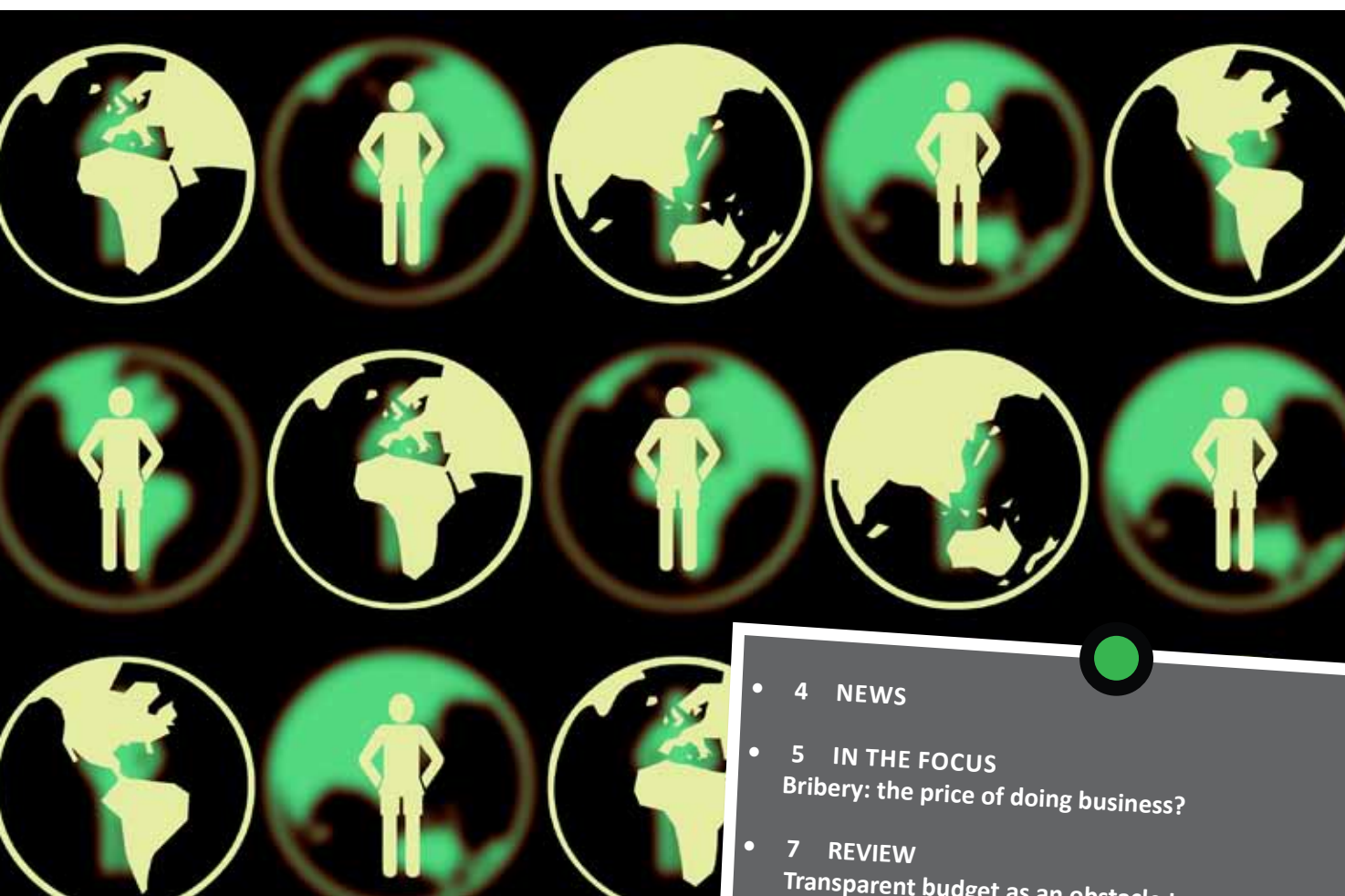


No. 5 year I May 2010

MAK

MONTHLY ANTICORRUPTION MAGAZINE



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About the monthly edition



The Center for Civil Communications was established in April 2005 as a nongovernmental, nonparty, and nonprofit association of citizens. In the past five years we have been working every day on narrowing the room for corruption in Macedonia and promoting the principles of “good governance”, both on central and local level.

We are focused on implementing two types of mutually related activities: monitoring and revealing corruption practices, and, on the basis of this, recommending measures and policies for narrowing the room for corruption and enhancing the ability of the journalists and the special role of the media in the fight against corruption in the country.

In the course of our everyday work, we and the experts we cooperate with arrive at numerous information regarding corruption and anticorruption practices in our country, as well as the countries in the region and the world. By publishing this monthly newsletter on anticorruption and “good governance” we want to share this information with the wider public, primarily with the representatives of the public administration, whom we consider the most responsible for the fight against corruption and establishing and respecting the principles of “good governance”.

At the same time, we offer expert analyses, which can serve as sources of ideas and examples for improving the current state with the corruption in Macedonia.

We are open for suggestions and we want you to send us your opinions, ideas, and attitudes on anticorruption topics as well as practices of “good governance”, as well as point to us corruptive practices and generally the existence of a room for corruption. This will serve us as a basis for further articulation of those practices and problems, as well as help in conducting our future anticorruption activities.

