Support for Improvement in Governance and Management
A joint initiative of the OECD and the EU, principally financed by the EU

ASSESSMENT

The former Yugoslav Republic of Macedonia

2011

TABLE OF CONTENTS

DEMOCRACY AND THE RULE OF LAW

Democracy

Democracy is threatened by a gap between political realities and the democratic values embodied in the Constitution. According to the Constitution of the Former Yugoslav Republic of Macedonia (fYRoM), the state is built on the principles of democracy, rule of law and the separation of powers between the executive, legislature and judiciary. But the political reality shows an unbalanced system with a clear supremacy of the executive branch directly/indirectly controlling the other two branches.

Many years of cultural and social adjustment and reform efforts are needed to develop respect for, and build confidence in democracy, which implies that the political establishment understands and accepts the importance of parliament in a parliamentary system of state powers. Such a reform process can only be driven by individuals and institutions of the society itself, with very limited scope of influence from outside the country.

Freedom of speech remains constrained by the small number of independent print media outlets.

Rule of law

The limited extent to which the rule of law is put into practice remains a serious matter of concern.[1]

The social and political role of the law is not understood. Public sector institutions frequently disregard legal provisions or binding procedures as they see fit. Administrative authorities often ignore Administrative Court rulings or obligatory decisions of other administrative bodies.

The lack of respect towards the law and towards democratic institutions can neither emerge by producing new legislation imported under time pressure nor through the application of a formalistic and artificial benchmarking system. The evolution of a democratic and legal culture is a long-term process for which a “stick and carrot” approach is counterproductive.

Constitution

The Constitution provides all the necessary rules for a parliamentary democracy based on free elections and the principle of the separation of powers. It recognises the rule of law, equality before the law and legality in the action of public powers. It grants fundamental freedoms and human rights, freedom of expression and religion, and respect for minorities.

[1] The rule of law includes, for the purpose of this report, a set of principles such as:
The separation of powers between the judicial, executive and legislative branches of government,
Compliance with the law by government and the proper functioning of the judiciary, and
The consistent application of fair procedures by the administration.

However, the Supreme Audit Institution has still not been granted constitutional protection.

Parliament

The role of parliament in the system of checks and balances is marginal, leading to the overall predominance of the executive power. There is no effective parliamentary control of the government and parliament's involvement in the legislative process is trivial. Parliament performs mostly as a "law-passing factory" without debate on policy. Such a law-production technique shows that the involvement of parliament is considered to be a formality rather than the participation of a respected, decisive power within a system of good governance. It is obvious that the importance of the role of a democratically elected parliament representing the people's will and legitimating the executive power is either not fully understood or not accepted by the political establishment.

The general contempt of parliament's role can also be observed by the government's routine practice of introducing a large majority of the legislative projects using the "short procedure", which is provided for by the Rules of Procedure of Parliament as an exception applicable for "non complex or extensive" laws. However, the exceptional procedure has become the rule applied for very complex legislation of key importance. Nevertheless, it is only fair to admit that the majority of parliament has always agreed with this procedure and by submissively doing so continuously abdicates its constitutional power.

The lack of substantial parliamentary participation in the legislative process not only raises the question of the democratic legitimacy of legislation, but it is also a source for the poor quality of laws, which in turn negatively affects their implementation, and therefore the quality of administrative services delivered by the executive power.

Government

Decision-making powers in the former Yugoslav Republic of Macedonia tend to remain largely within the executive branch, lead by the Prime Minister. Overall, the policy-making and co-ordination system has the necessary design characteristics but much of the human capacity required to produce and implement policy is still lacking, in particular in the line ministries. There is a legal framework for the policy-making and co-ordination system, including the Rules of Procedure and updated methodologies and instructions, and formal requirements as set out in the Rules of Procedure are generally observed. The regulation on procedures for inter-ministerial consultations is clear but often not followed.

Public administration

The new Ministry for Information Society became operational on 1 January 2011 and was established as one of the first actions of the new "Public Administration Reform Strategy 2010-2015". It is now the central administrative and policy-making body for all general public administration and civil service matters. This fundamental reorganisation of responsibilities of the public administration could contribute to improving the coherence and effectiveness of the public administration reform, but its real impact remains to be seen.

There is still an urgent need for elaborating a new Law on General Administrative Procedures. The recent amendments of 12 April 2011 do not resolve the fundamental problems. The attempt to improve the administrative procedures system by selective stepwise amendments is ill-advised because there is a

significant risk that repeated mending of such a law would entail an imperfect patchwork rather than a good consistent law.

Another characteristic of the malfunctioning administration is the non-use of delegation as a managerial tool within administrative bodies. Almost all decisions are still taken at the top of an administrative body (e.g. minister). This not only creates the inefficient internal organisation of administrative bodies, but also has an undesirable impact on the quality of administrative decisions and the accountability of civil servants. It also hinders the development of managerial capacity in the public administration.

The system of civil service and public servants is still in need of significant changes in order to meet professional standards. This is partly the consequence of an inappropriate legal framework. But the main reason why a merit-based civil service is still imperceptible, even more than 10 years after the creation of the Law on Civil Servants, is the non-observance of the existing legal framework. Recruitment and other decisions regarding the career of a civil servant are increasingly based on political or private motives rather than on merit. These notorious illegal practices not only entail a lack of professionalism of public sector staff, in particular of highly ranking posts, but they also increase public scepticism regarding the rule of law and the low level of credibility of the democratic system in general.

The recent policy of applying business/private sector human resources management practices to the civil service is taking the government down the wrong track. In particular, the intention of new regulation in the Civil Service Law to "make it possible to dismiss underperforming civil servants in the same way as in the private sector",[2] misjudges the genuine difference between private sector employees and civil servants with respect to their respective roles.

The public expenditure management system contains many of the attributes of an effective administration, characterised by the control of public funds and political commitment to fiscal discipline. Efforts are still needed to transform the theories of the legal framework into practice. In the area of public internal financial control, the planned reforms could benefit from more delegation and clearer accountability mechanisms to the lower levels of management

The legal framework for public procurement only needs small amendments; the institutional set up has reached a satisfactory level of maturity. The focus of the Macedonian authorities should gradually be turned to supporting the practical implementation of the procurement legislation. Instead of focusing on bringing in new electronic tools or procedural solutions, it is recommendable to concentrate on stabilising the already existing e-auctions system. The framework for concessions and public-private partnerships remains the most obvious weakness and further support and improvements will be necessary to the legal and institutional arrangements in order to arrive at a fully functioning system that might be comparable to EU standards.

Judiciary

The circumstances related to the dismissal of a Constitutional Court judge and the appointment of his successor within three days in April 2011 cannot be seen as proof of the political independence of the Judicial Council nor as an objective process to select a candidate for one of the highest public offices in a democratic state. Apparently, the judiciary is still understood to be, and used as, a political instrument.

[2] Public Administration Reform Strategy 2010-2015, p. 44.

The establishment of a High Administrative Court operational as from June 2011 as a second instance deciding on administrative matters, could strengthen the system of legal protection of citizens. Another improvement includes amendments to the Law on Administrative Disputes, which gives the Administrative Courts full jurisdiction and requires oral hearings for certain cases.

Nevertheless, in general, administrative justice is not sufficiently strong enough to ensure that the government and the administration fully respect the principles of the rule of law. In particular, the non-observance of judicial decisions by public bodies is still a major reason for concern.

According to statistics of the Court Council, the backlog of cases of the Administrative Court increased in 2010 from 10 340 to 13 810.

Integrity

The adoption of integrity-related legislation tabled by the government should not hide the fact that in many areas of the public sector corruption is a source of major concern. There is an obvious gap between the regulatory framework and its implementation. Therefore, the first pre-requisite for improving public sector integrity is not a long list of new legislation but the creation of a strong, professional and impartial civil service as well as the executive power's full compliance with the existing legislation.

It is first and foremost the responsibility of the executive level of administrative authorities (ministers/directors, heads of departments and units) to ensure administrative compliance with the law and thus the integrity of the public administration by exercising internal supervision and control within their respective remits.

Recommendations

1. The power of parliament as legislator and controlling institution over the executive needs to be strengthened. This cannot only be achieved just with providing external technical assistance aimed at improving the technical and organisational working conditions of members of parliament. First and foremost it requires the political establishment's understanding and acceptance that the Constitution gives an important role to parliament. The European Commission should have regular contact and discussions not only with the government but also with both Parliament as an institution as well as with its parliamentary party groups. This would underpin the importance of the representation of the people in a parliamentary democracy.

2. It is essential that the Government understands that better governance is a priority issue in view of the EU accession, but also that true reforms take time. The **quality and depth of needed reforms needed should not be compromised by artificial and unpractical deadlines or by disbursement pressure** from the EC. In particular, the government should concentrate on revising a limited number of key legislation and for the rest, ensure the implementation and enforcement of the current legal framework without falling into reformism.

3. Policy making should be strengthened, with a view as well towards EU integration. Capacity for policy and strategic advice needs to be further developed.

4. The government should promote stronger managerial accountability and delegation of decision-making authority at all levels of the administration.

5. A new LGAP is required that is better aligned with European principles and standards of legal certainty and citizen's legal protection and it should be more citizen oriented. Recent amendments do not resolve these fundamental shortcomings.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since the Last Assessment (May 2010)

The Parliament voted for its early dissolution on 14 April 2011 and at the time of writing (May 2011), elections were due to be held on 05 June 2011.

