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ASSESSMENT

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

APRIL 2013

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ASSESSMENT PRIORITIES

The former Yugoslav Republic of Macedonia applied for EU membership in March 2004 and the European Council decided in December 2005 to grant the country candidate status. In October 2009, the European Commission (EC) recommended that accession negotiations be opened. These recommendations were reiterated in 2010, 2011 and 2012. The Council has not yet decided on the Commission's proposals.

Following discussions with the EC, it was agreed that SIGMA's 2013 assessment should focus on areas where actual reform is either being implemented or planned. Against this background, the assessment of the former Yugoslav Republic of Macedonia has focused on five thematic areas of public governance:

- [Civil Service and Public Employment](#)
- [Appealing against Administrative Decisions](#)
- [Public Internal Financial Control](#)
- [External Audit](#)
- [Public Procurement](#)

Each selected assessment area is presented in a separate thematic report. These include a brief description of the state of play and recent developments. An overall assessment is followed by a more detailed analysis and conclusions.

- The **civil service and public employment** assessment focuses on the recent and forthcoming developments in the legal framework of public employment, the capacities of the main institutional actors to manage the reform, and the systems of asset declaration and interest statement for politicians and public employees.
- The assessment on the **system of appeals against administrative decisions** covers the three new institutions in this area: the Second Instance Commission, the Administrative Court and the High Administrative Court.
- The **public internal financial control** assessment analyses the current state of affairs in relation to the prioritisation of actions and recommendations to enhance implementation of internal controls, to support the development of managerial accountability in the context of public expenditure management and public administration reform.
- The **external audit** assessment covers the State Audit Office (SAO), analysing its independence and its capacities and focusing specifically on the follow-up and impact of the SAO's reports.
- The **public procurement** assessment analyses the current state of play and focuses in particular on the implementation of the legal changes introduced by the 2011 Public Procurement Law amendments. It also focuses on a number of operational practices.

Where possible, the assessment reports follow the relevant parts of the SIGMA baselines. As the 2013 assessments are tailor-made according to a country's priorities, not all areas are fully covered by the SIGMA baselines (in this case the capacities for civil service reform and the operation of the appeal institutions).

**CIVIL SERVICE AND
PUBLIC EMPLOYMENT**

**THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

APRIL 2013

1. State of play and main developments since the last assessment

1.1. State of play

The civil service and public employment system is in a standby condition, waiting for a new Law on Administration. Meanwhile, some institutions have been moving away from the civil/public service legislation and creating their own employment regulations, thereby increasing fragmentation in the legal framework. In this complex environment the ministry in charge, the Ministry of Information Society and Administration (MISA) which was created two years ago, is struggling to provide adequate leadership, co-ordination and technical capacities to implement reforms. The drafting of the new law could help to create momentum for building a public service with common principles and for re-designing its institutional structure.

1.2. Main developments since the last assessment

During 2012, some minor positive developments have occurred regarding public employment. Some amendments to the Law on Civil Servants and the Law on Public Servants were adopted by the Parliament. Some provisions introduced human resources mobility, allowing an easier management of manpower imbalances between institutions. In addition, about 12 laws affecting the legal framework of various groups of public employees have been approved or amended.

A fair amount of preparatory activity has taken place regarding the future legal framework for public employment and in March 2013, a policy paper defining the principles and content of this legislation was in the process of consultation. The Action Plan of the Public Administration Reform Strategy 2010-2015, revised by the MISA in February 2013, contains measures related to the civil service system and human resources management (HRM). The Agency of Administration (AA) adopted in August 2012 a Strategic Plan for the period 2013-2015.

Some efforts were made in 2012 to improve the implementation of conflict-of-interest legislation. Secondary legislation was adopted on the manner of verification of conflict-of-interest statements, which had previously been compiled and registered but not verified by the State Commission for the Prevention of Corruption (SCPC).

2. Analysis

2.1. Legal Framework

To date, the legal framework for public employment has been mainly based on two laws: the Law on Civil Servants and the Law on Public Servants. When the Constitutional Court declared unconstitutional the classification of staff in the health and education sectors, as well as some other categories of staff as public servants, the regulation of thousands of public employees began to be based mainly on labour law. This situation precipitated the decision to draft a single law regulating civil servants and public servants, which will be the "Law on Administration".

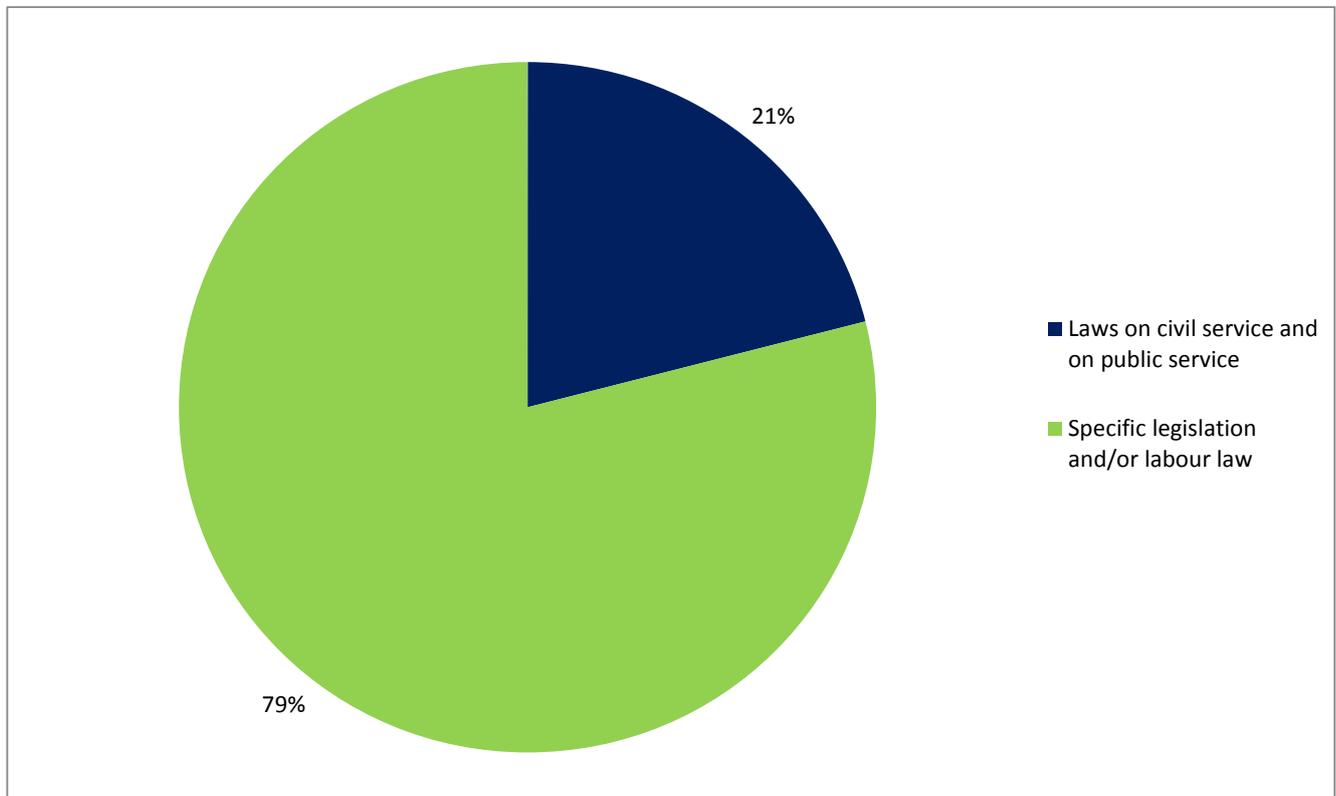
Current legal framework

Following the rulings of the Constitutional Court, the legal framework regarding HRM in the public sector became highly fragmented: no more than 21% of the employees working in the public administration are regulated under the provisions of the existing Law on Civil Servants and Law on Public Servants¹, see Figure 1 below. Labour relations, the systematisation of positions and the salary system of the remaining 80% are

¹ At the end of 2011, the number of civil servants was 14 821 and the number of public servants 10 738. The total number of public employees, estimated from the 2013 budget, is likely to be around 120 000.

subject to specific legislation and/or labour law. This complex and heterogeneous system makes it difficult for the MISA to play a significant role.

Figure 1. **Percentage of public employees included in the laws on Civil Service and on Public Service compared to those regulated by specific legislation and/or labour law**



Sources: Register of Civil Servants and Register of Public Servants (2011) and own estimation from the Budget 2013.

Moreover, there are some important differences between the regulation of these two groups of public employees. Regarding positions, for instance, there is a structure of 13 positions organised into three levels for civil servants, while some hundreds or even thousands of different positions exist for public servants, who are not classified or grouped by their legislation.

Continuing amendments to the current legal framework

The latest amendments to the Law on Civil Servants and the Law on Public Servants were adopted by the Parliament on 23 January 2013². These amendments, which are identical for both laws, focus on the recruitment interview and psychological and integrity tests. The interview is to be structured and contain "situational questions based on which the aspects of integrity of the candidate's personality are assessed". After the interview, the three most successful candidates have to take a psychological test "containing aspects of integrity of the candidate's personality", or they may be examined by a psychological test and an integrity test, checking "the social abilities [and] the aspects of integrity of the candidate's personality, such as the responsibility and ability to follow the rules, the approach to learning, as well as the other psychological characteristics required for performing the tasks and duties". The candidates assessed as unsuitable for the position cannot be selected. The costs of the testing are to be borne by the candidates. The AA should engage licensed experts from an accredited professional institution for the administration of the test. A psychologist from the AA may participate in the structured interview, but without having decision-making capacities.

A considerable volume of special legislation has been adopted or amended, using two opposite approaches. In some cases the legislation aims to regulate the personnel regime of certain institutions in the same way as the

² "Official Gazette of the Republic of Macedonia", no. 15/2013.

regime of civil servants or public servants. In other cases, the legislation defines a completely separate regime for staff outside the civil or public service.

Amendments to regulate as civil or public servants the personnel regime of certain institutions are as follows:

- The Law on Forestry and Hunting Inspection³ was amended to align some positions in this body with civil service positions, as defined in the Law on Civil Servants.
- The Law on Primary Education⁴ was amended twice in order to define the status of teachers as public servants and to establish a comprehensive system that is adjusted to the requirements of this sector; similar amendments were made to the Law on High School Education⁵.
- The Law on State Roads⁶ was amended twice. The first amendment introduced 21 new articles aimed at regulating as public servants the employees of the Agency for State Roads, who carry out activities in the public interest. Some months later, new amendments deleted all of those articles and specified briefly that the employees of the Agency, which had changed its status to that of a public enterprise carrying out activities in the public interest, are to have the status of public servants.
- The Law on the Protection of Nature⁷, Law on Employment and Insurance against Unemployment⁸ and Law on Water Management Organisations⁹ were all amended. The new Law on Pension and Disability Insurance¹⁰ aims to align the status of employees carrying out tasks in the public interest and to regulate, through its 22 articles, the employment, reassignment, mobility, probation, disciplinary liability and performance assessment of these employees.

The Law on the Immovable Property Cadastre¹¹ was amended with a view to modifying the special pay increase for civil servants working in the Cadastre Agency and obliging those occupying certain positions to hold a university diploma in geodesy.

New laws and amendments aimed at defining a completely separate regime, outside the civil service and public service, are the following:

- The Law on the Customs Administration¹² defines a completely separate HRM system for its employees having the status of “customs officers”, including a specific salary scheme. Only a few employees, involved in financial management and accounting, administrative tasks and procurement, hold the status of civil servants. Some auxiliary staff members are regulated by the general labour code. The last amendments to this law regulate mobility between the “customs officers” and civil servants’ positions.
- The Law on Internal Affairs¹³ regulates the categories, status and special authorisations of employees in the Ministry of Internal Affairs not belonging to the Police. The latest amendments to this law introduced changes regarding positions, promotion and re-assignment.
- Based on the Law on Court Service¹⁴, which regulates a separate HRM system for employees in the courts, the Ministry of Justice adopted a new rulebook on the criteria and procedures for the

³ “Official Gazette”, nos. 88/2008, 6/2010, 36/2011 and 74/2012.

⁴ “Official Gazette”, nos. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012 and 100/2012.

⁵ “Official Gazette”, nos. 44/1995, 24/1996, 34/1996, 35/1997, 82/1999, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012 and 100/2012.

⁶ “Official Gazette”, nos. 84/2008, 52/2009, 114/2009, 124/2010, 23/2011, 53/2011, 44/2012 and 168/2012.

⁷ “Official Gazette”, nos. 67/2004, 14/2006, 84/2007, 35/2010, 47/2011, 148/2011, 59/2012 and 13/2013.

⁸ “Official Gazette”, nos. 37/1997, 25/2000, 101/2000, 50/2001, 25/2003, 37/2004, 4/2005, 50/2006, 29/2007, 102/2008, 161/2008, 50/2010, 88/2010, 51/2011, 11/2012, 80/2012 and 114/2012.

⁹ “Official Gazette”, nos. 85/2003, 95/2005, 103/2008, 1/2012 and 95/2012.

¹⁰ The law has been amended twice since its adoption in August 2012 (“Official Gazette”, nos. 98/2012, 166/2012 and 15/2013).

¹¹ “Official Gazette”, nos. 40/2008, 158/2010, 17/2011, 51/2011 and 74/2012.

¹² “Official Gazette”, nos. 46/2004, 81/2005, 107/2007, 103/2008, 64/2009, 105/2009, 48/2010, 158/2010, 53/2011 and 113/2012.

¹³ “Official Gazette”, nos. 92/2009, 118/2009, 35/2010, 36/2011, 158/2011 and 114/2012.

¹⁴ “Official Gazette”, nos. 98/2008, 161/2008, 6/2009 and 150/2010.

recruitment of court servants, which is carried out by selection commissions established in each of the courts.

- Since employees in the health sector have been excluded from the Law on Public Servants in accordance with a decision of the Constitutional Court, the new Law on Health Protection¹⁵ regulates a specific HRM regime for these employees.
- Under the latest amendments to the Law on Foreign Affairs¹⁶, officials in the Ministry of Foreign Affairs are no longer civil servants but “diplomats” and “administrative-technical employees”, who are to be regulated by a special HRM system and labour code.

According to the MISA, the Ministry has actively participated in the drafting of some of these laws and amendments and has given its formal opinion prior to the Government’s approval of the drafts.

Preparatory work for a new legal framework

Law on Administration

In the March 2012 session¹⁷ of the Special Group on Public Administration Reform, the Government explicitly assumed its commitment to draft a Law on Administration (LoA). Some months later the initial draft was discarded after receiving comments from the EC and the Government decided to start a new draft. As indicated above, a draft policy paper has been prepared, taking into account the recommendations of the EC and SIGMA, and the results of the Ohrid Conference on merit recruitment and equitable representation¹⁸.

Other regulations

Two other texts are foreseen by the MISA as providing the basis for the construction of the new legal framework: the Catalogue of Work Positions (a by-law) and the Law on Salaries. Extensive work, with EU¹⁹ and other donor assistance, has been carried out regarding positions and salaries. The job classification system is being elaborated by a group of experts and MISA lawyers. Job evaluation criteria have been established, with the support of the GIZ²⁰. The system is expected to be completed in six months. The Catalogue of Working Positions will be derived from this activity. According to the MISA, these two projects have been developed in a participative way, involving 35 different institutions, including the AA, the main ministries and the trade unions²¹. The Ministry of Finance is foreseen to have the last say regarding the Law on Salaries. Keeping in mind the cascade approach adopted, the Catalogue of Work Positions and the Law on Salaries will be drafted in a sequential process, following approval of the LoA.

The MISA is aware of the need for sufficiently long periods of *vacatio legis*²² in order to adequately prepare the implementation of the new legal framework.

The development of a new legal framework for the civil service and public employment has only started, and it will entail a long and difficult process, requiring strong leadership, dialogue at the highest levels, and additional capacities.

¹⁵ “Official Gazette”, nos. 43/2012 and 145/2012.

¹⁶ “Official Gazette”, nos. 46/2006, 107/2008 and 26/2013.

¹⁷ 22-23 March 2012.

¹⁸ November 2012, organised by MISA, SIGMA and OSCE.

¹⁹ Technical Assistance for Drafting the Catalogue of Work Positions and Law on Salaries.

²⁰ German Cooperation Agency.

²¹ No minutes of the meetings or list of participating institutions were delivered during the assessment.

²² Period between the promulgation of a law and the time the law takes effect.

2.2. Management and Reform Capacities

MISA capacities to lead public employment reform

Since January 2011, the MISA has been the central administrative and policy making body for all matters concerning the overall public administration, the civil service and public employees. The Ministry has numerous competences in various administrative fields, in accordance with the Law on Organisation and Operation of State Administrative Bodies. It carries out activities regarding the information society, telecommunications and radio broadcasting, and the public administration. The denomination of the ministry suggests that the “administration” is the secondary area in the Ministry. The MISA website²³ also suggests that priorities are centred on information society policies. The website presentation of the Minister and the description of the MISA do not make reference to the public administration or public employment²⁴; only some documents and links are related to those areas.

An analysis of the MISA organisation²⁵ indicates that it is especially reinforced in the areas of the information society and internal management. The Ministry is structured in 12 departments, with a total of 31 units. The following departments and units deal with public employment and public administration issues:

- Department for Administration, with two units, one dealing with the civil service and the other the public service
- Department for Management, Development and Coordination of Human Resources and Training, with three units: one for management, development and co-ordination of HR in the civil and public service, a unit for training and a third unit dealing with the HRM of MISA employees²⁶.

Two other departments partially participate in public employment management:

- Department of Legal Affairs and State Administration: its units for drafting of legislation and state administration
- Department of e-Infrastructure, ICT Projects and Register of Civil and Public Servants: its unit for IT systems and its Central Register

Regarding MISA staff, according to the data provided, there are currently 121 employees, 35 of whom have positions in the State Administrative Inspectorate. According to the MISA, 51 employees are now engaged in the various sectors and units covering public administration in the broader sense²⁷. An analysis of the positions of the ten state advisors, who are top officials playing a key liaison role between political authorities and the administration, reveals that only one state advisor is specifically devoted to HRM.

Despite the MISA’s efficient and motivated staff, the ministry has an insufficient number of professionals with specialised expertise in HRM areas, e.g. HR planning, positions and salaries, performance and career development. The majority of professionals have a legal background, and expertise related to organisational psychology, labour relations or public management is scarce. The Ministry is aware of the need to further develop its internal capacities related to HRM.

²³ English pages.

²⁴ <http://misa.gov.mk> The Ministry of Information Society and Administration (MISA) is the basic authorised institution for coordination of activities for developing the information society and for coordination of measures derived from the following strategies:

- National Strategy for Developing the Information Society and Action Plan
- National Strategy for Developing Electronic Communications with Information Technologies

²⁵ A new systematisation of positions was expected to be ready during the week of the assessment mission, but no document was delivered during the mission.

²⁶ Mixing within the same department the overall responsibilities for public employment with domestic responsibilities for own personnel is not an advisable option.

²⁷ Such as strategic, legal and normative issues; information systems and registers of civil and public servants; training of civil and public servants; quality control; and EU-related issues.

The Deputy Minister and State Secretary exercise the top political management functions under the Minister. For these posts there is no formal and stable assignment of responsibilities concerning public employment. Decision-making is concentrated at the level of the Minister, and the co-ordination and exchange of information are based on informal contacts.

Agency of Administration: institutional design, role and capacities

The AA, established in 2000 as the Civil Servants Agency with wider competences than those of the AA today, is an autonomous state body accountable to the Parliament. The initial reasoning behind this institutional arrangement was that the status of an autonomous state body and the lines of accountability towards the Parliament would provide the Agency with more independence in promoting the implementation of civil service legislation across all three branches of power, including local authorities, than if it were placed under the Government.