Corruption is one of the greatest evils in Macedonia, which degrades the development and the progress of the economy, society, and the people who live in it, disrupts the competition and the free operation of the firms on the market, disables the governance of the true values in life and in the work, forces the young, educated people to leave the country and enables illegal benefits and enrichment of state officials at the expense of impoverishing the other people and destroying and abusing the public goods.

Therefore, by pointing the corruption practices and offering ideas, good examples, and solutions from the country and abroad, we feel that this monthly newsletter will ultimately contribute to decreasing the corruption in the country and enhancing the “good governance”.

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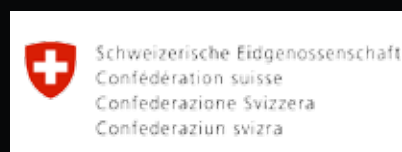
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IN THIS ISSUE:

You have the latest issue of the Anti-Corruption newsletter (MAK). First of all we wish to thank to all of those who responded to our poll by which we wish to hear how satisfied you are with our newsletter and collect your proposals, suggestions for its further development. We are also reminding and kindly asking those who failed to respond, to do that as soon as possible, as your opinions are of vital importance for an improvement of our performance. We shall present your proposals and suggestions in the next issue. We are now carefully reviewing your ideas to be able to immediately apply them in the next issues' articles.

In this issue we are presenting two similar cases for fining corruption acts in two countries in different part of the world that have different social structure and believes. The United States and China have punished prominent citizens for their involvement in corruption activities. In both countries, the penalties are considered to be a message to the societies about the hard stand of the authorities against the crime. In neighboring Greece, after a series of mass, violent protests, the government had to promise it would cleanse up the corruption in politics and restore public trust.

Our associate, anti-corruption expert Mihajlova, writes about the need of larger transparency of the budget, as a crucial instrument for participation of citizens and democratic control of the procedure for approving the budget and spending the funds. In this regard the experiences of two countries form different parts of the world also show that the calls for open budget substantially reduce the corruption and enhance the accountability of public servants.

Furthermore, experts in criminal law analyze a new incrimination of the Criminal Code on abusing the public call for granting a contract on public purchase, which is foreseen to become a serious punitive act that requires harsh penalty, as it is an attack not only on certain individuals, but also on the social community.

This issue also tackles the bribe many international companies have been paying as a price to run business in certain countries. After several large corruption scandals, now the very same international companies are opposing any form of bribe.

We hope that the contents of this issue will offer you more detailed information on the principles of honest, responsible performing and serve to all of us as a guideline in our own work.



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FORMER BRONX SENATOR GETS 7 YEARS FOR CORRUPTION

May 25 (New York Times) - Efrain González Jr., a once-powerful Bronx politician convicted of corruption, was sentenced to seven years in prison on Tuesday by a federal judge who called his story "an American tragedy."



Mr. González, 62, who was in the New York State Senate for nearly two decades, pleaded guilty a year ago to charges of conspiracy and fraud. Prosecutors said he had stolen hundreds of thousands of dollars from non-profit groups to cover personal expenses... Prosecutors had said Mr. González used his position as a state senator to favor a non-profit group called Pathways for Youth with about \$200,000 in state grants, known as member items. They said Pathways directed more than \$400,000 to another non-profit group, the West Bronx Neighborhood Association, which Mr. González founded, and which also solicited money from individual and corporate donors.

Prosecutors said that Mr. González misappropriated more than \$500,000 from West Bronx to pay expenses like membership fees in a vacation club in the Dominican Republic, rent for a luxury apartment there, jewelry, Yankees tickets and college tuition for his daughter.

Judge Pauley noted that Mr. González had neither accepted responsibility for his crimes nor shown any remorse. "You undermined the public's confidence in the integrity and altruism of their elected officials," he said.



CHINA'S 'KING OF FRIDGES' GETS 14 YEARS FOR CORRUPTION

1 May 19 (The Independent, Makfax) - He was born into poverty and dropped out of school. But Huang Guangyu built a business out of selling domestic appliances, becoming the richest man in China with a fortune worth £4.4bn. Yesterday, after one of the biggest corruption trials the country has seen, Mr Huang's career ended in a jail cell where he will spend the next 14 years.

China hopes the tycoon's punishment will send a clear warning to entrepreneurs and to foreign investors: that Beijing is taking a tough line on white-collar crime...

The country has more than its fair share of cautionary tales for the would-be wealthy. Nearly 30 billionaires who have appeared on the annual Hurun rich list have been charged with bribery or are at the centre of a police investigation, while 19 of the 1,330 business tycoons listed in the past 10 years are either in jail or awaiting sentencing on bribery charges.

GREECE SAYS WILL CLEAN UP CORRUPTION IN POLITICS

Athens, May 15 (Reuters) - Greece's government said it will clean up corruption among politicians and restore public trust, but faces flagging support and public anger at measures to resolve a debt crisis that has hit the euro.

Greece has been rocked by a series of major street protests against government measures to cut the country's deficit and a key demand of the protesters has been a crackdown on corrupt politicians they blame for mismanaging the Greek economy...

For decades Greeks have tolerated endemic petty corruption and political graft. But the current debt crisis has forced the government to introduce an austerity package in return for a 110-billion euro (\$140 billion) EU and IMF bailout.