In late December 2010 the Government of the former Yugoslav Republic of Macedonia (fYRoM) adopted the Public Administration Reform Strategy 2010-2015 and a detailed Action Plan. Prior to that, a longer list of recommendations for necessary improvements were discussed during a meeting between the European Commission and a large delegation from fYRoM in Brussels in early December 2010. However, almost none of the suggestions made at the meeting were subsequently reflected in the adopted version. Therefore, some serious concerns about the quality of both substance and methodology of the Strategy remain still valid. Nonetheless, the adoption of the Strategy as it stands can be seen as an expression of the general political will to develop good administration and create new momentum for the implementation of public administration reform.

The Law on Civil Servants (LCS) and the Law on the Organisation and Operation of State Administrative Bodies (LOOSAB)[1] were passed by parliament on 23 December 2010. Both pieces of legislation were submitted to parliament by means of the "shortened" parliamentary procedure, which according to article 170 of the Rules of Procedure can exceptionally be proposed by the government and accepted by parliament in the case of laws that are "not complex or extensive". However, these two amending laws are complex, as they form the legal basis for far-reaching changes of substantive rights and obligations of civil servants and of the institutional set-up for managing and reforming the public administration in general.

The largest portion of tasks and functions of the Civil Service Agency (CSA), all public administration-related competences under the responsibility of the Ministry of Justice, and the policy-making responsibilities of the Secretariat General of the Government related to the public administration have been transferred to the Ministry of Information Society, now referred to as the Ministry of Information Society and Administration (MISA). The concentration of responsibilities in the MISA was accompanied by an increase in the number of its staff (20 in June 2010) by more than 80 persons who were previously working in one of the downsized bodies mentioned above or in the Secretariat for European Affairs.

In addition to existing IT-related responsibilities, the new MISA remit covers the following new areas: policy development related to the public administration and civil service reform; drafting of legislation on all horizontal (in other words, general) public administration issues, including administrative procedures,

[1] Official Gazette, no. 167/2010; the LOOSAB was published and entered into force on the same day (23 December2010) upon its adoption by parliament. (The Law on Civil Servants came into force eight days after its publication in the Official Gazette.)

civil service[2] and public service[3] issues; ensuring and monitoring of the correct and uniform implementation of general administrative and civil/public service legislation and subsidiary regulations; management of the civil/public service system in areas such as job classifications and descriptions, salaries, and organisation and delivery of training; administrative inspections; and international co-operation related to the public administration.

The Civil Service Agency (CSA) was transformed into the Agency for Administration (AA), retaining three minor areas of competence: verification of whether the "systematisation" of posts prepared by the bodies employing civil servants is in compliance with some minor formal aspects; procedural participation in the process of recruiting civil servants; and decision-making on appeals and complaints as a second-instance body. The legal status of the AA remains the same as that of the former CSA, i.e. it is an "autonomous state body under parliament". With the transfer of most of the tasks and functions of the CSA to the MISA, the problems of the civil service management systems that were connected to the institutional set-up, in particular to the legal status of the CSA as an "autonomous state body under parliament", have mainly been resolved. However, questions remain about the logic of why a small number of competencies that could also reasonably be transferred to the MISA , still rest with the AA.

Some substantive (material) provisions of the amended LCS, concerning the probationary period, internal mobility and equitable representation, as well as some modifications of the recruitment procedure, can be seen as improvements of the previous law. Questionable, however, are the practicability and efficiency of psychological and integrity tests, which are to be mandatory not only for candidates entering the civil service for the first time but also for civil servants applying for another post within the public administration[4]. The introduction of a semi-annual performance appraisal is ill-advised for two reasons. Firstly, if such an assessment is taken seriously by the manager in charge, it will impose an unbearable administrative burden on managers; if it is not exercised professionally, the result is useless. Secondly, the legal consequences connected to this exercise could be disastrous for the civil servants and thereby endanger the professionalism of the civil service system as a whole. This is because a civil servant will be dismissed if his performance is evaluated as being "unsatisfactory" twice within a year or at least twice during the last three assessment periods.. Such a human resources management practice might be common in some private companies, but for the civil service of a state, where the rule of law is maintained, it is disproportionate. The intention of this regulation, namely "to make it possible to dismiss underperforming civil servants in the same way as in the private sector"[5], misjudges the genuine difference between a private sector employee and a civil servant in terms of their respective role and status. Given the low managerial capacities in the public administration, it is likely that the use of arbitrary dismissals will accentuate in the near future.

[2] At the end of 2010 civil servants numbered 12,480 (according to the Annual Report on the Data from the Civil Servants' Register for 2010 of the MISA).

[3] Public servants numbered approximately 130,000 in 2010 (public enterprises included); exact numbers will be provided by the Register of Public Servants, which the MISA expects to have set up by June 2011.

[4] These tests are mandatory except in situations where the vacant positions are filled as a result of internal announcements; in these cases the civil servants concerned do not take an examination and thus no integrity and psychological tests are required either.

[5] Public Administration Reform Strategy 2010-2015, p. 44

In November and December 2010 and in February 2011, that is eight to eleven months after the deadline set by the LCS, a number of laws were amended to implement the LCS regulation of September 2009 on widening the scope of the civil service.[6]

The Law on Public Servants (LPS) – public servants form the largest group of employees in the public sector[7] – will be applicable as from 26 April 2011. Subsidiary regulations adopted in July and September 2010 include a Code of Ethics for Public Servants, which is mainly a copy of the same regulation for civil servants. In general, the new LPS suffers from serious shortcomings in terms of both methodology and content.[8] The structure is unsystematic and inconsistent. The regulatory content fails to make a clear distinction between civil servants and public employees and, moreover, contains numerous substantive (material) regulations that are inappropriate and will cause problems and confusion when the law has to be implemented. The provisions on recruitment procedures do not exclude arbitrariness; rules on promotion do not exist; mobility is badly regulated; and the six biannual appraisals will impose an unbearable administrative burden on managers. First practical experiences might relatively soon show the need for major amendments.

In April 2011, shortly before its early dissolution, Parliament passed a mass of legislation, 93 of which railroaded at one single session on 11 April 2011. Although most of the adopted laws were amending laws. However, numerous very important and far reaching changes were addressed, including: the new Law on Establishment of a State Commission for Decision-making in Administrative Procedures and Labour Relations Procedures in Second Instance; some amendments to the Law on General Administrative Procedures related to the new system of second-instance commissions, the changes of the Law on Administrative Inspection, and the silent-consent rule in administrative procedures; some adjustments to the organisational distribution of competencies related to the new role of the MISA; and some amendments to the Law on Members of Parliament, the Electoral Code, the Criminal Code and the Criminal Procedure Code.

The High Administrative Court was established by amending the Law on Courts and the Law on Administrative Disputes[9]; the Court is staffed by 15 judges. As from June 2011, when the complete system is foreseen to be operational, administrative matters will be decided by the Administrative Court (first instance), the High Administrative Court (second instance), and the Supreme Court in exceptional cases concerning appeals against decisions of the High Administrative Court. Administrative courts now have full jurisdiction, which could improve the system of legal protection of citizens. Oral hearings are

[6] November 2010 (Official Gazette, no. 145/2010): Law on Classified Information; Law on State Audit; Law on the Public Revenue Office; and Law on Management of Confiscated Property, Material Benefit and Seized Objects in Criminal and Misdemeanour Procedure

December 2010 (Official Gazette, no. 156/2010): Law on Technological Industrial Development Zones; and Law on Establishment of the Agency for Promotion and Support of Tourism

December 2010 (Official Gazette, no. 158/2010): Law on Cadastre of Immovable Property; and Law on the Customs Administration

February 2011 (Official Gazette, no. 24/2011): Law on Establishment of the National Agency for European Educational Programmes and Mobility

[7] The total number of employees in the public sector is about 130,000, approximately 10% of whom are civil servants.

[8] See SIGMA's assessment report of May 2010 on Civil Service and Administrative Law in the former Yugoslav Republic of Macedonia, page 5; http://www.sigmaweb.org/dataoecd/28/40/46401959.pdf

[9] Both of these amendments were published in the Official Gazette no. 150/2010.

now required in certain cases. According to the statistics of the Court Council, the Administrative Court closed 6,322 cases in 2010, and the backlog of cases increased in 2010 from 10,340 to 13,810.

The new Law on Inspection came into effect at the beginning of 2011. This law regulates principles, procedures and competencies of the inspection services in state administration bodies and municipalities, but also the status of inspectors and the qualifications required for their position. The new legal and structural situation cannot be seen as a solution for the main problems of the system of general administrative inspections described below.

Substantial changes in the Law on Personal Data Protection adopted in September 2010[10] have significantly increased the protection of natural persons' personal data.

Main Characteristics

Democracy is threatened by a gap between political realities and the democratic values embodied in the Constitution. According to the text of the Constitution of the Former Yugoslav Republic of Macedonia the state is built on the principles of democracy, rule of law and separation of powers between executive legislative and judiciary. But the political reality shows an unbalanced system with a clear supremacy of the executive power directly/indirectly controlling legislative and judiciary.

The role of Parliament is marginal. Effective parliamentary control of the government does not occur, and parliament's involvement in the legislative process is trivial because it performs as a "law-passing factory", without much debate on policy. It appears that the importance of the role of a democratically elected parliament representing the people's will and legitimating the executive power is either not fully understood or not accepted by the political establishment.

In April 2011, Parliament was urged by the government to adopt more than 100 laws in less than two weeks, 93 of which being rushed through in a single session. Such a law-production technique suggests that the involvement of Parliament is considered a formality rather than the participation of a respected, decisive power within a system of good governance.