As the AA is an independent agency, neither the Government nor the Parliament sets objectives or strategies on its behalf or monitors its performance. This independence means that its activity does not necessarily support the public employment strategies driven by the MISA. The accountability of the Agency towards the Parliament is quite weak. The Parliament does not have a special committee to discuss the AA's reports, and the annual reports of the Agency are approved by the Parliament in a plenary session, and usually without any substantial debate, especially in recent years.

The AA's competences are:

- To organise and administer procedures for the selection and employment of civil servants and public servants
- To decide on the appeals and complaints of civil and public servants, as a second-instance body
- To give written consent to the rulebooks on internal organisation and systematisation of jobs in the public bodies that employ civil servants.

The AA is headed by a director and a deputy director. Two key positions are currently vacant: the Secretary General and the Head of the Department of Selection and Employment. The AA is structured into three departments: Department for legal affairs (with four units); Department for selection and employment of civil and public servants (two units) and Department for professional, organisational and general affairs (three units). Three independent units are in charge of internal affairs: the unit for HR, the unit for financial affairs and the internal audit unit. The total number of staff is 44, only 12 of whom deal directly with recruitment, which is currently the main competence and added value of the Agency. Six more persons are in charge of appeals, three are responsible for the formal checking of rulebooks, and the 23 remaining staff focus on the development of internal functions. Low category civil servants occupy many of the technical positions.

The AA adopted in August 2012 a Strategic Plan for the period 2013-2015, in which the strengthening of its capacities is identified as one of its goals, to be achieved through the employment of 24 new civil servants by 2015 and further training of its current staff; and the replacement of outdated IT equipment and upgrading of IT applications for selection procedures. During 2012, the Agency maintained a similar level of activity to the previous year²⁸.

Regarding the quality and impartiality of the AA, the 2011 Annual Report of the Ombudsman positively stated: *"During this report year the number of complaints requesting protection of the right to employment with the*

²⁸ According to its report for the year 2012, the AA delivered 414 consents on internal organisation, managed 443 recruitment procedures for 1 680 vacancies and 74 internal announcements for 141 internal vacancies, managed three recruitments to employ 126 civil servants through the SIOFA programme, processed 79 155 applications for employment by public announcement (50 applications per vacancy for civil servant positions and 18 for public servant positions) and 202 applications for employment by internal announcement (1.43 applications per vacancy), and organised trainee examinations for 435 candidates, all of whom passed the examination. The Commission for deciding in the second instance on complaints and appeals of civil servants received 345 complaints. The same Commission for public servants held 40 sessions and decided upon 170 complaints and appeals; a large number of complaints and appeals were rejected as groundless. The accepted appeals concerned mainly the non-compliance of first-instance organs with the legal provisions.

status of a state servant decreased, which is due to the transparent procedure conducted by the Administration Agency, as well as to the administrative selection performed by the Agency during candidates' application". A public opinion survey²⁹ conducted by the AA revealed that the Agency and its work were well known by both institutions and citizens, and the quality of the work rendered was recognised as good or even excellent. However, when asked about impartiality, only 11% of state bodies and municipalities and 9% of citizens considered that the AA was impartial in its operation. The AA website (<http://www.ads.gov.mk>) is only available in Macedonian, with no forms available in the languages of non-majority communities.

According to the MISA, the future LoA will address the role, institutional design and accountability of the Agency and its co-ordination with other entities of the HRM system in the public administration.

SIOFA and the equitable representation programme

The Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA) – <http://siofa.gov.mk> – has undergone no changes in recent years. In January 2013, the Government approved the current Annual Programme on Equitable Representation³⁰ and published it in the *Official Gazette*. According to that notice, the Programme “represents a comprehensive plan of the SIOFA for ensuring jobs to be filled for the purposes of equitable representation”. Developed in consultation with “other relevant bodies, and especially the AA and the Ministry of Finance” (the MISA is not mentioned), the plan of the Programme is to employ and assign to specific jobs 400 civil servants – members of minority communities – through SIOFA. Funds in the amount of approximately EUR 2.2 m have been allocated from the state budget to SIOFA for this purpose. There is no mention of the positions to which the new civil servants will be assigned, but the Programme document specifies that “in defining the future new assignments, the SIOFA will take into account:

- The state of play regarding equitable representation in the institutions
- The vacancies based on old-age retirement
- The vacancies envisaged based on the experience from the previous years
- The vacancies – new positions required due to functional reasons.”

As for the problem of assigning the already employed members of non-majority communities, the Programme document indicates that the SIOFA “will continue the process of assignment of employed civil servants” as well as the assignment of those who are to be employed by the SIOFA in 2013. “The assignment will be done based on the prepared plan of the SIOFA, which has been developed on the basis of the report on equitable representation for 2013.”

Co-ordination between the MISA, the AA and the SIOFA

The MISA, the AA and the SIOFA are the key stakeholders of public employment policies³¹. A good, co-operative and active co-ordination of these three entities is crucial for the success of any HRM policy in the public administration.

The SIOFA is in practice a key player regarding public employment, because of its specific announcements for non-majority candidates. Equitable representation of all communities in the public sector, derived from the Ohrid Agreement, is a key issue in the country³². Any disagreement on this issue will threaten possible advancements in public employment reform. In this sense, the SIOFA plays a key role, and its participation will be necessary during the drafting process of the LoA. However, according to some interviews conducted during the assessment mission, the relationship between the MISA and the SIOFA is not very smooth, except for

²⁹ Some doubts should be expressed about the reliability of this survey, since there is no information about the representativeness of the sample and other parameters; the apparent contradiction between the different findings should be further explored.

³⁰ Programme for employment of members of communities that are not in the majority in 2013 in central-level budget institutions.

³¹ Also the Ministry of Finance, which has not been an object of analysis in this assessment.

³² The Agency for the Protection of Minorities representing less than 20% of the population, which has not been analysed in this assessment, should also be taken into account.

exclusively operational matters, such as training delivery. Concerning the relations between the AA and the SIOFA, both institutions reported that these relations are effective.

The relations between the MISA and the AA are not easy - both institutions have competences on public employment, but they do not have common accountability lines. Moreover, the AA lost some of its important competences to the MISA when the latter was created. The AA has been involved in the working groups created by the MISA to draft the LoA and it provides its formal prior opinion on the legislation prepared by the MISA. However, a strong and smooth relationship that would facilitate discussions on public employment reform strategies is apparently non-existent³³.

Decentralised HR units and HRM in public institutions

According to the Government Decree on the Principles of Internal Organisation of State Administrative Bodies, HR units have been established in all public bodies, with the aim of implementing the HRM approach in the public administration. The creation of these units is a positive signal for the development of a managerial approach to HRM in public institutions, but it seems to be far from being achieved. Some efforts are being made to empower these administrative structures: a network of HR units, co-ordinated by the MISA, has been established, with a view to sharing experiences and good practice.

HR practices: performance appraisal

The performance appraisal system was introduced for civil servants and public servants in 2004. The system was modified in 2011 to carry out the appraisal twice a year instead of annually. According to information available related to the appraisal of civil servants for the second half of 2011, more than 90% of the institutions have appraised their civil servants. In a performance scale of four categories, 67% of the civil servants have been assessed as “outstanding”³⁴. This very high percentage demonstrates that the system has been distorted and is not effective. The MISA is aware of the weaknesses of the system and is considering how best to address it.

HR measures foreseen under the Public Administration Reform Strategy 2010-2015

The Action Plan of the Public Administration Reform Strategy (PAR) 2010-2015, revised in February 2013, is in place. Focusing on priority C, “Civil Service System and Human Resources Management”, some measures are foreseen in addition to the new legal framework. A selection of these measures is analysed in Table 1 below.

Table 1. Some measures on the Civil Service System and Human Resources Management: assessment of their adequacy

<p><i>Measure 27, Introduction of a model for HRM based on competences: to be implemented after adoption of the LoA</i></p>	<p>Waiting for the LoA is coherent, but seeking to implement a complex, latest-fashion managerial technique when merit is not yet fully assured breaks any priority sequence.</p> <p>However, if the competence model is simple and adequate and if the selection committees are fully trained to use it, in the medium term merit recruitment could be based on the skills/competences relevant to the position.</p>
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³³ During the drafting of the 2012 SIGMA report on merit recruitment, the AA was never invited by MISA to play an active role.

³⁴ 66.86%: Outstanding; 30.9%: Satisfactory; 2.11%: Partially satisfactory; and 0.13%: Unsatisfactory.

<p><i>Measure 29, Establishment of “managerial teams” in administration: the idea behind this measure seems to be “hiring special advisors to support top management”³⁵ [top political authorities]</i></p>	<p>The initiative to clarify the role and legal status of political advisors is commendable, but careful consideration is needed concerning their legal status³⁶.</p>
<p><i>Measure 32, Improvement of the co-ordination mechanism for HRM at the level of the entire administration</i></p>	<p>This is a positive measure, which is partially in practice already through annual conferences; a positive sub-measure on an HR network website is foreseen. All other sub-measures foreseen are normative-oriented, forgetting the essential need to train and enhance the awareness of HR professionals.</p>
<p><i>Measure 33, Introduction of a strategic level of HR planning; and Measure 34, Establishment of an HR information system</i></p>	<p>These two positive measures should help to improve the MISA’s role as the main public employment policymaker.</p>
<p><i>Measure 37, Strategy for Training of the Administration 2013-2015; Measure 38, Establishment of a new organisation for training; Measure 39, Establishment of electronic learning; and Measure 40, Establishment of a micro-learning system</i></p>	<p>The first two measures should be welcomed, especially if they help to analyse the adequacy of managing training directly from the MISA.</p> <p>The measures on electronic and micro-learning sound like latest-fashion concepts, Their real added value is probably limited to basic knowledge dissemination, and they are not useful as training in support of change management, which should be the priority approach to training at this stage.</p>
<p><i>Measure 41, Improving top management staff (enhancing their leadership competences)</i></p>	<p>This is an extremely important measure, but it should be connected with the delegation of responsibilities from ministers, with a view to eliciting positive outcomes in managers’ behaviour. This measure is now being implemented³⁷.</p>

Source: Ministry of Information Society and Administration, Action Plan of the PAR Strategy 2010-2015, revised in February 2013

In addition to these HRM measures, the MISA has devoted strong efforts to developing quality management in public bodies³⁸. The introduction of the Common Assessment Framework (CAF)³⁹, an overall quality management tool containing the HR dimension, could be a means of improving HRM practices in the administration. Also, in December 2012, the MISA⁴⁰ launched a survey to measure employees’ engagement and satisfaction in 85 state institutions⁴¹, covering topics such as organisational aims, management and leadership, learning and development, and fair treatment.

In conclusion, many positive measures have been included in this PAR Action Plan. Nevertheless, some concerns should be expressed about the apparent lack of prioritisation and sequencing and about implementation feasibility, taking into account the weakness of the structures and the scarcity of resources allocated, in spite of support from donors.

³⁵ The way in which this idea is expressed indicates some misunderstanding regarding political and managerial functions.

³⁶ According to the MISA, these political advisors are to be regulated through labour law, which could be highly problematic.

³⁷ With support from the UK National School of Government.

³⁸ In March 2013, the Government adopted the draft Law on Introducing a Quality Management System and the Common Assessment Framework and Providing Services in the Civil Service, which is now in an adoption procedure in the Parliament.

³⁹ <http://www.eipa.eu/en/topic/show/&tid=191>.

⁴⁰ With the support of the British Embassy.

⁴¹ A pilot survey was conducted for MISA employees. More than 80% of the civil servants responded, and the results were in line with the international average of satisfaction in the state administration.

The MISA is taking some positive HR measures and is assuming leadership in the public employment domain, but the stakeholders are far from providing the active and co-operative co-ordination needed. The reform requires a coalition for change, taking into account equitable representation, to redesign the overall institutional design of the civil service and public employment system.

2.3. Integrity: regulations and management of asset declarations and conflict-of-interest statements

Legal framework

The legal framework for asset declarations and conflict-of-interest statements of political authorities, civil/public servants and public employees is in place, consisting mainly of the Law on Prevention of Corruption and the Law on Prevention of Conflicts of Interest. The two laws are somehow repetitive, containing on some occasions similar regulations of overlapping issues. Another important drawback is that, in some cases, identical regulations are applied to everyone, without any differentiation with regard to status, situation or corruption risks. In addition, some situations are not adequately regulated for civil/public servants and public employees, which is frequently due to the absence of proper definitions of concepts. This is the case, for example, for incompatibilities, employment of relatives and gifts. The Law on Civil Servants and the Law on Public Servants, as well as the Law on Public Procurement, also contain some regulations with regard to ethics and conflicts of interest.

According to the revised Action Plan of the PAR Strategy 2010-2015, the Law on Prevention of Corruption is to be amended in 2013.

Persons obliged to submit asset declarations and conflict-of-interest statements:

Asset declarations

The obligation to present an asset declaration was introduced in 2009 by an amendment to the Law on Prevention of Corruption. Elected and appointed officials and all persons occupying civil service positions are obliged to submit an asset declaration.

Conflict-of-interest statements

The obligation to submit a conflict-of-interest statement was created by the Law on Prevention of Conflicts of Interest. All categories of officials and personnel, including both civil and public servants as well as temporary employees carrying out public duties, have the obligation to submit a conflict-of-interest statement to the body in which they are employed. Elected and appointed officials submit their statements to the State Commission for Prevention of Corruption (SCPC)⁴².

Submission of declarations and statements

Only elected and appointed officials are obliged to submit asset declarations and conflict-of-interest statements to the SCPC. All other public employees are supposed to deliver their declarations and/or statements to the official in charge of their public body⁴³. The obliged persons are supposed to present these declarations and/or statements as separate documents, using different forms. These forms are common to all obliged persons, which means, practically speaking, that a minister delivers the same type of information regarding his/her interests as any of his/her assistants.

⁴² <http://www.dksk.org.mk/en/>.

⁴³ Usually someone from the HR unit.

Table 2. **Obligations to submit Asset Declarations and Conflict-of-Interest Statements**

Category	Elected and appointed officials ⁴⁴	Civil servants	Public servants	Labour employees of public sector organisations
Number of obliged persons (estimation)	3 000	120 000 in total (12 000 civil servants)		
Asset Declarations	Yes, to SCPC	Yes, to own body	No	No
Conflict-of-Interest Statements	Yes, to SCPC	Yes, to own body	Yes, to own body	Yes, to own body

Source: Ministry of Information Society and Administration registries and 2012 Budget

Checking of declarations and statements by the SCPC:

Asset declarations

Previously, asset declarations were only verified if there was a specific complaint regarding an official. Today, some asset declarations of elected and appointed officials are randomly selected, by means of electronic procedures, to be checked against data available in the Revenue Office. The SCPC can also check information contained in the Cadastre, the Central Register, the Ministry of Internal Affairs and even the banks, through an authorisation signed by the official when submitting his/her declaration.

Conflict-of-interest statements

Prior to 2012 there was no clear obligation for the SCPC to check conflict-of-interest statements but, from 2010, some statements have been checked on the SCPC's own initiative. The Decree on the Manner of Checking the Content of Conflict-of-Interest Statements, adopted by the Government in March 2012⁴⁵, prescribes a three-step checking procedure, to be carried out by the SCPC⁴⁶ as follows:

- Checking whether the conflict-of-interest statement has been completed in accordance with the form prescribed by the SCPC
- Cross-checking the conflict-of-interest statement with the asset declaration to verify that all public authorisations and duties have been declared
- Supplying data from the Trade Register and the registers of other legal entities that would enable the confirmation of the correctness of the facts given in the statement.

The SCPC, by its autonomous decision, sets out a plan⁴⁷ with the sequence to be followed for checking the statements of conflict-of-interest⁴⁸. All of the statements included in the plan are checked with the same level of detail, and there is no reduction in the number of statements to be checked following a random selection. In 2012, the statements of government members, administration officials, MPs and local authorities were checked. This year, the judges from the various courts will be checked. In addition, the SCPC is obliged to check during the second quarter the statements of the new mayors (85) and the new members of municipal

⁴⁴ MPs, members of the Government, judges, mayors, local councilors and other office holders. There is not any register of those officials, but SCPC obtain the information through the Official Gazette.

⁴⁵ "Official Gazette", no. 42/2012.

⁴⁶ Within 30 days of submission of the conflict-of-interest statement.

⁴⁷ Plan and dynamics for verification of conflict-of-interest statements (a plan was drafted for 2012 and a new one for 2013 was recently approved).

⁴⁸ This plan that has been disclosed could be used by the obliged persons to act strategically, knowing whether their statements are to be checked or not.

councils (1500), in office since the recent local elections⁴⁹. There is a question about the capacity of the SCPC to effectively deal with such a huge number of statements.

The Commission has established 15 protocols of co-operation with various institutions so as to have access to the corresponding databases when checking declarations and statements.

SCPC activity and capacity regarding asset declarations and conflict-of-interest statements

The main features of the 2012 caseflow in the SCPC have been the following:

- The SCPC investigated 96 new cases⁵⁰, 60 of which resulted from complaints presented by citizens⁵¹, *ex officio* cases on 17 occasions, and 19 cases at the request of public bodies or individual officials.
- The SCPC identified 29 situations of conflict of interest and consequently issued five warnings and three proposals for dismissal.

The SCPC is composed of seven members, assisted by 17 staff. Two persons deal with asset declarations and another two persons with conflicts of interest⁵². The SCPC is trying to expand the team dealing with conflict-of-interest statements. An electronic database is being developed with UNDP assistance.

Additional elements:

Regarding public disclosure of asset declarations, the declarations of elected and appointed officials are published on the SCPC website, which allows additional social control by citizens, the media and NGOs. The declarations of civil servants are not disclosed by their respective bodies. No conflict-of-interest statements are published.

According to both of the above-mentioned laws, a large number of obligations to report to the SCPC are imposed⁵³, mainly on elected and appointed officials. Some of these provisions are very difficult to implement and often have a very limited added value. The SCPC has no capacity to deal with such a large number of potential information flows.

The SCPC does not possess any aggregated data on the number of asset declarations and conflict-of-interest statements submitted by civil servants and other public employees to public bodies and on the processing of those declarations. The State Commission receives reports from these public bodies every six months only, stating that the officials concerned have fulfilled their obligation to submit a declaration and/or statement and indicating any officials who have failed to do so.

Apart from a guide published in 2008⁵⁴, the SCPC to date has not provided any guidance or training for elected and appointed officials. The state programmes for the prevention and repression of corruption and conflicts of interest include the introduction of such training in 2013.

The SCPC has the sole responsibility of ensuring the implementation of the legal framework on integrity, even regarding civil servants, public servants and other public employees. No specific responsibility for integrity management is assigned to the individual public bodies, except for the delivery of certain reports to the SCPC.

⁴⁹ The obligation to verify these conflict-of-interest statements arises from article 3 of the Regulation on the Manner of Verifying the Contents of the Conflict-of-Interest Statements, which envisages a verification of each statement immediately after it has been received.

⁵⁰ All cases referred to concern elected and appointed officials.

⁵¹ Twenty of the complaints were anonymous.

⁵² In both cases, one of the persons is a junior associate, the lowest category.

⁵³ The SCPC was not able to provide a list of such situations.

⁵⁴ Guideline for managing conflicts of interest http://www.dksk.org.mk/en/images/stories/PDF/vodic_za_sudir_na_interesi.pdf.

The system of asset declarations and conflict-of-interest prevention is not very effective because of the overwhelming number of officials obliged to declare, the lack of differentiation between these officials, and the practice of checking all declarations, which does not allow an in-depth analysis, given the available resources. The SCPC is focused on formal compliance, and it is not clear which institution should take care of guidance in this area.