Investors are closely watching public reaction to the wage cuts and tax hikes, and whether the Socialist government will stand up to public pressure, or soft pedal on painful reforms...

Support for both the ruling socialists and the opposition conservatives is falling, while 21 percent of Greeks said they would spoil their ballot if there were an election now, an opinion poll in Ethnos newspaper says.

But Greek Prime Minister George Papandreou's personal popularity remains strong at 60 percent, and 51 percent of Greeks said last week's EU-IMF bailout had been imperative.

For now, parliamentary investigative committees are looking into two corruption scandals dating from the previous conservative government; a land-swap deal that cost the state millions of euros, known as Vatopedi, and a bribes-for-contract affair involving German firm Siemens. The Justice Ministry also is promising to probe the income of top officials.



Bribery: the price of doing business?

Deutsche Welle - German firms have been involved in a string of corruption scandals in recent years. These incidents show that in many parts of the world, bribery and under-the-table deals are firmly entrenched in the business culture.

The United States Justice Department last week revealed that German carmaker Daimler had bribed foreign officials in no less than 22 countries between 1998 and 2008. The company agreed to pay 138 million euros (\$185 billion) in fines.

The Daimler investigation is the latest in a string of probes involving large German corporations in recent years. In 2006, German engineering giant Siemens was accused of funneling hundred of millions of euros through overseas slush funds to secure contracts. Two years later, the company had to pay 594 million euros (\$800 million) in fines over a bribery scandal linked to Argentina, Bangladesh, Iraq and Venezuela.

Analysts said that the scandals do not indicate a growing trend of corporate corruption in Germany. However, they do show that Germany, which bases its economic power on its ability to export goods and expertise, does business in parts of the world where bribes and other off-the-book deals are commonplace, and a necessary part of doing business.

Globalization changes the playing field

According to Transparency International's 2009 Corruption Protection Index, Germany placed 14th - an indication that internal corruption is low. However, many of the countries where German firms do business score poorly.

China, for instance, is Germany's 8th largest export market, but only ranks 76th in the anti-corruption index. Russia - the 13th most important market for German goods - is placed 146th. According to the US Justice Department, officials in both countries received bribes from Daimler. Bildunterschrift: Corruption is concentrated in emerging markets and countries with lax rule of law

In some nations, the fast-changing global political landscape has contributed to business corruption. For instance, after the fall of communism, former



Soviet bloc countries had to quickly develop market economies in order to compete. Transparency International has recognized this problem in eastern European Union member states, and has lobbied the EU to improve corruption oversight mechanisms.

Brussels in recent years has taken corruption problems more seriously. In December 2009 the EU included anti-corruption stipulations – protocol that define how member states should combat corruption, and mandates to increase police and civil cooperation – in its five year law enforcement improvement plans.

«The EU now has a mandate which enables them to develop a robust periodical evaluation mechanism of anti-corruption efforts in 27 EU member states and also for countries aspiring to enter the EU, with the duty to hold all governments to account,» Jana Mittermaier, head of Transparency International's liaison office to the EU said. «Regular reporting and evaluation of anti-corruption measures in member states will help strengthen European citizens' trust in their own public institutions and those of the EU.»

Cultures of Corruption

While Europe has the political and legal structures to address corruption, other countries either lack the political will to take corruption seriously, or simply accept it as the price of doing business.

For instance, after the collapse of the Soviet Union, corruption was rampant in Russia. As president, Vladimir Putin made successful attempts to combat it on a large scale, and current President Dmitry Medvedev has acknowledged corruption as a major problem as well. However, for many businesses there, it remains an integral part of the business culture.

Corruption is so widespread in Russia that some firms have decided to stop investing in growing their business there. Last year, Swedish furniture giant Ikea said it would make no more capital investments Russia, citing the «unpredictability of administrative processes» there. Last month, two Ikea executives were fired for paying bribes to a Russian contractor.

«Ikea as a major shopping center developer wishes to invest in Russia to serve our customers and bring jobs and growth,» Ikea director, Per Kaufmann, said in a statement announcing the pullout «Yet, as long as the principal issues being crucial for Ikea development in Russia remain pending, we have to put all new investment plans on hold.»

The same can be said of China, as the recent bribery scandal involving mining giant Rio Tinto illustrates. Four Rio Tinto employees were jailed on Monday for

giving and receiving bribes. At the outset of the inquiry, Rio Tinto said its employees were simply playing by the unacknowledged rules of conducting business in China, although in recent days the company has abandoned the four workers.

In a recent paper, Minxin Pei, an adjunct senior associate with the Carnegie Endowment for International Peace's China program said that corruption in China is so endemic that it threatens the nation's economic development.

“Corruption has not yet derailed China's economic rise, sparked a social revolution, or deterred Western investors. But it would be foolish to conclude that the Chinese system has an infinite capacity to absorb the mounting costs of corruption,” Pei wrote. “Eventually, growth will falter.”

No more bribes, say foreign firms in Russia

International companies working in Russia have pledged not to offer backhanders. Good luck to them...

ManagementToday.com - More than 50 international firms have signed an agreement to help clean up business done with the Great Bear. Among the predominantly German bunch are Siemens, Deutsche Bank, Deutsche Bahn and Axel Springer AG. Their aim certainly seems noble enough - anti-corruption group Transparency International reckons bribery in Russia totals \$300bn a year.