The general contempt for parliament's role is also indicated by the government's practice of introducing most of the legislative proposals by means of the shortened procedure under the label "not complex or extensive", as happened in December 2010 with the LCS and the LOOSAB that abolished the CSA and established the MISA. It is not necessary to underline that the complexity of these pieces of legislation and their large-scale importance for the reform of the public administration and the civil service would have required a regular, transparent and in-depth debate in Parliament. However, it is only fair to admit that the majority of the Parliament has always agreed with this shortened procedure and in submissively doing so has continuously played the game and thus abdicated its constitutional power.

Not only does the lack of considerable involvement of Parliament in the legislative process raise the question of democratic legitimacy of legislation, it also a reason for the insufficient quality of laws. It is unlikely that laws produced without substantial parliamentary deliberation will meet the quality requirements of solid legislation, which in turn makes it difficult for the executive power to properly implement such legislation.

[10] Official Gazette, no. 124/2010

Various other reasons for the production of laws and secondary legislation of poor quality were already explained in SIGMA's 2010 assessment report[11], and include the insufficient law-drafting capacity in ministries and administrative bodies and the uncoordinated borrowing of laws from foreign contexts.

The system of employees in the public sector (civil servants and public servants) is still in need of significant changes in order to meet professional standards. This is partly the consequence of an inappropriate legal framework. However, the main reason why a merit-based civil service system is still imperceptible more than 10 years after the passing of the LCS, is the non-observance of the existing legal framework. Recruitment and other decisions regarding the career of a civil servant are increasingly based on political or private motives rather than on merit. These illegal practices not only entail a lack of professionalism of public sector staff, in particular of highly ranking posts, they also increase public scepticism regarding the rule of law and the low credibility of the democratic system in general.

Another indicator of the systematic non-compliance with the law has been the public employer's practice of circumventing the legally prescribed recruitment procedures by using the instrument of temporary contracts. There are good grounds to assume that in 2010 at least 4,500 employees were working on temporary contracts. This is a disproportionately large number when compared to the total number of civil servants with regular employment (approximately 12,400). A temporary contract might by justifiable as an exceptional human resources management tool. However, the number of more than 4,000 highlights the evident misuse as an instrument of commonplace recruitment policy. The European Commission has repeatedly requested that the Government addresses this serious problem. In response, the Government communicated in early 2011 that most of the temporary contracts had been converted into regular employment relations, but clear and reliable information on both the procedure and the number of employees/contracts was not available at the time time of writing. A final assessment of this situation therefore remains to be undertaken.

The number of civil servants employed under the Programme for Employment of Community Members does not reflect the real staffing needs of the respective administrative body to which the civil servant is to be assigned. As already pointed out in previous SIGMA reports, this tool, developed for putting into practice the principle of equal representation of the various minorities (Ohrid Agreement), quite often enters into contradiction with the merit system, because it provides additional room for partisan-influenced recruitment (given the existence of parties representing these minorities, which have always been a part of coalition governments).

The General Administrative Inspection, which was previously under the responsibility of the Ministry of Justice, has now been incorporated into the competencies of the MISA. Staffed with 15 administrative inspectors, the institution is meant to be the mechanism for monitoring and controlling comprehensively more than 1,100 public sector bodies. However, both the staffing and the equipment of the Inspectorate do not allow more than a marginal execution of this function. Furthermore, the system as such needs to be questioned. One disadvantage is that the existence of an external control mechanism, even if it is commonly considered as ineffective, has the effect of inhibiting the development of a culture of internal managerial control discharged by the managers of public bodies. Moreover, there is no clear distinction between inspection and legal control executed in response to administrative or judicial legal remedies against individual administrative decisions. Finally, an administrative inspection, which can have very severe consequences for the inspected person (e.g. high fines or other disciplinary measures) can be misused arbitrarily for the purpose of intimidating an office-holder (e.g. the mayor of a municipality or

[11] Op.cit., page 7, at : http://www.sigmaweb.org/dataoecd/28/40/46401959.pdf

the head of an administrative body) for reasons that are unconnected with his/her professional performance and thus not in compliance with the legal purpose of an inspection.

The urgent need to elaborate a new Law on General Administrative Procedures needs to be emphasised once again. The recent amendments of April 2011 do not resolve the fundamental problems identified in previous SIGMA assessment reports[12].

Another key factor of the malfunctioning administration is the reluctance to use delegation as a tool for organising administrative decision-making processes. As a result, almost all decisions are taken at the top level of an administrative body (e.g. by the minister). The major negative consequences of this organisational principle based on command and controls (verticalism) are: 1) the overburdening of organisations' top levels with numerous minor administrative decisions; 2) this in turn creates bottlenecks and overloads that are inimical to the efficiency of administrative decision-making processes; 3) the involvement in every day administrative issues prevents the involvement of the top level in strategic and supervisory work; 4) as a consequence of this dysfunctional organisation, both politics and public administration become devalued; 5) the inefficient internal organisation of administrative bodies also has an negative impact on the quality of administrative decisions and the accountability of civil servants; 6) it promotes the blurring of political and administrative responsibilities and a clear distinction of either field; 7) and final, it hinders the development of any managerial capacity embedded in the public administration.

It remains to be seen if the amendments of the Law on Administrative Disputes and the establishment of the High Administrative Court will contribute to a more effective judicial control of administrative actions and thus in the medium-term to better behaviour of administrative authorities.

Reform Capacity

The MISA's contribution to increasing the coherence and effectiveness of public administration reform could be positive, but its real impact remains to be seen. One remaining problem will be the co-ordination and co-operation of the MISA with the Secretariat General of the Government and with the newly established Agency for Administration, which still holds some procedural responsibilities related to the application of the LCS and to the approval of systematisations and job announcements. Another risk is that the management of the ministry, which has so far specialised in information technology, is unfamiliar with public administration reform and management and will require a certain period of adaptation. Finally, in light of the increase of staff from 20 to approximately 100, with the new 80 staff coming from four very different administrative bodies and contexts, both the management and the personnel of the MISA will have to face the huge challenge of forming a smoothly co-operating team.

The Ombudsman Office is a respected, fully functioning institution. The Ombudsman Report of 2010 is an outstanding document. The analytical part of the report identifies precisely a number of systemic shortcomings, e.g. the weak legal position of citizens as consumers of public services provided by

[12] Ibid., page 7: "The current LGAP still reflects the authoritarian understanding of the public administration of the past. It does not provide complete legal protection against administrative decisions, stipulates unnecessarily complicated and lengthy procedures, and goes into regulatory details that would be better dealt with through secondary legislation or internal administrative rules. In addition, the Law does not regulate several issues that are important for a modern administration."

privatised public utilities and other service suppliers[13]. However, so far institutions in charge of public administration reform have not used the report as a source of information for systematically analysing the state of affairs of the public administration and for prioritising reform areas.

Recommendations

1. The power of Parliament as legislator and controlling institution over the executive needs to be strengthened. This can not only be achieved by external technical assistance aimed at improving technical and organisational working conditions of members of parliament. It requires first of all the political establishment's understanding and acceptance of the important role Parliament should have according to the constitution. The European Commission's regular communication not only with the government but also with both the Parliament as an institution and with its parliamentary party groups would underpin the importance of the representation of the people in a parliamentary democracy.

2. The activities of the MISA that might require external support should focus on three areas:

    a. A new LGAP, better aligned with European principles and standards of legal certainty, citizen's legal protection and citizen-orientation, is required. Recent amendments to the current LGAP do not resolve the fundamental shortcomings.

    b. The legal provisions on termination of employment of civil servants according to the "performance-related dismissal policy" should be abolished. The recent change of the LCS in this respect is not in compliance with a civil service based on the values of the rule of law and democracy.

    c. The system of administrative inspections needs to be thoroughly reviewed so as to redefine its function within the overall system of the legal control of administrative actions and to establish a more effective control mechanism based on internal managerial control.

3. Policy-makers in charge of public administration reform would be advised to study the reports of the Ombudsman in order to better understand, through the complaints of citizens, the changes that are needed in the public administration.

[13] The lack of citizens' legal protection in such cases is one of the "modern" problems that needs to be urgently addressed by a new LGAP.

INTEGRITY

Main Developments since the Last Assessment (May 2010)

In September 2010 the State Commission for the Prevention of Corruption (SCPC) of the former Yugoslav Republic of Macedonia (fYRoM) started to elaborate a new State Programme for the Prevention and Repression of Corruption and a new State Programme for the Prevention and Reduction of Conflict of Interest as well as the corresponding action plans. These programmes will cover the period 2011-2015.

The new Public Administration Reform (PAR) Strategy 2010-2015, adopted on 28 December 2010[1], dedicates a special chapter to the anti-corruption strategy, which aims to "upgrade the existing activities and efforts for continuous implementation of the existing anti-corruption legislation, as well as the anti-corruption instruments and practices"[2].

The amendments to the Law on Prevention of Corruption adopted in November 2010[3] provide improvements to the institutional set-up of the SCPC. The seven members of the SCPC now exercise their functions on a professional basis (i.e. as full-time employees and not as part-time office holders); their term of office is four years instead of the previous five-year term, and they have the right to be re-appointed. The president of the SCPC is elected by the SCPC from among its members for a term of office of one year and has the right to be re-elected once. In April 2011 parliament appointed a new SCPC in accordance with these amendments, with four of the seven previous members being re-appointed.

It appears that during 2010 the SCPC succeeded in improving its performance. It is currently more proactive, enjoys higher credibility, and benefits from positive media coverage, despite a budget reduction of almost 10% in 2010 and 25 vacancies of the 41 planned administrative posts. Increasing the number of staff in its Secretariat would contribute to improving the quality and increasing the quantity of the SCPC's work – as stated in the SCPC's Annual Report.