**APPEALING AGAINST
ADMINISTRATIVE DECISIONS**

**THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

The system of appealing against administrative decisions in the former Yugoslav Republic of Macedonia, which is composed, in a wider sense, by the State Commission for Decision-making in the Administrative Procedure and the Labour Relations Procedure at the Second Level (hereafter referred to as the Second-Instance Commission), the Administrative Court and the High Administrative Court, is considered to be in a transitional state due to the recent creation of these three institutions. The whole system maintains certain incoherencies in its design and presents some shortcomings in terms of staffing, financial resources and organisational set-up, but it needs time to stabilise its working procedures.

1.2. Main developments since last assessment

In 2012, two new actors began to have an impact on the system of appealing against administrative decisions. Both the Second-Instance Commission and the High Administrative Court formally started to function in 2011, but their activities only started to have a significant effect on the whole system in 2012.

The total 2012 budget of the High Administrative Court increased by EUR 848 000⁵⁵ compared to 2011. The Administrative Court did not benefit from such an increase⁵⁶, but it has nonetheless managed to reduce its backlog of cases by about 11%.

2. Analysis

2012 was the first complete year in which all three main institutions composing the new system of appealing against administrative decisions (administrative and judicial appeals) have worked in a fully operational way.

Organisation and budget of the court system

The Law on Courts regulates the organisation and jurisdiction of the courts and the provision of funds for their operation. The organisation of the judiciary is unique. The judicial system is comprised of 27 basic courts, four courts of appeal, the Administrative Court, the High Administrative Court and the Supreme Court. The Judicial Council is an autonomous and independent judicial body responsible for ensuring the independence of the judiciary.

The courts are fully financed from the judicial budget, which is a separate section in the State Budget approved by the Parliament and independently managed by the Judicial Budget Council. The Council deals with all direct costs of the judicial system, except for the investments in new premises, which is handled by the Ministry of Justice. More than 80% of court expenditure is devoted to salaries⁵⁷. The forecasts that were made on the evolution of the budget expected a progressive increase in judicial expenditure, expressed as a percentage of GDP. This foreseen rise, which was to culminate in 2015 at the level of 0.8% of GDP, has stalled. Forecasts for 2012 (0.5% of GDP) did not materialise, and the percentage of judicial expenditure has remained at 0.4%⁵⁸, the same level as in 2011.

⁵⁵ Equivalent to MKD 52 171 000.

⁵⁶ During the interviews, the Administrative Court indicated that it had not received a budget increase.

⁵⁷ In 2011 a total of 84.63% of expenditure was devoted to salaries, compared to 0.51% for installation, upgrading and maintenance of IT and 1.48% for training and education of judges and staff. The rest of the budget was dedicated to the maintenance of existing buildings (6.01%), investment in new buildings (0.81%) and other judicial expenses, such as expertise and interpretation (3.36%).

⁵⁸ Sources: Judicial Budget Council, *Fourth Quarterly Report 2012* and CEPEJ (European Commission for the Efficiency of Justice), *the former Yugoslav Republic of Macedonia 2012 Evaluation Exercise*.

2.1. The process of appeal against an administrative decision

According to the country's legal system, in order to be able to exercise the right of appeal, a specific legal provision is required regulating the appeal procedure. The existing system of appeal against an administrative decision is structured in the following way. As a general rule, but with some exceptions, after an administrative body has taken a decision, two successive systems may review the decision: administrative review and judicial review. The administrative decision can first be appealed to the administrative body referred to as the "Second-Instance Commission" (see next section). To appeal against the Commission's decision, and also directly in some cases, a lawsuit may be filed with the Administrative Court, and its decision can in turn be appealed to the High Administrative Court.

The complete process of administrative and judicial appeal against an administrative decision is shown in Table 3 below.

Table 3. **System of administrative and judicial appeals against decisions taken by an administrative body**

Administrative appeal in second instance	To the Second-Instance Commission	To a specific second-instance appeal body	To the same administrative body	(Administrative appeal is not allowed in some cases)
Judicial appeal in first instance	Lawsuit filed with the Administrative Court (first-instance court)			
Judicial appeal in second instance	Appeal to the High Administrative Court (second-instance court)			
Judicial appeal in last instance	Appeal to the Supreme Court			

Source: Support for Improvement in Governance and Management (SIGMA)

The following pages present an analysis of the organisation and performance of the main appeal institutions (shaded in the above table), with the exception of the Supreme Court. All of these institutions are formally independent, and connection and co-operation between them is severely lacking. The three institutions analysed were created recently, between 2007 and 2011.

2.2. The Second-Instance Commission (State Commission for Decision-making in the Administrative Procedure and the Labour Relations Procedure at the Second Level)

The Second-Instance Commission is competent to resolve complaints against decisions in administrative proceedings in the first instance made by ministries, other state administration bodies, organisations established by law and other state bodies. It is also competent to decide in the second instance on matters of labour relations. To resolve these complaints, the Commission applies the provisions of the Law on General Administrative Procedure, the Law on Labour Relations and other material laws. The Commission sometimes takes its decisions on the basis of procedural regularity and sometimes on the merits⁵⁹, depending on the case and the availability of substantive facts.

Created by law in April 2011⁶⁰, the Second-Instance Commission started its work on 1 December 2011. The Commission performs its duties in substitution of 13 government commissions previously established to ensure compliance with the principle of appeal in administrative decisions⁶¹. Even though it can currently be considered as the main institution in the second-instance decision-making process, it should be taken into account that substantive rules reserve for other bodies the competence of resolving appeals concerning some material issues.

There are no uniform rules as to which institution is to deal with the appeals of various administrative decisions⁶². Appeals concerning building permits and tax issues, for instance, are excluded from the jurisdiction of the Second-Instance Commission. There is also a State Appeals Commission for Public Procurement as well as separate means of appeal in various ministries (e.g. Defence, Internal Affairs). In practice a hybrid system of administrative appeals is in place, with appeals sometimes dealt with in the Second-Instance Commission and sometimes in a specific body. This hybrid reality contradicts the unifying trend that led to the creation of the Second-Instance Commission and leads to other difficulties. On the one hand, it does not allow the alignment of the material scope of work of the Second-Instance Commission with that of the Administrative Court. On the other hand, this hybrid system is continuously open to change, in the sense that any new law could add or subtract areas to those dealt with today in the Second-Instance Commission. This situation creates an uncertain framework that does not contribute to consolidating the Second-Instance Commission and makes it difficult to plan adequate training for its professional staff.

The Second-Instance Commission is made up of seven members⁶³. The parliamentary procedure for their nomination⁶⁴ does not require a reinforced majority, which raises concerns about the independence of these members, as this arrangement could result in an allocation of Commission seats to the different political parties.

Personnel, premises and other resources

Of the Commission's 107 established positions of technical and support personnel, only 22 have been filled. From those positions, only 11 of them are lawyers assigned to the three departments supporting the work of the Commission in the various areas of administrative decision-making, analysing the cases and preparing draft decisions on the submitted appeals. These lawyers were hired in 2012; seven started to work in May and the others at the end of the year. The Commission considers that additional staff and training are needed to ensure its proper operation. New premises, inaugurated in February 2013, provide much better material conditions, but the IT equipment has some deficits - in March the Commission did not yet have access to Internet.

⁵⁹ A decision "on the merits" is a decision based on evidence rather than on procedural grounds. It is made by means of the application of substantive law to the essential facts of the case.

⁶⁰ Law on the Establishment of a State Commission for Decision-making in Administrative Procedures and Labour Relations Procedures in the Second Instance, Official Gazette, no. 51/2011.

⁶¹ The Government created these commissions, which were allocated to different areas through specific dispositions.

⁶² According to the Constitution and the Law on Administrative Procedure, the right of appeal should be regulated by material law.

⁶³ Six lawyers and an agricultural engineer.

⁶⁴ The President and members of the State Commission are appointed for a period of five years with the right of re-election.

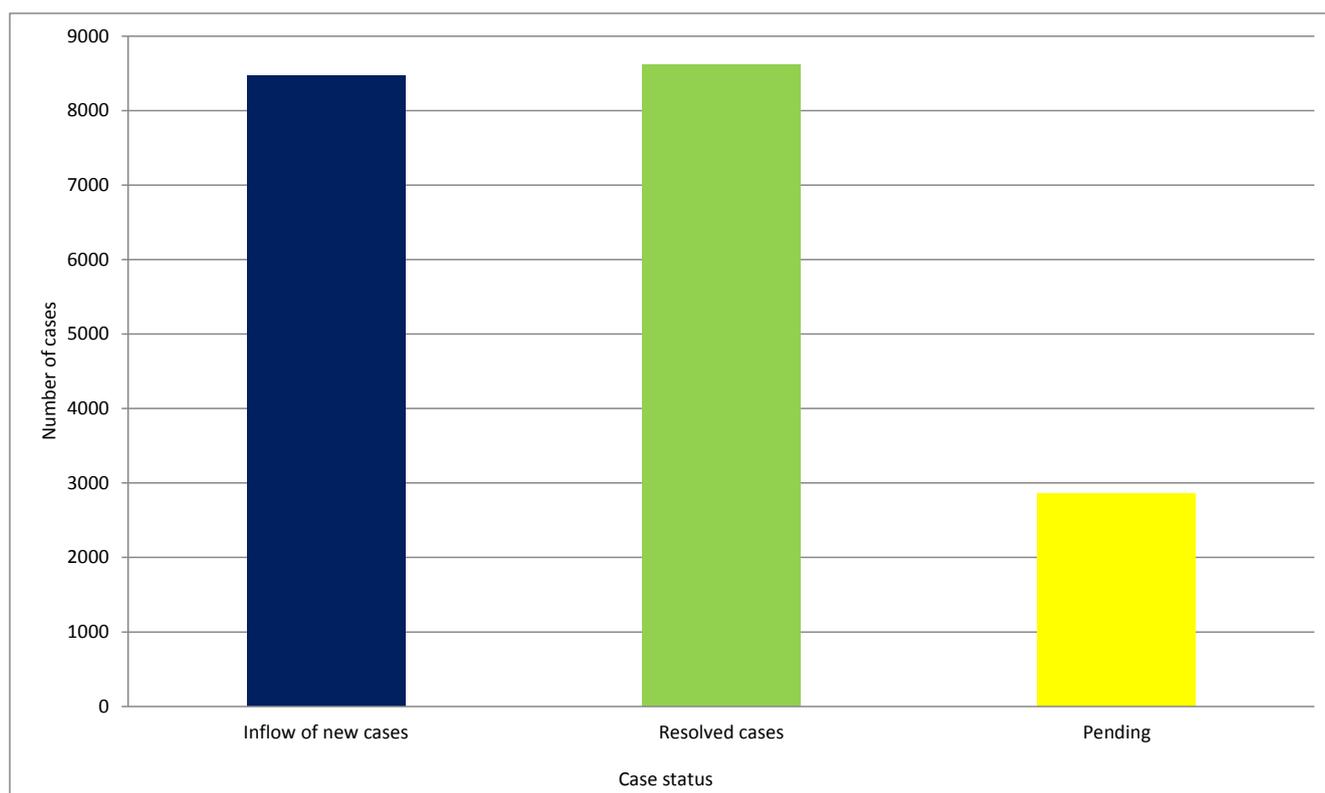
Activity and backlog

During 2012, the Commission received 8 472 new cases, plus about 3 000 that had been transferred from the previous system⁶⁵. The total workload amounted to 11 472 cases, of which the Commission resolved 8 619 cases, leaving 2 853 cases unresolved. It should be highlighted that, even in its first year of existence and with limited resources, the Commission was able to resolve more cases than the incoming new ones. The backlog at the end of the year was reduced in comparison to the “inherited backlog” of about 3 000 cases. The Commission’s forecast for the coming years is a stable level of litigation, as long as it is not assigned any new competences.

There is no standard with regard to the number of decisions to be issued monthly by each member; in 2012 the average number of cases resolved per month by a Commission member was 112⁶⁶ or five cases per working day (this figure represents three times more cases than the standard established for judges of the Administrative Court). When analysing the number of resolved cases, it should be taken into account that the lawyers supporting members of the Commission were not accessible during the entire year, which reduced the capacity of members to resolve cases. Another element to be taken into consideration is the learning curve, natural in any start-up process, which results in an increase in resolving capacity depending on accumulated experience.

The number of cases processed, classified according to the decisions adopted or the manner in which the Commission acted, is provided in Figure 2 and Table 4 below.

Figure 2. Second instance commission activity 2012



Source: Data from the Commission

⁶⁵ The exact data is unavailable, because it is not differentiated in the Annual Report of the Commission.

⁶⁶ Total number of resolved cases divided by seven members and by 11 working months.

Table 4. **Second-Instance Commission, Activity 2012 by typology of cases**

	Number	Percentage
Approved appeals ⁶⁷	2 053	17.90%
Rejected appeals	2 412	21.03%
Non-admitted appeals ⁶⁸	261	2.28%
Withdrawn appeals ⁶⁹	30	0.26%
Cases transferred to the competent body	1 691	14.74%
Halted cases (waiting for submission of the file or additional evidence by the first-instance body)	814	7.10%
“Supporting the court” cases (the administrative courts ask the Commission to request the file of the first-instance body and to prepare a brief on the case)	1 358	11.84%
<i>Subtotal resolved cases</i>	<i>8 619</i>	<i>75.13%</i>
<i>Subtotal unresolved cases</i>	<i>2 853</i>	<i>24.87%</i>
Total workload of cases (new inflow + “inherited backlog”)	11 472	100.00%

Source: Data from the Commission

The law creating the Commission states that cases should be resolved within a maximum of two months, unless relevant legislation does not foresee a shorter period. According to the Commission, cases are resolved within a period of between 2 and 12 weeks, which seems to be a very acceptable standard. There have been longer delays in some complex cases regarding industrial properties that may be considered normal. Certain delays in dealing with procedures are extremely common due to the absence of essential documents, which obliges the Commission to request the administrative body to send such documentation. Administrative bodies repeatedly ignore these requests from the Commission, and a considerable amount of time is spent trying to obtain the necessary data.

Quality of decisions taken by the Second-Instance Commission

Data to analyse the quality of the Commission’s resolutions is still insufficient. However, a positive indication of the good quality of the Commission’s resolutions lies in the fact that only 352 lawsuits were initiated in the Administrative Court against the decisions of the Commission. Taking into account the fact that 2 412 appeals were rejected by the Commission in 2012 (see table above), the total of 352 lawsuits with the Administrative Court signifies that only 14.6%⁷⁰ of those rejected appeals were challenged. No information is available yet on how those lawsuits were decided by the Administrative Court (affirming or annulling the decisions of the Commission). The data concerning the complaints received by the Ombudsman⁷¹ and by the State Administrative Inspectorate⁷², when available, will also be useful in assessing the quality of Commission decisions.

The State Administrative Inspectorate intends to conduct a specific inspection of the Second-Instance Commission in 2014, once the Commission has stabilised its working procedures.

After one year of operation, the Second-Instance Commission seems to be working properly, from both the quantitative and qualitative points of view. Unfortunately, as a result of the hybrid system of administrative

⁶⁷ Against the decisions of first-instance bodies.

⁶⁸ Submitted after the deadline or by an unauthorised person and other non-admissible appeals.

⁶⁹ The Commission is not competent to decide on those cases, which were submitted by mistake. The Commission informs the administrative body concerned of the relevant legal competences on this issue.

⁷⁰ This percentage is probably a bit higher because some lawsuits concerning appeals that were rejected in the last months of the year will probably not be filed before 2013.

⁷¹ In 2011, under the previous system, 9.65% of the complaints received by the Ombudsman were related to the second-instance procedure.

⁷² About 75% of the complaints received by the Inspectorate are related to matters concerning administrative procedures.

appeals, the scope of action of the Commission does not adequately fit the scope of the Administrative Court⁷³.

2.3. The Administrative Court

The competences of the Administrative Court are defined by the Law on Courts and the Law on Administrative Disputes.

Work organisation, personnel and management

The Administrative Court is structured into six specialised departments, dealing respectively with the following matters:

- Property, legal affairs and other rights
- De-nationalisation and other rights
- Urban planning, civil engineering and other rights
- Pensions, pension rights, disability insurance and other rights
- Public procurement and other rights
- Customs and other rights

The first and third departments have one judicial chamber each, whereas the second, fourth, fifth and sixth departments, due to the high number of cases, have two judicial chambers each. Each chamber is composed of three judges, one of whom chairs the chamber. This panel of three judges makes every decision, except in matters of misdemeanours. The chambers decide on cases following internal deliberations, without an oral public hearing. Sessions are held once a week.

The Administrative Court is staffed by 27 judges and the President. In order to fill the panels of three judges, some “rotational” judges from other chambers or courts are invited to sit on panels. The mobility of judges is subject to the discretion of the President of the Administrative Court. A grievance procedure against decisions rendered in this regard exists but has never been used. The assignment of judges, including rotational judges, seems to be effective, judging from the successful reduction in the backlog of cases (see explanation below).

Each judicial chamber forms an independent work unit, staffed with clerical, expert and managerial officers⁷⁴. Work organisation revolves around the figure of the judge, who creates a work unit around himself/herself and oversees all elements of the procedure. The features and duties of the support staff are loosely defined in the law, and in practice, each judge can thus organise his/her staff in a quite flexible way.

Only 45 of the 137 support posts that were foreseen in the judicial chambers have been filled and, according to the Administrative Court, the number of support staff is clearly insufficient. Nine clerical posts were filled in 2012, but the total number of available personnel was reduced due to resignations. The work organisation is old-fashioned and inefficient, due to its fragmentation into many pint-sized “judicial offices”. The staff is divided into various categories: administrative, management, technical experts and several sub-categories within the court counsellor category. The rulebook of systematisation of posts⁷⁵ includes personnel who have not been legally trained, who perform support activities (library, judicial police). In the rulebook, the various staff ranks are poorly defined and differentiated.

The other leading figure in each chamber is the court administrator. This court official performs the functions of court management and personnel organisation, drafting work plans and schedules in co-operation with the chairman of the chamber. The duties of this post have remained largely unchanged in recent years, despite a

⁷³ The Second Instance Commission should cover all the issues under the jurisdiction of the Administrative Court, except for those issues requiring a specialised body, such as the public procurement issues.

⁷⁴ According to the Administrative Court, once the posts in the Court are fully staffed, each judicial chamber will include one managerial judicial officer and at least two expert judicial officers.

⁷⁵ Rulebook on Internal Organisation and Systematisation of Posts in the Court.

recent EU project's⁷⁶ recommendations to transform the post into that of a real manager of all processes of the court, in charge of the "judicial office". Currently, court administrators cannot take decisions on the management of proceedings, and their effectiveness depends to a large extent on the harmony of their relations with the respective chairman.

According to the Administrative Court and the Ministry of Justice, the Court's IT system - ACCMIS⁷⁷ - is fully operational in all departments. Some technical problems have been reported, mainly related to poor interconnections and to the online submission of requests. The problems in the system are generally solved by duplicating the tracks (online and paper submission). The success of ACCMIS will mainly depend on the electronic interconnections with other institutions involved in administrative disputes, which are not yet guaranteed.

Except for the IT system, no significant changes have been introduced in the organisation and procedures of the Administrative Court since its start-up in 2008.

Activity and backlog

The activity of the Administrative Court has been characterised, since its start of operations on 1 January 2008, by a chronic delay in completing the resolution of cases, a delay that increased every year until 2012⁷⁸. This situation was inherited from the Supreme Court, which had been responsible for handling administrative disputes under the previous Law on Courts. The Supreme Court transferred a backlog of about 3 400⁷⁹ cases when these lawsuits were assigned to the Administrative Court. The Ombudsman has pointed out the delays in court procedures, in general, as one of the main areas of citizens' complaints⁸⁰.