Indeed, we can't help thinking that attempts by outsiders to tackle such an endemic element of Russian business are a little optimistic. Corruption is so ingrained in the Russian way of working that saying you won't give cheeky backhanders is a little like wading into a British office announcing a ban on tea, or proclaiming to the French that you won't stand for polishing off half-a-dozen bottles of plonk over a four-hour lunch.

And it's not just the natives who are at it. A couple of major international firms have been stung for possible corruption there recently. A few German executives at Hewlett Packard are accused of paying Russian officials \$11m in bribes to win a \$47m contract. Meanwhile German carmaker Daimler has agreed to pay \$185m to settle a US corruption case involving offences committed in Russia. They've now come unstuck courtesy of domestic investigations, but they could argue they were simply playing the game as it's played in those parts. When in Russia...

President Medvedev has - in public at any rate - made fighting corruption one of the main goals of his presidency. Over the past year or so he has tightened the laws on bribery, uncovering thousands of violations of state laws on a largely small-fry level. But he's keen to show he means business, and can point to some real heavy-hitters among the signatories to this latest accord, launched with much fanfare at an official ceremony in Moscow. We so hope the doormen for that event were taking sweeteners to let people sneak in.

But while the intentions may be pure, we'd be surprised if the results of the international accord match up to its lofty aims. Russia's current wealth was built on an almost lawless period of smash-and-grab capitalism that followed the fall of the USSR, and which gave rise to many wealthy oligarchs. For a company to come in saying they won't stoop to bribery is likely to simply hand business to others who will.

We suggest the system might be more effective if it punished the companies receiving the backhanders, rather than the ones nodding and winking as they passed them on. And of course the whole thing relies on the anti-corruption authorities themselves remaining whiter than white - pretty hard to guarantee given the prevailing business culture there...

TRANSPARENT BUDGET AS AN OBSTACLE TO CORRUPTION

The principle of transparency is a crucial instrument for participation and democratic control of the procedure for adopting the budget, as well as for spending the funds. For the citizens to be informed about the budget process (state or local) and spending of their money, they should take active part in its drafting, locate and propose the priorities for the fiscal and forthcoming years, as well as be able to monitor, control whether authorities truly turn their pledges, suggestions into reality.



The crucial question about the need of budget transparency, as a preventive measure against corruption is rather simple: what is the budget transparency and why is it important? The Organization for Economic Cooperation and Development (OECD) defines the budget transparency as 'full disclosure of all relevant fiscal information at timely, systematic manner'. The budget is a key document, proposed by the government, which defines the objectives of policies that are being realized within certain deadlines. It should be comprehensive, encompassing all revenues and expenditures. It should also include detailed commentary on each revenue and expenditure programme. The budget transparency also means that this document should be submitted to the Parliament far enough in advance to allow the institution to study, analyse each paragraph before endorsing it.

Insufficient transparency of the budget process, off-budget activities, weak and underdeveloped systems for managing the expenditures and absence of public control create great possibilities for corruption. The result of lack of responsibility in spending money, for example, for better education or health care, is unfavourable exactly for those these funds are intended to – pupils, students and patients.

In open, democratic societies, citizens may get detailed information on spending the public money, and the public is included in the process for drafting and adopting the budget. The principle of transparency is a crucial instrument for participation and democratic control of the procedure for adopting the budget, as well as for spending the funds. It enables to the engaged and informed citizens to have access to the budget process and monitor whether the policies and obligations deriving from them are really implemented in practice. The transparency facilitates the identification of weaknesses and

enhances the policies by promoting the necessary reforms. It also contributes to the macroeconomic, fiscal stability as prevention from crises and timely responding, coordinating the budget incomes and expenditures to such situations.

In order to help countries to raise the budget transparency level, OECD has drawn a set of 'Best Practices', based on different countries' experiences in each area. It should be stressed that the Best Practices are not meant to constitute a formal "standard" for budget transparency, but designed as a reference tool to be used for realization of this objective.

Link between transparency and citizens' participation

For the citizens to be informed about the budget process (state or local) and spending of their money, they should take active part in its drafting, locate and propose the priorities for the fiscal and forthcoming years, as well as be able to monitor, control whether authorities truly turn their pledges, suggestions into reality.

For the budget transparency gains to be efficient it is necessary for the legislative power and civic sector to participate in the government's decision-making process. The transparency and public participation are interconnected and necessary for a better budget outcome. However, this is preconditioned by having information and tools for controlling the executive power. Information may enable the

legislative power to monitor the executive decisions and their implementation, but the final result will not be efficient if it cannot react, intervene, namely if there are no tools for controlling the executive power. The transparency also means consensus about the policy, decisions on allocating the budget funds – but such consensus will depend on the level of influence the legislative power and civic sector are allowed to have on the budget debate. The inclusion of these actors may substantially improve the policy and decisions on allocating the budget funds, by various proposals and suggestions, and also distribute the responsibility for the adopted, common decisions.

When the public should be included?

In countries that apply good practices, the public (civic and business sectors) is included right from the start of budget drafting and determining the priority projects, as there will be no room for interventions once the Parliament endorses the document.