The main activities of the SCPC include the administration of asset declarations of elected and appointed officials and the implementation of the Law on Conflict of Interest.[4] Furthermore, in December 2010 the SCPCsigned a Memorandum of Co-operation with 18 national NGOs on mutual support in the prevention of corruption and conflict of interest. Cooperation under the memorandum should include: exchange of information and initiatives in the area of corruption and conflict of interest; analysis and

[1] A short general comment on the Public Administration Reform (PAR) Strategy was made at the beginning of SIGMA's 2011 assessment report on Civil Service and Administrative Law.

[2] PAR Strategy, page 55

[3] Official Gazette, no. 145/2010

[4] According to its Annual Report, during 2010 the SCPC received 541 new asset declarations of elected and appointed officials, 57 asset declarations upon termination of office of officials, and 58 asset declarations upon re-election or change of office of officials; 164 officials reported changes in their assets. The SCPC filed 28 misdemeanour reports against officials who had failed to submit asset declarations; out of a total of 174 filed misdemeanour reports during the period 2007-2010, the SCPC received 145 decisions on closed misdemeanour cases from the courts, including 54 during 2010. The SCPC initiated a procedure for examination of the assets of 19 officials during 2010; the Public Revenue Office (PRO) managed to terminate the procedure for asset examination in nine cases during 2010, which brought the total number of terminated procedures to 17 out of 89 initiated cases during the period 2007-2010. Out of the total number of 2,445 asset declarations in the SCPC database, 2,168 asset declarations of officials are published on its website.The SCPC received 3,563 statements of interests in 2010 and submitted 222 initiatives for misdemeanour procedures against officials who had not submitted their statements on time.

research of corruption and conflict of interest; regular meetings between the Commission and NGOs; cooperation in organisation of public debates, workshops, conferences and public awareness raising campaigns; organisation of training on corruption and conflict of interest.

The Judicial Council elected the 12 judges of the newly established High Administrative Court in March 2011[5]. The media reported that some of these judges had close family relationships with persons in the ruling party holding high public office.

The "legal" position of Parliament, in particular the role of the opposition, has been strengthened by amendments to the Rules of Procedure adopted in September 2010[6]. In addition, donor-funded projects aimed at reinforcing the institutional capacity of Parliament are continuing. However, as explained in more detail in SIGMA's 2011 assessment report on Civil Service and Administrative Law, parliamentary practice during the first months of 2011 has not demonstrated that these legislative and institution-building activities have had a positive impact on parliamentary and political reality.

Amendments of the Electoral Code to Parliament, adopted on 02 April 2011, provide *inter alia:* increased transparency of election campaign financing by introduction of a requirement for the organisers of campaigns to prepare interim and final reports, which will be published on the web-sites of the SAO, the State Election Commission and the SCPC; a more precise definition of the start and end of the election campaign and a definition of political activities, which are not allowed before the start of the campaign; and a detailed regulation that could improve fairness and financial transparency of the work of media during election campaigns.

The Law on the Establishment of an Additional Condition for the Performance of Public Office (the "Law on Lustration") was amended in February 2011. The amendments partially re-introduced regulations that had been annulled by the Constitutional Court in March 2010, *inter alia* the extension of the lustration period beyond 1991 and the widening of the scope of the law to include the leadership of political parties, journalists, media editors, NGOs, religious groups, and practicing lawyers. These amendments were unfortunate. The amending law was adopted during the period when the opposition parties were boycotting the work of parliament.

The Judicial Council adopted a Code of Ethics for its members in December 2010[7]. The text was drafted with the support of USAID. The Code's non-binding nature is explicitly emphasised in its article 1; in its last article the Code states that disrespect of the provisions of the Code implies an unspecified "moral accountability" of the members of the Council. It must be assumed that within the given cultural, legal and political context such a document will be out of place, and will therefore remain of minor impact on the reality.

The large number (676,462) of unresolved cases in the judiciary at the end of 2010 and in particular the increased backlog in the Administrative Court cause serious concerns with regard to the effectiveness of the judiciary as a key mechanism in the repressive system of fighting corruption.

With the intention of modernising the criminal procedure, enhancing its efficiency and accelerating its course, a completely new Law on Criminal Procedure was adopted in November 2010[8], while its implementation will start on 26 November 2012. The new law provides substantial changes in the previous system. It is questionable whether some of the changes, such as the out-of-court settlement, the abolition

[5] Published on 7 April 2011 in the Official Gazette, no. 46/2011

[6] Official Gazette, no. 119/2010

[7] Official Gazette, no. 162/2010; the Code was drafted with the support of USAID. Article 1 of the Code states that "the purpose of the Code is not and it cannot be that any of the Council members is forced to work and behave in accordance with the ethical principles defined in it, but it is pointed out that the holder of such a high office has and should have much greater self-consciousness and control in performance of the office".

[8] Official Gazette, no. 150/2010

of the judicial pre-trial investigation, and the transfer of responsibilities for investigation to the public prosecution, will fit into the Macedonian legal, institutional and social contexts. As this law redefines the roles of the public prosecution, the courts and the police, as well as other actors in the criminal procedure, adjustments to numerous other laws will be required[9].

On 11 April 2011 Parliament adopted a decision to dismiss the President of the Constitutional Court[10], after both the Administrative Court and the Supreme Court had confirmed the decision of the Lustration Commission that he had been a collaborator with the former security services. The Judicial Council identified, examined and decided on a successor in two days only. This extremely short period is evidence of the absence of a solid and objective process to select a candidate for one of the highest public offices in a democratic state. At the session of 14 April 2011, as the last item of the agenda just prior to voting on its dissolution, parliament elected a new judge of the Constitutional Court upon a proposal of the Judicial Council. The motives for this last-minute replacement remain unclear, however.

Main Characteristics

The weakness of the public integrity system is still one of fYRoM's most pressing problems. In comparison with the previous assessment, noticeable improvements in the system cannot be reported, although some anti-corruption related legislative activities were undertaken. The major reasonfor the unsatisfactory situation is the gap between the regulatory framework and its implementation. Therefore, the first precondition for improving public integrity, is not the massive production of new legislation, but would be the creation of a strong, professional and impartial civil service and judiciary, and the public administration's and judiciary's full compliance with the existing legislation.

The executive level of the public sector (such as ministers/presidents, directors of department, heads of unit) apparently does not understand that it is first and foremost the responsibility of the leadership of every administrative authority (and not the task of central specialised institutions) to ensure integrity and undertake anti-corruption measures. Specialised bodies can only have a complementary and supportive role in this respect. Full compliance of an administrative authority with the law, which also includes pro-active anti-corruption measures, is in the first instance an internal executive and supervisory task within the respective administrative authority. However, in this respect the executive level's awareness of its accountability is rather low.

A necessary condition for a civil servant's full compliance with the law is job security. This is crucial in order to allow the civil servant to resist corruptive influences from outside and inside his administration. The lower the level of job security, the more the civil service is vulnerable to corruption. From this viewpoint, the recent amendment to the Law on Civil Servants, namely "to make it possible to dismiss underperforming civil servants in the same way as in the private sector""[11] is headed in the wrong direction. Such a "dismissal policy" fosters corruption.

The SCPC is the main implementation body of anti-corruption prevention programmes. Its limitations in terms of staffing and budget have been restricting the efficiency of its efforts. It remains to be seenwhether the recently introduced change from part-time to full-time employment of the seven members of the State Committee can contribute to visible improvements in public integrity.

[9] e.g. Law on the Public Prosecution Office, Law on Courts, Law on Misdemeanours, Law on Mediation, Law on Juvenile Justice, Law on Practicing Lawyers, Law on the Police, Law on Internal Affairs, Law on the Financial Police, Law on the Customs Administration, Law on Interception of Communication, Law on Prevention of Money-Laundering, and Law on International Legal Assistance

[10] Official Gazette, no. 48/2011

[11] Public Administration Reform (PAR) Strategy 2010-2015, p. 44

In the past the financing of political parties and electoral campaigns has been one of the main risk areas that adversely affected public integrity and the fight against corruption[12].. It remains to be seen whether the aforementioned April 2011 amendments of the Electoral Code to Parliament will lead to an improvement in comparison to previous elections, since the major reasons for the doubts about fairness and financial transparency concerned the implementation system rather than the regulatory content of the legislation. The early parliamentary elections announced for the 05 June 2011 provide a first test of the effectiveness of the amended legislation.

In March 2010, GRECO recommended "to provide a leading independent body assisted, if appropriate, by other authorities, with a mandate and adequate powers and resources to carry out a proactive and effective supervision, investigation and enforcement of political financing regulations"[13]. However, the institutional set-up has not changed. The controlling of political parties is still undertaken by the same group of institutions, namely the State Audit Office (that for SIGMA is not the appropriate institution for this task)[14] and, in addition, the State Commission for the Prevention of Corruption, the State Election Commission and the Public Revenue Office. The lack of clearly defined scopes of responsibilities and effective mechanisms of controls and sanctions have also not been solved. None of the four institutions has the specific authority to impose sanctions or bring an action if a rule is not being respected.

It appears that a phase of consolidation has begun regarding the institutional set-up of the judiciary . It remains to be seen, however, whether this set-up will contribute to the higher efficiency of the courts, in particular to an improved fight against corruption. In this context, public discussions on political favouritism influencing the Judicial Council's election of judges, and in particular the way the new judge of the Constitutional Court was very recently selected, are not very encouraging. According to complaints received from NGOs, public prosecutors of the Basic Public Prosecution Office for Organised Crime and Corruption come under strong political pressure, which significantly diminishes the institution's performance.