The litigation has nearly doubled since the creation of the Court (from the 8 000 yearly cases initially to the estimated 15 000 cases for 2013). This growth in litigation has not been uniform in all matters, thereby creating bottlenecks in some chambers of the Court.

It has been reported that the attribution of misdemeanours to the Administrative Court is also causing these bottlenecks in some chambers, not only because of their large number but also because resolving issues for which administrative consideration is sometimes conceptually difficult, hinders the uniformity and specialisation of the Court.

The Judicial Council sets annually the minimum number of decisions that should be issued monthly by each judge. This number was increased in 2012 to 33 resolutions of de-nationalisation matters and 40 for other matters, with the exception of misdemeanours, for which the number is much higher⁸¹. According to the data provided, these monthly standards have been achieved by almost all judges and exceeded by many of them⁸², which could explain the backlog decrease (see below).

Causes of backlogs

The causes of backlogs from the previous years are probably mixed and would require an in-depth analysis in order to be identified. In addition to the inherited backlog, some factors may have contributed to low productivity during the first years, such as material scarcities, including IT, but the main element was the quantitative and qualitative limitations of the judicial officers involved. Another factor was the insufficient number of judicial assistants providing legal expertise to judges. Such assistants were not available in 2008 and

⁷⁶ IPA 2007 Support to more efficient, effective and modern operation and functioning of the Administrative Court (2009-2012).

⁷⁷ Automated Court Case Management and Information System.

⁷⁸ The backlog in 2008 was 9 154 cases, and in 2009 it increased to 10 340 cases and in 2010 to 13 810 cases.

⁷⁹ The backlog comprised 4 760 cases, according to certain sources (N. Ivanovska, "Specialised Courts in the Republic of Macedonia", paper presented to the annual meeting of the Law and Society Association, June 2012).

⁸⁰ The Annual Report 2011 of the Ombudsman, which was the last one available in March 2013, highlighted the "judiciary" as the area in which a major number of complaints were concentrated (732 out of a total of 4 256).

⁸¹ Misdemeanour cases are counted in such a manner that five resolved cases are considered as one resolved case in the monthly norm.

⁸² According to the Administrative Court, in 2012 the average number of cases resolved per judge in relation to the monthly standard was 110.77%.

only 18, fewer than one per judge, were hired in 2009⁸³. In addition, the level of specific expertise of the new judges on administrative issues was very limited, although this drawback has not been recognised by the Court⁸⁴.

Another factor that slows down court procedures is the absence of essential documents, which obliges the Court to request the administrative body to send such documentation. Administrative bodies often ignore those requests. This problem has been highlighted by the State Audit Office, which in a recent performance audit concerning the judiciary underlined the “orderly and timely delivery of documents to and from the courts” as one of the three areas requiring improvement⁸⁵.

Activity 2012 and reduction of the backlog

In 2012, the Administrative Court registered an inflow of 14 675 cases, resulting in a total number of cases handled of 30 591, with 16 363 resolved cases. The backlog at 31 December 2012 amounted to 14 228 unresolved cases.⁸⁶

For the first time since its creation, the Administrative Court demonstrated a capacity to cope with the inflow of new cases and to reduce the backlog of unresolved cases. This capacity was especially evident as from April 2012, when it was recorded for the first time that the inflow had been completely dealt with and that the backlog of unresolved cases had been reduced by 1.78% in comparison to the unresolved cases at the beginning of the year. The reduction of the backlog continued until the end of the year, with a total reduction of 1 752 cases (from a backlog of 15 980 cases at 31 December 2011 to a backlog of 14 228 at the end of 2012, meaning a reduction of about 11%). This decrease in the backlog of cases in 2012 has coincided with an increase in litigation amounting to about 3 000 more cases compared to 2011.

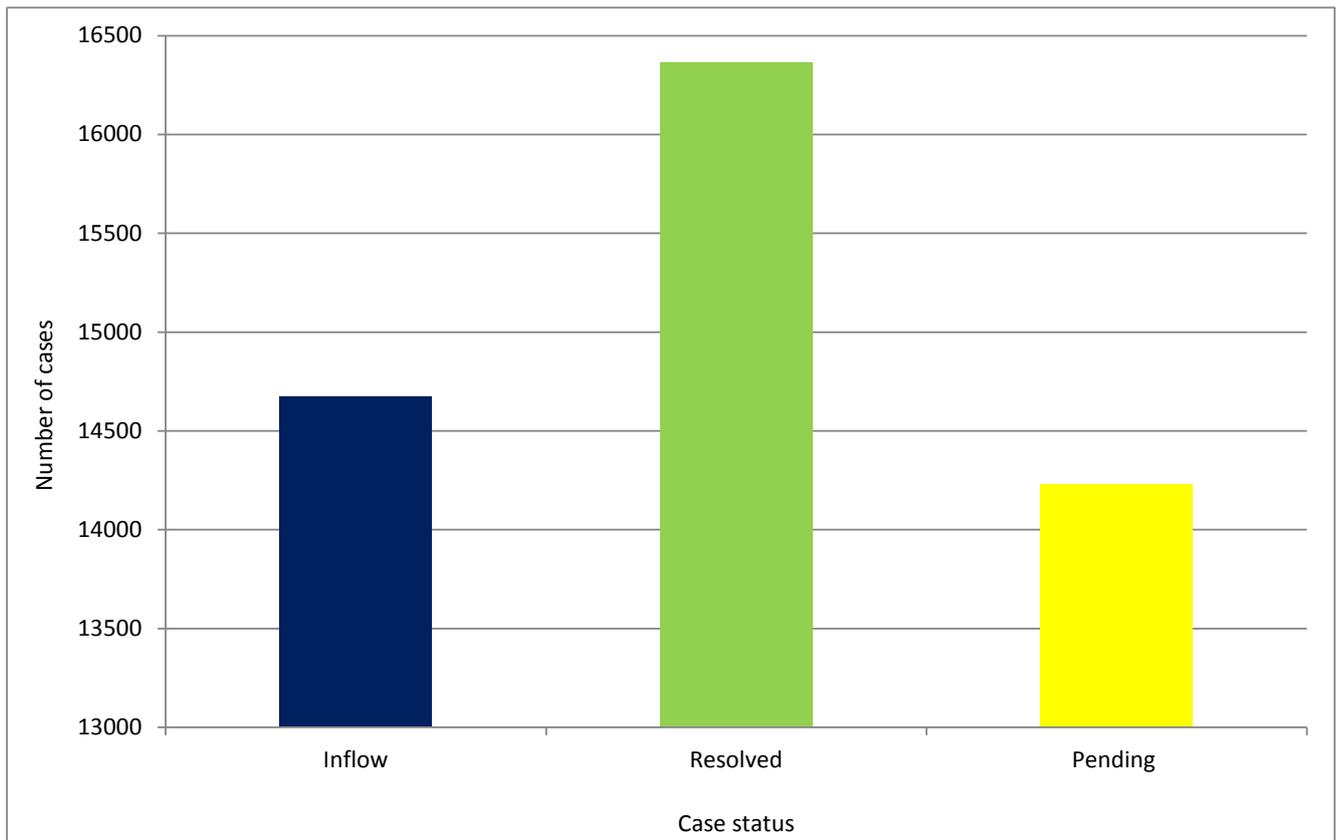
⁸³ Administrative Court, annual reports 2008 and 2009.

⁸⁴ “...prior to their appointment to the Administrative Court, most [of the judges] had no practical experience in the administrative legal field” in: N. Pelinova and B. Dimeski, “Efficiency of the judicial system in protecting citizens against administrative judicial acts: the case of Macedonia”, *International Journal of Court Administration*, April 2011.

⁸⁵ State Audit Office, Annual Report 2011.

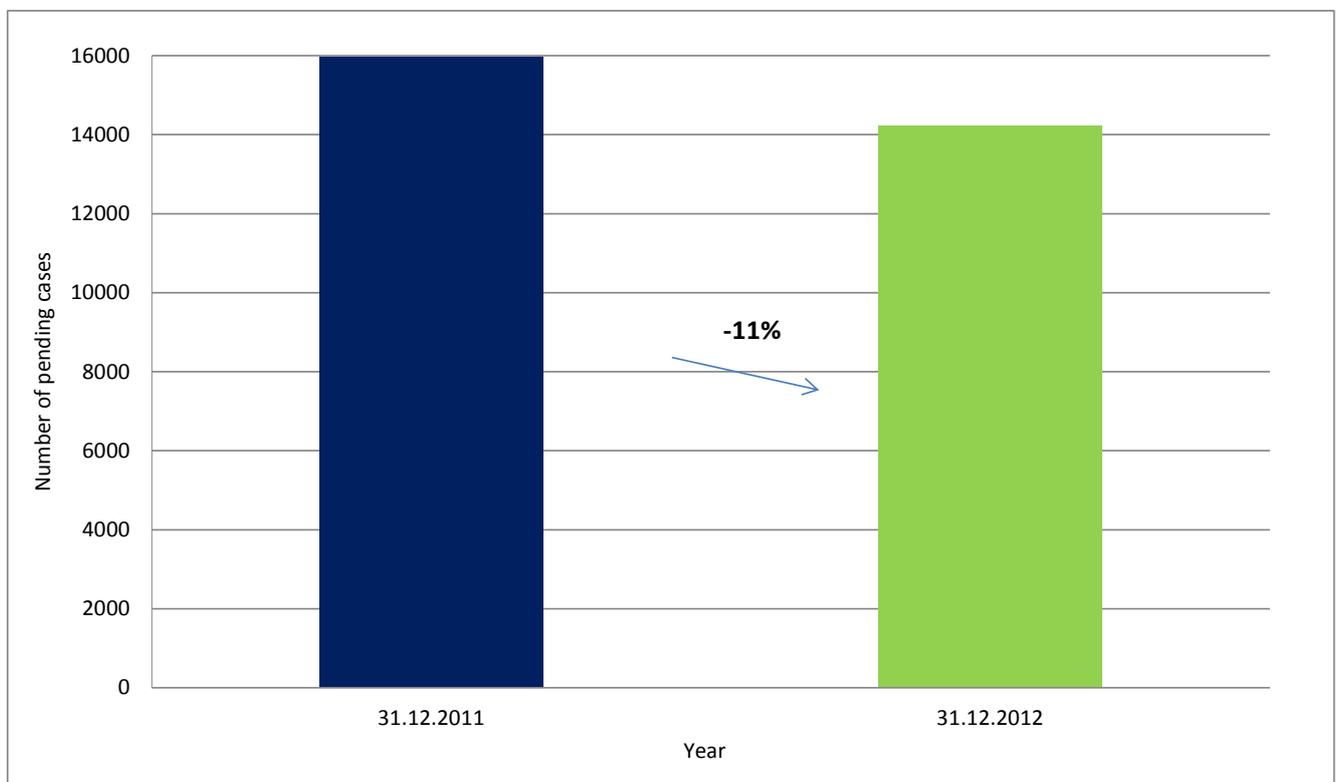
⁸⁶ 2012 Annual Report of the Administrative Court.

Figure 3. **Administrative court cases in 2012**



Source: Fourth Quarterly Report of the Administrative Court (2012)

Figure 4. **Administrative Court pending cases 2011-2012**



Source: Fourth Quarterly Report of the Administrative Court (2012)

Various positive measures taken could explain this reduction in the backlog: first of all, the increase in the minimum number of decisions that are to be issued monthly by each judge; the decision to work some Saturdays; and – probably the decisive measure – the secondment of four judges from the High Administrative Court for a period of three months⁸⁷. The productivity of judges has been high, even taking into account the support provided by the seconded judges. They resolved an average of 53 cases per month⁸⁸.

This decrease of the backlog cannot be considered as guaranteed in a long-term projection. An analysis of the monthly caseflow shows very significant peaks, although a consistent downtrend of the backlog was noted. On the other hand, the sustainability of some of the measures taken is not guaranteed. This positive data therefore needs to be monitored and confirmed in the long term.

The Administrative Court has successfully reduced its backlog to a sustainable level, using the flexible allocation of resources by the Court Council. The Court needs to have additional personnel (legal advisors) and a period of stabilisation in order to develop the expertise of judges and support staff. This period could create a favourable environment for the introduction of organisational (efficiency-driven) reforms.

2.4. The High Administrative Court

The Supreme Court continued to take charge of appeals against the decisions of the Administrative Court until July 2011, when the High Administrative Court became operational. As no complete annual report has been published yet by the High Court, no comparative analysis of data or projections can be done. In 2012 the High Court had an inflow of 1 755 new cases, and since only 40 were pending in February 2013, there is no significant backlog.

The number of cases that will reach the High Administrative Court from the Administrative Court in the future cannot be adequately estimated due to its recent establishment and limited time of operation. However, the High Court has estimated that the inflow of cases during 2013 will number about 3 000.

Work organisation in the High Administrative Court is very similar to the organisation of the Administrative Court, which means that it is characterised by many of the same deficiencies. Ten judges currently work in the High Court, plus the President; two judicial posts are vacant. The Court has only ten support staff (two court registrars, two typists, two technical assistants, one expert counsellor who is legally trained and experienced in administrative matters, and three other employees), out of a total of 41 established positions in the Court. Support staff was reduced by about 25% in 2012, apparently due to a lack of financial resources. The existing support workforce is clearly insufficient when compared with the number of judges.

The High Administrative Court maintains a very low backlog and has even been able to support the Administrative Court.

2.5. Some additional transversal elements

Common delays in all instances are related to the expedition of documentation required for the resolution of appeals and lawsuits and there are no consequences for the negligence of the administration. This problem has been reported repeatedly, but no measure has been taken (neither law amendments nor technical solutions). In addition, every agency and court has to promptly return the file to the source organisation once the case is resolved, rather than keeping it until the deadline to appeal has passed. On top of that, the parties are not allowed to obtain copies of the necessary documentation for direct submission.

According to some legal practitioners, decisions “on the merits” are made in a very low proportion of cases by the Second-Instance Commission, the Administrative Court and the High Administrative Court, which in practice results in a lack of full jurisdiction.

There is a marked absence of oral hearings at all stages of the administrative dispute procedure; its use depends on the will of the court.

⁸⁷ From 15 April to 15 July.

⁸⁸ 16 363 cases were resolved by 28 judges (including 12 months of one seconded judge), divided between 11 working months.

**PUBLIC INTERNAL
FINANCIAL CONTROL**

**THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

The legal framework for public internal financial control (PIFC) consisting of the PIFC Law⁸⁹ and related rulebooks⁹⁰ complies broadly with the requirements of the European Union. The adoption of a law on financial inspection, drafted in 2011 and published on the Ministry of Finance (MoF) website in May 2012, is still pending.

The actual implementation of the Financial Management and Control (FMC) legal framework is on its way, but is slow: establishment and staffing of financial affairs units is developing gradually at a slow pace at both central and municipal levels; and delegations of authority from heads of institutions to line managers have started only in 2012 for distribution of the approved budget⁹¹ and undertaking liabilities and payments⁹². The authorisation is given for signing invoices and commitments and controlling that spending does not exceed budget ceilings. Overall, financial management and control is realised as controlling that spending is in line with legal requirements and within allocated budget, but managers are in no position yet to have control over outputs or efficiency and effectiveness.

Two policy papers have guided the development of PIFC so far and a draft third policy paper has been under discussion among stakeholders since 2011. The latest plan was to adopt the Policy Paper at the end of March 2013, but the MoF is still working on a version that would satisfactorily integrate European requirements and national circumstances and views. The Ministry for Information Society and Public Administration (MISA), responsible for PAR, and the PIFC, Treasury and Budget Departments of the MoF, increasingly discuss matters of joint concern, e.g. in FMC committee meetings.

1.2. Main developments since last assessment

In February 2013, a two year Twinning Project with the Dutch Ministry of Finance was completed. As part of this Project, a series of training programmes for internal auditors, financial affairs unit staff and line managers in both central and local government was undertaken.

The Public Internal Financial Control Department (PIFCD)⁹³, with the help of the Twinning Partner, prepared a revised draft policy paper which was published on the MoF website in July 2012. Consultations have been undertaken on the draft during the year with the Budget, Treasury and Financial Affairs Departments of the MoF as well as with financial affairs units and internal auditors.

The FMC and the Internal Audit (IA) Committees, established by decision of the MoF in August 2011⁹⁴ as consultative bodies met once in 2011 and twice during 2012 to discuss the draft PIFC policy paper and other issues.

During 2012, delegation of authority has started for the distribution of the approved budget to line managers (86% of the direct budget users and 72% at local level have issued related decisions) and for general

⁸⁹ Law on Public Internal Financial Control, Official Gazette No.90/2009).

⁹⁰ 12 rulebooks have been adopted for financial management and control and internal audit specifying the requirements of the PIFC law, see website of the MoF: <http://www.finance.gov.mk/node/972>.

⁹¹ Required of the Rulebook for the way of implementing general financial processes, in force since September 2011.

⁹² Required of the Rulebook on the manner of granting authorisations, in force since January 2012.

⁹³ The PIFC Department is the responsible unit for the implementation of PIFC and the coordination of the development, establishment, implementation and maintenance of the public internal control system. It is the Central Harmonisation Unit of the Ministry of Finance.

⁹⁴ Decision for establishing Audit Committee, No.15-25108/1, 1 August 2011 and Decision for establishing Committee for Financial Management and Control, No. 15-25107/1, 1 August 2011.

authorisations for undertaking liabilities and payments (63% of direct budget users and 38% at local level issued related decisions)⁹⁵.

Consultations took place during 2012 between MISA and the MoF (State Secretary and PIFCD), focussing mainly on capacity development, e.g. about establishing generic and specific training programmes in Financial Management and Control and Internal Audit and exploring the possibility of including them in the Annual Programme for Generic Trainings for civil servants.

2. Analysis

Earlier assessments have shown that while the legal basis required for PIFC has been adopted, implementation of financial management and control is slow. Therefore, this assessment is focussed on the question of how far, specifically, the FMC component of PIFC has changed in practice and the extent to which it is interlinked with the PAR strategy and developments in Treasury and Budget.

2.1. Policy and legislative framework for PIFC

A coherent and comprehensive statutory base defining the systems, principles and functioning of PIFC should be in place.

The legal framework for PIFC consists of the PIFC Law⁹⁶ and related rulebooks⁹⁷, complemented by an internal audit manual and a financial management and control manual. This framework defines the system, principles and functioning of the PIFC system, comprised of financial management and control, internal audit and their harmonisation. This framework needs to be seen in the context of the Law on Budgets, the Law on Accounting for the Budget and Budget Users, the Law on Public Procurement, the Laws governing local government, as well as the annual Budget Execution Law, altogether providing the overall framework for internal financial control, defining roles and responsibilities and setting the overall context within which PIFC occurs.

Financial management and control pursuant to the Law on PIFC is applicable to budget users in central government, the funds, the municipalities and the City of Skopje⁹⁸. Each such budget user is required to establish a special organisational unit for financial affairs (FAU). The PIFCD has realised over time that small budget users often do not have the resources to comply with such requirements. It is therefore envisaged in the draft policy paper to revise the PIFC Law, to lower requirements for small budget users. While adjustments of the legal basis will be helpful operationally for putting PIFC into practice in smaller budget users, the implementation of PIFC does not depend upon further changes to the legislation (or the rulebooks) but rather on a greater focus on ensuring that the FMC arrangements actually work.

A coherent and comprehensive statutory basis defining the systems, principles and functioning of PIFC is in place.

⁹⁵ For more detail, see data provided under 2.2.

⁹⁶ Law on Public Internal Financial Control, Official Gazette No. 90/2009).