Citizens should attend Parliament sessions on the budget in order to be able to voice their suggestions, proposals, remarks. A responsible government will very carefully analyse these proposals and take them into consideration in the budget projecting process. It is very important for the business community to know in advance to which sector the budget funds will be allocated for the fiscal year, as well as for the mid-term period, so that it could draft its business plans.

Foreign donors' role

The insufficient budget transparency is a particular concern of donor agencies, and according to the Paris Declaration on Aid Effectiveness "corruption and lack of transparency impede effective resource mobilisation and divert them away from activities that are vital for poverty reduction and sustainable economic development."

IDA survey reveals that those countries performing least well in terms of budget transparency practices share certain characteristics, including lower income levels, dependence on foreign aid. It shows that not only is the average budget transparency score for aid-recipient countries lower than for all countries covered in the survey but also that the score declines as their degree of dependence on foreign aid increases.

The survey ranks Macedonia among medium dependent countries along with Albania, Angola, Cameroon, Georgia, Nepal, Papua New Guinea,

Sudan and Vietnam (World Development Indicators, Aid/GNI).

The survey finds that in the majority of countries little budget information is made available to the public. In some cases, governments do not have sufficient resources or technical capacity to generate even the basic budget documents required by international good practices on budget transparency. In other cases, governments produce such documents for internal purposes or for their parliaments or donors but choose not to make them publicly available. In the second case -- where the main obstacle lies in the government's unwillingness to disclose information that is already produced for internal purposes – experts suggest for donors to pressure governments to correct this attitude.

Although donors, concerned whether the aid pledged to countries is being used for the planned purpose, urge for greater transparency, they have limited influence on reforms in this sphere. What donors can do, however, is provide technical assistance to build the capacity of official oversight institutions. They also can support efforts by civil society and the media to analyze available budget information. But such support should be seen as a comprehensive package of efforts to improve overall budget accountability and oversight.

Donor agencies can promote budget transparency and accountability by supporting and influencing the actions of domestic governmental and non-governmental actors, but also do much more – urge the aid beneficiary country to implement their good practices and procedures.

A survey carried out by the OECD and DAC (Development Assistance Committee) shows that more than half of aid flows that finance certain government activities cannot be easily monitored or subjected to normal budget accountability and oversight procedures. Much of the rationale behind such transparency failure lies in the fact that donors often channel their aid through mechanisms that are outside an aid-recipient government's formal budget system, and which follow separate and parallel budget formulation, implementation, and reporting procedures. Such off-budget funding is justified by donor concerns that existing government budget management institutions and practices may be weak and, therefore, susceptible to mismanagement. However, the distribution of donations outside a country's formal budget as a result of the mistrust that they



will be used properly has a long-term negative influence. Hence, donors should promote budget transparency and accountability, regardless of the mechanisms for delivering the aid to the beneficiaries. For example, in Macedonia also no precise data have been available for a long period about foreign aid that entered the country over the years from bilateral donors or international organizations, despite the efforts for the foreign aid to be coordinated by one institution – the Secretariat for European Integration.

To overcome this situation, experts suggest that the donor community should improve budget

transparency and accountability in aid-recipient countries. Their efforts are expected to produce the following effects:

- Donors can directly support the development of better budget information systems and include specific transparency clauses and conditions in aid agreements.
- Donors can similarly support formal and non-formal budget oversight actors, such as legislatures, SAIs (State Audit Institutions) and civil society organizations.
- Donors can change and improve their own practices, enhancing the quality of the information they provide on aid flows and utilize modalities that are compatible with country budget systems and processes.
- Donors can support further analysis and research on the impact of aid on budget transparency and accountability in aid-recipient countries.



Experiences of two countries from different parts of the world show that the commitment to open budget substantially reduces corruption and improves the accountability of public servants. The first example comes from India, i.e. its largest state Rajasthan. Motivated by the findings about flourishing corruption, several civil society organizations demanded from the government to give them access to budget and other documents.

Surveys of those organizations found out that for years millions of dollars of the budget money had been misspent via financial frauds. Inter alia, large amounts of money were paid for construction of grand infrastructure projects, such as hospitals, dams or cultural centres that had never been undertaken. In addition, it was revealed that several workers that were shown as paid in the labour rolls had never been actually paid or employed. As a result several officials were suspended and jailed. The findings of the civil organizations also opened the road for endorsing a legislation that allows free access to information and inclusion of citizens in drafting the budget and spending of public money.

The second example comes from Mexico, where one NGO, due to the high maternal death rate in rural areas, expressed concern that resources in the national budget were not being allocated effectively to combat the loss of women's lives during childbirth. By exercising the right of access to information, a coalition of NGOs gained the right to directly participate in designing the budget for decreasing the maternal mortality rates. By direct participation in the budget drafting, this organization secured an increase of \$50 million for this purpose.

LEGAL PROTECTION OF PUBLIC PROCUREMENT

The Criminal Code has gotten a new incrimination: 'an abuse of a public call procedure, granting a contract on public purchase, or public-private partnership'. The legislator considers these (illegal) activities as serious crimes that require (harsh) penalty, as they are an attack not only on certain individuals, but also on the social community. Practical implications of the mentioned provision are yet to be seen.