The Ombudsman has evolved into an institution that is now highly respected by both the public sector and civil society[15].

Reform Capacity

The SCPC holds a key position in the institutional set-up for horizontal anti-corruption activities. With respect to the integrity of public sector personnel, close co-operation is required with the newly constituted Ministry for Information Society and Administration. Both organisations were recently subject to far-reaching changes related to their organisational and legal frameworks, and they will require a certain amount of time to consolidate before they will be able to establish trouble-free collaboration and mutual support.

As the December 2010 Memorandum for Cooperation between the SCPC and 18 domestic NGOs shows, numerous non-governmental initiatives to combat corruption are in place, with Transparency International Macedonia being one of the most visible.

The Ombudsman, although without a specific role in fighting corruption, contributes through its oversight function to improving the rule of law as well as to increasing transparency and integrity in public life. The annual Ombudsman report, and in particular its analytical part, which identifies systemic shortcomings, could be used by the relevant public sector bodies as a valuable source of information for prioritising reform activities related to preventing corruption.

[12] c.f. Sigma Assessment report 2009 on Public Integrity System, http://www.sigmaweb.org/dataoecd/1/41/43910553.pdf

[13] Evaluation Report on the former Yugoslav Republic of Macedonia, Transparency of Party Funding, adopted by GRECO at its 46th Plenary Meeting (Strasbourg, 22-26March 2010)

[14] Cf. Sigma Assessment Report 2011 on Public Expenditure Management and Control, page 3

[15] For details see the chapter of this report on General Administrative Law Framework and Public Service

Recommendations

1. The institutional set-up for financing of political parties and electoral campaigns should be reviewed and one independent body mandated and adequately powered to carry out a proactive and effective supervision and control of political financing issues.

2. The legal provisions on termination of employment of civil servants according to the "performance-related dismissal policy" should be abolished. This recent change of the LCS does not only contravene a civil service based on the values of the rule of law and democracy, it could also foster corruption.

3. Higher priority should be given to the implementation of existing laws rather than to law-drafting activities. It is first and foremost the responsibility of the executive level of administrative authorities (such as ministers, directors of departments and heads of units) to ensure, within their respective realms, the compliance of civil servants with the law and integrity of administrative behaviour. Awareness raising measures are required to improve the executive level of administrative authorities' understanding that ensuring transparency and preventing corruption is in the first instance an internal executive and supervisory task within the respective administrative authority.

4. The de-politicisation of the Judicial Council is needed to make the institution credible.

5. The SCPC should be fully staffed and provided with an adequate budget. The large number of vacancies and a recent budget reduction are not positive signs.

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments since the Last Assessment (May 2010)

In both 2009 and 2010, the economic downturn resulted in a reduction of public revenue, and the government was obliged to contain spending in order to achieve its fiscal deficit targets. The government sector budget deficit has been kept below 3% of GDP and the overall public dept is also low, at 24% of GDP in 2010. Although in the former Yugoslav Republic of Macedonia the impacts on public revenue were modest compared to those experienced by some other small and open economies, the reduction of public spending has nevertheless had a negative effect on the possibilities for further reform.

In the area of public expenditure management (PEM), no significant changes have occurred during the past year. Positive progress has been achieved in the preparation of the Pre-Accession Economic Programme, which has improved in content and, for the first time, was submitted to the Commission on time in January 2011.

There has been some further consolidation of the Treasury function by the inclusion of public health organisations in the system of Treasury accounts as from the beginning of 2011. Also, EU funds are gradually becoming part of the budget, as all new programmes implemented under the decentralised model are included in the state budget. On a negative note, IPA funds are included in the budget as independent programmes and not as part of sectoral programmes.

The status for the decentralised implementation of IPA funds for component I (institution-building) was granted to Macedonia in December 2010. IPA components III (regional development) and IV (human resources development) already started under the decentralised implementation system in 2009.

The legal basis and general framework for public internal financial control (PIFC) has improved since the last assessment. In June 2010 the government adopted a new Strategy on Development of Public Internal Financial Control (PIFC) 2010-2011. The strategy is of a general nature, with clarifications sometimes missing. A revised version of the strategy is foreseen to be adopted in June 2011. Furthermore, in 2010 the Central Harmonisation Unit (CHU) in the MoF, in co-operation with Dutch bilateral support, developed and adopted eight rulebooks (by-laws), standards for internal control in the public sector, and a Financial Management and Control Manual. The Internal Audit Manual has been updated. The rulebooks relating to internal audit have been applied since 13 October 2010. The financial management and control rulebooks will hopefully be applied as from 1 September 2011. The relationship and inter-linkage between the Law on Budgets and the PIFC Law have been clarified with the introduction of the rulebooks. Practical experience will prove to what extent further clarifications are needed.

A second twinning project on public internal financial control commenced in February 2011. The project is the continuation of long-term co-operation with the Dutch Ministry of Finance.

The constitutional foundation for the State Audit Office – SAO (external audit) is still missing, but the SAO is active in approaching both government and parliament to fill this gap. In February 2011 parliament considered a proposal that underlined the need to amend the Constitution to the effect that the State Audit Office was designated as the independent external audit institution of the Republic of Macedonia.

The new SAO Law that was adopted by parliament in May 2010 introduced a number of important changes and improvements. The number of auditees to be audited annually on a mandatory basis has decreased, allowing more room for manoeuvre by the SAO in the establishment of its annual audit work programme. The provision that the SAO is partially funded by fees from a specific category of auditees has been abolished. In addition, the provisions for preparation and parliamentary approval of the SAO's budget have been clarified and now lay down the principle that Parliament is to decide on the basis of a proposal by the SAO itself. All of these new provisions contribute to strengthening the operational and financial independence of the SAO. However, there is a risk that its operational independence with respect to the selection of auditees will be reduced if the SAO is chosen as the body to financially supervise political parties. Currently, the SAO can audit the use of the state budget by political parties, which represents only a small portion of their financing. If instead the SAO became the statutory auditor of all political parties, this function could negatively affect its stature as the independent state audit body. It might also have an impact on its free use of resources.

The implementation of the Strategic Development Plan (SDP) 2010-2014 is well underway, substantial training efforts have been made, and the number of SAO staff has increased to 94, of whom 79 are auditors (including 33 chartered state auditors appointed by the General State Auditor). The SAO is committed to further improving its relations with all stakeholders, from auditees to parliament to the media, and it has made some progress in this area. Important initiatives have also been undertaken to improve the quality of audits. In July 2010 the SAO adopted a quality assurance guideline, which results from the second goal set out in the SDP, that of improvement of the quality of audit. This new guideline has been applicable since 1 January 2011. The format and timing of the SAO's annual report have been changed in order to give parliament, as a major stakeholder, and the media a clearer overview of audit activities and results. Individual audit reports now include a summary, which is also aimed at assisting readers other than the auditee.

The Audit Authority, with its function to audit EU funds in Macedonia, used to be part of the SAO as a functionally separate entity. To ensure its independence from the SAO, the new Law on the Audit Authority resulted in a complete separation of the two bodies as from May 2010.

Main Characteristics

The Former Yugoslav Republic of Macedonia's public expenditure management system (PEM) contains many of the attributes of an effective administration, characterised by the control of public funds and political commitment to fiscal discipline. The treasury system tightly controls expenditures and produces timely and informative reports on budget evolution and deviations and the state budget that is approved by the parliament includes also the principal social security funds. A strategic planning framework is in place, with line-ministries preparing and presenting to the Ministry of Finance their three year strategic plans as inputs for the budget process.

Nevertheless, previously identified weaknesses remain. They include decisions on strategic capital investment projects that are taken late in the budget process and separately from the rest of the sectoral expenditure plans (including staffing), the failure to produce a fully consolidated set of accounts at year-end for parliamentary approval, and the absence of information on the impacts of current budget decisions on the budgets of future years even if the links between strategic plans and the budget sometimes have improved in some areas.

Furthermore, no progress has been made in developing the budget preparation regarding the process of prioritisation between the main policy areas, and in bringing expenditure and revenue projections closer to the budget discussions in Parliament. Furthermore, the 2011 budget process (for the 2012 budget) was conducted within a very limited time frame, as the government required the submission by the Ministry of Finance of key documents (e.g. fiscal strategy and the budget circular) significantly earlier than foreseen,

giving ministries less time to prepare their contributions. During 2010 one supplementary budget was issued.

The detailed expenditure proposals presented in November cannot be robust since the overall budget and economic strategy framework is based on macroeconomic projections prepared in the spring, with some updates in the autumn. The Macroeconomic Department of the MoF clearly has the skills to also provide a second, systematic economic and fiscal forecast in the autumn to support the budget discussions in the Cabinet and in parliament.

Plans to introduce advanced concepts, such as full programme budgeting, need to recognise the need to first address the more fundamental weaknesses of PEM and of administrative structures and delegation procedures. Programmes currently exist but their number is very high (280 programs in 2011 budget), and the content and use of the programme information are still being developed. There is not enough delegation of budget and control responsibilities at the budget-user level. A more tangible delegation of responsibilities can only be found in the decentralised management system for IPA funds. The exchange of information within the Ministry of Finance could be improved by integrating the different databases used by its departments.

Inter-departmental and inter-ministerial co-operation takes place only for delivering regular obligations such as the preparation of annual budget documents or opinions by the Ministry of Finance to the government. There is no consistent evidence of middle-management ownership for taking of initiatives to develop the financial management system.

The Former Yugoslav Republic of Macedonia is now gradually applying financial management and control (PIFC) on a large scale and in practice. However, efforts are still needed to transform the theories of the legal framework into practice. The Twinning project can provide substantial support in this respect. The task embraces, however, both the central and municipality levels. Local government is in the middle of a complex decentralisation process aimed at improving the general quality of governance, which adds another dimension to the complexity of implementing financial management and control.

