



**BUSINESS CONFEDERATION OF MACEDONIA**



**BUSINESS ALIANCE OF SLOVAKIA**

**ANTI-CORRUPTION NEEDS OF MACEDONIA'S BUSINESS COMMUNITY  
PUBLIC CALL TO ACTION TO AUTHORITIES AND POLITICIANS**

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# VOICING THE ANTI-CORRUPTION NEEDS OF MACEDONIA'S BUSINESS COMMUNITY: PUBLIC CALL TO ACTION TO AUTHORITIES AND POLITICIANS

*For the Business Confederation of Macedonia*

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## I. CHALLENGES AND THE CURRENT SITUATION

### Political parties and campaign funding

Political parties financing represents one of the highest risks of corruption, which has been internationally recognized and is subject of Article 7 of the UN Convention against Corruption. The mentioned article calls on governments to enhance transparency in the funding of political parties and candidates for elected public office. Macedonia, along with most European countries, has taken steps to regulate political party and campaign financing by legislating the disclosure of finances and requiring parties and candidates to report on the donations received, including the origin of the donation, the amount and parties expenditures. Despite existing regulation of this area, and increased public attention to this issue, there are still gaps in the legal framework and problems in its enforcement. Although this is a significant area of risk, political party financing still remains a black box, lacking transparency.

Large private donations could undermine the political process by allowing substantial influence on decision-makers, including politicians. The current solutions in Macedonia that govern political party funding represent a partial obstacle for such misconduct, by imposing a ceiling on the amount pledged by individuals or corporate donors for political parties funding (100/200 average monthly salaries respectively). However, this is not entirely the case with election campaign funding. Campaign funding donations from individuals are legally limited to EUR 5'000, while the limit for legal entities is 5 per cent of their income from the previous year. OSCE ODIHR notes that this discriminatory and grants an advantage to large corporate entities. For example this provision may allow a large corporation to singlehandedly cover the entire funds for the election campaign of all political parties – legally limited to EUR 5.4 million.

Adequate registration and disclosure of donor details are also vital in order to monitor the adherence to limits on political party and election campaign funding, and is increasingly becoming accepted as a good governance practice. However, public scrutiny revealed marked inconsistencies between what major political parties have reported as revenue and the amount they have actually spent on paid media during

election campaigns. A segment of this gap can be attributed to situations where media have not been actually paid for the provided space, thereby making them informal political party donors – and in essence bypassing the law. In November 2012, the ruling coalition amended the Electoral code, specifying that any difference between the market value and the invoiced value of a good or service offered to an electoral campaign will be considered campaign donation. On the other hand, the mentioned difference is so large that it can even imply the existence of not fully registered and reported sources of funding. The November amendments to the Electoral Code also introduce a compulsory audit to be conducted by the State Audit Office on the final election campaign financial report, within 60 day of its submission. The capacity of responsible institutions has been further strengthened to enable an accurate and timely audit, by stipulating a Memorandum of cooperation that has to be concluded between the State Electoral Commission, the State Audit Office and the State Corruption Prevention Commission. This is in line with advice laid out in the OSCE ODIHR election monitoring report on the 2011 Parliamentary elections.

One of the potential risks that has been noted in experiences of some European countries is the situation where individuals and companies, who are not formally related to a party, place advertising or carry out other activities for the benefit of a party without granting a formal donation, thus avoiding financial transparency and accountability. Macedonia's Electoral Code stipulates that any services paid by third persons and provided to a campaign are considered a donation. However, in a hypothetical situation third party could promote a certain candidate or candidate list without services being provided directly to the electoral campaign.

Another legal void that may enable parties to keep contributions secret and bypass financing rules is related to the practice of channeling funds through foundations or affiliated associations that are not subject to the transparency and accountability requirements for political parties. The Electoral Code and the Political Party Financing Law does not allow political party or campaign funding by civil society organizations (CSOs), however nothing prevents CSOs to engage in activities – such as public debates, protests and gatherings, or media advocacy – that play in favor of a certain political party or political campaign.

