to "convince" local businesses to contribute with the controlled employee vote. Often, local labour inspectorates intensity checks in the beginning of the election campaign.

Members of Parliament who often mediate in the negotiations between parties and middlemen. An MP running in elections becomes practically inaccessible to law enforcement. Due to their parliamentary immunity, investigation procedures against MPs are essentially blocked. People with criminal background are also often included in party lists in order to engage in the buying of votes. Operational investigations of MoI and investigations of journalists have shown that some bigger parties have even attributed some leaders of regional party lists with responsibilities both with regard to the party campaign and to the buying and control votes.

Criminal leaders and their networks who have been permanent participants in the process in the last 10 years. Criminals working both in Bulgaria and abroad in illegal lending, drugs and prostitution are actively involved. In addition to being middlemen, they also have enforcement functions with regard to informal contracts and payments related to buying and control of votes. Private security companies became a new actor in the last election: they had the function to enforce contracts, as this is part of the black market and force is often used to ensure compliance.

Judiciary and Anti-Corruption

Members of the Bulgarian judiciary have only functional immunity. This is theoretically seen as a good basis for strengthening the integrity and accountability of the judiciary. However, in practice no significant progress was made in key areas such as governance of the judiciary and monitoring of its performance, enforcement of criminal cases for corruption, weaknesses in the state accusation, the ambiguous role of the prosecution, etc.

Governance of the Judiciary

The Supreme Judicial Council (SJC), which appoints, promotes, demotes, transfers and removes from office all magistrates (judges, prosecutors and investigative magistrates, the latter being part of the Prosecutor's Office), sets the direction of the overall judicial policy. Therefore, the election of this collective body, as well as the election of the heads of the higher courts and the Prosecutor General is subject to attempts at political influence and backstage negotiations. Loaded with high public expectations, the current SJC, inaugurated on October 3, 2012, has raised doubts about its legitimacy:

- Regarding the judicial chapter, the election was marked by non-transparent selection of delegates heavily influenced by the administrative heads of the respective courts and prosecutor's offices. This was especially visible in the election of the prosecutors' quota, where a large number of the delegates, and most successful candidates, were among the administrative heads of various offices.
- The election of the parliamentary chapter increased the already existing suspicion that positions are negotiated behind the scenes between the parliamentary political forces. The checks and hearings of the nominated candidates were formal and did not fulfil their goal to ensure openness and public participation in the procedure.
- The SJC accumulated criticism as regards its managerial capacity and integrity by its inaction in relation to the allegations accompanying the two unsuccessful procedures for the election of a constitutional justice by the Parliament.
- The election of the new Prosecutor General in December 2012 clearly showed that even seemingly competitive and public elections could be non-transparent, especially if the competition is fictitious and the procedure is manipulated, including, paradoxically, even the use of electronic voting to pre-determine the vote. Such shortcomings showed also the failed election of a new president of the Supreme Court of Cassation at the end of September 2014.

In the beginning of 2014, the Council received another series of criticisms after the disciplinary dismissal of one of its members, a former high-ranking prosecutor. The dismissal led to doubts about the very legality of the SJC's actions, since the magistrate was removed by a lesser number of votes than that required by law, following the leak of wiretapped conversations, supposed by law to be destroyed after not being used for the criminal case they were made under and certainly not for grounding and disciplining the magistrates involved.

Moreover, despite some formal steps being taken (the Committee on Proposals and Evaluation of Judges, Prosecutors and Investigative Magistrates being divided into a sub-committee on judges and a sub-committee on prosecutors and investigative magistrates), judges and prosecutors are still practically being governed together, as witnessed by a case in March 2014, where a member of the prosecutorial quota allegedly proposed a harsh disciplinary penalty for a judge in a highly controversial disciplinary proceeding.

Monitoring Judicial Performance

Doubts as to the ethics enforcement capacity of the SJC and its ability to oversee the work of the judiciary through its Inspectorate continued in relation to the institutional stalemate as regards the so far failed election by Parliament of a Chief Inspector of the Inspectorate of the SJC. The Inspectorate is mainly tasked by law to inspect the administrative activity of the judiciary and the case progress, as well as to analyse and summarize the closed cases and files, without infringing upon the independence of magistracy. The election of a new Chief Inspector has been generally seen as a test both for the Parliament, having to form a majority of two thirds of all MPs, and for the judiciary as to its capacity to put forward a candidate “of high professional and moral qualities”, as required by law. The initial single nomination of a Supreme Court Justice, allegedly involved in unclear property transactions with her mother and husband, was largely criticized as flawed and non-transparent. In the face of a growing public scandal, the Justice ultimately retired, receiving the substantial monetary compensation due upon retirement, a number of magistrates refused to be put forward as subsequent candidates, which led monitors to consider the perception of judicial integrity in Bulgaria as falling into complete collapse.

Measures for Raising the Capacity and Integrity of the Supreme Judicial Council

- Adoption and effective enforcement of new rules for election of the members for the Supreme Judicial Council, in particular of its judicial chapter such as “one magistrate – one vote”, electronic voting etc.;
- Effective implementation of transparent and open for public participation procedures for nominating and electing SJC’s members of the parliamentary chapter;
- General internal division of the Council in 2 chambers – one composed of judges and competent to deal with the management of the court and one composed of prosecutors and investigators to manage the prosecution;
- Increasing publicity regarding disciplinary proceedings against magistrates on corruption-related grounds.

In October 2014, the Ministry of Justice published on its website for public deliberations a draft *Updated Strategy to Continue the Judicial Reform*⁵⁰

⁵⁰ http://mjs.bg/Files/Проект_на_Актуализирана_стратегия_за_съдебна_реформа_635489116277892922.pdf

outlining the goals and measures for the next seven years. The first strategic goal titled *Guaranteeing the Independence of Courts and Other Bodies of the Judiciary through Effective Measures to Curb Corruption, Political and Economic Pressure and Other Dependencies* contains specific measures for overcoming the institutional prerequisites for exerting illicit influence upon and through the Supreme Judicial Council, for restricting possible administrative influences upon the independence of the courts, and for enhancing the responsibility and efficiency of court administration; it also envisions a set of measures for preventing corruption within the judiciary. The development of a *Modern and Effective Criminal Justice Policy* is a strategic goal of its own, as are the issues of human capital and the effective administration of the judiciary.

Systematic Policy to Prevent Corruption within the Judiciary

- Integrated policy to prevent conflict of interests and corruption within the judiciary. Electronic registers enabling the declaration of a wider range of circumstances.
- Establishment of an Integrity Unit within the SJC Ethical Committee to be tasked with regular inspections of magistrates and judicial administration using an approved methodology for identifying corruption inducing factors.
- Introduction of mechanisms for the effective application of the judicial ethics rules by judges, prosecutors and investigative magistrates, and by the SJC.
- Introduction of mechanisms for speedy, objective and accountable investigations against magistrates, and creation of effective guarantees that investigations are not used for putting those under investigation into a state of dependency.
- Removal of administrative discretion when deciding on magistrates' remuneration, including financial incentives, which should not be used as a covert mechanism to promote some magistrates at the expense of others.
- Establishment of security standards for the IT tools used in the judiciary.
- Establishment of guarantees for a secure and transparent process of random case distribution and judicial panel members' nomination.
- Building the capacity of the SJC Inspectorate to monitor systemic corruption factors in the daily work of the judiciary.
- Annual reports by the SJC containing data on corruption and assessment of the effectiveness of anti-corruption measures, which should be put under public discussion.

Source: Updated Strategy to Continue the Judicial Reform (draft).

The public deliberations and the positions⁵¹ on the draft updated Strategy contributed by stakeholders make it possible to develop further and to coordinate the proposed measures prior to the government's adoption of the Strategy.

⁵¹ <http://mjs.bg/107/>

Enforcing the Criminal Law in Cases of Corruption

After a series of legislative amendments (the last one dating back to the year 2010) Bulgarian criminal law was brought in compliance with the main international standards in the field of anti-corruption. The catalogue of criminal offences and their corresponding sanctions satisfies the requirements of the major international treaties to which Bulgaria is a party. The main forms of corruption behaviour are incriminated and the sanctions are relatively high. Most of the corruption-related offences are grave crimes (punished by more than five years of imprisonment), which means that they can be investigated through special intelligence means. However, the current Criminal Code was subject to justified criticism for a number of reasons.⁵² In January 2014, the Ministry of Justice submitted to the National Assembly a draft of a new Criminal Code.⁵³ The poor quality of the draft combined with the inability of the Ministry of Justice to adequately defend the controversial provisions caused strong criticism on the part of legal practitioners, NGOs and the general public. The Ministry of Justice preferred not to respond to the appeals for a public discussion on the draft before its submission to the parliament. Ultimately, the ministry dropped the project submission, which was one more signal for lack of strategic vision and political will for laying the foundations of a comprehensive criminal law reform.

Despite this inconsistency, the main problem in the field of criminal law and procedure is not the legislation itself but rather its ineffective enforcement. The problems affect both the investigation of the crimes at the pre-trial stage and the subsequent trial proceedings. The result is a low number of cases ending with conviction, lenient sanctions and no successfully completed high-profile cases.

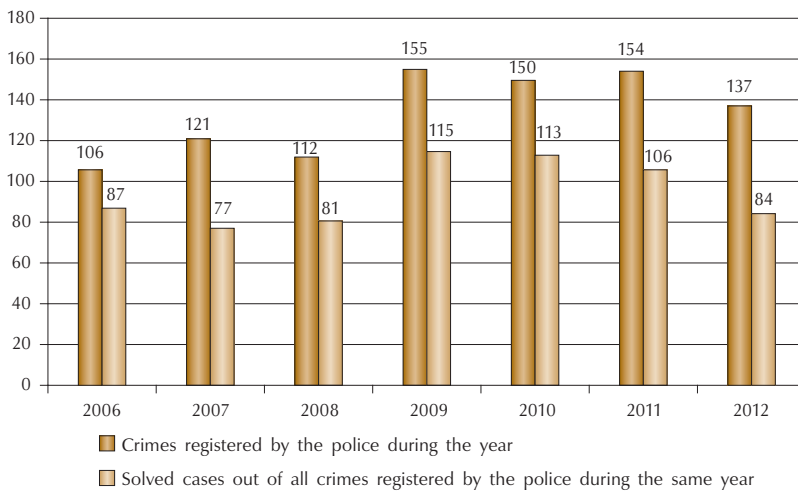
The problems start at the **police** where a **significant share of the registered crimes remains unsolved** (Figure 15).

The share of bribery cases which the police were unable to solve during the same year is gradually increasing, reaching almost 40% in 2012. There are numerous reasons for the low success rate of the police in corruption cases. On the one hand, corruption cases are difficult to solve because there are no real victims who could assist the law enforcement bodies. On the other hand, without underestimating the objective complexity of these cases, there are also problems related to the integrity and capacity of the investigative authorities.

⁵² Adopted in 1968, it basically follows the Soviet model of criminal law, which does not correspond to the new economic and social environment. The numerous and often inadequate amendments of the Code and particularly of its Special Part (the one listing the crimes and their corresponding penalties) resulted in gaps and contradictions, which in turn led to problems with its practical application and inconsistent case law. There were also problems in terms of compliance with international standards, including those of the EU and the Council of Europe.

⁵³ Despite the long drafting process, which took several years and involved a number of criminal law experts, the final version of the draft presented by the Ministry of Justice did not meet the expectations of both the legal community and the general public. The Ministry of Justice disregarded most of the proposals and recommendations coming from NGOs and practitioners and presented its own version of the law.