⁹⁷ 12 rulebooks have been adopted for financial management and control and internal audit, specifying the requirements of the PIFC law, see website of the MoF: <http://www.finance.gov.mk/node/972>.

⁹⁸ Art. 5 (2) of the Law on PIFC.

A clear policy or strategy should be in place and implemented for developing PIFC within the overall Public Administration Reform efforts.

PIFC policy

Two policy papers have been adopted by the Government and published,⁹⁹ and a third is in preparation¹⁰⁰. The previous papers focussed mainly on the development of the necessary legal basis and the establishment of infrastructure arrangements associated with PIFC, such as FAUs and Internal Audit Units (IAUs). A draft third policy paper, which was published on the Ministry of Finance website in July 2012, calls for a shift in focus to the implementation of PIFC. It was intended to cover the period up to 2014 but as its adoption has been delayed, it is now intended as the PIFC strategy for 2013-2015. It builds upon the previous policies and operational experience of PIFC. This draft policy paper was prepared with the help of the Dutch Twinning Project and has been the subject of extensive discussion by stakeholders. The aim of the MoF is to ensure that it is relevant to the country's circumstances.

The Twinning Project had aimed for a PIFC Policy Paper before the end of 2011, to be both a result and a guide for the activities in the Twinning. The European Commission's DG Budget discussed the first draft Policy Paper at the beginning of December 2011 with the Minister of Finance and commented upon it. These comments were then discussed in the FMC Committee and in the IA Committee on the 25 April 2012, where focus was given to the struggle of smaller institutions to establish an FAU and an IAU. This, and the insight gained from other activities performed within the Twinning Project, was used to prepare a new draft of the PIFC Policy Paper. At the beginning of August 2012 this draft was shared with DG Budget, the EU Delegation and the State Secretary of the MoF. The second draft was also discussed in the FMC Committee and in the IA Committee on 12 September 2012. The Policy Paper was discussed again with DG Budget and further comments were provided. It was agreed that the Gap Analysis that is part of the draft was strong but that defining the actions for the upcoming period in concrete steps needed improvement. Since then, the MoF has been developing and discussing a new version, which is not yet finalised.

The draft Policy Paper in the published version of July 2012 follows a similar approach as the two previous ones, such as amending the Law on PIFC, creating commitment and criteria for the establishment of FAUs and audit committees in all major public sector entities, increasing the staff of FAUs, and issuing more guidelines.

The Policy Paper discusses managerial accountability, which is an important part of PIFC, but still misses some aspects which are essential for its implementation, such as the degree to which the present delegation arrangements do not provide a sufficient basis for development of genuine managerial accountability and that individual managers, if they are to take responsibility for operational activity, need greater control over budgets than merely over procurement. It also focuses on FAUs with regard to the responsibility for efficiency and effectiveness, which should be the responsibility of the manager. Moreover, the Policy Paper does not address important issues such as the different requirements for state or municipal owned enterprises nor the governance arrangements between first level organisation and second level organisations. On the other hand, advanced concepts such as the development of risk management and audit committees are over-emphasised. Finally, it does not show how the proposals for a training institution are co-ordinated with the proposals contained in the PAR development paper.

Programme budgeting and strategic planning is currently being developed in co-operation with the IMF and a Twinning Project. Another Twinning Project that started in December 2012 supports the MoF in improving the budget planning. All of this will affect FMC and internal audit arrangements, but the draft Policy Paper does not take these developments into account.

⁹⁹ Policy Paper for Developing Public Internal Financial Control in the former Yugoslav Republic of Macedonia 2006-2008 and Policy Paper for Developing Public Internal Financial Control in the former Yugoslav Republic of Macedonia 2010-2012, both published on the website of the Ministry of finance.

¹⁰⁰ Draft - Policy Paper for Developing Public Internal Financial Control in the former Yugoslav Republic of Macedonia (2012- 2014) Version 2.

Several versions of a new PIFC Policy Paper were drafted with support of the Twinning Project during 2011 and 2012, and discussed extensively with DG Budget and local stakeholders. However, the current draft lacks an overall vision and assessment of the impact that the current developments in budgeting or in the Treasury system will have on PIFC, as well as a description of developments in budget management or accounting that will be necessary for further development of managerial accountability.

PAR policy

A PAR Strategy was adopted in December 2010, along with an Action Plan for its implementation. At the beginning of 2011, the Ministry of Information Society and Administration (MISA) took over the co-ordination of public administration reform, and thus the realisation of the measures defined in the Strategy. The PAR Strategy mentions PIFC in its description of the public finance system, stating that “The focus of this part of the PAR Strategy is put on the most important subjects to create an efficient public finance system in the country: *budget preparation process, public procurement, internal financial control, and external financial audit.*”¹⁰¹ In the text further on, when describing capacity building and implementation, PIFC, unfortunately, is associated with public sector financial inspection, which is misleading.

By the end of 2012 a revised Action Plan of the PAR Strategy 2010-2015 was adopted by the Government. In this Action Plan, actions in the PIFC field are also mentioned. These are in line with the actions described in the second draft of the PIFC Policy Paper. These reforms include: capacity building for effective operation of internal financial systems; strengthening the role of internal audit; strengthening the capacity of the Unit for Public Internal Financial Control within the MoF; strengthening the assistance for the municipalities with sufficient capacity for internal audit; and capacity building for effective operation of internal financial control.

In addition, the PAR Strategy mentions the inclusion of activities related to the environment in which PIFC operates: improving the quality of strategic planning; improving the capacity of the Ministry of Finance for macroeconomic, revenue and expenditure forecasts to support the strategic planning cycle; amendments to the Budget Law to introduce medium-term financial planning; improvement of analytical skills within the Budget Department; training to improve the planning responsibility of the budget institutions; strengthening the capacity of units dealing with capital projects in ministries; as well as the adoption of regulations for financial inspection and the development of training for financial inspectors.

Consultations have occurred between the CHU and MISA on various aspects of the draft PIFC Policy Paper and MISA representatives attend the FMC and IA Committee meetings. A major discussion point between MISA and the MoF regarding PIFC was the establishment of new training programmes - generic and specific ones - in Financial Management and Control and Internal Audit, and ways to include them in the Annual Programme for Generic Trainings for the civil servants.

MISA is currently working on the introduction of a competence framework in the new Law on Administration, and is considering making financial management a generic competence for all managerial positions. Discussions are ongoing between MISA and the PIFCD about the plan foreseen in the draft PIFC Policy Paper to establish a specified academy for the initial and ongoing education in the area of internal control.

The PAR Strategy recognises PIFC as one of the pillars for an efficient public finance system. Overall, PAR and PIFC reform matters are increasingly interlinked, not on paper but in practice, and this is a positive development.

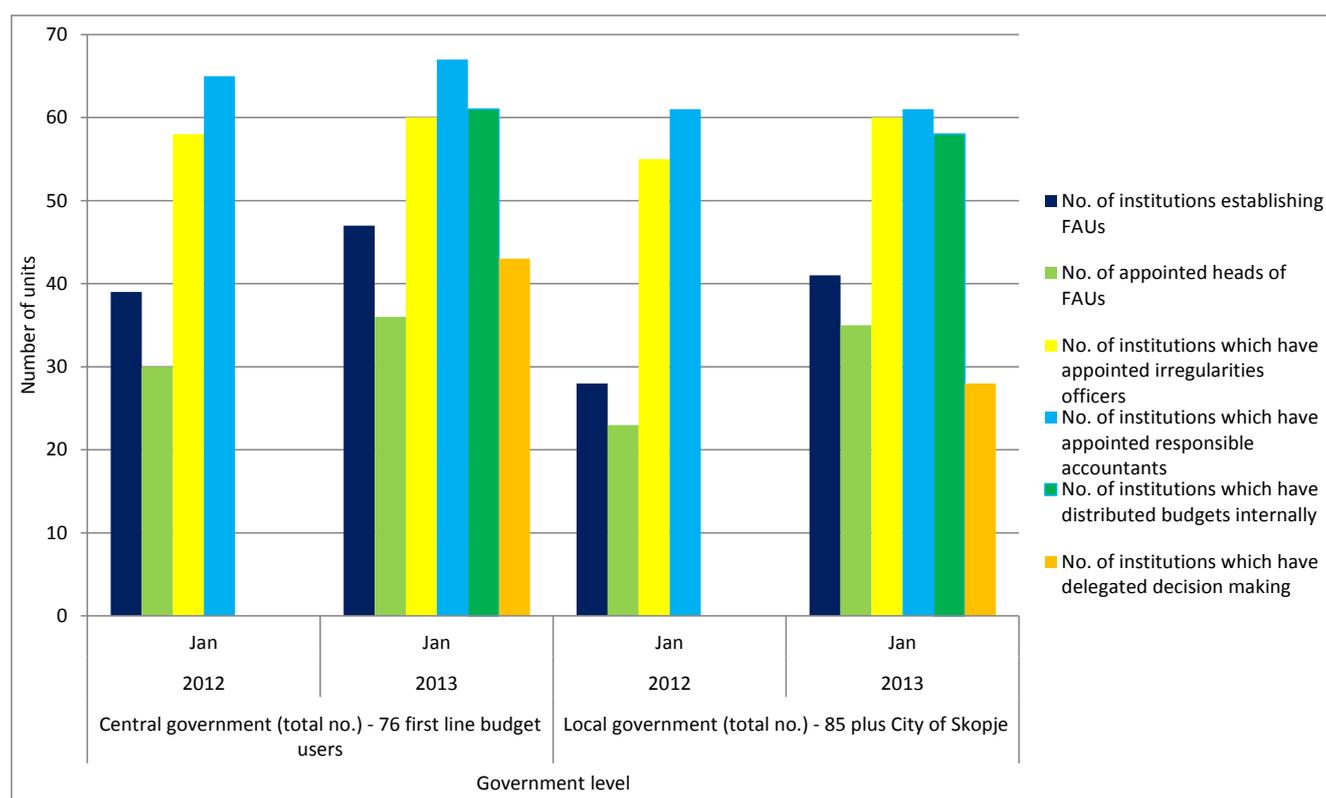
¹⁰¹ PAR Strategy, page 49.

2.2. Conditions and capacity for financial management and control

Relevant financial management and control systems and procedures should be in place and function.

One of the requirements under the Law on PIFC, adopted in September 2009, is the establishment of FAUs in budget users at the central and local level¹⁰². More than three years after this legal requirement came into force, the process of establishing FAUs is still ongoing; the current statistics¹⁰³ (January 2013) are:

Figure 5. Financial affairs units



Source: Data provided by Public Internal Financial Control Department

Figure 5 suggests that in practice there has been little development in the last twelve months when it comes to establishing FAUs and appointing heads of FAUs at the central level. At the local level, the developments have been more substantial although not yet attaining 50% of municipalities. There is awareness within the MoF that, to some extent, this is due to the fact that a number of small budget users do not have the resources to establish FAUs. A revision of the PIFC Law is envisaged to determine which entities will be obliged to establish a unit and which could instead appoint a person responsible for financial affairs within the entity.

Officials responsible for reporting on irregularities and suspicions of fraud and corruption have slightly increased, with 79% of direct budget users and 71% of local government having appointed irregularities officers, reporting to the financial police office in the MoF.

Establishment and staffing of FAUs in both central and local government continue at a slow pace. Creative solutions will have to be found to overcome the problems created by the lack of resources (due to current budget constraints and/or the small size of budget users) in order to optimise existing resources.

¹⁰² Art. 9 Law on PIFC.

¹⁰³ Data provided by the PIFCD.

FMC and Managerial accountability

The Gap Analysis in the published draft PIFC Policy Paper states that, while there is awareness of financial control, this is not the case for managerial accountability and financial management: “Awareness of Managerial Accountability is low at all levels within institutions/municipalities.”¹⁰⁴ This analysis was confirmed during the assessment, especially in discussions regarding decentralisation and delegation of decision-making authority.

There are currently two aspects to decentralisation and decision-making under the PIFC regulation - the arrangements for the delegation of budgets and the arrangements for the delegation of authority for making decisions to managers.

The authority for the delegation of budgets is set out in the “Rulebook for the Implementation of the General Financial Processes”¹⁰⁵. This prescribes three categories of budget delegation: an unallocated part of budget, that part of the budget intended for the common expenditures of the entity (salaries, electric energy, heating, water, current and investment maintenance, common goods and services, and others), and that part of the budget that is intended for the realisation of policies and projects.

For the delegation of decision-making, the Ministry of Finance, under Article 8 of the PIFC Law, is required to stipulate ‘the manner of the granting of mandates’ leading to delegation. A rulebook was published in 2010, coming into force on January 2012, setting out the detailed arrangements. Ministries and other budget users have started to implement this requirement through decisions that grant authorisation for certain areas to heads of departments, who in turn may sub-delegate.

Table 5. Distributed budgets and delegated decision making

	Central government – total number of first line budget users: 76		Local government – total number of local governments: 85 plus City of Skopje	
	Jan 2012	Jan 2013	Jan 2012	Jan 2013
No. of institutions which have distributed budgets internally ¹⁰⁶	NA	65	NA ¹⁰⁷	61
No. of institutions which have delegated decision-making for liabilities and payments	NA	48	NA	32

Source: Data provided by Public Internal Financial Control Department

The procedure for undertaking financial commitments is being carried out as follows: the Managing Director, as the person having received general authorisation for undertaking financial commitments, submits a request for payment to the FAU with the following documents attached: contract for procurement, invoice/situation, and the document confirming the undertaken financial commitments. By signing the request for payment, the Managing Director documents the fact that the invoice and other documents attached are verified.

Therefore, delegation is occurring in implementation of the rulebooks. However, the degree of delegation was reported to be limited to authority for a civil servant to sign contracts, orders and invoices, but not payment authorisations. Payment orders remain to be signed by the head of the institution (that is a minister or mayor, or the equivalent in other organisations).

The particular delegation instrument that has been provided as an example¹⁰⁸ for such a decision on delegating authority, limits the delegation authority, stating it “cannot make decisions which are of significant

¹⁰⁴ Draft PIFC Policy Paper, Gap analysis, page 3.

¹⁰⁵ Issued in March 2011 under Article 20 (3) of the PIFC Law, coming into force on 1 September 2011.

¹⁰⁶ The budget distribution arrangements are: in part held centrally for central organisational costs including employees, but operational staff are devolved: one part regarded as unallocated costs e.g. fuel costs, the remainder are distributed. This is different from delegating managerial authority.

¹⁰⁷ NA = ‘not available’.

¹⁰⁸ Decision of the Ministry of Finance, No. 05-1219/1 of 09.01.2013 on granting a general authorisation.

political or financial influence without previously obtaining approval from the authorisation giver". What constitutes 'significant political or financial influence' is not defined.

In practice the delegation amounts to a requirement for the relevant manager to ensure that spending does not exceed the approved budget (something that the FAU and the Treasury should do in any event) and is limited to procurement. This is echoed in the power that is being delegated to individual managers (i.e. the power to sign commitments and invoices). Both steps are regarded as part of the process of developing managerial accountability. Senior managers regarded the decentralisation that is occurring now as a major shift of responsibility that has given more responsibility to the civil service, and enables the civil service to feel more involved.

However, the fact that the minister (or another head of an institution) still needs to sign the payments order, makes the position vulnerable. The sole contribution that can be made by the minister is to hold up the payment. Although he or she can also 'call-in' the invoice and require explanations, this possibility makes the minister even more vulnerable. At the root of this problem appears to be the question of 'trust'. Managers are reluctant to take more responsibility and politicians appear to feel the same¹⁰⁹. These are issues that lie outside the immediate domain of PIFC, yet are fundamental to it. They are very much linked to public administration reform and should be addressed in that context; a key reason why PIFC and PAR strategies need to be integrated.

As decisions for the decentralisation of budget and delegation of signing authority have been issued only during 2012, it is too early to assess how far this has concretely changed the practice of financial management in the country.

The PIFC Policy Papers, specifically those of 2010-2012, make it clear that FMC is about providing reasonable assurance that the objectives of the entity are achieved, and that this can be achieved not only through spending control, but through relating spending to the objectives it is intended to achieve. However, they do not explain how this is to be accomplished. The practical recognition of the need for managers to be responsible for obtaining value-for-money does not exist. Much still needs to be done to move from spending control towards a financial management approach that relates spending to the objectives that are supposed to be achieved.

Delegation of authority from heads of institutions to line managers has begun in relation to signing invoices and commitments and controlling that spending does not exceed budget ceilings. While this is an important step in the direction of developing full managerial accountability, line managers do not yet have the budget information required for managerial decisions, and are not held accountable for achieving objectives.

Treasury control

In practice, the Treasury is the *de facto* financial controller because all expenditure passes through it, and it actually arranges all payments as well as managing the overall cash position of the public sector, as far as budget income and expenditure are concerned. At the commencement of each year, all budget organisations submit monthly spending plans to the Treasury for each budget line and every programme of activity. A list of approved signatories is also submitted. In addition, lists of commitments are required. Upon receipt of an invoice for payment, the Treasury checks against the cash flow calculation, whether the invoice relates to a 'committed item', that there is a budget available and that the proposed payment is to an approved supplier. The Treasury does not check the arithmetic of the invoice.

While the present arrangements are understandable, the principle objective of budget users will be to ensure that an invoice passes Treasury scrutiny, rather than focussing on whether or not the expenditure decision gives value for money. Also, given the level of detail required for the cash flow calculations, there are bound to be many incorrect calculations. However, budget institutions do not yet have discretion for adjusting their cash flow calculations therefore it will be cash flow that drives spending rather than expenditure planning.

¹⁰⁹ See Gap Analysis in draft Policy Paper, page 12ff, http://www.finance.gov.mk/files/u1/Draft_Policy_Paper_3_08_2012eng_0.pdf.

The Treasury acts as an efficient ultimate controller of funds, ensuring that spending is maintained within budget limits or, where changes are required, that proper authority is obtained. The Policy Paper so far is silent on the impact that making management fully responsible for expenditure under the PIFC arrangements will have upon the Treasury control arrangements.

Inspection

During 2011, the PIFCD prepared a draft Law on Financial Inspection with SIGMA support, which was published on the MoF website in May 2012¹¹⁰. This law, however, has not yet been approved, and will not be until after a proposed Law of Administration has been enacted (according to the revised Action Plan for PAR Strategy, postponed until July 2013). This is due to the fact that the latter Law refers to the salary levels of administrative inspectors, and the salaries payable to financial inspectors are meant to be in relation to those levels.

As there is no legal basis, no substantive financial inspection activity has yet been established. However, the PIFCD carries out a kind of inspection work on request. For example, during 2012, the PIFC Department, at the request of the Ministry of the Interior, engaged in what it regards as 'supervision' activity. This involved three such activities involving the head of the department and two senior staff for two days per 'supervision', although other staff resources were required for a longer period. In total about 20 person-day's work was involved. The results of this activity did lead to some prosecutions. The Head of the PIFC Department did not consider that this relatively marginal activity compromised the development of internal audit by generating misunderstanding. The plan is that once the new Inspection Law and inspection activity become operational, this degree of potential risk will be removed, and such 'supervision' activity will be undertaken by in the future by the inspection unit.

Inspection is an important complementary activity to PIFC, especially while internal audit remains relatively weak. Therefore, completing the legal process is important as one of the 'tools' of expenditure control. Overall, the practical development of FMC remains rather slow and is still limited in scope. The practical recognition of the need for managers to be responsible for obtaining value-for-money does not exist.

¹¹⁰ Draft Law on Financial Inspection in the Public Sector,
http://www.finance.gov.mk/files/u10/Draft_Financial_Inspection_Public_Sector_Law.pdf.