Internal Audit Units and Financial Affairs Units are gradually being introduced in the administration. The Financial Affairs Units supervise the execution of financial management and control in budget users. 45% of the budget users at the central level have established such units (January 2011). The corresponding figure for municipalities is 20%. This organisational change does not mean that all required financial management and control procedures are operational and applied in practice. In 2010 another 5 internal audit units have been established and their total number is now 116 (February 2011). The main focus is on system-based audits which may have contributed to the auditees' more positive view on internal auditors. There are indications that the auditor is less perceived as an inspector and more as a person contributing to the overall performance of the institution.

The outputs produced (e.g. manuals and rulebooks) by the PIFC department (CHU) of the Ministry of Finance are generally being used by the budget users. In this respect the department fulfils an important task which has significantly contributed to the robust legal framework. The department has 14 staff and 16 vacancies.

In parallel with the implementation of financial management and control is an ambition to introduce a financial inspection law. Before such a law is introduced, it will be important to consider not only the relation and interface between financial management and, on the one hand, internal audit and, on the other, financial inspection, but also to thoroughly analyse to what extent a financial inspection service is needed.

External audit (the State Audit Office – SAO) has gained considerable experience in financial and compliance audit, which dominate its work programme. In the annual work plan for 2011, seven

performance audits are included, one for each audit sector. A deliberate choice has been made not to concentrate performance audit in one sector, but to distribute the experience with performance audit over the various sectors and to build more experience by having these audits conducted by all sectors instead of only one. This seems to be a sensible approach.

High on the agenda of the SAO is to ensure that their reports are dealt with by parliament in a proper way. This priority of the SAO has not yet resulted in the establishment of a specialised body in parliament that would allow for such a review of SAO reports, although there is growing consensus within the parliamentary commission for Public Finance Control that such a solution is desirable and that the Presidium of parliament should take a decision in that direction.

Reform Capacity

The managerial capacity to initiate and implement reforms in the area of public expenditure management (PEM) is relatively low in the former Yugoslav Republic of Macedonia. The current situation suggests that a clear mandate from the political leadership is required for any systematic development in public expenditure management.

The low level of managerial initiative has also led to a situation where the core departments of the Ministry of Finance have not made much use of EU assistance. The lack of funding hinders the implementation of the Ministry of Finance's plan for an IT upgrade that would further integrate data-sharing between the Budget, Treasury, Debt Management and Macroeconomic Departments.

The implementation process for sound financial management (PIFC) will depend on the capacity to establish management structures that are able to respond to the need for improved effectiveness and efficiency. This process must be led collaboratively at an inter-ministerial level, but concerns exist regarding the capacity to conduct such a type of co-operation. In most organisations, the head of the organisation is also the "manager" of the whole organisation. Some ministers, directors and heads of departments consider that managerial responsibilities can only be carried out properly if the head of the organisation takes all decisions. PIFC cannot work effectively under such conditions, and there are not enough practical tools to promote the new managerial arrangements. In the context of the decentralised management and control system for IPA programmes, this delegation of responsibility to lower levels of management has to some extent been achieved. To support this system at both central and local levels is a difficult task, given the ongoing parallel initiatives, such as the decentralisation process in local government.

An important element of the reform process is the supervision of the quality of the financial management and control system and of the operations of the internal audits units. This is a key prerequisite to promote the practical implementation of the legal framework. The PIFC department should take on a more active role in this sense but this will call for a gradual improvement of its capacity both in terms of number of staff and their experience.

External audit (the SAO) has engaged in major reforms with regard to its organisation, audit practices, and relations with stakeholders, based on the Strategic Development Plan (SDP), which has a detailed Action Plan that includes clear deadlines. The implementation of the SDP will imply major efforts on the part of the SAO and will stretch to its limits the SAO's capacity to accommodate changes. At the same time, the clear willingness to engage in this major reform demonstrates that the SAO is determined to further improve its practices and increase its impact.

Recommendations

1. The Minister of Finance should promote capacity in the Ministry to initiate and carry out PEM and PIFC reforms that require significant inter-departmental and inter-institutional co-operation.

2. The Ministry of Finance (CHU) should promote a strengthening of managerial accountability at all levels of the administration. There is a clear need to create practical procedures to support the implementation of the general principles of the PIFC Law. As an example, some of the measures that are applied in the decentralised implementation system (DIS) for IPA funds could be further investigated by the Ministry of Finance (CHU) in terms of their applicability on a large scale throughout the administration.

3. Once the more fundamental weaknesses of PEM have been dealt with, the Ministry of Finance needs to improve the concept of programmes in the state budget. This task of improving the overall structure of programmes and the relationship between programmes and managerial responsibilities should be addressed together with the need to increase the capacity for policy planning and analysis at the level of line-ministries.

4. The Ministry of Finance should start to prepare two regular economic and fiscal forecasts each year (instead of only one in the spring). The second projection should be prepared just before the final budget discussions in the government and could be published each year in September or early October. This change would improve the adequacy of budget plans and would help the public and parliament to follow and understand budget developments.

5. The State Audit Office should continue to promote communication with parliament and thereby stimulate the implementation of recommendations that extend beyond the control of individual auditees, such as the harmonisation of existing laws or the introduction of new laws.

6. The Ministry of Finance should ensure that decisions on capital investments are an integrated part of the budget process and timely coordinated with other decisions.

PUBLIC PROCUREMENT

Main Developments since the Last Assessment (May 2010)

The legal framework in the former Yugoslav Republic of Macedonia (fYRoM) with regard to **public contracts** has stabilised in recent years, with a few minor amendments in August 2010 and April 2011[1] to the Public Procurement Law (PPL), which are mainly linked to changes in the Budget Law and in the Criminal Code. The improvement of models of standardised tender documentation has continued. The Rulebook on the Manner of Using the Electronic System of Public Procurement was amended[2] so as to harmonise with the legal regulations on the protection of personal data and to introduce the most economically advantageous tender (MEAT) as alternative award criterion in reversed electronic auctions as from 2011.

This trend is to be linked to the progressive move towards the systematic use of e-auctions that has been pursued, with the initial target of 70% in 2011 and 100% in 2012. However, the use of e-auctions is no longer defined with regard to "the estimated value of the planned procedures for awarding public contracts" but rather "from the number of published contract notices", a requirement that is slightly more flexible. The objective *per se* is nevertheless questionable, because the whole procurement system runs the risk of being "adjusted" exclusively to reach the single objective of 100% e-auctions, thus reversing the proper logical order, according to which an e-auction should simply be an alternative technique for the award of a contract.

The strengthening of the administrative capacity of the Public Procurement Bureau (PPB) has continued. Seven additional staff joined the Bureau in 2010 and four in 2011, meaning it now employs 22 full-time employees. Training of both the existing and the newly employed staff is a continuous activity. The PPB is also participating in the IPA multi-beneficiary project on "Training in Public Procurement in the Western Balkans and Turkey" organised by the European Commission.

With respect to contracting authorities and economic operators, 18 training courses were held by the PPB in 2010 and were attended by 354 participants from 173 contracting authorities and 17 economic operators. In 2011, 4 sessions involving some 80 people have already been organised at the time of writing (April). On average 20 persons attended each session. In addition to the original six training modules, a seventh module on conflict of interest and corruption in public procurement has been provided since February 2011. Furthermore, seven sessions, attended by 540 participants in January 2011, introduced the new concept of e-auctions using the MEAT award criterion. Active support has also been provided by the PPB through a call center, as well as through a Question and Answer facility provided by the Electronic System for Public Procurement (ESPP).

Despite these important and continuous capacity building efforts, concerns remain about the practical implementation capacity at the level of contracting authorities.

With regard to the award of **concessions and public-private partnerships** (PPPs), much of the activity in this area has not been reported and has also not been recorded in a single register, despite a requirement in

[1] Official Gazette of the Republic of Macedonia", nos. 97/2010 and 53/11.
[2] Official Gazette, no. 170/2010

the law No. 7/2008 that is currently in force, under the responsibility of the Ministry of Finance. The Ministry of Transport is currently seeking tenders for a highly significant project of privately financed highways, with an estimated investment value of 1bn EUR (advertisements have been placed in the international media and in the *Official Journal of the European Union*). Large power generation projects are either in preparation or in the process of procurement by ELEM, the state-owned electricity utility. A total of 47 smaller power generation projects have been implemented, most of which were hydroelectric schemes, following announcements in the *Official Gazette of the Republic of Macedonia* and in the *Financial Times*. The Ministry of Economy (MoE) has advertised a further 44 opportunities, with an estimated combined investment value of 63m EUR, with a deadline for expressions of interest in May 2011.

The capacity of the unit for concessions and PPPs in the MoE remains limited to only one person (no developments in this regard).

Concerning **review and remedies**, two new employees joined the State Appeals Commission (SAC) for public procurement in 2010, and its total number of staff is now 12 (foreseen full staffing level: 19). The SAC's administrative capacity has been further developed by a number of actions for economic operators, including the preparation of a *Guide on Legal Protection in Public Procurement Procedures*. The SAC's hardware and software facilities, especially a Document Management System (DMS), are being elaborated in the framework of a project funded by the United Kingdom. There has been good progress towards the SAC's development as a mature review authority.