#### *Failure to enforce rules*

Despite the increased regulation of party financing, effective enforcement is still an open issue. Macedonia has an advanced legal and institutional framework established to tackle this problem (State Commission for Prevention of Corruption, State Electoral Commission, The Public Revenue Office, The Central Registry of Macedonia, and State Auditor's Office) it remains to be further developed with a focus on effective enforcement.

## **Lobbying and state capture**

Macedonia is one of the very few countries in Europe that have a “lobbying law”, adopted in 2009, which specifies that lobbyists have to be registered and submit annual reports on their activities and revenues. However, the law has been publicly portrayed in a negative connotation, which may have created a situation where it seems that it is being silently disregarded by the authorities which should have enforced it. As its non-implementation appears to be a result of tacit agreement between the authorities and the lobby groups, the law does not even feature in public discourse.

One can get an impression as if lobbying is still in a rudimentary phase in Macedonia. Yet, judging by some debates often initiated by the public and the media information, there is growing citizens discontent with the manner in which regulatory bodies establish the price for some public utility services, or in which in state owned companies provide preferential treatment to private enterprises – as was the case, for example, related with the heating services in Skopje. This may reflect a situation where it is difficult to speak only of lobbying, but one can refer to state capture as well.

## **Conflicts of private and public interest involving employment**

One of the not overly exposed areas of conflict of interest concerns the intersection between the private and public sector. More specifically, it refers to instances where senior public officials move on to the private sector, taking with them knowledge, contacts and specific information that can constitute unfair advantage for the receiving company or organization over other market participants. Few years ago, the transfer of a high ranking official at the National Bank to a private bank received prominent public attention, due to the risk of compromising the confidentiality of information on the state of other banks finances and market approaches.

Although post-employment restrictions for parliamentarians, members of the executive and senior public officials are important for regulating conflicts of interest and controlling what has become known as the ‘revolving door’ between the public and private sectors, still in a number of European countries these are lacking. This despite the fact that post-employment restrictions as potential conflicts of interest via is an internationally recognized norm. Article 12 of the UN Convention against Corruption calls for restrictions “for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure”. Following experiences in other European countries, some states have established a so called “cooling off period” (временска тампон зона) providing a certain amount of time where the official would be excluded from practicing activities which were related to his/her time in office. Where a cooling off

period is deemed necessary, the former employer has the duty of remuneration. A clause on post-employment restrictions in relation to transition to a new position must be included in the employee's contract from the beginning of the employment.

## **Public procurement**

Public procurement is continuously noted in the media as a particular area of concern, and as a system prone to corruption risks, fraud and waste of public resources. According to the Centre for Civic Communications company survey and last quarterly Public procurement monitoring report<sup>1</sup> the key issues are late payments on the part of the institutions for realized procurements, favoring and/or vague tender documentation, as well as unrealistically high bidding criteria for companies.

It is interesting to note that the Government, in its efforts to combat corruption in public procurement has introduced mandatory e-auctions in 2012. This is in line with the recently proposed new EU Directive on public procurement which promotes the use of e-procurement. However around 70% of surveyed companies declared they were not prepared for this reform, due to their inexperience with e-auctions. This makes the need for a larger-scale education of companies evident, as the public procurement system efficiency does not rest only on educated institutions, but on trained business sector as well. Nevertheless, the e-auction was not used in 45% of examined procedures due to the fact that only one bid has been submitted, or due to only one bid being deemed acceptable.

A worrying tendency is the decline in the number of bidders, with no more than two bidders participating in 60% of examined procurements. Another trend that causes concern is the rise in annulled public procurement procedures, reaching almost one third of examined cases.

The media quote as a common practice for contracts to be split up in order to fall below the legal threshold for more demanding public demanding procedures and thus decrease the levels of mandatory reporting. This is often documented in State Auditor's Office reports.

A more positive picture is portrayed with the decrease by one third of company appeals to the State Commission on Public Procurement Appeals, and the higher share of approved appeals – 30% compared to 21% last year. Also improvements are noted in the electronic publishing of the tender documentation which has now increased to 55% of the monitored procedures. Still in the remaining 45% of the cases, the documentation could only be obtained in hard copy at the contracting authority– and sometimes requiring payment of a fee.

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<sup>1</sup> Public Procurement Monitoring Report 2/2012, Report No. 14, October 2012.