Public procurement is a crucial instrument for the market economy development. By the process of purchasing the state takes active part in the market and its attitude has substantial influence on the overall economic trends. Actually via the public procurements the state should clearly demonstrate that it respects the basic principles of the market economy and successfully realizes the well-thought-out role of a guarantor of smoothly functioning of free and fair competition. The constant upward trend of the public procurements also adds to their significance as one of the fundamental segments of the national economy. Namely, in 2006 the scope of Macedonia's public procurement was at Denar 8,9 billion or 3 percent of the GDP. In 2007 it reached Denar 21,8 billion or 6 percent of the GDP, coming only a year after to staggering Denar 27,6 billion or 7 percent of GDP. Considering the pace of the public procurement growth, it is crucial for

this process to be constantly monitored, analyzed and upgraded in favor of the realization of ultimate objectives.

Naturally the first and most important step in this direction is an introduction of comprehensive, consistent legal frame that regulates the public procurement process, as a prerequisite for establishing a functional, efficient and transparent public procurement system, which is also a vital tool for preventing possible abuses, corruptive and other criminal acts.

To this effect, the Republic of Macedonia – in order to regulate the process for utilizing the public funds by certain government body and hence be a beneficiary of foreign resources, most often from commercial bidders, as well to realize its aspiration to become full-fledged member of the European Union, enacted

a modern Public Procurement Law.¹ The Public Procurement Law, set into force on January 1, 2008, is almost completely in line with the relevant European provisions that regulate this sphere, first of all the procedures for awarding a public procurement contract, their legal protection, including the establishment of competent bodies in charge of cases that may be a subject of appellate procedures, etc.

Despite the fact that the Public Procurement Law does not incorporate provisions on misdemeanor responsibility (one of the possible indicators of (un) successful application of the law, as well as one of the many open issues that require further measures and activities), a possibility certain activities to have all characteristics of a criminal act is not excluded, as the public procurement procedures have proven to be rather suitable ground for various corruptive moves.

Speaking about legal protection the Article 353 of the Criminal Code directly refers to public procurement – ‘Misuse of official position and authorization’, which is actually the main incrimination of the Chapter 30 – Crimes Against Official Duty, i.e. paragraph 5, which stipulates at least five-year imprisonment if the crime is committed in the sphere of public procurement, damaging the budget of the Republic of Macedonia, public or other funds of the state. This paragraph affirms the fact that the latest changes and supplements to Criminal Code in 2009 were not ‘immune’ to the contemporary commitments to introduce harsher penalties for certain forms of these kind of crimes (earlier the law called for at least a four-year prison sentence).

Speaking about the public procurement abuses, we have mentioned the corruption as the most striking example of misuse of authority and power in governing and making decisions on state affairs, particularly in spending budget, public funds – collected by all citizens and legal entities. Basically, we are talking about a deceiving behavior of the persons involved in procurement process, which leads to further losses for the state. Usually, it comes in a form of secret cooperation between the procurer and bidder: authorized persons of the contracting body are demand or being led to accept certain services. This practice is often qualified as ‘criminal’, immoral, inappropriate in comparison with the good practice. Thus it appears that in many cases we are exposed to the influence of the so-called vicious cycle of corrupted procuring practice, which includes activities of the government,

i.e. procurer (contracting body), and of competitors for the government’s tenders. There is also a possibility for the bidder to present false reports on his expenditures and at the same time make a secret agreement with the other bidders, under which they will offer too high prices, and hence enable the concrete bidder to be selected as ‘most favorable’². By lying, i.e. covering up the facts, a person (in this case the contracting body) is being misled. However there is a doubt whether in this case the damage has been brought to the contracting body, i.e. if it has done something wrong to damage its property only by accepting the bid.

In German literature, some theoreticians say the damage is actually a so-called ‘hypothetical competitive price’ (*hypothetischer Wettbewerbspreis*), presenting the difference between the price paid by the contracting body and the one that would have been paid if the public procurement procedure were conducted in line with law. Accordingly, the bidder has done everything the law qualifies as ‘fraud’ at the moment when the other contracting party accepted the offered price, which would have been lower without the previous agreement with the other bidders.³ Dealing with numerous difficulties and manipulations in this sphere, the German Criminal Code in 1997 introduced a new incrimination, titled as ‘agreements that limit the free competition in the sphere of public procurement’ (Art. 298). The act is

2. German literature refers to the agreements as Submissionsabsprachen

3. This stand is also adopted by the German Federal Court



1. Public Procurement Law – Official Gazette of RM, no. 136/07



defined as an offence of abstract danger, i.e. only the limiting agreements are subject of sanctions, meaning that the procurer doesn't necessarily suffer property damage.

Referring to the current situation with public procurement in the Republic of Macedonia, we should not fail to mention a tendency of the legislator for further harmonization of the Criminal Code with the Public Procurement Law in favor of preventing numerous activities that have been avoiding, i.e. violating the public procurement procedure. Namely, in 2009 a new incrimination was introduced in the Criminal Code – Chapter 25 that covers the crimes against public finances (Article 275 – v) – 'Abusing of the public procurement procedure, awarding of a contract on public procurement or public-private partnership', which to a certain extent surpasses the so-called crisis of the system of (economic) incriminations.⁴

The law says the basic form of the act (paragraph 1) is perpetrated by a person who violates the regulations of the public procurement procedure, awarding of a contract on public procurement or public-private partnership, by presenting false documentation, making agreements with other possible participants (bidders) in order to trick the procedure, fail to meet the obligations of the contract or in other way intentionally violate the rules of this procedure and in that manner acquire a large property gain for himself or for another, or cause damage, if the other characteristic of another

more serious crime are not present. The sentence is set to three years, offering possibility for fine. At least four-year imprisonment is set for more serious forms of crime, namely when the perpetrator acquires larger property gain for himself or someone else, or brings larger damage (paragraph 2).