FIGURE 15. NUMBER OF BRIBERY CASES REGISTERED AND SOLVED BY THE POLICE (2006 – 2012)



Source: Ministry of the Interior.

The public prosecution admits that the number of uncovered corruption crimes is extremely low. However, instead of undertaking a more pro-active approach, it prefers to blame the bodies exercising administrative oversight for not reporting a sufficient number of corruption cases to the public prosecutors and even the civil society for "the embedded public attitudes and the insufficiently pro-active citizens' standpoint for the eradication of corruption mechanisms and practices".⁵⁴

Public Prosecution

Experience so far clearly shows the significant impact of the Prosecutor General on the effectiveness of the entire Prosecutor's Office.

Despite the declared will to prioritize the prosecution of high-level corruption and organized crime, the Prosecutor's Office did little in this direction. Soon after the election of the new Prosecutor General a number of high-profile cases were launched, but few of them marked significant progress. The Prosecutor's Office heavily advertised the launch of these cases by special media notes, some of which went beyond the mere description of the facts and included assumptions bordering on a violation of the presumption of innocence.

The Ballots Case

An exemplary case of a compromised investigation due to untimely media publicity is the case with the allegedly fake election ballots in 2013. On the day before the parliamentary elections in May, which is a statutory period of election silence, the Prosecutor's Office issued an official statement concerning an operation performed the previous day at the premises of the printing company responsible for printing the election ballots, during which a certain amount of ballots were found. The statement one-sidedly and unprofessionally referred to facts and assumptions that at this stage were not properly verified. It mentioned the number of the ballots, described them as "printed and ready for shipment", included an explicit conclusion that the amount was beyond the one which the company was

⁵⁴ ПРБ. Доклад за прилагането на закона и за дейността на прокуратурата и на разследващите органи през 2012 година [Report on the Enforcement of the Law and the Activities of the Public Prosecution and the Investigating Authorities in 2012], 17.09.2013, p. 98, available at: http://www.prb.bg/uploads/documents/docs_3923.pdf

obliged to produce, and announced that the launched pre-trial investigation was not only for abuse of power, but also for election-related organized crime. The investigation that followed rebutted most of these conclusions, establishing that the initially stated number of ballots was incorrect, not all of them were ready for use, and there was no evidence concerning their eventual shipment. As a result, the Prosecutor's Office was unable to adequately solve the case, and neither the purpose of the ballots, nor the persons who ordered their printing was revealed. The charges for election-related organized crime were also dropped. To avoid complete failure the Prosecutor's Office tried to indict the former secretary general of the government for not exercising control over the operation of the printing company. However, even this attempt to save the case proved unsuccessful, as both the first and the second instance court returned the file back to the Prosecutor's Office due to its ambiguity and lack of evidence. The chronology of the case and some documents leaked at a later stage increased the suspicions that the Prosecutor's Office played a political, rather than prosecutorial role, and its main objective was to influence the outcome of the elections, rather than solve the case.

As a result of the organizational changes of February 2012, the specialized department for countering corruption and crimes committed by public officials of the Supreme Prosecutor's Office of Cassation was assigned with the task to monitor also the corruption cases against members of the judiciary. In 2012, these teams received 14 pre-trial proceedings and completed five of them, bringing charges against one investigator, one judge, and several parliamentarians.

Specialised Criminal Court and Prosecution

In 2010, the National Assembly passed legislative amendments providing for the establishment of a specialized criminal court with a jurisdiction to examine organized criminal group cases and a specialised court of appeal acting as a court of second instance.⁵⁵ The same legislative package provided for the establishment of new units within the prosecution system: a specialised prosecutor's office of appeal and a specialised prosecutor's office with an investigation department as a constituent element. The specialised criminal court enjoys a status equal to that of a district court and examines cases sitting in a panel of one professional judge and two lay judges, unless otherwise provided for in a law.

The establishment of the specialized courts and prosecutor's offices was debatable even before the adoption of the legislative amendments and still remains so. Among the main obstacles before the specialized

⁵⁵ The proponents and the opponents of a specialised criminal court first clashed back when the government unveiled its idea on its establishment, even though it was never submitted to a broad expert and public discussion. Despite the doubts about the need of this new instrument and opinions against this idea expressed by legal practitioners and experts, the parliamentary majority pushed through the amendments.

court to administer justice more efficiently in organized crime cases is that specialised courts and prosecutor's offices are in Sofia, and the investigation very often takes place far from their headquarters. Another obstacle is posed by the still unaddressed weaknesses of the pre-trial proceeding in the collection of evidence. One such weakness is said to be the prosecutors' practice to keep modifying the charge without citing evidence and the lack of control over this practice.

Enhancing the Capacity of the Judiciary to Enforce Anti-Corruption Legislation

- Improve the substantive and procedural legislation, the investigation process and collection of evidence, as well as the capacity of prosecutors and investigating authorities. Address delays in investigations and judicial proceedings.
- Put focus on the pursuit of high level corruption, which can as a result improve the public and investors' confidence. Expand the jurisdiction of the specialised court and prosecution to be able to examine cases for high-level corruption as well.
- Reform the pre-trial proceedings and strengthen law enforcement for lawfully implementing special means and techniques for detecting and investigating corruption and their links with organized crime, and for gathering reliable evidence.
- Increase the responsibility of the prosecution to conduct and direct investigations of corruption and to press reasoned and proven charges before the court.
- Improve judicial practice for dealing with corruption cases and imposing adequate penalties.
- Significantly improve the collection of statistical data on criminal cases in general and on corruption cases in particular. A common definition of corruption offences should be elaborated and all judicial and law enforcement authorities should be obliged to collect data in line with this definition.
- Further reform the Prosecutor's Office.⁵⁶ A system of performance indicators should be developed and implemented to assess both the work of individual prosecutors and the operation of the whole system.

⁵⁶ In a *Position of the Prosecutor's Office of the Republic of Bulgaria on the Judicial Reform Strategy* published on November 25, 2014 the Prosecutor's Office for the first time expresses its support for the restructuring of the SJC into two chambers – a chamber of judges and a chamber of prosecutors and investigative magistrates, as well as for the introduction of direct election of SJC members from the magistrate quota preceded by a transparent nomination procedure of candidates and deliberations of their qualities. The Position presents some ideas on reforming the internal structure of the SJC Inspectorate to correspond to the possible restructuring of the SJC, on reforms in the organization and system of the Prosecutor's Office, including its current structure and hierarchy, on the activities of specialised prosecution offices, etc., and ultimately, on enhancing public control over the work of the Prosecutor's Office. If there is a will to develop further and put into practice these ideas, they could contribute to a transformed, modern and smooth-running public prosecution. For more details see: <http://prb.bg/main/bg/Documents/5318/>

IV. CORRUPTION IN THE BUSINESS SECTOR

In 2014, the Bulgarian public saw first-hand indicators of the **formidable scope and scale of political corruption** and its corrosive impact on the economy:

- The rise and fall of the Corporate Commercial Bank has demonstrated that **state capture** has firmly gripped even the most powerful law enforcement public institutions such as the public prosecution, the financial intelligence, as well as the central bank. Bulgarian public institutions have been paralysed for months, leaving small depositors stranded in a bank under special supervision, while two powerful moguls have been disputing ownership over the bank and its assets.
- The **South Stream saga** at the same time has revealed the depth of corruption reach in public institutions, as third country interests have been able to dictate terms on the Bulgarian parliament and the Bulgarian government at the expense of Bulgaria's financial and European interests. In the face of rising economic and political risks to the project government ministers have acted haphazardly to ensure ways for more than BGN 1 billion of public funds to be irreversibly committed to the project. This has happened against the backdrop of a continuing rise of indebtedness of state-owned energy companies, with National Electric Company debts towering over BGN 3.5 billion, while Bulgargas and gas dependent central heating companies have been constantly scrambling for cash to ensure adequate gas and heating supply.
- The lack of control over public spending in 2013 and 2014 coupled with long leadership vacuum at key revenue agencies and the de-facto blocking of anti-corruption law enforcement has resulted in the **rise of public procurement and administrative corruption**. Ultimately, Bulgaria has entered a spiral of rising debt, with the Ministry of Finance proposal from October 2014 for the total allowable debt ceiling for 2014 rising from 22% to 28% of GDP in a matter of six months. Total government debt stood at 14% of GDP at the end of 2009. Public expenditures have kept crawling up in 2014 according to plan, although revenues have continuously fallen short of expectations.

The CCB Case

In the CCB affair public institutions have been pitched against one another at the expense of the general public interest, with the net public welfare loss likely to rise well above 5% of Bulgaria's GDP, or comparable to the EU funds the country was entitled to receive in the 2007 – 2013 period. The case has revealed the very high level of political and oligarchic control of the Bulgarian economy in key sectors such as fuel trading, telecommunications, media, etc.

State-capture symptoms, which have so far surfaced in the affair:

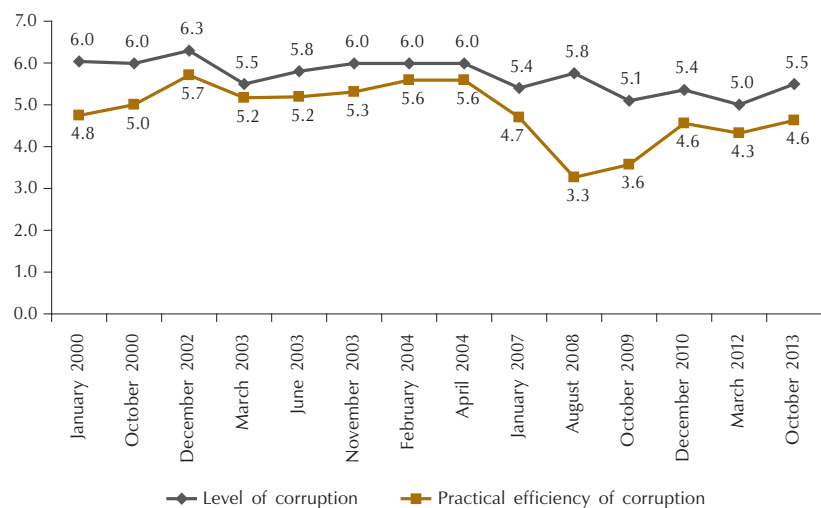
- The Bulgarian prosecution, MoI, and SANS have launched a coordinated highly publicized attack on companies close to the bank a week before its placement under special supervision in June 2014. The attack has coincided with media outbursts against the stability of the bank from one of the large media groups in the country, and with the start of criminal investigations against the deputy governor of the central bank in charge of banking supervision. It is unlikely that professionals from the law enforcement institutions would not consider very carefully the full effect of their actions on the stability of the bank and the banking system as a whole.
- The Bulgarian National Bank has appeared incapacitated and unwilling to act swiftly and with resolve to shore up the bank, and to stop the panic from spreading, preferring instead to continuously appeal to politicians for action. It has issued numerous conflicting statements over the health of the bank in a very short period of time, and has chosen to withhold important pieces of information from the bank's review following its placement under special supervision. The bank has been initially evaluated as well capitalised, liquid, and stable by the central bank, which has been confirmed by the CCB withstanding withdrawals of up to BGN 1 billion in the week before the bank's placement under special supervision. The subsequent revision of the bank's loan portfolio, requested but not disclosed publicly by the central bank, revealed a potential loss of asset value to the tune of BGN 4.5 billion. Claimed irregularities are so blatant that it is inconceivable for them not to have been noticed in advance by the central bank and law enforcement bodies.
- In a final accord the newly convened Bulgarian parliament decided to consider scenarios for saving CCB in an apparent act of rebuttal of central bank authority and trust.