## **Access to information<sup>2</sup>**

### Mandatory publication of public contracts online (Contracts Register)

The transparency of the public sector could be largely enhanced and its credibility strengthened if it provides open public access to its contracts. As a good practice example, in an unprecedented move, Slovakia started publishing a great share of its public contracts online from January 1, 2011 allowing anyone interested to quickly find and read through contracts on stationery or large subvention contracts. Contracts are valid only after they had been published on the internet.

### Online database of subsidies (state grants, subventions and pre-accession EU funds)

Excellent access to information is one of the ways to secure integrity of subvention schemes. Timely and good quality information on “who got what and why” is crucial for controlling of the processes both from the government’s point of view as well as citizen vigilance.

### Online legal information portal

Easy access to valid primary legislation such as laws as well as secondary legislation or executive orders is one of the preconditions for rule of law and compliance. Any difficulties in accessing valid legislation and in tracking the recent changes in legislation increase transaction costs and cost businesses money. Good access to legal documentation does not translate automatically into better quality of the legal environment, but allows even small and medium-sized businesses to use legal arguments when dealing with states and report on illegal behavior.

One of the ways to improve access to legal information is creation of an online portal concentrating all relevant legal information, especially laws and their consolidated versions after any given amendment.<sup>3</sup>

### Portal of upcoming legislation

Predictability of the legal (regulatory) environment is one of the key attributes of good business environment. Businesses need to know what their duties are at the moment. Yet, knowing and being able to influence their *future duties* resulting from new legislation is as important. The process of law-making must be transparent, inclusive for all relevant actors, yet reasonably quick. This means that Government such as e-democracy<sup>4</sup> and ENER<sup>5</sup> need to be improved to publish all draft legislation and to allow sufficient time for the business community to be able to review them and voice its stance.

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<sup>2</sup> Based on “Recent Slovak Anti-corruption Measures”, Matej Kurian, Transparency International Slovakia, 2012

<sup>3</sup> For an example refer to <http://jaspi.justice.gov.sk/>

<sup>4</sup> <http://e-demokratija.mk>

<sup>5</sup> <http://ener.gov.mk/>

## Publication of judiciary rulings online

Public polls show that judiciary is one of areas most affected by corruption. The public has a low confidence in the integrity of proceedings and courts usually take long to make decisions. The role of impartial and high-quality judiciary is irreplaceable in creating good, corruption-free business environment.

As a good practice example, Slovakia passed a law in 2011 that mandated publication of court rulings online. The [assumption](#) behind the legislation is that publication will increase the pressure on the quality of the rulings with legal professionals being able to quickly find them and compare with established rulings and legal precedents. Court decisions are available on - <http://www.rozhodnutia.sk/>. Technically, rulings have been previously available if requested under Freedom of Information Act.

## Online Freedom of Information Portal ("What Do They Know")

Legal right to obtain information held by the public authorities is among the most crucial transparency and anti-corruption instruments. While authorities and agencies try to disseminate information on their works, they do so only in issues they deem worthy communicating. Also, they might find themselves in situation where they might not be enthusiastic to disclose information pro-actively.

Having the legislation in place is only part of the solution. Experience shows that authorities are often unwilling to comply and disclose the information required. Lacking effective enforcement mechanisms and working judicial system, legal right to obtain information might remain "paper tiger" only.

This problem can be partially addressed by interactive Freedom of Information Act Portals such as What Do They Know (<http://www.whatdotheyknow.com/>) run by UK-based non-profit MySociety.

## Publishing business blacklists

Concept of black-lists is the final measure discussed based on the public information aiming to limit harms of potentially corrupt and/or fraudulent companies. The premise of the measure is simple – "bad" track record of the companies should be publicly available for public institutions, business and population at large in order to assess integrity of the businesses.

As a good practice example, in Slovakia black-lists are published by the [Social Security Office](#) as well as [Tax Authority](#) and public health insurance providers<sup>6</sup>, or even some municipalities (e.g. [Prešov](#), [Banská Bystrica](#)). Companies who fail to pay on time their contributions on time are listed, including the amount of their debt. Similar black lists could be devised for other duties such as paying fees or penalties levied by regulation authorities (consumer protection etc.). Ideally, this information would be a part of single-stop information shop for the company data.