EXTERNAL AUDIT

**THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

The State Audit Office (SAO) has clear legal authority to audit all public funds and entities in the former Yugoslav Republic of Macedonia. The SAO carries out all types of audit as defined in the INTOSAI standards. Recommendations from the SAO are followed up at a satisfactory level of around 80%¹¹¹ by the individual auditees. At the same time, the final impact of the SAO's audits can be questioned, since the high percentage (1/3) of adverse audit opinions has not been reduced. This indicates that rules and procedures are often not obeyed. Notwithstanding recent improvements, the Annual Report is not yet effectively used for reporting on systematic weaknesses in public financial management and control.

In general, the SAO has satisfactory operational and functional independence to carry out its duties in all respects, however, resources are scarce compared to the wide audit remit and therefore many smaller entities cannot be audited on a regular basis. The SAO is still not anchored in the constitution, and its budgetary autonomy, although ensured in principle in the procedure for the adoption of the SAO's budget, is in practice not guaranteed. Parliament pays occasional attention to individual audit reports, but only the SAO's Annual Report is dealt with in a systematic way. The SAO has made several efforts to introduce procedures in the Parliament which would allow for systematic review of relevant audit reports, so far without success.

1.2. Main developments since last assessment

In 2012, the SAO, supported by the Netherlands Court of Audit, developed a manual for dealing with SAO reports, primarily directed towards the Parliament, but also to the media. The manual explains the work of the SAO, what its objectives are, how audit terminology should be understood, how the Parliament could make use of reports, and what follow up could be given.

The SAO has developed and tested a database that will allow for reporting more analytically on the overall situation in respect of financial management and control, and it will help as of the 2013 audit cycle in demonstrating the impact of the SAO through its audits.

The budget for 2013 has been reduced in relation to the 2012 budget by 8.7 million Dinars. Nevertheless, the SAO is confident that it will be able to carry out its work at the required level of quality and quantity. This is based on an agreement reached at the end of 2012 with the Minister of Finance to obtain a supplement on the budget for five more auditors (an increase of 5%) in the course of 2013, in view of the new obligation to audit political parties and election campaigns.

2. Analysis

The SAI should have clear authority to satisfactorily audit all public and statutory funds and resources, bodies and entities, including all EU resources.

The State Audit Law¹¹² clearly defines the mandate and remit of the SAO. Obligatory annual audit is restricted to the budget of the Republic and the budgets of the Funds (Health Insurance, Pension and Disability Fund, Employment Agency). All other potential audit subjects can be selected for audit in the annual work programme that the General State Auditor adopts on the basis of selection criteria which take into account volume of budget, risk, results from previous audits, rotation, etc. The number of potential auditees is around 1400, which makes it impossible to cover them all, even using a rotational system. Through thematic

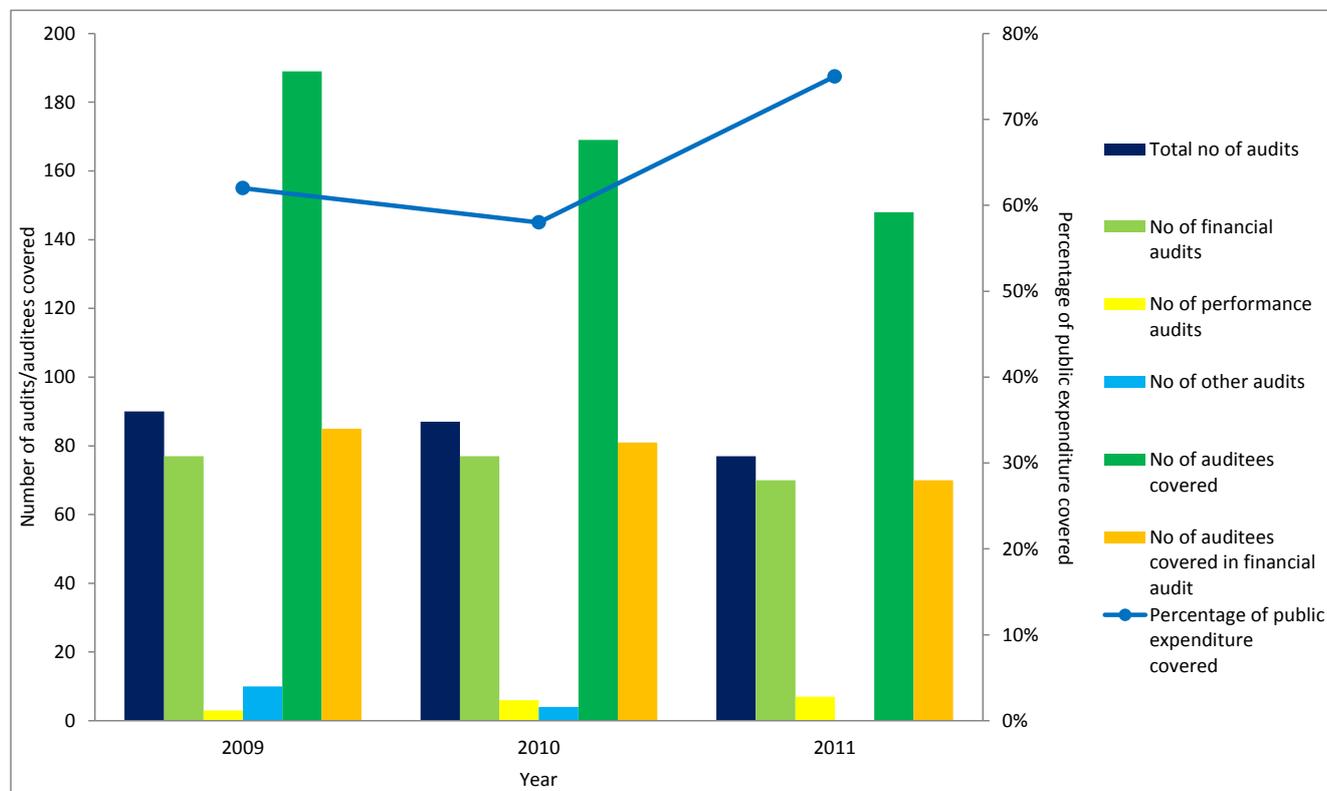
¹¹¹ See SAO Annual Report 2011.

¹¹² State Audit Law, Art. 3, 18-19 and 22-23; the law is published at:
http://www.dzr.mk/en/Uploads/1_State%20Audit%20Law_adopited%20May%202010_ENG.pdf.

(horizontal) audits the SAO tries to increase the number of auditees covered each year, even if only partially on the basis of a topic selected. However, even then the coverage is limited.

In Figure 6 some basic data concerning audits is summarised.

Figure 6. External audits



Source: State Audit Office

These figures show that in 2011 only one out of every 20 entities was covered by a financial audit. On the other hand, in terms of the budget under the mandate of the SAO, the coverage is more satisfactory. The focus within auditing is clearly on financial audit. The 70 financial audits that were carried out in 2011 resulted in 144 reports. Separate reports are prepared for each set of financial statements, and entities prepare separate sets of financial statements for each source of revenue. Consolidation of these sets of financial statements at the level of the audited entity does not take place. Although fewer audits are carried out, the coverage of public expenditure has been increased due to a more risk based audit approach.

Article 22 of the State Audit Law states “State audit shall be conducted on [...] beneficiaries of EU funds (excluding the system for implementation, management and control of the instrument for pre-accession assistance in the Republic of Macedonia)”. This exemption in the Law on state audit was introduced after separating the Audit Authority (AA) for EU funds from the SAO and is supposed to clarify the distinction of the role and mandate between the SAO and AA. However, as article 22 is formulated now, it reads as if the SAO did not have the right to audit management and control structures of EU Funds. This goes too far as in order to be able to inform parliament on how well government is managing EU funds, the SAO has to have the mandate to audit the performance of managing authorities, certifying authority and the AA itself.

The SAO has clear legal authority to audit all public funds and entities in the former Yugoslav Republic of Macedonia, although this excludes from its mandate the audit of the system for implementation, management and control of EU funds. This authority is defined for both the institution and for the state auditors working in the institution. The number of potential auditees far outreaches the resources of the SAO to carry out audits on each entity regularly. Many smaller entities will therefore not be audited at all for a long period of time.

The type of audit work carried out should cover the full range of regularity and performance audit set out in INTOSAI auditing standards.

Article 2 of the State Audit Law gives definitions of regularity/compliance audits, financial audit and performance audit. Moreover, Article 18-1 sets as a general framework for all audits the INTOSAI auditing standards, which are to be published in the Official Gazette. Auditors are bound to comply with these standards (Art. 20-2), and non-compliance may even be sanctioned with a fine (Art. 39-3).

In practice, the SAO carries out all types of audit. The financial audits that are carried out are broad financial audits, covering both the reliability of financial statements and the regularity of expenditure/revenue, and include audit opinions on both. Audit opinions based on compliance audits in the audit reports for 2011 were distributed as follows: 31% of the audit reports encompass a positive (unqualified) opinion, 34% a qualified opinion, 32% an adverse opinion, and in 4% of the reports a disclaimer of opinion was given. It has to be taken into account that the materiality threshold¹¹³ applied is 4%, which is relatively high in comparison to the generally internationally applied level of 2%. Irregularity of public expenditure is a real problem in the country, and the percentage of adverse audit opinions over the years 2009-2011 has remained stable at the high level of 32%.

The SAO summarises the outcome of its audits in an Annual Report that is submitted to Parliament before the end of June. This includes summaries of the performance audit reports issued.

Follow-up on findings and recommendations

Auditees are obliged to report within 90 days of the actions undertaken in response to the findings and recommendations by the SAO in a final audit report. Apart from this information, received directly from the auditee, the SAO assembles its own information on the implementation of recommendations. In every audit the SAO looks at what the auditee has done with the recommendations from a previous audit. If an auditee is not included in the annual work programme and the findings and resulting recommendations from a previous audit are considered serious, a specific follow-up audit is carried out. In 2011, 68 of such follow-up audits were carried out, covering 118 audit reports.

Such information is needed to ensure that auditees have not given a too optimistic picture of their actions to address shortcomings identified during an audit. The track record of the SAO in terms of recommendations implemented is high. Annual report statistics show that roughly 80% of all recommendations are implemented. This implementation rate has certainly been stimulated by the fact that the Government since 2009 devotes a session to the annual report and other audit reports of SAO. During such a meeting of the Council of Ministers, with the participation of the SAO, conclusions are drawn on the response to the audit reports and the recommendations contained in the reports. This has given a signal that SAO recommendations should be considered seriously.

However, the stated implementation rate must be considered in the light of the stable and high level of adverse audit opinions as mentioned above. The implementation of SAO's recommendations has apparently had no visible impact on the average number of auditees affected by an overly high level of irregularities. This mis-match needs to be analysed carefully.

Audit reports during 2011 reported 77 findings with regards to internal control systems of individual auditees. The SAO so far does not use these findings to identify the generic aspects that need to be addressed.

¹¹³ The concept of materiality is applied by the auditor both in planning and performing the audit, and in evaluating the effect of identified misstatements on the audit and of uncorrected misstatements, if any, on the financial statements and in forming the opinion in the auditor's report. The materiality threshold provides guidance to the auditor on what constitutes a material discrepancy, so that they can concentrate their work on areas that are more likely to identify materially misleading errors/omissions/misstatements.

In some cases, the SAO submits a report to the Public Prosecutor's Office or to the State Commission for the Prevention of Corruption (SCPC). Of the audits carried out in 2011, eight reports were submitted to the Prosecutor's Office because of findings regarding possible misdemeanour or criminal offences, and two were submitted to the SCPC. Although it is expected that feedback on submitted cases is to be received, the procedures take a very long time. From the submitted eight cases, the SAO has received feedback information only on five. Within the SAO, no clear procedures have been established as to what action auditors should take when they come across a suspicion of a misdemeanour or criminal act.

The SAO carries out all types of audit as defined in the INTOSAI standards. Financial audits result in professional audit opinions on the reliability of financial statements and the regularity of expenditure and revenue, and give rise to a large number of recommendations that are dealt with by auditees in a serious manner. The implementation of the SAO's recommendations has apparently had no visible impact on the average number of auditees affected by an overly high level of irregularities. Performance audit is developing gradually, but at a steady pace.

The SAI should have the necessary operational and functional independence required to fulfil its tasks.

The SAO does not have a constitutional anchorage. The SAO has repeatedly made efforts to change this situation, and has been successful in that the Parliament adopted a resolution in February 2011 to amend the constitution in that sense. However, the sufficient majority needed to add the entire set of amendments to the constitution does not exist at present.

Constitutional anchorage may be lacking, however, the State Audit Law itself ensures a high level of independence. Article 3 lays down that the SAO is independent in its operations, and this is reflected in the provisions concerning the adoption of the work programme (Art. 9-2) and other competences of the General State Auditor (Art.9). The position of the General State Auditor is secured through the provisions for appointment and cease of mandate. Dismissal by the Parliament is only possible in the case of accepting a public function incompatible with the position of General State Auditor as defined in Article 5, item 4, or in the case of a sanction or verdict for an act of misdemeanour, item 5. Functional immunity for the General State Auditor and his deputy are regulated by Article 11 of the law on Remuneration and is based on general provisions for appointed and elected persons¹¹⁴.

Although the number of possible auditees by far outreaches the possibilities of the SAO, the number of annual mandatory audits in the State Audit Law is limited by the state budget and (the limited number of) budget funds. This implies that the formal independence of the SAO to decide on its work programme is also a material independence. However, this independence is potentially affected by obligations put on the SAO in another law, the Law on Financing Political Parties. The resulting obligation for the SAO to annually audit the finances of all political parties and the election campaigns restricts the independence of the SAO in defining its work programme.

The legal obligation to make all final audit reports public is in line with international standards and contributes to the independence of the SAO. The State Audit Law contains provisions which allow the auditors access to all necessary documents and data (Art. 24), which allow access to the premises of the auditee (Art. 25-1)., This obliges the auditee to co-operate with the auditors (Art. 24-2, Art. 25-2,3), within strict timelines, and places fines on the authorised and responsible persons in an audited entity if they fail to submit documents, or otherwise hamper the work of the auditors (Art. 39-1,2). In 2011, the SAO auditors met problems in receiving the necessary information and co-operation. In five cases of audit of political parties, necessary documents requested were not submitted to the SAO. The five cases were transmitted to the Public Prosecutor's Office, which however has returned these cases to the SAO. According to the public prosecutor it is up to the SAO to follow-up on these cases, whereas the SAO holds the view that the Public Prosecutor should initiate

¹¹⁴ Art. 13 of the SAO law.

prosecution. Meetings are planned to take place between the Auditor General and the Public Prosecutor to find a solution for this situation.

The budget of the SAO is prepared by the SAO itself and is submitted to the Ministry of Finance for inclusion in the state budget. The Parliament votes separately on the SAO's budget. The State Audit Law states that the budget shall be prepared within the framework of the annual limits in compliance with the established fiscal strategy. This means that general budget constraints have an impact on the SAO's budget, which explains the great discrepancy between the number of job positions in the systematisation and the actual number of staff. The procedure, however, does allow for the Parliament to decide separately on the budget of the SAO and therefore gives an opportunity for the SAO to explain and justify its budget requests.

In this way, budgetary autonomy is ensured to a satisfactory level. However, the practice is that the SAO negotiates with the Ministry of Finance on the level of the budget to be included in the draft state budget. The SAO's strategy is to obtain an agreement with the Ministry of Finance, and to refrain from using its potential power to directly request resources considered necessary from parliament. For the 2013 budget the SAO has accepted a cut as compared to the budget for 2012. Reparation to some extent is to be included in the revision of the budget by mid-2013, when additional funds for five more auditors will be supplemented, based on an agreement between the SAO and the Minister of Finance.

The SAO has satisfactory operational and functional independence to carry out its duties in all respects, although resources are scarce compared to the wide audit remit. The SAO is still not anchored in the constitution to ensure its independent position. Budgetary autonomy is ensured in principle in the procedure for the adoption of the SAO's budget; the level of the budget is insufficient, however, to recruit the planned audit staff even in the medium-term, and experience with the 2013 budget does not testify that the procedure works adequately in practice. The 2011 and 2012 amendments to the Law on Financing of Political Parties introduced a new obligation for the SAO which may adversely affect its image of independence and objectivity, and which also affects the freedom to use its audit resources according to its own decisions.

The SAI's annual and other reports should be prepared in a fair, factual and timely manner.

The State Audit Law sets the rules for reporting and for the opportunity for auditees to comment on a draft. A draft report, prepared by the responsible authorised state auditor, is sent to the legal representative of an auditee, who has 30 days for submitting comments. The state auditor then prepares a final audit report, which is sent to the auditee and competent authorities/bodies, submitted to Parliament and published on the website of the SAO. The report contains the comments from the auditee and the SAO's reply to these comments. Internally, within the SAO, there are supervision and quality control procedures in place to ensure a harmonised and co-ordinated approach and the factual correctness of audit findings. The General State Auditor or the deputy is not directly involved in the precise text of audit reports. Meetings with the auditee, both at the beginning of the audit procedures and at the end when the draft report is presented, help in clarifying the identified state of affairs and in increasing understanding about the SAO's approach and criteria.

The SAO introduced quality control procedures in 2009 and quality assurance procedures in 2010, starting with pilots. So far, quality control is based on paper documents; electronic audit documentation with a built-in quality control function is lacking. Such a system would enhance the efficiency of audit procedures as well as supervision and quality control. The SAO has successfully applied for technical and financial assistance from INTOSAI's donor co-operation in order to buy the necessary software and to introduce such a system into the work practice. This project started in September 2012 with the signature of a MoU with the Norwegian Audit office, and will last three years.

As in 2011, the SAO managed to fully implement its annual work programme for 2012, which means that all deadlines were met. The 2011 Annual Report was submitted before the end of June, in compliance with the deadline given in the State Audit Law. The format of the Annual Report is a mix of summarising audit results

and reporting on operational activities by the SAO, including some statistics for instance about the number of audits, and the recommendations implemented. Since it is the most important report the SAO issues, improving on the analytical contents could increase its potential impact. The information from individual audits is already being collected in a systematic way; however, the database can be much better exploited to report on more systematic and generic issues.

The SAO has procedures in place to ensure that its reports are factually correct and that recommendations and opinions are well-founded and in line with the audit standards applied as laid down in the respective audit manuals. Reports are submitted on time, and the full work programme is being accomplished.

The work of the SAI should effectively be considered by parliament, e.g. by a designated committee that also reports on its own findings.

The SAO has invested a lot of energy in strengthening co-operation with the Parliament, and its main objective is to ensure that audit reports are adequately followed up by Parliament. Up to now, the competent parliamentary committee, the Committee on Budget and Finance, only reserves time for a discussion of the annual report from the SAO. The committee drafts conclusions on the basis of this annual report, which is transmitted to the plenary. The conclusions and the annual report are then discussed in the plenary, where the General State Auditor gives a speech by way of introduction.

Individual audit reports, which are also all submitted to Parliament, are not dealt with in a systematic way by Parliament, although members do sometimes use information from individual reports for their political debates, especially during the monthly question time sessions in the plenary, and in public hearings that are organised per ministry or topic. The parliamentary committee appreciated SAO's initiative in developing a manual for the effective handling of audit reports, which included training for members of parliament on understanding audit reports, and was organised with support from the Netherlands Court of Audit. The manual has also been promoted in the media. Apart from that, three events have been organised with local media to assist them in understanding audit reports. The improvement of contacts with the media is a component of the new strategic development plan for 2013-2017.

The SAO also submits its annual work programme for information to the Committee on Budget and Finance, in December of the prior year.

Parliament pays occasional attention to individual audit reports, but only the SAO's Annual Report is dealt with in a more systematic way. The SAO has made several efforts to introduce procedures in Parliament which would allow for systematic review of relevant audit reports, potentially leading to more political pressure to improve financial management in the public sector. Apart from continuing its efforts to create procedures or a separate body within Parliament to deal systematically with audit reports, the SAO is exploring possibilities to more actively involve the media in results from audits, so as to avoid negative effects.