Administrative Corruption

Bribes have in effect become part of the price for certain administrative services. In the business sector, the practical efficiency of corruption as a means to resolve problems and obtain access to services remains high, and has even been on the rise since 2008. The indexes for corruption pressure and involvement in corruption practices measuring the level of corruption in the business sector have not changed significantly in recent years. There is no notable change in perceptions of the corruptness of the business environments, either, i.e. no principle change of the business environment has been achieved.

According to the Eurobarometer survey 2013 and the *EU Anti-Corruption Report*, corruption is most likely to be considered a problem when doing business by companies in the Czech Republic (71%), Portugal (68%), Greece and Slovakia (both 66%). In Bulgaria, 51% of the companies consider

FIGURE 16. PERCEPTIONS OF CORRUPTNESS OF SOCIETY AND PRACTICAL EFFICIENCY OF CORRUPTION IN THE BUSINESS SECTOR IN BULGARIA (TREND)

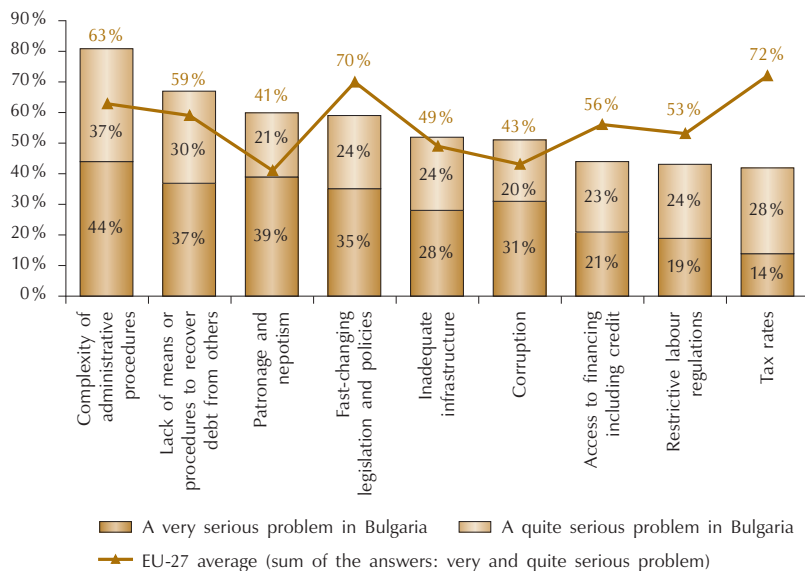


Source: CSD/SELDI Corruption Monitoring System.

corruption as a problem to their operation. This is slightly higher than the EU average. In addition, more than 60% of companies in Bulgaria consider patronage and nepotism to be quite serious and very serious problem to doing business in the country, as compared to only 40% on average in the EU. This is exacerbated by the higher complexity of administrative procedures companies face in Bulgaria compared to the EU.

In terms of types of corruption practices, Bulgarian companies are much more likely to encounter pecuniary forms of corruption than their EU counterparts, with bribes and kickbacks being the most widely spread corruption practices in the country. In Europe these are more likely to be replaced by favouritism of friends and family as well as different forms of fraud. Interestingly, buying political influence seems to be equally likely in Bulgaria and in the EU.

FIGURE 17. PROBLEMS ENCOUNTERED IN DOING BUSINESS



Source: Flash Eurobarometer – Business, EC, 2013.

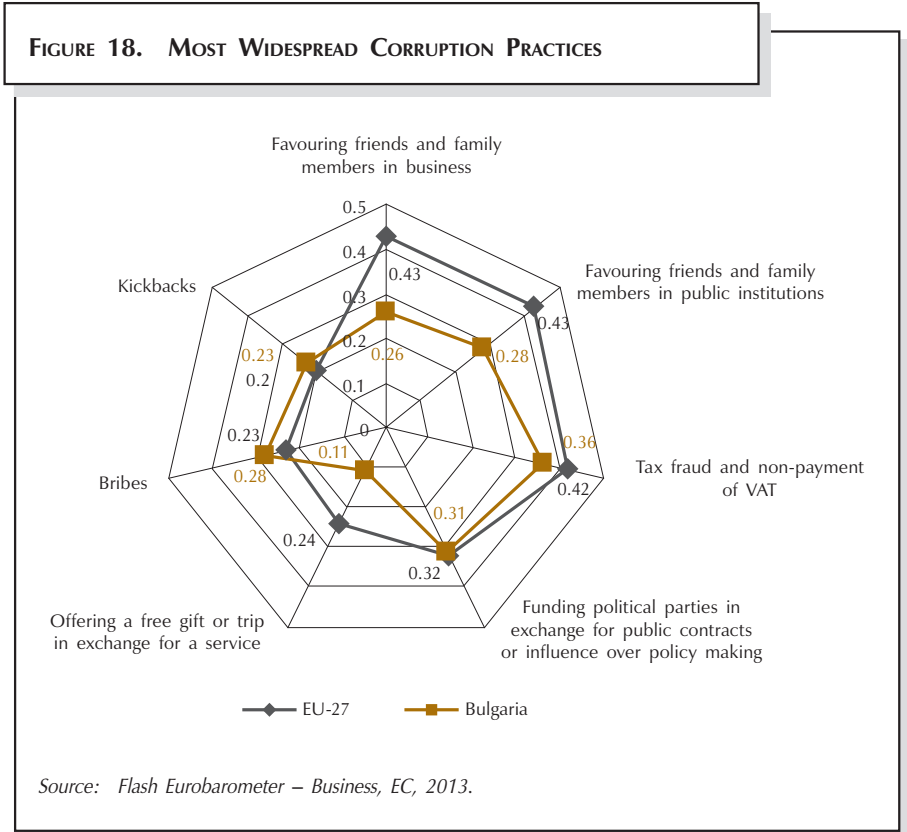
Several summary conclusions could be made regarding the impact of corruption on the business sector:

- Corruption is still an effective tool to resolve immediate business problems, e.g. dealing with competition pressure or avoiding a fine. Through corruption many businesses often make successful efforts to shield themselves from

the competition and/or obtain procurement contracts. In this respect countering corruption would be much more effective if economic, rather than criminal justice policies and measures are enforced, such as improvement in the anti-monopoly practice, ensuring higher transparency of key markets, etc.

- Companies lack confidence in the public institutions, and complain of lack of equal treatment by the legal system.

- E-Justice and e-government are far from operational despite the substantial amounts of public money spent on such projects. Most documents requested by the administration are considered official only if presented on paper. This puts additional administrative burden on the companies and citizens, slows down turnover, and generates corruption pressure.



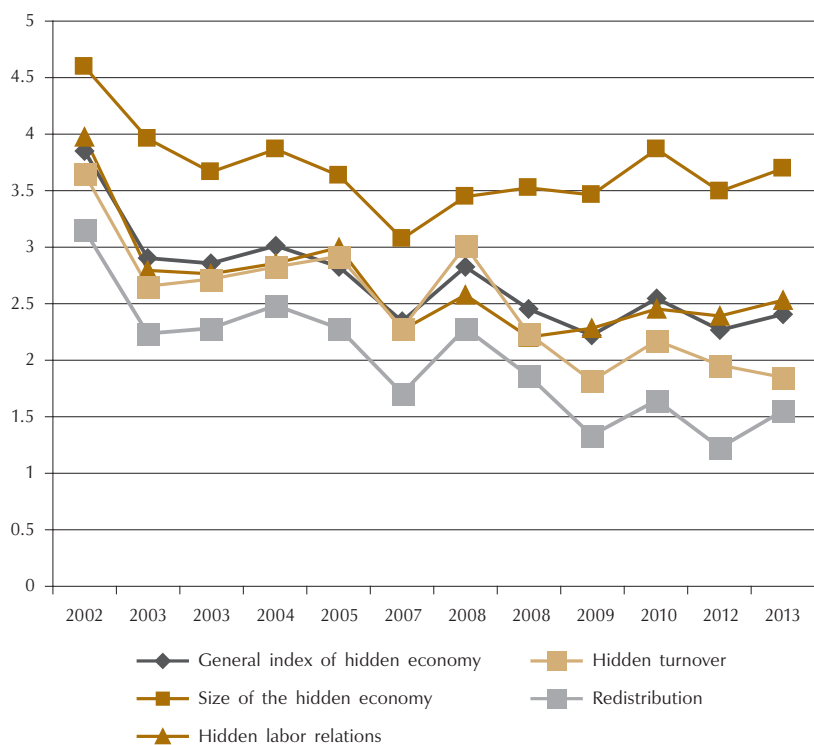
Hidden Economy

According to various estimations, the hidden economy in Bulgaria is about 30% of GDP. The operation of businesses in the hidden economy is related, among others, to the use of bribes, mostly directed towards the public administration and the control bodies (social securities, tax, etc.). It should be noted that, as a positive trend over the last 10 years, the hidden economy has shrunk due to various economic factors, including the economic convergence with the EU, the deepening of the credit markets, the introduction of mandatory employment contract registration in 2003 and the real-time linking of fiscal devices with the National Revenue Agency (NRA) servers, as well as the performed follow-up checks.

Still, according to CSD's 2013 *Hidden Economy Index*, the share of the hidden economy in Bulgaria has increased slightly on an annual basis. This trend is likely to have persisted in 2014. The main reasons can be sought in the lack of improvement of the general economic sentiment and the continuing overall political instability, which has affected negatively the functioning of the control and compliance bodies. Estimates show that, according to rough approximations, almost BGN 1.45 bn annually is

lost to VAT evasion and social security contribution gaps, while the real figure could be even higher.⁵⁷

FIGURE 19. HIDDEN ECONOMY INDEX 2002 – 2013



Source: *Hidden Economy Index*, Center for the Study of Democracy/Vitosha Research, 2013.

One of the key factors, which can influence positively or negatively the development of the hidden economy and the corruption related to it is the functioning of the numerous control and compliance bodies in the public administration. In the past two years political oversight on the functioning of these bodies has been lax, increasing the risks of corruption. The control functions of these bodies are considered one of the most potent risk factors in business. Some of the key agencies have remained without management for an extended period of time, which has affected negatively their performance, e.g. revenue collection. Although the level of transparency and performance appraisal of most such agencies has improved, they remain predominantly focused on controlling, rather than servicing businesses. At the same time,

it is unlikely that negative attitude towards control and compliance bodies is replaced by more cooperative behaviour while large-scale displays of graft such as the CCB case remain unresolved.

Public Procurement and Corruption

Economic difficulties after 2008 increased the competition among companies for public contracts and gave an additional lever to both politicians and the administration to extract corruption fees. Despite economic difficulties, the total value and number of procurement contracts has increased continuously, indicating an increase in corruption opportunities (Table 2). On the positive side, the number of awarding entities and the number of contractors has been increasing, which denotes a rising and vibrant market and competition. While this has improved the value for money proposition in competitive markets, it has also made it more difficult for compliance and control authorities to check for irregularities.

In the area of public procurement, a complex and ever changing legislative framework has made it even more difficult to create a culture of objectivity

⁵⁷ CSD Policy Brief 42: *The Hidden Economy in Bulgaria in 2013*, Center for the Study of Democracy, November 2013.

and rigour. The e-procurement system has been gaining traction in Bulgaria, but still has limited functionalities. The increasing responsibilities of the specialised Public Procurement Agency have not been matched with similar increase in its human capacity and budget. Thus, the positive idea to task the agency with ex-ante checks of larger procurement procedures has been limited in scope due to capacity constraints. The checks cover neither the decisions of contracting authorities to apply derogations to the application of EU procurement legislation, nor the technical specifications of the tenders. More importantly, there are doubts about the effective enforcement of rules and the application of sanctions in the public procurement process, which are confirmed in highly publicised cases of wasteful spending in the case of large energy projects, the acquisition of vehicles for government agencies and ministries, etc.