Main Characteristics

The key institutions for ensuring fair and transparent public procurement in fYRoM are the following:

- Public Procurement Bureau (PPB), a separate legal entity within the Ministry of Finance in charge of public contracts;
- State Appeals Commission (SAC), in charge of review and remedies;
- Ministry of Economy, responsible for preparing a new Law on Concessions and PPPs;
- State Audit Office (SAO);
- State Commission for Prevention of Corruption (SCPC).

The Public Procurement Law (PPL) ensures a high level of harmonisation with the *acquis communautaire* and is well on the way to being in full compliance with the EC Directives. The PPL covers the classical and utilities sectors and all types of procurement (works, supplies and services), except for concessions. The rules concerning the utilities sector are provided in a separate chapter. The PPL also contains provisions for remedies and for the establishment and operation of the State Appeals Commission (SAC) and the Public Procurement Bureau (PPB).

The PPL largely follows the logic of the EC Directives in a co-ordinated fashion and regulates the procurement process from the planning of procurement until the conclusion of the contract. Furthermore, most of the provisions of the law have the same or very similar wording as the provisions in the Directives. There are still some issues to be resolved concerning a few conceptual differences, imprecise implementation of some of the provisions of the Directives, and minor gaps in the implementation of some relevant details of the Directives. Some provisions of the Directives have not been fully transposed (mostly those provisions dealing with utilities and remedies). A set of 15 pieces of secondary legislation has been issued on the basis of

the PPL since it was enforced in order to facilitate its implementation. In this regard, the PPB has already taken steps towards incorporating a more in-depth view of procurement in its strategy for the period 2010-2012. The added aspects include training for economic operators in addition to the training provided for contracting authorities. The focus of training has been widened to cover aspects that are outside the scope of public procurement legislation but that affect procurement discipline to a large extent. Issues related to corruption and codes of ethics are the first steps towards a more comprehensive view of issues that have an impact on the procurement field. In addition, the PPB provides standard tender documents and standard contracts on its website for the disposal (not mandatory) of contracting authorities and it has added some sectoral guidelines and standard tender documents.

The total value of the procurement market in Macedonia amounts to EUR 743 million (11% of GDP), and the government and other public institutions are the main trading partners for many businesses.

Compared with 2008, when the most economically advantageous tender (MEAT) criteria were used in 85% of procurement procedures, there is clearly a declining trend (74% in 2009, 56% in 2010), as a result of the large scale use of e-auctions. Such trend could undermine the effectiveness and economy of public procurement by neglecting quality and long-term costs. Whilst there would be compensating factors if quality was integral to technical specifications, only rarely does that appear to be the case. That situation might change in 2011, as e-auctions have been developed using the MEAT criteria in addition to the lowest price auctions that have been used by contracting authorities so far.

The Public Procurement Bureau (PPB) is a key institution, and although it has neither sufficient staff nor adequate premises, it has certainly proven its ability, skills and capacity to develop the public procurement system. The PPB is proactive and is regarded by the procurement community and throughout the administration as being supportive and knowledgeable.

The State Appeals Commission has successfully managed to establish itself as a respected institution and to cope with its workload. There are no delays in decision-making, it is transparent (decisions are published online), and the legal basis of decisions is properly explained. However, it is important that the SAC continues to receive sufficient organisational and budgetary support, especially including the possibility of seeking the technical expertise of independent specialists where necessary.

It appears that until now, when auditing procurement processes, the State Audit Office (SAO) tends to focus on procedural compliance and less on value-for-money issues. In some cases it interprets the requirements of the PPL in a formalistic manner. This approach potentially has a negative secondary effect on the procurement practice of contracting authorities (CAs). As CAs try to avoid criticism by the SAO, even when the law permits the exercise of discretion in the procurement process, they are more likely to refrain from anything that is not explicitly allowed, in a legalistic, often overly bureaucratic way. This is another obstacle to procuring value-for-money. However, the SAO will from now on also develop performance audit in the field of public procurement.

Of the approximately 1,000 complaints received in 2010 by the State Commission for Prevention of Corruption (SCPC), only 31 were procurement cases. Seven procurement cases were referred to the public prosecutor, with recommendations for criminal procedures. According to the SCPC, these cases terminated at the public prosecutor's level. Three out of 34 dismissals of officials from the civil service concerned procurement cases.

The SCPC has been heavily involved in training under the State Programme on Conflict of Interest. This training has been delivered to all municipalities throughout the country, and has included the participation of

mayors, counsellors and key officers. The training covers nine areas of risk, with procurement identified as an issue in three of these nine areas. The training offered by the Public Procurement Bureau (PPB) also covers a module on conflict of interest developed in co-operation with the SCPC.

Public procurement is acknowledged as a high-risk area for corrupt practices. The general training and support provided by the PPB and the consequent increased professionalism of procurement officers are also helping to reduce the potential for corruption. The implementation of training on conflict of interest and the proposed national policy and action plan on integrity in public procurement are other important and positive elements in tackling this issue.

The framework in fYRoM for concessions and public-private partnerships (PPPs) remains the most obvious weakness of the public procurement system, and further support and improvements to the legal and institutional arrangements will be necessary in order to arrive at a fully functioning system that would be comparable to the standards in many EU Member States. There are examples of PPP-style projects in the country, some of which are quite impressive, but these projects are being supported mainly by international financial institutions (IFIs), and they relate mainly to very substantial infrastructure projects. Effective and efficient PPPs that are prepared and procured by public bodies in fYRoM and supported by private equity and debt financing from commercial banks still remain a future prospect.

A second, substantial current concern in the area of concessions and PPPs is the absence of effective institutional co-ordination, as reflected by the absence of data attached to this report.

Reform Capacity

The comprehensive overhaul of the PPL, which was planned for late 2010, has been postponed so as to be part of the activities of a 16-month twinning project with the German Federal Ministry for Technology and Economy. This project was initially foreseen to start at the end of 2010, but its launch is still pending.

The preparation of a new Law on Concessions and PPPs (CPPPL) by a working group under the responsibility of the MoE is still underway. The submission of its draft to the government has been postponed twice (in May and September 2010). It has currently been forwarded to the EC for its opinion, and it would subsequently be discussed and adopted by the government and enter into the parliamentary procedure. However, parliament has been out of session since 12 April 2011. Pending early elections to be held on 5 June, followed by the formation of a new government, there would obviously still be sufficient time to improve the current draft CPPPL if need be, taking into account the EC's comments.

Considering the time-frame of the drafting work, launched in 2008 and still ongoing, the recent history of developing the legal framework for concessions and PPPs has created an environment of doubt about the government's capacity to successfully implement a new, effective law that regulates this area and to provide the political and institutional support that will be necessary to implement it.

Recommendations

1. In the light of past developments, further support should be given to the Ministry of Economy in order to assist in the elaboration of a robust set of regulations and guidance that can bolster the finalisation of the draft Law on Concessions and PPPs. A rapid and effective harmonisation of other national laws, especially sectoral laws which regulate individual sectors of the economy, for example energy, should be undertaken once the CPPPL has been adopted. However, the scale of efforts needed to carry out this task is likely to overwhelm the existing capacity of the Ministry of Economy, and external assistance will therefore probably be required.

2. Regarding public contracts, the transposition of the EC Directives into the national legislation is a target that has almost been accomplished. **There are no serious reasons to recommend the acceleration of this process**. The required adjustments do not represent a top priority for the time being, and it is not necessary to force the adoption of the amendments immediately. Attention should be shifted more and more to the practical aspects in order to ensure the smooth implementation of the existing legal provisions and to provide legal certainty.

3. In particular, rather than focusing on the introduction of new electronic tools (DPS, e-catalogues), concentrating on stabilising the already existing e-auctions system and reconsidering its further extension is recommended. Further training of contracting authorities also needs to be provided on the functioning of the system, on how to make the most efficient use of the system, and especially on how to use the system's assistance in order to obtain value-for-money.

4. There are several areas of procurement beyond the implementation of the *acquis* that the Macedonian authorities have not yet fully taken into consideration. In particular, matters of organisational, economical, technical and legal aspects of contract management should be incorporated into the materials provided on the PPB's website and also into the training that it provides for contracting authorities.

PROCUREMENT/CONCESSIONS STATISTICS for 2010

A. Number of contracting entities		
State bodies	145	
Bodies of local government units and of the city of Skopje	101	
Legal entities established for specific purpose of meeting public interest needs-indent b), paragraph 1, Article 4 of the Law	787	
Associations established by one or more contracting authorities	12	
Public enterprises, joint stock companies and limited liability companies in the concerned areas	109	
Other contracting authorities	65	
Total number of contracting entities	1219	
B1. Awarded public contracts/Contracting entities (above national thresholds – low-value procurement not included)	**Total (estimated) value (Mio EUR)**	**Total number**
State bodies	230.7	963
Bodies of local government units and of the city of Skopje	94.3	971
Legal entities established for specific purpose of meeting public interest needs-indent b), paragraph 1, Article 4 of the Law	205.1	5527
Associations established by one or more contracting authorities	4.7	50
Public enterprises, joint stock companies and limited liability companies in the concerned areas	122.1	978
Other contracting authorities	11.3	20
Total public contracts awarded	668.1	8509
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 thresholds		
Works	104.9	12
Services	65.4	136
Goods	144.3	281
Mixed contracts	/	/
Total public contracts above the EU thresholds	314.7	429