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<sup>6</sup> For example [http://www.unionzp.sk/index.php?www=sp\\_file&id\\_item=352](http://www.unionzp.sk/index.php?www=sp_file&id_item=352)

## Publishing citizens satisfaction with Government Agencies

Citizens shopping for shoes have more than dozens of shops to buy at. If they do not like one, they can decide to vote with their foot and never shop at that place again. Unlike with shoes, there is usually just one provider of a public service – the government or its agency. Even when citizens are not happy with their services, most of the time they are stuck with it.

At the same time, quality of individual agencies or even within agencies vary greatly, and agencies themselves seldom perform satisfaction surveys or have solid data and performance indicators upon which their performance could be measured.

## **II. DRAFT PUBLIC CALL TO ACTION TO AUTHORITIES AND POLITICIANS**

### **Preamble**

*We, the business community of Macedonia,*

*Concerned* by the detrimental effects and potential threats posed by corruption on the community, that may erode political processes and the rule of law, impoverish the society, and jeopardize the environment,

*Acknowledging* the adverse long-term effects of corruption on the business climate, that may result in distortion of competition, inadequate distribution of wealth, and undermining of economic growth,

*Urge* national and local authorities and politicians to take seriously the corruption risks and move decisively to further improve the governance and integrity standards of the public sector that have vast effect on the prosperity of business and the society in general.

### **Political parties and campaign funding**

*With regard to political parties and campaign funding, we expect the government and politicians to:*

- Expand provisions on campaign finance reporting to provide more detailed financial reports (e.g. by introducing a template requiring break down of expenditures) and more effective audit mechanisms.
- Introduce deadlines for auditing interim campaign finance reports, and for publishing the preliminary audit results before election day.
- Eliminate the discrepancy in the nature of thresholds for campaign donations between individuals and legal entities, simultaneously reducing the generous limits to corporate election campaign funding that may contribute to situations of state capture.

## Public procurement

*With regard to public procurement, we expect the government and politicians to:*

- Enter in open dialogue with the business sector to overcome the issue of late payments for public procurements;
- Analyze the most frequent tender participation criteria for companies and determine which of them are inappropriate, disproportionate and discriminating; educate the contracting authorities by pointing out what is considered inappropriate, disproportionate and discriminating criteria.
- Join hands with business associations (employers organizations, chambers of commerce and industry associations) in order to provide to their member companies trainings and practical guidance on the use of the e-procurement system, with a special focus on e-auctions; make SMEs, as entities with more limited resources, a key target group for such assistance and capacity building.
- Amend Article 169 of the Public Procurement Law, regarding cases when contracting authorities may annul the public contract award procedure based on 'unforeseeable changes to the budget' and 'changes to the needs of the contracting authority', and specify that the procurement that has been annulled based on the said two cases may not be repeated during that budget year.
- Mandate the publishing of tendering documentation in the electronic public procurement system, thereby easing access to companies and reducing the private sector expenditures for fees charges for hard copy tendering documentations.

## Access to information<sup>7</sup>

*With regard to access to information, we expect the government and politicians to:*

- Mandatorily publish public contracts online, and link their validity with such publication.
- Create an online database of subsidies (state grants, subventions and pre-accession EU funds)
- Create of an online portal concentrating all relevant legal information, including laws and secondary legislation and their consolidated versions after any given amendment.<sup>8</sup>
- Improve the functioning of e-democracy<sup>9</sup> and ENER<sup>10</sup> portals to publish all draft legislation and to allow sufficient time for the business community to be able to review them and voice its stance.

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<sup>7</sup> Based on "Recent Slovak Anti-corruption Measures", Matej Kurian, Transparency International Slovakia, 2012

<sup>8</sup> For an example refer to <http://jaspi.justice.gov.sk/>

<sup>9</sup> <http://e-demokratija.mk>

<sup>10</sup> <http://ener.gov.mk/>

- Publish judiciary rulings online
- Create an interactive Freedom of Information Act Portals such as What Do They Know (<http://www.whatdotheyknow.com/>).
- Publishing business blacklists of companies who fail to cover their obligations to the state
- Conduct periodic citizen satisfaction surveys with Government agencies and publish the results