TABLE 2. PUBLIC PROCUREMENT CONTRACTORS, ANNOUNCEMENTS AND CONTRACTS IN BULGARIA

| | 2010 | 2011 | 2012 | 2013 |
|--|--------|--------|--------|--------|
| Number of awarding entities | 2,585 | 3,217 | 4,662 | 5,302 |
| Number of contractors | 14,700 | 16,347 | 18,257 | 20,490 |
| Total number of public procurement announcements | 7,404 | 8,194 | 10,129 | 11,939 |
| out of them: above the EU threshold | 1,599 | 2,022 | 2,570 | 3,653 |
| out of them: with EU funding | 951 | 1,210 | 2,421 | 3,012 |
| Public procurement announcements in construction | 1,056 | 1,177 | 1,552 | 1,791 |
| Public procurement announcements in supplies | 3,463 | 4,025 | 4,679 | 5,162 |
| Public procurement announcements in services | 2,877 | 2,989 | 3,888 | 4,986 |
| Number of contracts | 15,755 | 17,579 | 20,813 | 22,779 |
| Total value of the contracts, in billions of BGN | 4.00 | 5.78 | 5.97 | 8.04 |

Source: Public Procurement Agency.

Note: The number of contracts and the total value in Table 2 may differ from other sources, as the Public Procurement Registry is continuously updated.

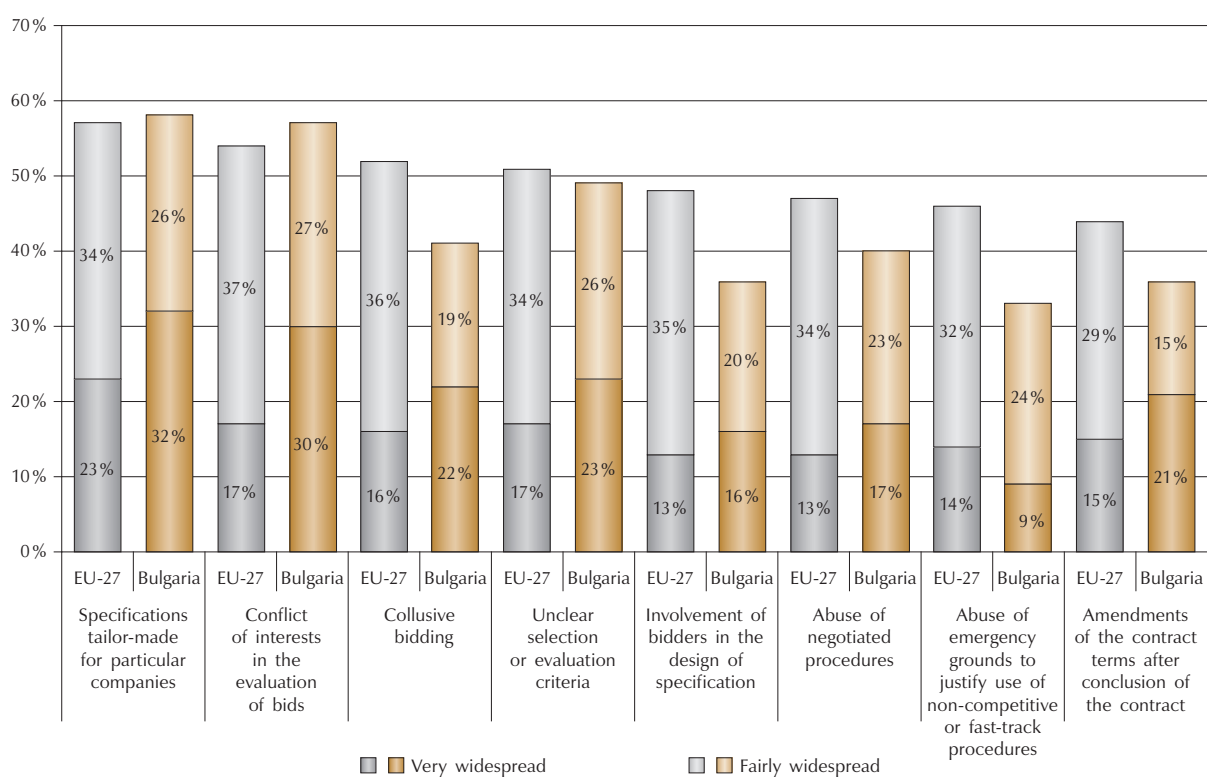
The Flash Eurobarometer 2013 survey among 2,816 European companies shows that 58% of the Bulgarian firms claim corruption has prevented them from winning public tender or public procurement contract in the last 3 years. Closest to that are data for Slovakia (57%), Cyprus (55%) and the Czech Republic (51%). At EU-27 level an average of 32% of the companies that have participated in public tenders/public procurement say corruption prevented them from winning a contract. A total of 58% of the Bulgarian and 57% of the EU-27 firms consider that public procurements are tailor-made for specific companies.

Checks by the Public Procurement Agency, the Public Financial Inspection Agency (PFIA) and the national Audit Office prove key instruments in ensuring transparency in public procurement. The violations of the public procurement law and procedures uncovered by the PFIA remain very high. The capacity of the Agency to tackle problematic public

procurement increases, but its deterrence and prevention effects are very limited and violations continue to be widespread. One reason is the constant political interference in the work of the agency, in particular in bigger public procurement contracts.⁵⁸

An issue of concern remains the **share of non-competitive procedures** among the announced public procurements (25% in 2012 and 26.3% in 2013), including negotiated procedure with and without publication of a contract notice, which are generally considered an instrument particularly exposed to fraud and corruption.

FIGURE 20. MOST COMMON IRREGULARITIES IN PUBLIC PROCUREMENT ACCORDING TO BUSINESSES



Source: Flash Eurobarometer – Business, EC, 2013.

TABLE 3. VOLUME AND NUMBER OF INSPECTED PUBLIC PROCUREMENT CONTRACTS PER YEAR (2007 – 2013)

| Year | Volume of the inspected PP contracts (million BGN) | Number | Volume of the PP contracts with discovered violations (million BGN) |
|------|--|--------|---|
| 2013 | 4,562 | 2,484 | 1,795 |
| 2012 | 2,044 | 2,446 | 1,488 |

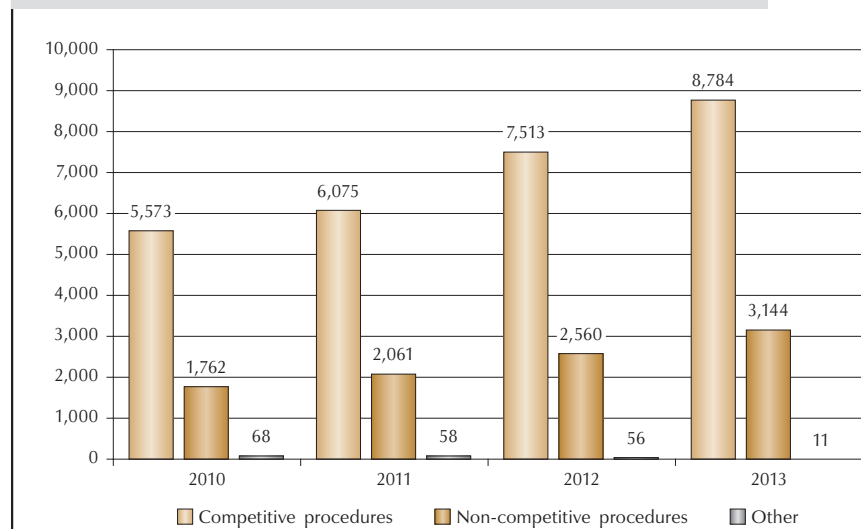
⁵⁸ Source: Stoyanov, A., R. Stefanov, and B. Velcheva. *Bulgarian anti-corruption reforms: a lost decade?* ERCAS Working paper #42 (2014).

TABLE 3. VOLUME AND NUMBER OF INSPECTED PUBLIC PROCUREMENT CONTRACTS PER YEAR (2007 – 2013) (CONTINUED)

| Year | Volume of the inspected PP contracts (million BGN) | Number | Volume of the PP contracts with discovered violations (million BGN) |
|------|--|--------|---|
| 2011 | 1,459 | 1,368 | 1,060 |
| 2010 | 2,203 | 1,391 | 1,191 |
| 2009 | 1,084 | 1,140 | 660 |
| 2008 | 636 | 1,364 | 306 |
| 2007 | 1,031 | 1,529 | 601 |

Source: PPA Annual Reports; PFIA Annual Reports, 2013.

FIGURE 21. NUMBER OF ANNOUNCED PUBLIC PROCUREMENTS BY TYPE OF PROCEDURE (2010 – 2013)



Source: Public Procurement Agency.⁵⁹

The Price of Public Procurement Corruption in Bulgaria

The exact value of the losses due to corruption in public procurement in Bulgaria is hard to estimate. According to PFIA data, the volume of the public procurement contracts with discovered violations range from 601 million BGN in 2007 to 1,795 million BGN in 2013. The introduced ex-ante control of PPA on certain public procurement procedures of increased public interest has shown that about a third of the submitted

⁵⁹ Note: Non-competitive procedures include: (a) restricted procedures (incl. restricted fast-track procedures); (b) negotiated procedure (with the publication of a contract notice, fast-track negotiation with the publication of a contract notice, negotiation without publication of a contract notice) and (c) negotiated procedure following an invitation under the RSSPP (repealed). Competitive procedures include: (a) open procedure (incl. framework agreement) and (b) open contest under the RSSPP (repealed). Other procedures include (a) ex-ante selection systems; (b) project competition (open or restricted) and (c) project competition under the RSSPP (repealed).

documents did not comply with the requirements of the law, indicating high corruption potential from lack of professional capacity.

The European Commission has requested a study on the costs of fraud and corruption in public procurement in the EU, which has taken an alternative approach to estimate the losses from public procurement irregularities.⁶⁰ The report notes that out of the 18% calculated budget volume loss from corrupt/grey public procurements in the 8 analysed Member States, 13% of budgets' loss involved can be attributed to corruption. According to very rough estimations, if the same methodology is applied to Bulgaria, corrected with the country's score in Transparency International's Corruption Perception Index 2013 scores, the direct cost of corruption in public procurement as share of the overall value of the published public procurement contracts for 2013 could be assessed to be between BGN 334.1 mn and BGN 506.91 mn.

TABLE 4. EX-ANTE CONTROL OF THE DOCUMENTS FROM PUBLIC PROCUREMENTS ACCORDING TO ART. 20B OF THE LAW ON PUBLIC PROCUREMENT (NEGOTIATED PROCEDURE WITHOUT NOTICE), IN FORCE FROM 1 JANUARY 2009

| | Number of procurement documents |
|--|---------------------------------|
| The selected procedure is lawful | 2,070 |
| The selected procedure could be considered lawful if the Contractor presents sufficient evidence | 419 |
| The selected procedure cannot be considered lawful or the evidence is not sufficient | 359 |
| The selected procedure is illegal | 132 |
| No position available (suspended procedure) | 127 |
| Total | 3,107 |

Source: Public Procurement Agency.⁶¹

Corruption in the Energy Sector

The energy sector, an unliberalized market with few large privatized monopoly electric distribution companies, presents an **example for high political corruption risk** in Bulgaria. There are considerable economic interests at stake in the sector, with strong political lobbies and substantial financial resources involved. About one in four public procurement contracts relates to the energy sector, which renders it one of the biggest spenders of taxpayer money. While transparency has improved in

⁶⁰ Identifying and Reducing Corruption in Public Procurement in the EU, PricewaterhouseCoopers (PWC), Ecorys, June 2013.