The SAI should adopt internationally and generally recognised auditing standards compatible with EU requirements, and implement those to the extent possible.

The State Audit Law states in Article 18-1 that the SAO is to apply the auditing standards from INTOSAI. Of course, each SAI has to assess how far it is able to fully apply all INTOSAI standards; application is to take the situational context into account. A large body of new auditing standards was approved by the INTOSAI Congress in November 2010. These standards are, to a certain extent, already incorporated into the SAO audit manuals, as earlier drafts were available and could be incorporated in the manuals the SAO has issued. For the entire ISSAI framework – all INTOSAI standards – a translation project has started. External assistance is still being solicited for this translation project. In 2012, preparations started for a twinning project that is planned to start in 2014. Assistance in training the audit staff to actually apply the before mentioned standards is to be a component of the new twinning project. Actual application of all INTOSAI standards is not foreseen before 2015. This is also demonstrated by the quality control and quality assurance arrangements. After pilot testing,

quality control procedures were implemented in 2010, and quality assurance procedures were in place in 2011.

The annual work programme is very much based on departmental proposals, which are prepared by individual audit staff. Selection criteria for audits exist, and proposals follow these criteria. On the basis of departmental proposals, the General State Auditor decides on the work programme. For performance audits, each department submits three possible topics, with a ranking. The General State Auditor, after consultation, selects the most appropriate topics for inclusion in the annual work programme, sometimes combining several suggested topics into one audit or changing the focus somewhat.

Although it is good practice to involve the audit staff in suggesting audits, as is the existence of selection criteria, the SAO would gain from having programming that is more strategic and based on risk-oriented assessment. Instead of only applying selection criteria to the annual work programme, the SAO should strengthen its capacity to look at the allocation of its audit resources from a more strategic and multi-annual perspective. This has already been identified as an area for improvement, since it is to be one of the five components of the planned twinning project.

In line with what the State Audit Law prescribes, the SAO adopted the international auditing standards from INTOSAI as a reference for its audit work. The audit manuals that are used are basically in line with these standards, and the SAO is actively seeking for its audit staff to apply the newest INTOSAI standards through a systematic approach of translation, distribution and training. Audit quality control procedures are in place, and audit quality assurance is starting to become a standard procedure in the SAO.

The SAI should be appropriately aware of the requirements of the EU accession process.

The SAO has been an active member of the Network of the European Court of Auditors and SAIs of candidate and potential candidate countries since 2006. Staff members participate in workshops and other activities organised in the framework of this Network. Also, a substantial number of audit staff has followed a five-month internship at the European Court of Auditors, receiving on-the-job training. This demonstrates EU-awareness, and at the same time enhances EU-awareness in the SAO by sharing experiences.

EU requirements also have an impact on the audit environment and corresponding risks. For instance, the introduction of PIFC and managerial responsibility is a huge change in the way public finances are managed, and this implies a risk in audit terms. Such risks should be subject to the risk assessment the SAO makes when programming and planning its audits. This could be a relevant component for the more strategic set up of multi-annual programming.

The SAO is well aware of the requirements surrounding the EU-accession process, but has not to date systematically taken the corresponding changes in its audit environment into consideration for its own work.

PUBLIC PROCUREMENT

**THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

APRIL 2013

1. State of play and main developments since last assessment

1.1. State of play

The public procurement system in the former Yugoslav Republic of Macedonia is rooted in sound foundations: the legal framework has been almost fully harmonised with the EU *acquis*; it also gives consideration to concerns expressed by direct users, as shown by the latest amendments to the Public Procurement Law (PPL) and secondary legislation, which entered into force in 2012 and 2013. One of the most significant features is the Electronic System for Public Procurement (ESPP), which handles all procurement notices and enables contracting authorities (CAs) and bidders to publish and access all tender documents, submit and evaluate bids and conduct e-auctions. Since 2012 CAs have been obliged to use e-auctions almost 100% of the time in award procedures, with only a few legally determined exceptions.

The public procurement institutional set-up has been stabilised during the last years. The central procurement agencies, such as the Public Procurement Bureau (PPB) and the State Appeals Commission (SAC) have developed into mature and proactive institutions, which are willing to and capable of further developing the system.

The area of concessions and PPPs remains a matter of concern as implementation of the new Public Private Partnership (PPP)/Concessions law has been seriously delayed.

1.2. Main developments since last assessment

The public procurement system in the former Yugoslav Republic of Macedonia has continued to evolve with the following main developments:

A new draft of a National Strategy for the Development of the Public Procurement System has been developed by the PPB to cover the next five-year period from 2013 to 2017. Although this strategy is not yet¹¹⁵ officially adopted, the first measures have already been implemented between January and March 2013.¹¹⁶

Since the last major amendments of the Public Procurement Law in 2011, the legal framework for public procurement contracts has stabilised, with only a minor amendment of the PPL in January 2013 (Art. 202 (5) amended). Some additional changes in secondary legislation were made, such as the introduction of fees for the use of the ESPP by economic operators and practical guidelines for a qualification system for utilities and also for training.

During 2012 the main focus, however, was on the implementation of the legal changes introduced by 2011 amendments. Many of these new provisions, including the publication of small-value contracts and e-procurement, became effective six months after their adoption, in mid-2012, to allow the PPB to upgrade the ESPP software, as well as to allow contracting authorities and economic operators to receive training and adjust their internal workflow accordingly.

2. Analysis

According to statistics submitted by the PPB, the total value of procurement in 2012 amounted to 12% of GDP. The total number of contracts awarded in 2012 was 23 732 with a total worth of EUR 916.5 million. Government and other public institutions are the main trading partners of many businesses; the average number of submitted tenders amounts to three in the case of works, two for services and four for supplies.

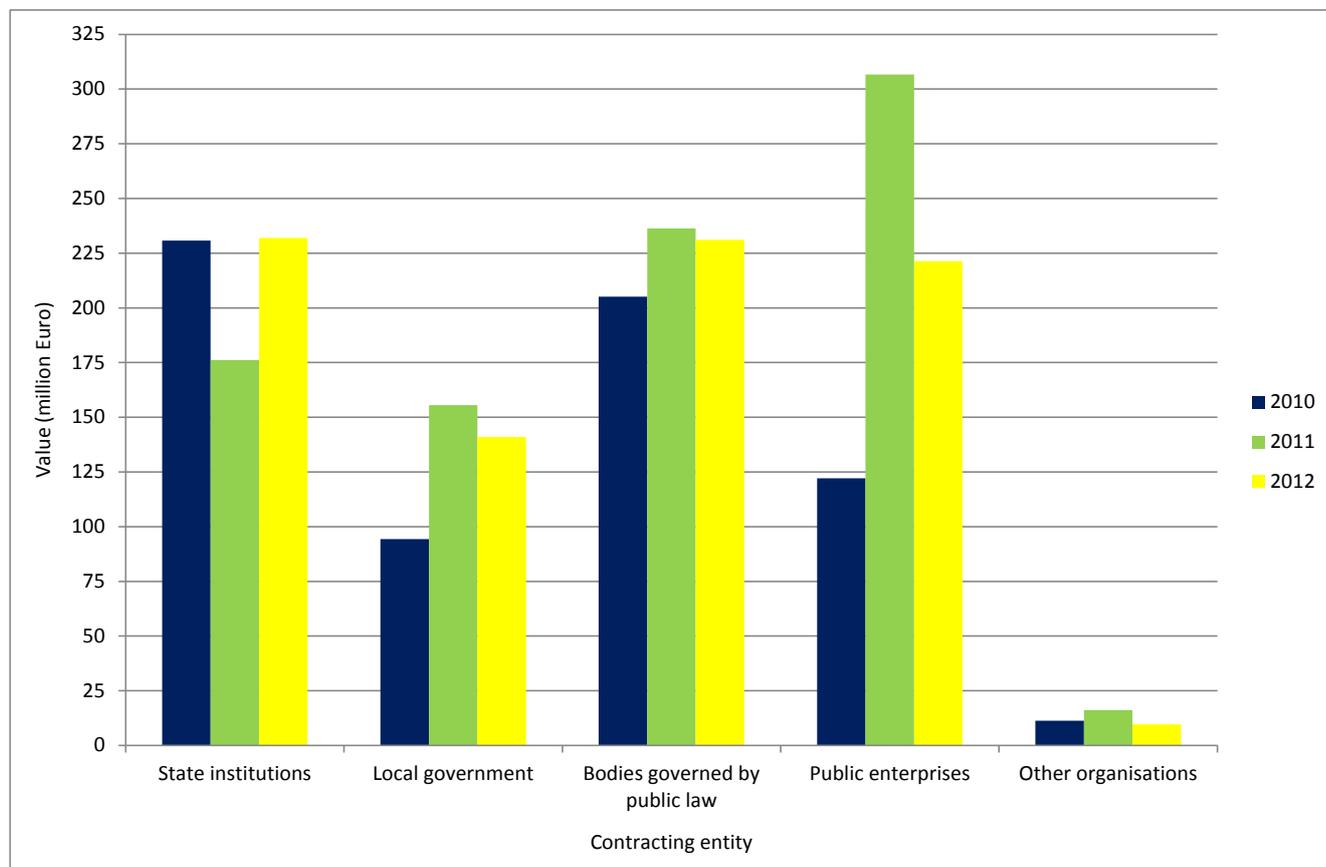
Although there are 20 notices published for concessions award procedures in the ESPP, there is no data available on concessions and PPPs awarded, as the MoE failed to implement the register until March 2013.

¹¹⁵ As of March 2013.

¹¹⁶ After the preliminary approval by the Minister of Finance, it was sent to the EC on 18 March 2013 for review and will be then sent to the Government for adoption.

Figure 7 below presents the value of public contracts awarded by contracting entities in the former Yugoslav Republic of Macedonia in 2010-2012.

Figure 7. Value of contracts (million EUR)



Source: Public Procurement Bureau

2.1. Legal framework

Within the framework of the 2012 Twinning Programme (MK-08-IB-FI-01) between the German federal Ministry of Economics and Technology and the PPB117, a draft National Strategy for the Development of the Public Procurement System was developed to cover a five-year period from 2013 to 2017. The strategy contains short-term (one year), medium term (three years) and long term (five years) measures. These include, for instance the simplification of required documentation for participation in award procedures (e.g. electronic interoperable connection of the Electronic System for Public Procurement (ESPP) with the Central Registry to create a single-shop stop for qualification criteria). Although the Strategy was not officially adopted until March 2013, the first measures have already been implemented from January to March 2013. The overall target of this Strategy is to create an efficient, professional and highly educated public administration that respects the procurement principles of transparency, integrity, non-discrimination and competition, as well as innovation, sustainability, social and environmental considerations.

The legal framework is well on its way to becoming fully compliant with the *acquis*¹¹⁸. It goes beyond EU requirements (e.g. the use of electronic tools to promote transparency) and also gives consideration to concerns expressed by direct users, as shown by the latest amendments to the PPL and secondary legislation. The current PPL (Official Gazette (OG) of the Republic of Macedonia No. 136/2007) was adopted on 6

¹¹⁷ Twinning Interim Quarterly Report No 5 from 11 Jan 2013, p 10 ff: Component 3, Activities 3.1. to 3.3. – Assistance to develop a National Strategy for Development of the public procurement system; see also Twinning Final Report from 11 Feb 2013.

¹¹⁸ Comparative analysis of the Public Procurement Law with the European Union provisions in the field of public procurement, SIGMA, 2012.

November 2007 and entered into force on 1 January 2008. It was amended in October 2008 (OG No. 130/08); in July 2010 (OG No. 97/2010); twice in 2011 (OG No. 53/11 and OG No. 185/2011) and once in 2013 (OG No. 15/2013). The PPL follows the main structure and logic of the EU Directives and is generally well structured and user-friendly; it implements the EU Directives in a co-ordinated way and regulates the procurement process from planning until the conclusion of the contracts. It covers the classical and utilities sectors in separate chapters as well as all types of procurement (works, supplies and services), except for concessions and PPPs. It also contains provisions for remedies, the establishment and operation of the State Appeals Commission and the operation of the Public Procurement Bureau. It implements the new purchasing instruments regulated by the EU Directives (without dynamic purchasing systems), such as competitive dialogue, framework agreements, central purchasing bodies and e-procurement.

A minor amendment of the PPL on 23 January 2013 (OG No. 15, 25 January 2013), reduced the qualification requirements for the President of the State Appeals Commission (SAC). Thus, the chairperson is now required to hold a university degree in law, have passed the bar exam and has to have at least five years of working experience in legal affairs. Unlike previously, no particular experience in public procurement is required.

The following new pieces of secondary legislation were also adopted in 2012:

- Code of conduct for carrying out public procurement (adopted on 16 March 2012, published in OG No. 39, 22 March 2012),
- List of fee rates for using the Electronic System for Public Procurement (adopted on 16 March 2012, published in OG No. 44, 30 March 2012), obliging the economic operators to also contribute to the financing of the e-procurement system,
- A rulebook on the format, contents and on the manner of preparation of the annual public procurement plan (adopted on 2 July 2012, published in OG No. 84, 4 July 2012),
- A rulebook on the format and contents of the notice to candidates or tenderers on the decisions pertaining to the performed pre-qualification, contract award, concluding of the framework agreement or cancellation of the contract award procedure (adopted on 2 July 2012, published in OG No. 84, 4 July 2012),
- A rulebook on the public procurement education programme, training programme for public procurement trainers, the form and contents of the certificate of passed exam for public procurement officer and trainer, as well as the amount of the fee paid by participants in the education process (published in OG No. 90, 18 July 2012),
- A rulebook on the format and contents of the form of notice for setting a qualification system (adopted on 16 July 2012, published in OG No. 91, 20 July 2012).

During 2012, the main focus, however, was on the implementation of legal changes due to the amendments on 14 April 2011 and 30 December 2011 respectively, including:

- Mandatory publication of all contracts award procedures, including small-value tenders up to EUR 5 000 on the Electronic System for Public Procurement
- Mandatory e-auctions, 99.5% of contract notices envisaged e-auctions; only 68 contract notices without e-auctions started from the beginning. In cases with only one tenderer left, no e-auctions were performed
- Mandatory technical dialogue when procuring goods and services with a value over EUR 130 000 (326 technical dialogues have been conducted since that provision entered into force on 1 July 2012)
- Introduction of a negative reference list
- Mechanisms to reduce the cancellation of procedures (e.g. technical dialogue)
- Mandatory certification of public procurement officers after a special training programme

- Qualification system for utilities new competences for the SAC, namely the legal control of concessions and PPPs as well as the power to annul contracts

The legal framework of the public procurement system is well established. The Public Procurement Law is almost fully compliant with EU *acquis* and in some aspects goes beyond the EU requirements (e.g. the use of electronic tools to promote transparency).

2.2. Institutional setup

The Public Procurement Bureau (PPB) is the main policy making and training institution. It now employs 20 full-time staff and one director with a budget for 2013 of EUR 770 000 (49 million Denars) based on state budget and its own incomes (e.g. revenues from users of the e-procurement system). Since 2012 there has been a significant budget increase from EUR 504000 to 770000, which is needed for the further development of the e-procurement system.

The PPB receives all data regarding conducted contract award procedures and makes most of the data (e.g. publication notices and tender documentation) available to all interested stakeholders. Thus it contributes to the transparency and integrity of the entire system. These data are not only used to prepare detailed statistical reports, but are analysed and serve as the basis for further (legislative) measures. Published tender documents are also used by other CAs as models for their procurements.

The Ministry of Economy (MoE) is responsible for implementing the Law on Concessions and PPP (CPPPL) adopted in January 2012¹¹⁹. In March 2012, a total of six by-laws were adopted by the Government. In May/June 2012, the harmonisation roadmap, which included guidelines for the sectorial legislation on concessions, was developed with SIGMA assistance. A training needs assessment, as the basis for development of a training plan, was finalised, with SIGMA assistance, in December 2012¹²⁰. The MoE expressed its intention to use this document to apply for EU technical assistance.

Nevertheless, important measures for the implementation of the Law on Concessions and PPPs, which had been due in March 2012, are still missing. The PPP Council which should consist of 15 members, to include central and local governments, utilities, business and independent experts, has yet to be established. The register of awarded concessions and PPP contracts had not been put in place at March 2013 – thus no structured data is available on the number of PPP projects and concessions that have been planned, launched or awarded.

The PPP unit within the MoE has continued to be struggle with constant under-staffing and staff fluctuation. In the field of concessions and PPPs there are currently two persons working on a permanent full-time basis, with one additional staff assigned by the Minister to that unit. This staff is meant to serve as a basis for support and training for all stakeholders. So far, no support has been given to the CAs, even though support is needed for concession projects at the central and local levels (e.g. tramline, landfill sites and ski resorts projects).

Signalled by SIGMA in previous years¹²¹, doubt remains about the capacity to successfully implement the CPPPL and to ensure the continuous, effective development of the overall system without additional capacity building and EU technical assistance.

The State Appeals Commission (SAC) is the independent review body for procurement procedures. Since 2012 it has also been responsible for procedures to award concessions and PPPs. It is composed of a president and four members appointed by the Assembly for a term of five years (which will end in November 2013), with the possibility of re-appointment. The total number of SAC staff is s remains at 15. Given its new competences and the growing importance of concessions and PPPs, SAC requires sufficient additional budgetary resources and staff to cope with the new challenges.

¹¹⁹ Law on Public Private Partnership (Legal Framework Analysis including special (sectoral) regulations on concessions, SIGMA, Dec 2009.

¹²⁰ Concessions and PPP system development: Training Needs Assessment, SIGMA, Dec 2012.

¹²¹ See also Assessments 2010 – 2012, as well as Peer Assistance in Public Procurement, Concessions and Public-Private Partnerships, Macedonia, 2011, chapter 5 on concessions and PPPs p 64 ff.

Complaints are subject to a fee ranging from EUR 100 to 400 depending on the value of the contract. The SAC received and resolved 658 complaints (including 6 regarding concessions and 1 for PPPs) in 2012, a slight decrease from 690 in 2011. According to the SAC, the decrease was due to: a better knowledge of procurement law by the public and private sectors; the availability of decisions of the SAC on-line; reduced budgets of the CAs due to a budget rebalancing in March 2012; and the 100% requirement of e-auctions, most of them based on lowest price criteria only. Compared with 2011, 4% fewer cases went to the administrative court. The SAC has reported an overall improvement in the quality of appeals received from economic operators. The SAC publishes all of its decisions online, so that the stakeholders can learn about the settled case-law. This has all helped to reduce the number of appeals. The SAC generally respects its decision deadline of 15 days.

The State Audit Office (SAO) monitors the legality of procurement procedures, detects deviations from the PPL and procurement principles, as well as violations of the principles of legality, efficiency, effectiveness and economy in public funds management.

In 2012, the SAO did no performance audits in public procurement, but carried out four in concessions (e.g. hunting and water supplies). The SAO noticed improvements in the overall procurement system due to the proactive role of the PPB in amending the PPL, and improving the e-procurement system as well as trainings. Nevertheless, certain – sometimes basic – irregularities in award procedures have been found, which are analysed and reported to the PPB for designing further (legislative) measures and published in the SAO Annual Report¹²². These include: contract award without procedures as stipulated in the PPL; weaknesses in the bid evaluation and documentation; the signature of contracts with bidders other than the selected ones; conditions changed in the contract; incomplete tender documentation.

The PPB has continued to prove its ability and capacity to further develop the procurement system, although for some of its work it has received external assistance. The PPB was the main driver for a comprehensive overhaul of the PPL, which took place in 2011 in regards to law drafting and in 2012/2013 regarding its implementation. The PPB continued to prepare secondary legislation and to issue manuals and guidelines to facilitate the implementation of the new provisions.