A prison sentence for at least five years is foreseen for cases that resulted in acquiring significant property gain (for the perpetrator or other person), or a serious damage is caused (paragraph 3). Such crime is also subject to fine if the perpetrator is a legal entity, who is also liable to secondary penalty in line with new Criminal Code provisions, which ban participation in procedures for awarding public procurement contracts (art, 96 – b, paragraph 2). An attempt for perpetrating such crime is also punishable (paragraph 5).

The above mentioned shows that the legislator has decided to commit to further tightening and consistent respect of the established standards of public procurement, stipulating additional (subsidiary) possibility to set into effect the legal protection in case of their violation. Furthermore, taking into consideration the set standards for classification of the crimes according to their severity (first of all the standards incorporated in the international documents; for example the Palermo Convention), the legislator has defined these (illegal) acts as serious punishable offences, for which it foresees (harsh) penalty, as they are an attack not only on certain individuals, but also on the social community. Practical implications of the mentioned provision are yet to be seen.

4. Law on Changing and Supplementing the Criminal Code 'Official Gazette of RM' no. 114/09

MONITORING OF PUBLIC PROCUREMENT



From November 2008, the Center for Civil Communications from Skopje has continuously analysed the implementation of public procurement process in the Republic of Macedonia, as regulated under the Public Procurements Law. The analysis aimed to assess the implementation of public procurements in the light of the new Public Procurement Law and the application of basic principles of transparency, competitiveness, equal treatment of economic operators, non-discrimination, legal proceeding, cost-effectiveness, efficiency, effectiveness and cost-effective public spending, the commitment to obtain the best bid under most favourable terms and conditions, as well as accountability for the public procurements implemented.

The present analysis of the public procurement process in the Republic of Macedonia was performed based on the monitoring of selected sample of procedures (40 per quarter). Monitoring activities start with the publication of calls for bids in the «Official Gazette», followed by attendance on public opening of bids and data collection on the procedure course, and use in-depth interviews and structured questionnaires submitted to the economic operators, as well as data

obtained from contracting authorities by means of freedom of information (FOI) applications.

The present analysis was performed based on monitoring of selected sample of 40 procedures implemented by central and local level contracting authorities, whose public opening was performed in the period January to March 2010. In this quarter, public procurement procedures implemented by local level contracting authorities, i.e., municipalities or authorities falling under municipal competences were monitored for the first time. This was an exercise that encompassed a large number of public procurement-performing entities that is several times higher than the number of central level contracting authorities, although majority of them can be classified as small public procurement-performing entities in terms of funds at their disposal and the number of procedures implemented. In the first quarter, in compliance with the stipulated methodology, monitoring was performed on 15 procedures implemented by the City of Skopje, municipalities of the City of Skopje and contracting authorities that fall under the competences of the City of Skopje or municipalities which are part of the City of Skopje.

KEY FINDINGS

Application of bid-evaluation criteria that do not guarantee the selection of the most favourable bid, i.e., cost-effective and efficient public spending, becomes a worrying problem.

Increasing is the application of so-called manipulation prone criteria, such as performance deadline, payment deadline and manner; evident is the tendency to award too many points to the criterion “quality”, without providing precise evaluation thereof, and introduction of odd and vague bid selection criteria.

Inadequate criteria are set to determine companies' eligibility to participate in public procurement procedures.

In that, contracting authorities apply criteria that are inadequate and disproportional to the procurement type and size and that can have discriminatory effects and decrease competition. Inadequate criteria were set in nearly half of monitored procedures, which assess the company's bid rather than the company itself.

High share of public procurement procedures annulled (20% of procedures monitored).

The problem related to procedure annulment is particularly noted at local level.

E-auctions were used in 5.5% of public procurement procedures, which is several times below the legally stipulated threshold of 30%.

The practice of insufficient use of e-procurements continues both at all procurement stages and as part of e-auctions as the final stage.

Rapid increase of the number of framework contracts signed without specifications of the contract-awarding manner to companies was noticed.

The trend on increased use of framework contracts was particularly evident in regard to procurements related to project development and construction works, and they were primarily used by local level contracting authorities.

Failure to comply with the legal obligation stipulating the detailed notifications to companies concerning the reasons behind the selection of the most favourable bid or the rejection of the bid in question.

This practice has been recorded throughout the entire monitoring of public procurements.

Requirements for bank guarantees as part of the bid and the amount thereof have been reduced.

Bank guarantees were requested in 45% or 18 procedures from the total number of 40 procedures monitored, compared to 23 procedures in the fourth quarter of 2009.

The practice on imposing charges for tender documents has been slightly decreased.

Nevertheless, another practice continues – the amount of the tender documents charge is disproportional to the procurement's value and the actual costs incurred for its availability.

High amount of public spending for procurements implemented under the least transparent procedure – negotiation procedure without announcement of call for bids.

In the first quarter of 2010, procurements made under this procedure type amounted to 123,295,058 MKD or 2,009,699 EUR.