⁶¹ Note: Ex-ante control is implemented for EU Funds beneficiaries that procure in the areas of (a) construction – from BGN 264,000 to BGN 2.64 million or for (b) supplies, services and design contests – from BGN 66,000 to the respective threshold defined in Art. 45a, para. 2 of the Public Procurement Law.

recent years, the sector remains largely captured by vested interests and with large information asymmetries at the detriment of the consumers. Malpractices in the sector's governance are abundant in all its subsectors, but several **manifestations of the corruption risk** in the last three years should be noted:

- The findings of the 41st Parliament about serious malpractices in the energy sector, including the procedures for the construction of the Belene nuclear power plant have so far remained without any consequences. The publicized arrests of officials who took part in the project, without a clear picture of the general direction of the investigation, raised suspicions that these measures have been selective and politically motivated.
- The non-transparent model of decision making in the Belene Nuclear Power Plant (NPP) has been continued more recently in the handling of the South Stream gas pipeline project. Each of these projects is worth as much as the annual value of public tenders in Bulgaria. Yet, both projects have been developed without a clear strategic framework and without cost-benefit analysis. In the case of South Stream there have been clear signs of state capture, as the project has been continuously pushed forward by separate cabinet members in the end of 2013 and the first half of 2014, even though there have been increasing signs of rising risks to the project.
- The decision of the Bulgarian Parliament from 4 April 2014 to adopt at first reading the amendments in the *Energy Law*, which grants South Stream special status highlights the lack of logic in the national energy policy and compounds the impression that public interest is not the driving force behind the proposed changes. The subsequent revelations that this decision has been taken on proposal by the contractor are a very serious sign of state capture. Avoiding established procedures for coordination and consensus-building in the executive and circumventing common EU rules, the amendments to the *Energy Law*, which concern enormous public resources and long-term interests, have been introduced by two Members of Parliament (MPs).⁶²
- In the electricity sector, the state-owned enterprises have continued to pile debts, squeezed by politically motivated freeze in the process and state-guaranteed private sector profits and subsidies. Frequent shuffles in the top management of the State Energy and Water Regulatory Commission, and changes in the energy-pricing model create opportunities for illegal access to regulatory decisions and two-way corruption pressure between the regulator and the business sector. There have been repeated signs that state-owned enterprises disregard important decisions, with hundreds of millions of public funds at stake, of their owner – the state, as represented by the respective line ministry. The government and the regulator have repeatedly failed to solve pricing frictions in the case of long-term contracts in the coal and renewables sectors, at the expense of the public purse.

⁶² CSD Media note: *Energy in(security): the parliament's decision on the South Stream pipeline increases the risks for Bulgaria's energy security*, April 4, 2014.

- In the fuels sector, the lack of transparency as to the compliance of the national refinery with the requirements of installing metering devices on inflows and outflows of products has continued to hang in the air after a spate of public confrontation between the refinery and customs authorities in 2012. Regular check-ups by the National Revenue Agency in the past three years have demonstrated that the share of illegal fuel market has not shrunk despite control measures, hinting at structural problems.

Over half of the public tenders in the energy sector are conducted through closed procedures. When audited, most of these procedures are found to contain irregularities and other abuses.⁶³ The most big energy projects (e.g. Belene NPP, Tsankov Kamak HPP and the rehabilitation of facilities) can serve as examples of the abuse of public procurement mechanisms.⁶⁴ In addition, previous CSD analysis of the management of key energy projects (Belene NPP, the Tzankov Kamak Hydro Power Plant (HPP) project, Maritsa Iztok 2 Thermal Power Plant (TPP), Toplofikacia Sofia, etc.) has revealed complete disregard for even basic rules of good governance, leading to skyrocketing project costs. The **failure of the checks and balances system** raises legitimate concerns about the state's ability to manage large-scale infrastructure projects worth over EUR 500 million.⁶⁵ There are several important trends that could be derived from the available data.⁶⁶

Measures for Improving Governance in the Energy Sector⁶⁷

- A detailed review of the financial control system of state-owned energy companies is necessary. It may include, among others, annual energy policy review by the National Assembly.
- The ex-ante and ex-post control should be strengthened; the number of inspections of public procurements in the energy sector should be increased, in particular the ones performed by the Public Financial Inspection Agency.
- Improving the functioning and management of state-owned energy enterprises by reducing political control over energy enterprises.
- Developing an emergency bailout plan for Bulgaria's energy sector in order for catastrophic scenarios to be avoided, implementing controlled wind-down of main financial strains such as long-term subsidies, followed by subsequent market restructuring, as well as introducing a liberalised market.

⁶³ CSD Policy Brief 43: *Corruption and Anti-Corruption in Bulgaria (2012 – 2013)*, CSD, November 2013.

⁶⁴ CSD (2013) *Addressing the Threat of Fraud and Corruption in Public Procurement: Review of State of the Art Approaches, Compendium*, and CSD (2011) *Anti-Corruption in Public Procurement: Balancing the Policies*.

⁶⁵ CSD (2011) *Energy and Good Governance in Bulgaria. Trends and Policy Options*.

⁶⁶ CSD (2014) *Good Governance and Energy (In)Security in Bulgaria*.

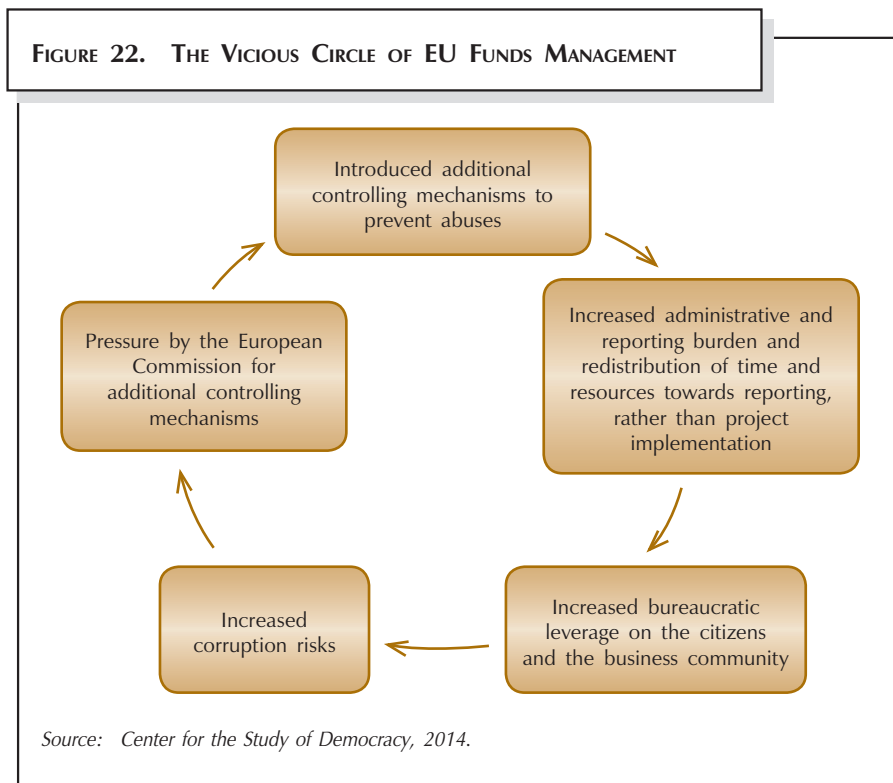
⁶⁷ Ibid.

- The current model of centralized administration and excess electricity production should give way to decentralized production, liberalization of the energy market, and adequate mechanisms to cushion vulnerable energy-poor groups against the transition.
- Decisions concerning major investment projects in the energy sector must incorporate comprehensive and transparent financial, economic, social, and environmental impact assessments. It is paramount that the current practice of signing contracts and agreements for large energy projects in the absence of information about the total costs is discontinued.
- Creating an energy information system and database, as well as registry of public procurement contracts of state-owned energy enterprises.

EU Funds Management

The distribution of EU funds in Bulgaria is associated with **red tape and corruption vulnerabilities**. Although the managing authorities (MAs) perform strict technical and financial checks, various official evaluation reports and mid-term reviews note the continuing lack of administrative capacity and technical knowledge in the public administration.

One of the major identified shortcomings of the process is the focus placed on the documentation checks, and not on the evaluation of the actual impact and benefits of the money spent. The process is a typical vicious circle – the pressure by the European Commission leads to additional controlling mechanisms to prevent abuses, however this strengthens the “bargaining position” of the administration and increases its bureaucratic leverage on the citizens and the business community and increases corruption risks.



The corruption risks can be sought in several areas:

- **Large projects** are associated with corruption risks, similar to large public procurement contracts. The online information system for management and oversight of the EU Structural Instruments in Bulgaria (UMIS) presents data on the largest OP beneficiaries (mostly public entities), some of them awarded with 40 – 80 projects each for amounts ranging between BGN 500,000 (EUR 255,645) and BGN 2 million (EUR 1.02 million).

- **Burdensome administrative procedures.** The OPs application and implementation remain a relatively complex process due to excessive control procedures by the national authorities in order to prevent rule violations.
- **Public procurement contracts** requirements from EU funds beneficiaries impose an additional burden on the implementation and increase the risks of formal non-compliance. During the economic crisis this has resulted in the freezing of a number of procedures and the introduction of penalties which have been discretionarily taken up or not by the national budget. This has increased corruption risks, in particular among large-scale contractors and municipalities.
- **Lack of understanding on the technical specifics** of the implemented projects can easily lead to misinterpretation of the results. Although the MAs use external experts in different areas for evaluation of project applications, expert knowledge and consultations are not readily available on all stages of the project monitoring process.
- **Achieving fast absorption for the 2007 – 2013 period** and preparing for the next 2014 – 2020 programming period is another corruption risk factor. The end of the programming period 2007 – 2013 was marked by an increase of the number and value of contracts, as well as by increased payments, to compensate for the initial low absorption rates. This led to less control and a shift from competitive distribution of funds to direct contracting.⁶⁸

According to the latest available report by the AFCOS Directorate to the Bulgarian Ministry of Interior, the forefront institution to protect EU financial interests, the following irregularities with EU Funds should be noted, although they date back to 2011 (the time of the latest available report).⁶⁹

- European Agricultural Guarantee Fund and European Fund for Rural Development: 149 cases of financial irregularities for EUR 5,356,732.
- Structural Funds (European Regional Development Fund and European Social Fund): 49 cases of financial irregularities for EUR 5,423,511.
- Cohesion Fund: 2 cases of financial irregularities for EUR 571,350.

Examples of needed improvement in the cooperation of AFCOS with EU funds' directorates include:

- Introduction of timelier relaying and investigation of signals rather than work only on planned inspections.
- Lack of timely updates to the information entered in the records of received signals for irregularities.
- The follow-up activities and other changes in previously reported cases of irregularities are not reported to AFCOS.
- Delays in taking measures for forced recovery of undue or over-payments, as well as unduly or improperly utilized resources.

⁶⁸ Resume of the mid-term evaluation of Operational Programme "Environment" for the period 2010 – 2010, Association European Analyses and Evaluations, 2012, http://ope.moew.government.bg/files/useruploads/files/Evaluation/resume_interim_evaluation.pdf

⁶⁹ AFCOS Directorate to the Ministry of Interior, 2011 Annual report, http://afcos.bg/upload/docs/2012-06/Doklad_2011_final.pdf

V. CIVIL SOCIETY AND ANTI-CORRUPTION

Civil society involvement in anti-corruption activities in Bulgaria has a long and strong track record from the late 1990s on, following the establishment of the pilot civil society anti-corruption initiative *Coalition 2000*. Besides direct anti-corruption initiatives, Bulgarian NGOs also contribute indirectly to anti-corruption through pressure for higher transparency and access to information, or even through appealing of specific decisions with high corruption risk (mainly concerning environmental issues).