The SAC has continued to cope well with its obligations, including the review of concessions and PPPs.

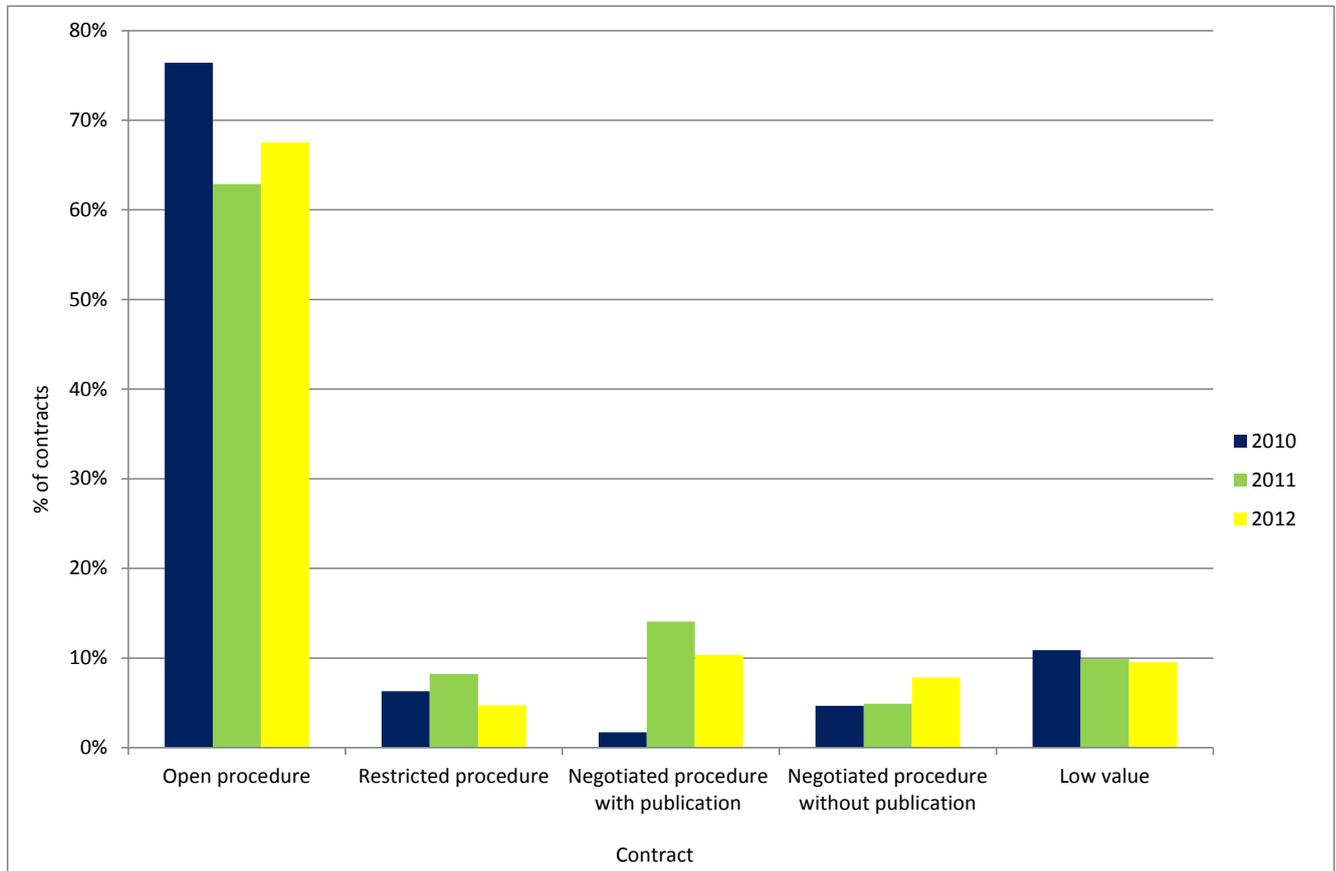
The same positive picture does not apply to the MoE's work on concessions and PPPs. Although the Law on Concessions and PPPs (CPPL) was adopted and complemented by some sectorial by-laws, the implementation is delayed (e.g. Register, PPP Council).

¹²² SAO Annual Report 2011, chapter public procurement p 23 ff; SAO Annual Report 2012 has not been published.

2.3. Operational practice

Figure 8 below presents the usage of procurement procedures in 2010-2012¹²³. Consistently – the most competitive and transparent procedure (the open procedure) is most commonly used.

Figure 8. Procurement methods used (contract value)



Source: Public Procurement Bureau

Integrity: According to the State Secretary in the Ministry of Justice, in 2012 the number of reported corruption related procurement cases (Art 353 (5) Criminal Code) has more than doubled in comparison to the previous year: 28 cases (2011: 12); 12 persons have been convicted for procurement related crimes and misdemeanours in 2012 (no convictions in 2011 and 2010). There have been five charges of abuse of procurement or PPP procedures (Art 275c Criminal Code) in 2012, with one person convicted, as compared to two criminal charges in 2011. The data shows that there is follow-up on criminal cases. Due to the electronic procurement system, media campaigns and greater awareness of the general public, more corruption cases have been detected and followed-up on throughout 2012.

NGOs, such as the Centre for Civil Communications and Transparency International, regularly monitor randomly selected procurements from state and local CAs and point out in their reports: excessive qualification criteria for bidders (e.g. regarding turnovers and human resources), insufficient or tailored tender documents, inappropriate technical specifications and wrongful bid-point allocation¹²⁴, partially due to lack of knowledge but also partly due to bad will of CAs.

E- procurement system (ESPP) with mandatory auctions: One of the most characteristic features of the procurement system is the e-procurement system (ESPP), which not only handles all procurement notices, but

¹²³ Value of public contracts according to the procurement methods used - based on data received from the Public Procurement Bureau.

¹²⁴ Centre for Civil Communications, Public Procurement Monitoring Reports 2 and 3/2012.

also enables CAs and bidders to publish and access all other tender documents, submit and evaluate bids and conduct e-auctions. While the system is now capable of handling the economically most advantageous tender (MEAT) criteria, it is still used by CAs primarily for e-auctions based on the lowest price criterion alone, thus risking a reduction in the quality of services, goods and works purchased.

Since 2012, contracting authorities have been obliged to use electronic auctions in almost 100% of contract notices¹²⁵ for open and restricted procedures, as well as for negotiated and simplified competitive procedures with prior notice. As the latter was to be advertised as from July 2012, the scope of e-auctions has been extended to all low-value procurements, thus incurring significant administrative costs in terms of time and effort for contracting authorities. In 2012, 99.5% of all contract notices envisaged e-auctions; only 68 contract notices stated that no e-auction would be carried out. In cases where only one tenderer was left, no e-auctions were carried out.

Although the drive for the ambitious target of 100% e-auctions use has been based on the principles of transparency and fairness, there were certain reservations expressed in SIGMA's Peer Review in 2011¹²⁶ that this system is too rigid and inflexible, especially for the procurement of certain (intellectual) services and works. These concerns have materialised during the last years, as many procurements had to be cancelled due to imprecise tender specifications or lack of competition. Although MEAT criteria are legally and technically possible, CAs focus too much on price and thus risk reducing quality and sustainability. As precise data on the economic results are missing, it is impossible to judge whether e-auctions generally achieve sound economic results or eventually lead to even higher prices given the exclusion of competitors as negotiations with the remaining bidder are not allowed. However, both the public sector and private sector, including civil society and NGOs, perceive e-auctions generally as a success, but hard data as to the savings are missing.

Another feature is that CAs can make their tender documentation available on-line through the ESPP, which helps to reduce bureaucracy, costs and time for all stakeholders. In 2012 a total of 6 134 procedures, or 52.4% of all contract notices, published their tender documentation through the ESPP. In addition, the obligation of the public opening of bids prior to e-auctions, although regarded by stakeholders as essential in view of transparency and probity, constitutes a real risk of providing an opportunity for collusive behaviour; particularly where the competition is limited. In order to anticipate and prevent collusive situations among the competitors, PPB and the State Commission for Competition are co-operating to detect cartels and other anti-competitive behaviour in certain market sectors. First steps have been taken in the pharmaceutical sector, where companies have been fined for cartel agreements in 2012, according to the Competition Authority, and a new manual for the detection of irregularities in markets will be written as a tool for PPB trainings.

Centralised procurement: The foundations for centralised procurement already exist: the Office for Common and Mutual Matters conducts certain centralised procurements in the fields of works, services (e.g. maintenance and cleaning services) and supplies (e.g. airplane tickets). This central purchasing body services 50 CAs on a voluntary basis, employs 4 staff and has a procurement volume of approximately EUR 30 million, some 25% of it dedicated to works.

Cancellation of procedures: In previous years the high number of cancelled procedures (23% in 2011) was identified as a risk that could erode the trust in administration, in addition to causing unnecessary costs to both economic operators and the public sector due to project delays. In 2012 out of 11 697 published contract notices, 2 236 were cancelled (19.1%¹²⁷).

Contracting authorities still justify cancelled e-auctions by unforeseeable cuts in government budgets, changes in their procurement projects or because the prices quoted by the bidders were much higher than expected market rates, thereby obliging the CA to enter into a negotiated procedure which yields closer prices. Incorrect tender specifications, as well as no or unacceptable bids, constitute other reasons for the many cancellations.

¹²⁵ See also exceptions in Art 123 and 121 (1) PPL.

¹²⁶ SIGMA Peer Review of Public Procurement, Concessions and PPPs in the former Yugoslav Republic of Macedonia, 2011, chapter 6.4 on E-Procurement, including recommendations to e-auctions, e-catalogues and dynamic purchasing systems.

¹²⁷ Based on data received from the PPB. The Center of Civil Communications claims an even higher number of 25.79% for the third quarter of 2012 in their report.

Several features of the latest PPL amendments were intended to reduce the number of cancellations and also yielded some positive results. The introduction of a technical dialogue to alleviate the issues arising from weak planning as well as another PPL amendment, according to which a tender cancelled for objective reasons cannot be reinitiated for a period of six months, helped to reduce the number of cancellations. Although some of the PPL measures helped to reduce the overall number of cancellations, the cancellation of award procedures in some CAs remains an area of concern.

Negative Reference List: The negative reference list was introduced with the 2011 amendments as a measure concerning the wrongdoing of suppliers, resulting in the exclusion of the tenderer from any contract award procedure for a period of one year. This is extended for an additional year for every subsequent negative reference. In January 2013, there were 31 companies on the list. Due to the “Guidelines on Negative References” which were agreed upon between the PPB and SAC, the SAC made some decisions based on whether a company was rightfully on this list. Although generally praised by contracting authorities and bidders alike, the list has to be radically changed or abolished in the light of the recent ECJ case C-465/11, which declared certain forms of automatic exclusion (“blacklisting”) as not compliant with Directive 2004/18.

Late Payment: Reliable data on late payment is missing as there is no central register and the perception of public and private sectors differ considerably. While CAs claim to generally pay for their purchases within a deadline of 30 days, some economic operators claim to wait much longer (from up to 6 respectively 12 months for their payments in the construction sector and 60 to 180 days in the pharmaceutical sector). The practice of not paying commitments and building up arrears is not sound budgetary practice and negatively impacts on individual businesses, the number of competitors in a specific procurement and on the economy in general. Given the usually weaker position of the economic operator, the consent of the economic operator to late payment as stipulated in Art 26 a and b PPL will probably rarely be in compliance with the Late Payment Directive.

Central Registry: Simplification of the qualification of bidders in the procurement award procedure is one of the key elements of a sound public procurement system. Over the last few years, the Central Registry of the former Yugoslav Republic of Macedonia has become a successfully working one-stop shop qualification database for economic operators, which has helped tremendously to reduce bureaucracy and the costs of bidding. The registry was established by the Government of Macedonia in order to host the various public registries derived from the different competent authorities. A certificate from the Central Registry is valid for a six-month period and can be obtained by economic operators for reasonably low prices. The Central Registry has its headquarters in Skopje, but also has regional and local offices throughout the country. All of these facts make it easily accessible for public procurement stakeholders. The Central Registry now provides all documents in a procurement procedure for proving the personal status of the economic operator (e.g. data from a company register, annual accounts, criminal records) except for the tax declarations and declarations of social security contributions, which are issued by the Public Revenue Office.

Training: Since 2012, the Public Procurement Bureau, as the main training provider, has focused on the implementation of the legally prescribed certification programme for procurement officers. According to the new Art 29a (2) PPL, only certified officials are allowed to carry out procurement. Following the PPB Training Programme, every procurement official in a CA has to obtain a certificate after a five-day training programme of seven hours per day, with the first three days devoted to public procurement in general, EU law and anti-corruption training and remedies, followed by two days dedicated to e-procurement and e-auctions. One month later, the CA officials are invited to take a multiple choice exam, to obtain their certificate, which is valid for a three-year period. After its expiry, a one-day training with an exam is needed to renew the certificate. If the candidates fail, they may repeat the exam once more.

In 2012, a total of 37 training sessions each with 25 to 30 participants from central and local government, as well as from the utilities sectors, have been held. Usually one to two economic operators participated in each training; more specialised trainings will be offered to the private sector starting from April or May 2013 onwards. All-in-all, 772 participants were trained in 2012. The costs for a training course amount to EUR 150 per participant and are usually paid by the employer of the participant.

The train-the-trainer two-week programme especially focuses on administrative law, contract law and e-procurement, but also benefits from the localization (translation and adaptation to local legislation) of the Public Procurement manual of the IPA Regional Training Project. This certificate lasts for two years and then has to be renewed; in 2012 a total of 35 trainers were re-certified (out of the previous 50 trainers). In January 2013 there were 35 trainers, either PPB staff or staff from other institutions, on the list.

The PPB training system has been praised by all stakeholders. It could serve as a model for the entire region.

Operational practice has improved due to common use of the ESPP, procurement trainings done by the PPB together with the Competition Authority and continued efforts of PPB, SAC, SAO and the judiciary. The Central Register helped to considerably reduce bureaucracy for CAs and economic operators alike and could serve as a model for the entire region. Nevertheless there is still room for improvement, as CAs do not fully exploit the possibilities of procuring value for money, because they still use almost exclusively the lowest price criterion, although the ESPP would allow for multiple award criteria.

The number of cancelled procedures is still relatively high, which causes unnecessary costs to both suppliers and CAs.

Table 6. Procurement Statistics for 2012¹
(submitted by the Public Procurement Bureau)

A. Number of contracting entities²		
State bodies	234	
Bodies of local government units and of the city of Skopje	119	
Legal entities established for specific purpose of meeting public interest needs-indent b), paragraph 1, Article 4 of the Law	812	
Associations established by one or more contracting authorities	17	
Public enterprises, joint stock companies and limited liability companies in the concerned areas	152	
Other contracting authorities	80	
Total number of contracting entities	1414	
B1. Awarded³ public contracts/Contracting entities (above national threshold – low value not included)	Total (estimated) value (million EURO)	Total number ⁴
State bodies	231.9	1218
Bodies of local government units and of the city of Skopje	141.0	1226
Legal entities established for specific purpose of meeting public interest needs-indent b), paragraph 1, Article 4 of the Law	231.1	4961
Associations established by one or more contracting authorities	1.9	58
Public enterprises, joint stock companies and limited liability companies in the concerned areas	221.4	1194
Other contracting authorities	9.6	60
Total public contracts awarded	836.9	8717
B2. Awarded concessions/Contracting entities	n/a	n/a
Central government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total concessions awarded		
C1. Awarded public contracts above the EU thresholds⁵		
Works ⁶	271.9	2159
Services ⁷	272.7	8633
Goods ⁸	370.3	12940
Mixed contracts	/	/
Total public contracts	914.9	23732
C2. Awarded concessions above the EU thresholds	n/a	n/a
Works ⁹		
Services ¹⁰		
Other		
Total concessions above the EU thresholds		
D. Procurement methods used¹¹ (above the national thresholds¹²)		
Open procedure	617.7	7258
Restricted procedure	43.3	19
Negotiated procedure with prior publication of a notice	94.8	99
Negotiated procedure without prior publication of a notice ¹³	71.6	1162
Other procedures (competitive dialogue, etc.)	0.1	1

D1. Low- value procurement (estimated) <i>Includes:</i> - <i>simplified competitive procedure without publishing a notice</i> - <i>simplified competitive procedure by publishing a notice</i> - <i>public service contracts (category of service 17- 27)</i>	87.4	15193
E. Participation rate (average number of submitted tenders)		
Works	/	3
Services	/	2
Goods	/	4
F. Review procedures		
Number of complaint received	658	
Number of complaint treated	633	
Number appealed to the Court	64	
Number of decisions with interim measures		

F. A list of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

	Name of Contracting Authority	Main Activity	Annual procurement
1.	Macedonian Power Plants	Utilities	EUR 150.7 million
2.	General and administrative matters division - Government of Macedonia	General public services	EUR 66.7 million
3.	Ministry of Health	Health	EUR 64.0 million
4.	City of Skopje	General public services	EUR 27.8 million
5.	Ministry of interior	Public order and safety	EUR 20.0 million
6.	Municipality of Centar	General public services	EUR 17.9 million
7.	Macedonian Forests public enterprise - Skopje	General public services	EUR 17.1 million
8.	Electricity Transmission System Operator of Macedonia	Utilities	EUR 14.3 million
9.	Agency for national roads	General public services	EUR 13.5 million
10.	Agency for electronic communication	General public services	EUR 13.0 million

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2012 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

	Subject of contract	Name of CA	Contractor	Value (EUR)	Time of exec.
1.	Excavating and transport services for coal location Brod - Gneotino	Macedonian Power Plants	Pelister DOO Bitola, Macedonia	53.3 million	2 years
2.	Civil and construction works – buildings of state institutions	General and administrative matters division - Government of Macedonia	Granit AD Skopje, Macedonia	19.7 million	1.6 years
3.	Excavating and transport services for coal, location Suvodol	Macedonian Power Plants	Trans Met DOO	19.2 million	2 years
4.	Purchase and supply of specific drugs and medicine materials (insulin, glucagon etc.)	Ministry of Health	Replek AD - Skopje	14.6 million	2 years
5.	Civil and construction works – buildings of state institutions	General and administrative matters division - Government of	Beton AD - Skopje	13.5 million	1.5 years

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		Macedonia			
6.	Construction works for parking garage (storey building)	City of Skopje	Beton AD - Skopje	12.7 million	1.8 years
7.	Purchase of oil and derivatives	Macedonian Power Plants	Lukoil Macedonia	12.5 million	1 year
8.	Cleaning and maintenance services in the buildings of the Government and other state institutions	General and administrative matters division - Government of Macedonia	Securikom Multiservices	10.1 million	3 years
9.	Sophisticated electronic measurement equipment	Agency for electronic communication	TCI International	9.6 million	n/a
10.	Civil works for underground parking lot – Skopje centre	General and administrative matters division - Government of Macedonia	Beton AD - Skopje	9.3 million	1 year

¹ Statistics covers contracts awarded in the period 1 January 2012 – 31 December 2012.

² As for 31 December 2012.

³ Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices).

⁴ Please indicate whether the data include the low value contracts.

⁵ Please indicate whether the data include contracts awarded by the utilities sector.

⁶ Above EUR 5.000.000.

⁷ Above EUR 130.000 for public institutions, EUR 400.000 for utilities.

⁸ Above EUR 130.000 for public institutions, EUR 400.000 for utilities.

⁹ Above EUR 5.000.000.

¹⁰ Above EUR 130.000.

¹¹ Both for public contracts and concessions.

¹² Including contracts above EU thresholds.

¹³ Including single-source procurement.