In their opinion, main problems faced by companies in public procurement procedures are as follows:

poorly developed tender documents and technical specifications, improper point-allocation for bid evaluation that enable favouring a particular bid, use of inadequate contractawarding criteria, as well as delays in payment of goods and services procured.

Companies provided a worse assessment on the overall public procurement process in the country.

The average assessment provided on this survey is 2.80, unlike 2.93 in the previous year (on the scale from 1 to 5).



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About the Center for Civil Communications

The Center for Civil Communications is a non-governmental, non-profit and non-partisan association of citizens, with a mission to improve and develop the communication among all factors in the society of the Republic of Macedonia about the processes of wider societal importance as well as to monitor, analyze and promote the social-political and economic processes in the country, mostly in the field of anti-corruption, local government and economic development.

The Center for Civil Communications fulfills its mission through organization and implementation of surveys, analyses, monitoring, training, seminars, roundtables as well as publishing of reports, publications and manuals.

In the past five years, the Center for Civil Communications has focused its work on two sets of interrelated activities: monitoring and discovering the corruption practices and based on this providing recommendations on the measures and policies for reducing the corruption and capacity building of journalists and media for fulfilling their special role in the fight against corruption in the country.

The most significant activities that have been implemented include the following:

Project on Transparent Local Governance (2009-2012)

The project develops mechanisms for increasing the transparency, accountability and responsibility of local governments in Macedonia, encouraging the participation of citizens and local business community in the decision making process in the local government and sharing the best practices and experiences among the municipalities in the country and the region. The project activities will contribute for reducing the level of corruption in the local community and increasing the trust of the citizens and business representatives in the local authorities. The project is implemented in partnership with the non-governmental organizations: EHO from Stip and NGO Info Center from Skopje and is funded by the USAID Macedonia.

Monitoring of Public Procurement on Central and Local Level (2008-2010)

The project analyses the implementation of public procurement procedures and system in the country in light of the new Law on Public Procurement, from the aspect of transparency, competitiveness, equal treatment of economic operators, non-discrimination, legal, economic, efficient, effective and rational use of budget funds, getting the best offer under the most favorable conditions and accountability for the funds spent during the public procurement process. Total of 160 randomly selected public procurement procedures are monitored and analyzed on annual level, through direct monitoring of opening the offers, in-depth interviews with the bidders and the institutions that open the tenders, gathering information from the Public Procurement Bureau and other involved institutions. The results of the monitoring include recommendations for promoting the public procurement process. The project is funded by FOSIM.

Enhancing the Role of Media in Fight against Corruption (2008-2009)

The project promotes the journalistic standards on researching and reporting corruption and builds the capacity of media on fulfilling their role in the fight against corruption. The starting point is an in-depth analysis of the way in which the Macedonian media report on corruption and identifying the main weaknesses in this reporting. Based on this, recommendations are developed for promoting the journalistic standards. The implementation is through training of 12 investigative reporters from leading media in the country. These activities will contribute for overcoming one of the main problems detected in the National Strategy on Reducing Corruption – inappropriate media coverage of corruption. The project is funded by USAID Macedonia.

Measures for Reducing Corruption in Macedonia (2007-2008)

After the first phase of the project identified the most vulnerable areas of corruption in Macedonia, this project has developed and recommended total of 156 specific measures that should be undertaken in order to narrow the space for corruption. The project included comparison of the best practices in the other countries, series of workshops where experts and representatives of the stakeholders discussed and proposed ways to narrow the room for corruption, prioritize the measures and sending them to the competent institutions and media for monitoring their implementation. Most of the measures were implemented, particularly those for granting higher independence to the second instance National Commission for Complaints on Public Procurement, which was transferred from the auspices of the government to the Parliament, the independent legal status of the Public Procurement Bureau, which is no longer under the Ministry of Finance, etc. The project was funded by the Balkan Trust for Democracy.

Reduction of Corruption: Exchange of Experience and Good Practices in Investigative Reporting between the Journalists from Macedonia and Romania (2008-2009)

In partnership with the Romanian Center for Investigative Reporting, 10 investigative researchers from Macedonia were trained from the leading Romanian trainers in investigative reporting about the advanced techniques of investigating journalism. After the training, the journalists had an opportunity to be in the Romanian media where together with their colleagues from Romania worked on investigative stories, which were published in the Macedonian media. As a result of the project, a network of investigative reporters was established within the Center for Civil Communications. The project was funded by the East-East program.

Series of trainings for journalists from local media on investigative reporting and reporting on the local government (2008)

The Center delivered 4 regional trainings for 30 journalists from the local media on strengthening their capacities and abilities for researching and reporting on the work of the local government in light of the increased competences of the local authorities, which also increased the role of local media in reporting on the issues of the interest of local citizens. The project resulted in developing a Manual on Journalist Reporting for the representatives of the local media in Macedonia. The project was funded by the USAID Macedonia local government activity.

In addition, the Center for Civil Communications in the past period has published a series of Corruption Reports in Macedonia (2005 and 2006), supported by the Balkan Trust for Democracy, trained the members of entire newsrooms from 16 local TV stations from throughout the country on reporting the issues of local interest, through the support of the US Embassy to Macedonia, participated in the expert team that developed the three-year National Strategy on Combating Corruption, and was a member of the Committee that granted the good governance award in Macedonia, etc.