Practically behind most major policy decisions that have led to the decrease of petty corruption in the past 15 years there has been civil society pressure to first accept that there is a problem, then agree that at least one of the suggested tools works, and finally seek public support in implementing it (despite internal opposition to the measures). The years 2013 – 2014 marked a new wave of rising civil society anti-corruption initiatives but also a maturing of civil society in terms of impact on policy outcomes. Throughout its one year term, the 42-nd Bulgarian parliament and the Bulgarian government it has supported have tried to actively divide civil society by selectively choosing to negotiate legislative and policy changes with conformist and loyal NGOs, while actively trying to discredit others. This policy has ultimately failed, but it has created a rift both between politicians and civil society and within civil society itself.

After the February protests in 2013, many new NGOs were registered in attempt to legitimize new civil society leaders, but more than a year after that, these NGOs are practically non-existent. The political battles and even corruption have been transferred to the NGO level, where some of the NGOs are preserving the original ethos of the civil society and others are simply using these organizational forms and positive reputation of the sector to achieve their illegitimate goals. The June 2014 and follow-up protests saw a new and qualitatively different wave of active involvement of the civil society sector and the formation of new activist groups with high impact potential. Preserving this potential and further developing the organisational potential of the civil society sector in Bulgaria will be one of the main factors in reducing political and administrative corruption in the country.

Although there is rarely corruption within the civil society similar to the one in the public administration (someone paying a bribe to receive a service from an NGO, manipulating procurement procedures leading to loss of public value, receiving a service which is not due, etc.), the public at large is very concerned about the NGO – government relations. Particularly sensitive is the receiving of funds by **quasi-NGOs** established and managed by top-ranked politicians and government officials and/or their relatives, or the so-called capturing

of NGOs, when their agendas are closely aligned with government of the day priorities through lavish funding. Such quasi-NGOs blur the public's perception of the activities of the NGO sector and discredit its credentials as an anti-corruption player.⁷⁰

⁷⁰ Most of the cases at the margins of civil society and the government have been discussed in CSD's report from 2010 *Civil Society in Bulgaria: Trends and Risks*.

ANNEX: CORRUPTION IN SOUTHEAST EUROPE⁷¹

Corruption in Southeast Europe has been in the news, in the focus of public debate, and on the policy agenda of national and international institutions so often and for so long that its scrutiny hardly needs to be justified. It is precisely because it has proven to be such an intractable issue that innovative approaches to its understanding – and hence its reduction – are warranted. The EU accession prospects for the countries in the region – though distant – provide an enabling framework for action but it is local stakeholders, and in particular civil society who can bring about sustained progress in anti-corruption. The Southeast Europe Leadership for Development and Integrity (SELDI) has made the in-depth diagnosing and understanding of corruption and governance gaps in the region one of its main priorities, as a requisite condition for its advocacy of **knowledge-driven anticorruption policies**. This SELDI report fits in the development and implementation framework of the emerging regional anticorruption policy and infrastructure as exemplified by the SEE2020 Strategy's Governance Pillar run by the Regional Anti-Corruption Initiative.

Being the result of collaboration within SELDI, this report is innovative in both its method and its process. It is the result of the application of a system developed by SELDI in the early 2000s for the assessment of **both corruption and anticorruption**, tailored to the social and institutional environment of Southeast Europe.⁷² The victimisation survey-based approach employed by the *Corruption Monitoring System* used in the report provides a unique data-driven assessment of anticorruption progress in the region since 2001. The 2013 – 2014 round of assessment – the findings of which are summarised in this report – is a rare case in international monitoring practice whereby the **same issues and the same region are revisited after a little more than a decade**. The assessment has compared the national legislation and institutional practice in a number of areas critical to anticorruption efforts: regulatory and legal framework, institutional prerequisites, corruption in the economy, the role of civil society and international cooperation. The report provides **a civil society view and policy assessment** while its findings and recommendations have been consulted with national and regional public institutions.

The assessment of the national institutional and legal aspects making corruption in the region possible is not intended as a comprehensive inventory of regulations and practices in all countries but rather emphasises some of the priority issues relevant to potential efforts of stemming common sources of corruption in Southeast Europe (SEE). The report provides a **model for reporting on anticorruption progress** by civil society in SEE.

⁷¹ This Annex is a re-print from the report Center for the Study of Democracy (2014) *Anti-Corruption Reloaded: Assessment of Southeast Europe*. Sofia: CSD.

⁷² SELDI, 2002.

MAIN FINDINGS

Overall Assessment

Despite some important achievements – mostly with respect to the stabilisation of democratic institutions, the adoption of laws in key anticorruption areas, a reduction in petty bribery and growing public intolerance of corruption – anticorruption and good governance reforms are not consolidated, corruption among elected politicians and judges seems to be increasing and the enforcement of anticorruption legislation is haphazard. Anticorruption policies and institutions in the region will benefit immensely from the adoption of regular and accurate victimisation-survey based tool for measuring corruption and the rate of progress in good governance, similar to the special Eurobarometer on anticorruption, UNODC’s SEE monitoring of corruption and organised crime, and the *Corruption Monitoring System* employed by this report.

Prevalence of Corruption in Southeast Europe

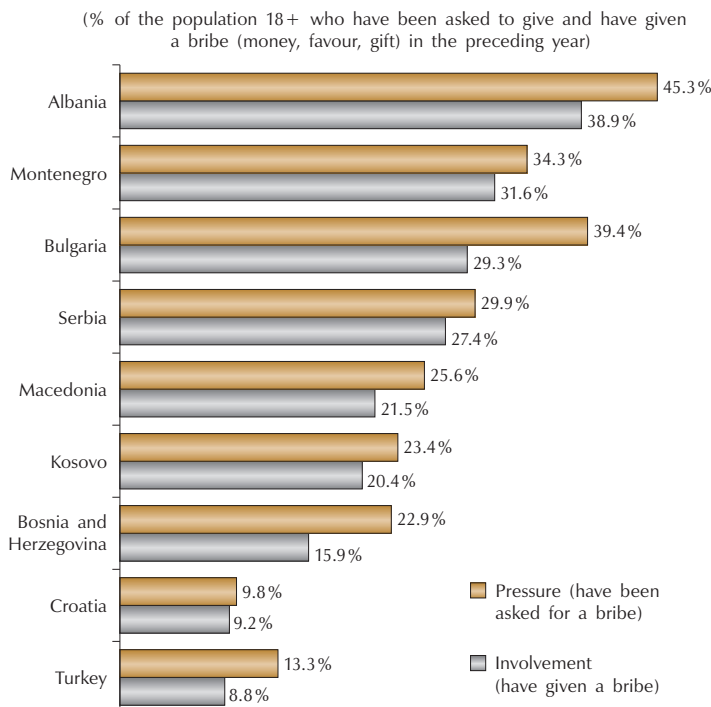
The experience with corruption – in other words, the involvement of members of the public in corruption transactions – in SEE is very high. Even in Turkey and Croatia, where levels of administrative corruption are lowest in the region, about 8-9% of the population report having

given a bribe in the last year. Such levels of experience with corruption are well beyond the average levels registered by the Eurobarometer surveys in the EU.⁷³ This shows that administrative corruption is a **mass phenomenon** and cannot be confined to single cases of corrupt officials.

Substantial differences between countries with a common historical background show that different paths of social, economic and institutional development render differing results. Overall, except for Bulgaria, the changes since the previous SELDI rounds of CMS diagnostics (2001 and 2002) for all countries are positive; progress, however, has been slow and uneven.

Corruption pressure from officials is the main factor that statistically influences the level of

FIGURE 23. CORRUPTION PRESSURE AND INVOLVEMENT IN CORRUPTION



Source: SELDI/CSD Corruption Monitoring System, 2014.

⁷³ Indicators for experience with corruption used in the Eurobarometer surveys have slightly different content as they refer to direct experience and cases when respondents have witnessed cases of bribery. For more details, please refer to (TNS Opinion & Social, February 2014).

involvement. Most of the countries where both involvement and pressure are high are also characterised by low **resilience** to corruption pressure (most of the respondents who were asked for a bribe gave one). Although resilience could not be considered the main factor to reduce corruption, it reflects the prevailing social attitudes to integrity and is largely result of the efforts of civil society and authorities in increasing anticorruption awareness. In this respect the role of civil society is crucial as it is in a position to evaluate results and lead the public pressure for change.

Anticorruption Policies and Legislation

Overall, the SELDI countries have adopted the better part – more importantly the logic and approach – of international anticorruption standards in their national legislations. Statutory quality, however, continues to be a problem. Frequent and inconsistent changes to laws have resulted in procedural and statutory complexity and contradictory interpretation by courts.

All countries have adopted some kind of strategic document containing their overall approach to tackling corruption. Though there are some differences among the countries, the implementation of these documents is generally hampered by insufficient resources and commitment at the senior government level. A further problem across the region has been the designing of strategies in a way to address all possible aspects of corruption. Instead of prioritising, these documents became all-embracing; with respect to anticorruption, strategic has come to signify simply exhaustive.

As regards policy priorities, there have been two significant changes in the approach to anticorruption – a shift of attention from petty corruption (that of traffic police or public sector doctors) to grand (that of members of parliament or ministers) and criminalisation of a wider array of abuses of public office. Achieving impact in terms of punishing grand corruption though remains limited at best. The key challenge for anticorruption policies in the region is to close the implementation gap, and keep up with the shifting manifestations and forms of corruption while maintaining regulatory stability and avoiding overwhelming the judiciary with frequent changes.

The findings of SELDI monitoring emphasise the **significance of public support for the success of anticorruption policies**. Trust by the public in government and the effectiveness of policy are joined in a kind of virtuous circle: higher shares of people who are optimistic about the feasibility of anticorruption success are correlated with lower corruption levels. Conversely, more prevalent corruption goes hand in hand with increased pessimism about the prospects of anticorruption.

Institutional Practice and Enforcement of the Law

In Southeast Europe, the earlier emphasis on harmonising national legislation with international standards in anti-corruption has been gradually giving way to a focus on enforcement under increasing EU and local civil society pressure.

A shortcoming that is common to all SELDI countries is the compromised autonomy of the various oversight and law enforcement bodies. Some

degree of interference by elected politicians – members of parliament or government ministers – in the work of the civil service is typical. Further, none of the SELDI countries has an adequately functioning complaints management mechanism in the public administration. Most have instituted an anticorruption body that is expected to receive complaints from the public. Another deficiency that is shared is the shortage of reliable and publicly accessible data on the performance of government institutions, especially as relates to anticorruption. Information and statistics are either not collected, not available to the public, or gathered so haphazardly as not to allow monitoring and analysis.

One of the key issues related to the design of specialised national anticorruption institutions in the region is **how to combine preventive and repressive functions**. Typically, the SELDI countries have tried to have their **anticorruption institutions** do both, although repression is by far the lesser aspect of their work. Most of the tasks of these bodies are related to some form of supervision and control, usually of the national anticorruption strategies and there is little evidence that they have had any significant influence on the governments' legislative agenda. The establishment and functioning of such institutions has been plagued by a number of difficulties:

- High as corruption might have been on the governments' agendas, it was not feasible to create institutions with extraordinary powers that would somehow affect the established balance of power. The typical compromise is for these agencies to be attached to the executive branch and given supervisory powers which, however, are usually limited to requiring other government agencies to report on the implementation of the anticorruption tasks assigned to them.
- Such agencies had to be careful not to duplicate powers already conferred to other oversight bodies (e.g. national audit institutions or law enforcement agencies).
- Most were provided with limited institutional capacity – budget, personnel – despite declared intentions to the opposite.

As regards the **legislature**, parliaments in the region do not rank high in the public trust and this unenviable position is not without its reasons. Codes of ethical behaviour are rare and unenforced; lobbying regulation is even rarer; only recently have procedures for lifting immunity from prosecution started to be introduced, albeit timidly; wherever there is an anticorruption body in parliament, it is typically to supervise some executive agency, rather than deal with corruption among members. An issue of significant concern in the SELDI countries is the financing of political parties and electoral campaigns. Most countries have implemented GRECO's recommendations on party funding but a number of problems – such as anonymous donations, vote buying (or voter bribing), insufficient capacity to audit party finances and limited powers to enforce sanctions – persist.

The present state of the **civil service** corresponds to the transitional nature of the SEE countries and the lack of adequate legal and institutional traditions as well as to chronic underfunding. Despite some differences

among the countries, the need to facilitate managerial and organisational development within the civil service is common to most. The culture of “control” of the administration instead of managing its work through motivation is what obstructs both enhanced professionalism and reduced corruption. One of the main findings in the report is **the mutual reinforcement between competence and integrity**. Typically, whenever the anticorruption credentials of a given government department are questioned, it is also found to be wanting in terms of institutional capacity. Conversely, any gain in professionalism has also led to improvement in integrity. Thus, the challenge in the region is how to make transparency and accountability essential characteristics of the civil service while also enhancing its professionalism. Quite often, it is poor management, obscure criteria and inadequate division of powers and responsibilities that hamper reform and undermine government authority.

The anticorruption role of **law enforcement agencies** in the region needs to be understood against the background of the constantly expanding range of incriminated corruption-related practices which risks channelling a disproportionate number of cases to law enforcement and the prosecution. The anticorruption role of law enforcement agencies in Southeast Europe is further compromised by their high vulnerability to corruption, especially by organised crime. The police forces in most SELDI countries have units specialising in countering organised crime operations; these units are also expected to work on anticorruption. Accommodating these two functions into one body is warranted mostly by the use of corruption by organised crime but also by the need for special investigative methods in uncovering sophisticated corruption schemes – expertise that is usually vested in the anti-organised crime departments. These units are, however, typically embedded in the larger police force or the ministries of interior which deprive them of the institutional autonomy that is required for a specialised anticorruption institution.

The Judiciary in Anticorruption

In Southeast Europe the strong focus on ensuring judicial independence has not been balanced by equally strong requirements for accountability. Without adequate checks and balances judicial self-governance has spiralled out of control, and has turned into corporatism with all the associated corruption risks. An overemphasis on formal electoral independence became a typical example of the cure turning into the disease – instead of ensuring a balance to the executive power, self-governance perpetuated clientele-type relations between magistrates and special interests. Today, the judiciary in SEE has been as effectively captured as the other branches of power. Once emancipated from public scrutiny and the political factors that brought about such arrangements, there are today few checks on the rent-seeking by magistrates.

Not surprisingly, the public does not hold the judiciary in particularly high esteem. SELDI’s *Corruption Monitoring System* finds that magistrates are considered among the most corrupt public officials in the region. The absence of transparency and accountability is arguably a significant factor in such assessments. In all SELDI countries, there has been a tangible

deterioration of the assessment of the spread of corruption among magistrates since 2001.

The capacity of the judiciary in the region to enforce anticorruption legislation, especially as regards political corruption, has been undermined by a number of problems that have exerted their influence cumulatively:

- Constitutional issues, primarily related to restoring the balance between independence and accountability of the judiciary;
- The complexity of the criminal prosecution of perpetrators of criminal offences of corruption, especially at the political level;
- Overall insufficient capacity and the related issues of low professionalism, excessive workload, and resulting backlog of cases, case management, facilities, etc.

An important finding of this SELDI round of corruption monitoring that is relevant to the judicial role in anticorruption is the **lack of feedback mechanisms** that allow the public and policy makers to evaluate both the integrity of the judiciary and its effectiveness in applying criminal anticorruption laws. In none of the SEE countries is there a reliable, systematic and comprehensive mechanism for collecting, processing and making publicly available statistics on the work of the courts and the prosecution, in particular on corruption cases.

Corruption and the Economy

In Southeast Europe, the outstanding considerable involvement of governments in the economy generates a number of points of potential conflict between public institutions and business; in turn, this creates corruption risk. The risk is particularly high in the area of privatisation and in public procurement and concessions heavy industries such as energy and healthcare. Further, business overregulation – mostly concerning registration, licensing and permit regimes – continues to generate various barriers to market entrants and higher costs of doing business although some countries in the region have made substantial progress in tackling business obstacles. Yet, oversight and compliance administrations still distort markets through focusing overwhelmingly on control and penalties without proper risk and cost-benefit evaluation. This is particularly true of customs administrations across the region, which are still seen as effective means for pressure on businesses. This either drives entrepreneurs in the informal sector or compels them to resort to bribery. In a downward spiral this then justifies further regulation and administrative barriers.

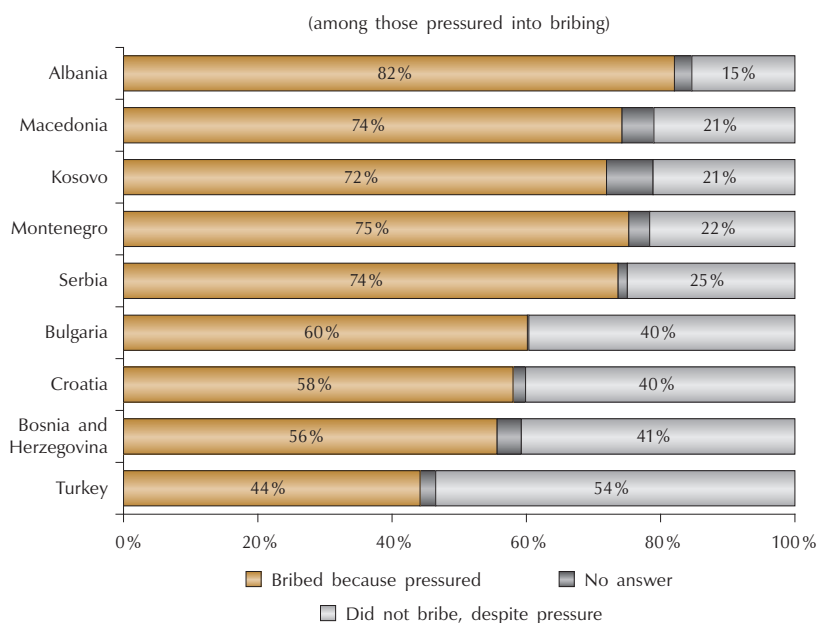
The variety of circumstances that occasion corruption in the interactions of business and public officials illustrate the difficulty anticorruption policies face as they need to take a multitude of factors under consideration. When initiated by business, corrupt practices can be divided into two main categories – avoiding extra costs and gaining unfair advantage. In the first group are the kickbacks necessitated by poor or excessive regulation, individual or institutional incompetence, etc.; in the second are various types of fraud – tax evasion, VAT fraud, smuggling, non-compliance with health and safety standards, etc.

In Southeast Europe, government procurement is one of the main channels through which corruption affects the economy. Corruption risk in this area is associated with a number of deficiencies: insufficiently transparent procedures, large share of non-competitive procedures, weak oversight and ineffective judicial review (given judicial corruption), etc. Although more than a decade ago a SELDI study found that the countries in the area had made recent progress in strengthening the legal framework of the process and its harmonisation with the EU acquis, public procurement continues to be among the weakest aspects of public governance. Realities have not changed much since as well-conceived rules are circumvented by corrupt politicians and well connected businesses. Institutional fragmentation does not allow effective implementation of public procurement rules.

Civil Society in Anticorruption

Non-governmental organisations in Southeast Europe are among the most important driving forces in anticorruption. They are, however, still a long way from translating public demands into effective advocacy for policies, and from standing up to corruption due to a number of shortcomings. Their contribution depends in no small measure on being capable of **both serving as watchdogs and engaging government** in anticorruption reforms. Still, there is a lack of formal mechanisms for engaging civil society by national governments in the region, as well as lack of administrative capacity and clear vision and understanding of the potential of CSOs in the field of anticorruption. Over-reliance on international, including European financing, and the lack of national policies for nurturing vibrant civic sectors in Southeast Europe, compromise the sustainable impact of local anticorruption champions.

FIGURE 24. RESILIENCE TO CORRUPTION PRESSURE



Source: SELDI/CSD Corruption Monitoring System, 2014.

Although NGOs in the SELDI area have managed to establish some international public-private partnerships, these were not transformed into effective partnerships with national government institutions as well. The key to making partnering successful has been the capacity to enter into various relations with state institutions, both complementary and confrontational. One way, for example, of reconciling cooperation with performing a watchdog function, has been to enhance the professionalism of NGO monitoring of corruption and anti-corruption policies.

The effectiveness of NGOs in addressing the issues of good public governance in SELDI

countries depends to a great extent on their capacity to maintain their own governance in order. The risk of capturing of NGOs by special interests and corrupt public officials or elected politicians stems from the opportunity to exploit a number of vulnerabilities of the non-profit sector in the region:

- absence of mandatory procedures for transparency;
- ineffective control of compliance with financial regulations;
- lack of auditing culture;
- low level of self-regulation and coordination of efforts.

Countering civil society capture as part of national anticorruption efforts in Southeast Europe should be on the top of the reform agenda in the region.

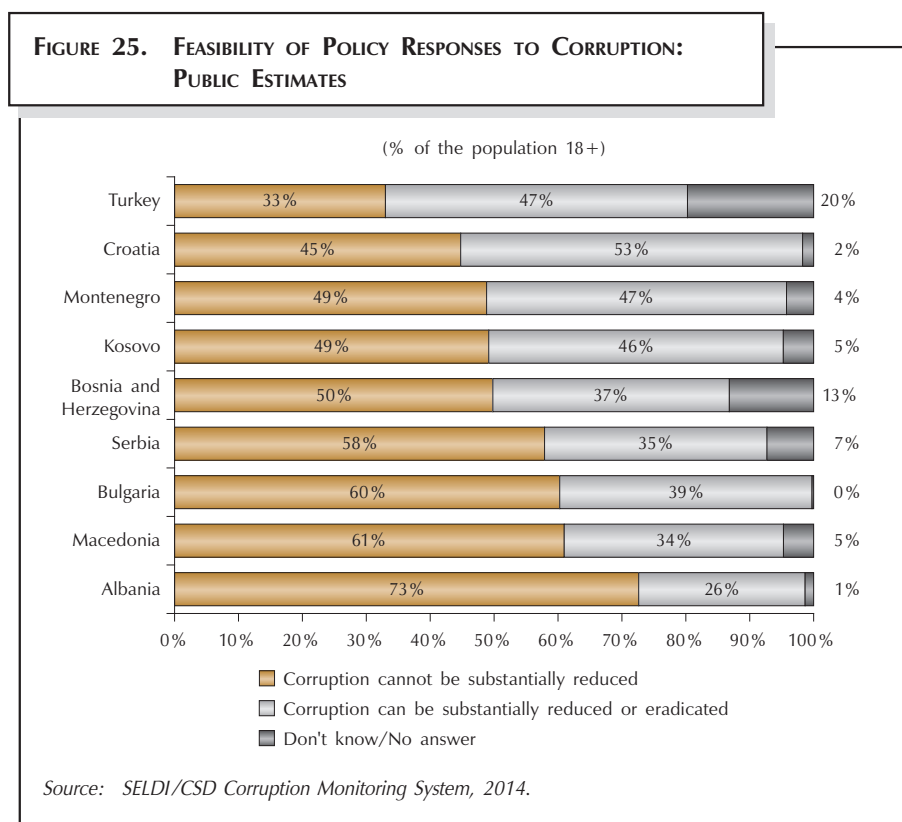
International Cooperation

International institutions and foreign partner countries have played an important role in the anticorruption developments in Southeast Europe. Given the extreme partisanship in domestic politics, international commitments facilitate the adoption of reform policies that might otherwise have been shunned by national politicians. Progress reports by the European Commission, EU funding for reforms and twinning arrangements are crucial international influences on the national anticorruption agendas in most SEE countries. Although anticorruption is one of the main elements of the EC progress reports, they are received locally in different ways – countries with clearer accession prospects pay much more and detailed attention to the reports' findings, while in Turkey, for example, reports generally receive less attention.

International involvement, however, also brought with itself the risk of unrealistic expectations for quick fixes which in turn could prompt the adoption of superficial and ad hoc measures. Conditionality and most of the incentives affect primarily the executive branch agencies, while the judiciary, parliaments and other concerned public and private institutions were not sufficiently involved. The sustainability of international engagement was bolstered by the broadening of the range of involved local stakeholders to include civil society, media, professional associations, trade unions, etc. This broadening of the domestic interlocutors of international partners has had the effect of empowering isolated reformist politicians or political groups but also various non-government actors and encouraging public demand for reforms. Continuing and building on this engagement would be crucial to the leverage the EU has in the region. For this to happen, a government-to-Brussels connection is not sufficient. The engagement by international partners of reformist politicians and parties needs to be supported – and verified – by civil society in a kind of trilateral cooperation.

KEY RECOMMENDATIONS

The experience of SELDI countries in tackling corruption since 2001 demonstrates that solving the corruption challenge in the region would require sustained efforts on many fronts and the involvement of all local and international stakeholders over the long term. The current report provides a number of recommendations to achieve further progress in limiting corruption. Among these, three key areas need to be prioritised by countries in the region and at the European level in order to achieve breakthrough in the mid-term:



Effective prosecution of corrupt high level politicians and senior civil servants is the only way to send a strong and immediate message that corruption would not be tolerated. Bringing crooked politicians to justice has proven very effective in strengthening anticorruption measures in Croatia and Slovenia, for example. Success in this direction would require also international support, including the involvement of EU member states law enforcement.

An **independent corruption and anti-corruption monitoring mechanism** needs to be introduced on national and regional level in order to provide robust data and analysis and integrate both **corruption diagnostics** and **anticorruption**

policy evaluation. The mechanism should be implemented through national and/or regional civil society organisations and networks, and should be independent of direct national government funding. It should serve as a vehicle for opening up administrative data and enhancing public access to information. Data allowing the tracking of public procurement, concessions, the enforcement of conflict of interest legislation, state aid, budget transfers, the annual performance reports of oversight and compliance agencies, etc., should be made publicly available in a database format, thus allowing big data analysis and the use of monitoring tools.

Critical sectors with high corruption and state-capture risks, such as the energy sector, should be addressed with priority. The other priority measures include:

- increasing competition in public procurement;
- improving the corporate governance of state owned enterprises;

- transparent management of large-scale investment projects;
- enhancing the accountability and independence of energy regulatory authorities.

International partners, and primarily the European Commission, should engage directly civil society organisations in the region. This is essential for several reasons: a) for internationally supported reforms to become sustainable, they need to gain wider public acceptance and CSOs are indispensable for this to happen; b) involvement of CSOs is a way of guaranteeing that the accountability of governments to donors and international organisations does not take precedence over accountability to local constituencies; c) the effectiveness of international assistance would be enhanced if it utilises the monitoring and analytical skills and advocacy capabilities of CSOs; d) a direct engagement would have the added benefit of preventing civil society being captured by the clientelistic networks of unreformed and often corrupt public administrations.

SPECIFIC RECOMMENDATIONS

Policies and legislation

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

Anticorruption institutions and enforcement of the law

- Introduce a feedback mechanism for the enforcement of anticorruption policies. The mechanism could be based on innovative new instruments made more readily available in recent years, such as the *Integrated Anticorruption Enforcement Monitoring Toolkit* developed by the Center for

the Study of Democracy and the University of Trento. It allows policy makers to assess corruption risks in a given government institution and the effect of the corresponding anticorruption policy, identifying the highest impact solutions.

- The institutional capacity of the relevant government bodies – particularly the specialised anticorruption agencies and oversight agencies such as the national audit institutions – including their budgets, facilities and personnel need to be aligned with the wide remit these institutions are given. Alternatively, they should design more narrow annual or mid-term programmes, which prioritise interventions.
- National audit institutions should also have their institutional leverage strengthened, including the powers to impose harsher sanctions. Both auditees and national parliaments should be obligated to follow up on the reports of these institutions. The national audit institutions should also be mandated to audit the management of EU funds where these are administered by national authorities. As performance audit work is at a very early stage, they should develop their capacity to carry out more of these.
- Further measures are needed to ensure that recruitment to the civil service is merit based and not dependent on political party affiliation.
- The anticorruption work needs to be shared more evenly among government bodies. Expanding the range of statutory incrimination should be balanced by enhanced capacity in all public bodies to address corruption in their ranks through administrative tools instead of “buck-passing” responsibility to police and prosecution. General public administration bodies should act as gatekeepers of the criminal justice system by dealing with as many corruption cases as their administrative powers allow them. At the very least, this entails the creation of effective complaints management mechanisms.
- The forfeiture of illegally obtained assets in corruption cases is an anticorruption tool the application of which should be expanded. While special care needs to be applied to balance the rights of the accused with the interests of public good – especially in an environment of often corrupt public administrations – wealth confiscation following criminal convictions is an important deterrence which is still underutilised in SEE.

Judiciary

- Countries where the majority of the judicial self-governing bodies are not elected among magistrates should adopt reforms increasing their voting power. Countries that have not, should adopt the “one magistrate – one vote” principle.
- Ensure that the election of the judicial quota is as representative as possible, including judges from first instance courts. Carefully review, and if needed reconsider, the compatibility of the position of court chairperson with membership of the judicial self-governing bodies.
- In countries where both the prosecution and the courts are governed by the same body, two colleges – for the prosecutors and for judges – need to be separated within this body. Prosecutors and judges, respectively, would only be elected to these colleges.

- Abolish or reduce to a minimum the role of government ministers (typically of justice) in judicial self-governing bodies, especially as regards decisions on disciplinary procedures.
- Magistrates should be prioritised in the mechanism for verification of asset declarations.
- The independence and capacity of judicial inspectorates should be strengthened to allow them to step up inspections.
- Introduce feedback mechanisms for the enforcement of anticorruption policies with respect to magistrates. These mechanisms are substantially deficient or practically missing in all SELDI countries; their absence sabotages the repression aspect of anticorruption policies and renders further incrimination of corruption useless. A possible best practice to be replicated – although it is still underdeveloped – is Kosovo’s Platform of Anticorruption Statistics, designed by an NGO. Such a mechanism should include regular information about: disciplinary and administrative and criminal measures in the public service and the judiciary; the various aspects of criminal prosecution, including indictments and convictions/acquittals, and sentences by the various types of corruption offences.

Corruption and the economy

- Reduce to a minimum and review annually state aid policies as they create considerable corruption risks. Introduce in advance strict enforcement of EU state aid rules, and develop the capacity of national independent state aid regulators to enforce the rules.
- Improve the enforcement of anti-monopoly legislation in order to promote free enterprise and competition. Apply special care and review regularly concentration in sectors which are heavily regulated and face licensing and other restrictions, thus creating a risk of collusion between larger competitors and politicians.
- Countries that have not done so should establish institutional links between the management of assets and liabilities of all public finances, including state-owned companies, in order to mitigate financial risks and enhance the government’s credibility in public finance management. State-owned enterprises should meet stringent corporate governance and reporting requirements (e.g. OECD rules), on par with publicly traded companies. These enterprises should publish online quarterly reports.
- Introduce liability and sanctions for contracting authorities who fail to submit reports on public procurement in continuity, reports on violations of anticorruption regulations or submit incorrect or incomplete data.
- Define a legal and institutional framework for the management and control of contracts concluded by public-private partnerships.
- Improve oversight of procurement by large public procurers (state-owned enterprises and utility companies) to maximise the efficiency and reduce irregularities.
- Adopt policies to reduce the share of public procurement tenders with only one bidder and enhance competition. Publish in online searchable data-base format the complete documentation on public procurement pre-notices, notices, bids, contracts, and any addendum thereof.

- EU candidate countries that do not have one should establish decentralised implementation systems for EU funds to provide the appropriate legal and administrative framework for the transfer of responsibilities for the implementation of the EU funded programmes. Oversight should remain centralised and independent of implementation bodies.
- Introduce the concept of value-for-money in the evaluation of public procurement contracts.

Civil society

- Enhance the capacity of civil society organisations to monitor and report on corruption and anticorruption, including the ability to collect and collate primary information on the operation of government institutions, skills for the measurement of the actual proliferation of corruption and in the analysis of data, institutional evaluation and report writing.
- Conflict of interest legislation should include non-profit institutions, especially where they are funded via government administered programmes, such as national budget, EU funds, etc.
- Rules and regulations for public funding – both by central and local governments – of non-profit organisations should be clear and transparent. Only NGOs registered in the public benefit should be allowed to receive public funding, and should respectively meet more stringent reporting and disclosure requirements.
- The European Union and other donor agencies should consider a larger share of funding for good governance programmes implemented in collaboration between civil society organisations and public institutions. These programmes should have explicit requirements against the capture of NGOs by special interests. It should be noted that achieving impact requires longer-term (10 years and above) sustained commitment.
- The civil society sector needs to provide for its own self-regulation. At the minimum, this involves adopting codes of conduct with aspirational standards. They should also find more and better ways of organising coalitions of interest.
- NGOs need better understanding of the need to be transparent and accountable. This includes undergoing regular auditing, disclosure of financial statements, explicit and transparent corporate governance procedures, and measures against capture by special interests.
- The non-EU member countries of SEE would be well advised to learn from the body of knowledge and expertise contained in the EU Anticorruption Report. This would provide them with valuable insights with respect to the evaluation of the spread of corruption and the design of anticorruption policies.

International cooperation

- Foreign assistance programmes need to better reflect the findings of international and independent domestic evaluations. For this to be achieved, assistance programmes need to be made more responsive and flexible, including a shorter time lag between design and delivery.

- International anticorruption assistance to national governments should envisage a stronger role for civil society. This includes the involvement of NGOs as implementation partners, monitors and resource organisations, especially in the evaluation of the impact of assistance projects.
- The effectiveness of assistance needs to be periodically evaluated through impact assessment methods. In addition to providing a value-for-money measure – especially when there has been public funding involved – this would allow successful programmes to be sustained while unsuccessful to be discontinued. It is imperative that this assessment be independent and that it utilises the expertise of civil society organisations.
- Assistance needs to encourage cross-country programmes on common issues, such as trans-border crime. The Bulgarian experience in public-private cooperation in the analysis of the linkages of organised crime and corruption should be utilised across the region.
- European Commission regular reports' preparation and findings should be better embedded in local policy-making by drawing more heavily upon local civil society and business community.

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