C2. Awarded concessions above the EU thresholds	**n/a**	**n/a**
Works		
Services		
Other		
Total concessions above the EU thresholds		
D. Procurement methods used (above the national thresholds)		
Open procedure	563.3	7246
Restricted procedure	46.5	93
Negotiated procedure with prior publication of a notice	12.6	68
Negotiated procedure without prior publication of a notice	34.5	827
Other procedures (competitive dialogue, etc)	/	/
D1. Low-value procurement *(estimated)* *Include: - simplified competitive procedure without publishing a notice* *-simplified competitive procedure by publishing a notice* *- public service contracts (category of service 17- 27)*	80.3	16014
E. Participation rate (average number of submitted tenders)		
Works	/	4
Services	/	3
Goods	/	6
F. Review procedures	**n/a**	**n/a**
Number of complaints received	868	95.47%
Number of complaints treated	820	5.53%
Number appealed to the Court	94	10,83%
Number of decisions with interim measures	non-existing jurisdiction	

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

	Name of Contracting Authority	Main Activity	Annual procurement
1.	Macedonian Power Plants	Utilities	73.5 mil eur
2.	Ministry of Transport and Communications	General public services	69.2 mil eur
3.	General and administrative matters division - Government of RMacedonia	General public services	33.5 mil eur
4.	Ministry of Health	Health	20.4 mil eur
5.	PE Macedonian Forests	General public services	19.4 mil eur
6.	Ministry of Culture	Sport and culture	17.0 mil eur
7.	City of Skopje	General public services	15.0 mil eur
8.	Cultural Heritage Protection Office	General public services	14.0 mil eur
9.	Medical clinic for radiotherapy and oncology	Health	12.5 mil eur
10.	Minucipality of Center	General public services	11.9 mil eur

G. A list of 10 largest public contracts/concessions awarded and/or advertised in 2010 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, and time of execution):

	Subject of contract	Name of CA	Contractor	Value (eur)	Time of exec.
1.	Purchase of 202 new two-story buses	Ministry of Transport and Communications	Zhengzhou Yutong Group Co. Ltd	41.5 mil	3.8 years
2.	Supply and installation of mining equipment	Macedonian Power Plants	THYSSEN KRUPP GMBH	17.2 mil	2 years
3.	Construction of new building for Ministry of Foreign Affairs	General and administrative matters division - Government of Macedonia	Beton AD - Skopje	15.8 mil	1.5 years
4.	Construction of new buildings for Public Prosecution Office and Department of Financial Police	General and administrative matters division - Government of Macedonia	Beton AD - Skopje	13.1 mil	1 year
5.	Reconstruction works and adaptation of the building of the Assembly	Assembly of Republic of Macedonia	Beton AD - Skopje	12.6 mil	2 years
6.	Purchase of new one-story buses	Ministry of Transport and Communications	Lvivski Avtobuski Fabriki	11.7 mil	1.8 years
7.	Construction works and adaptation of the building of Ministry of Finance	Ministry of Finance	Energoplan Engineering - Skopje	10.4 mil	1.6 years
8.	Reconstruction of St. Kliment's University in Ohrid	Cultural Heritage Protection Office	Konstruktor Engineering - Split	9.0 mil	2.2 years
9.	Translation, computer editing, printing and delivery of 500 law books from eminent authors (100 pieces of a book)	Ministry of Education and Science	ARS Lamina	6.8 mil	2.5 years
10.	Construction works – Theatre Veles	Ministry of Culture	Svetlost Teatar DOO - Belgarde	4.7 mil	0.6 years

POLICY-MAKING AND CO-ORDINATION

Main Developments since the Last Assessment (May 2010)

The structures and the formal role of the General Secretariat in policy co-ordination have been stable, but the tendency towards using ad hoc working teams and other forms of policy input has increased.

In December 2010 the Government of the former Yugoslav Republic of Macedonia (fYRoM) adopted a new Public Administration Reform (PAR) Strategy, which includes measures to address policy-making and co-ordination. A working group in the General Secretariat has developed a detailed Action Plan to ensure implementation of these measures. A new Ministry for Information Society and Administration was established, and most of the PAR functions and a part of the staff of the General Secretariat and the Secretariat for European Affairs were transferred to the new ministry.

The strategic planning process 2011–2013 was implemented according to the new methodology, which puts more emphasis on alignment with the budget and with the NPAA (National Programme for the Adoption of the *Acquis*). The links between strategic plans, the budget and the NPAA have improved.

An updated NPAA for 2011 was adopted in December 2010. The government's Annual Programme for 2011 was adopted early in January and published on the government's website. Initiatives have been grouped by level of priority and by process, that is, initiatives to be adopted by parliament, initiatives that require only the approval of the government, and initiatives that are the regular business of the government. Indications of the level of implementation of the 2010 Work Programme are positive.

To support the policy co-ordination system, teams appointed by the Secretary General have been assigned to specific policy areas to review incoming material and to prepare briefing notes for the Secretary General in preparation for the weekly meeting of the General Collegium of State Secretaries. Besides considering the formal aspects in relation to the Rules of Procedure, especially in terms of the consultation process, some attempts have been made to include in the briefing notes a substantive review of the incoming proposals.

To further support the public consultation process, a Code on Consultation was developed with the assistance of the project supported by the UK Foreign and Commonwealth Office. The Code on Consultation is expected to be approved by the Government soon.

Some of the measures planned under Phase III of the Regulatory Guillotine have been completed. These measures relate mainly to amendments that have the purpose of removing administrative barriers.

The electronic circulation of materials from ministries for the sessions of the government has completely replaced paper circulation.

The Secretariat of Legislation has continued to improve its performance, especially in the assessment of the level of harmonisation of national legislation with the EU *acquis*. A new design of the Table of Concordance has been introduced to enable a clearer overview of the specific provisions being harmonised. An improved edition of the *Handbook on Harmonisation of the National Legislation with the EU Acquis* has been issued, and training has been delivered by the Legislative Secretariat to civil servants in ministries and other agencies.

Main Characteristics

Designed structure, but much of the human capacity required to produce and implement policy remains to be developed, in particular in the line-ministries. There is a sound legal framework for the policy-making and co-ordination system, including the Rules of Procedure and updated Overall, the policy-making and co-ordination system in fYRoM has the characteristics of a well methodologies and instructions, and the requirements as set out in the Rules of Procedure are generally observed.

The organisation primarily responsible for policy co-ordination is the General Secretariat. It is well structured and formally they have the design and mandate to support the policy system. There is however significant use of different ad hoc working teams and other informal inputs to the policy process at the centre, which implies that the existing structures and procedures are not satisfactory for the current government. The capacity of the working teams tends to vary. The main weaknesses continue to be over-politicisation and the under-utilisation of professional civil servants' capacities. As a result, the system put in place over the past ten years is under-performing.
The Secretariat for European Affairs (SEA) and the Legislative Secretariat also play important roles in policy co-ordination. The SEA is well staffed in terms of numbers, and its EU co-ordination mechanism, including the EU working committee and sub-committee, seems to be effectively performing its co-ordination and monitoring role. The Working Committee on European Integration is chaired by the Deputy Prime Minister responsible for European Integration, and its members are ministerial state secretaries. It holds regular monthly sessions to review progress on the implementation of the NPAA and IPA funds. A sub-committee on European integration, chaired by the State Secretary of the SEA, examines technical issues related to the specific chapters of the NPAA. Its members are the heads of European integration sectors in ministries.

The strategic and work-planning systems are well established and operational, with mechanisms to link the strategic priorities of the government with the Annual Work Plan and the NPAA. Three-year ministerial strategic plans are produced and are linked to the government-wide planning documents, and in particular to the budget. The quality of the ministries' strategic plans is variable and needs further improvement. The capacities in ministries for policy planning, analysis and co-ordination are still insufficient.
Ministries' strategic plans are submitted to the Ministry of Finance for review, together with their budget proposals. However, since it is not required by law, ministries seem to bypass the General Secretariat, failing to submit their strategic plans for its review. This causes difficulties for the General Secretariat in the regular annual reporting on the strategic process and on the implementation of the government's strategic priorities. It is also an indication that the ministries still do not consider the General Secretariat

as an important player in the strategic planning process. Also, co-operation between the General Secretariat and the Ministry of Finance is insufficient.

Understanding of the importance of co-ordination and analysis in the early stages of the policy and law-drafting process is increasing. However, pressured by tight deadlines and the increased production of legislation, ministries tend to contract the stages in the policy development process, especially the need to consult other relevant stakeholders, which at times results in legislation of poor quality.
Strategic planning and policy analysis units have been formally established in all ministries, although in practice internal coordination in ministries is still very poor. Furthermore, these units are still understaffed, and staff turnover has seriously undermined their effectiveness. The capacity for policy development in the ministries remains insufficient.

The procedures for inter-ministerial consultations are clear and draft laws are also published in the Single Electronic Register of Regulations, thus giving an opportunity to stakeholders to comment on the drafts. However, procedures are often not observed because of the pressure of tight deadlines. A Code on Consultation to improve the consultation requirements and process is expected to be approved by the government soon.

The formal requirements for regulatory impact analysis (RIA), which came into effect in January 2010, are being observed, and some progress has been made in terms of developing the capacities for RIA. Both formal and substantive checks are done by the staff in the Economic Policy and Regulatory Reform Sector in the General Secretariat. Regular communication with the business community on improving regulations and reducing restrictions is maintained. The Sector develops a brief report for all RIA accompanying legislation, and this report becomes part of the package presented to the meeting of the State Secretaries and the government. The capacity of the Sector has improved but still focuses mostly on red tape reduction. The RIA process is also not well enough integrated into the general rules for policy-making, and reporting by ministries should be incorporated into the Memorandum, together with reporting on fiscal impact assessment (FIA). The current separation of these documents creates confusion and overburdens the ministries.

Reform Capacity

The newly established Ministry for Information Society and Administration is responsible for overall co-ordination, monitoring and reporting on the PAR Strategy. The ministry was established at the beginning of 2011, and the process of staffing and institutional development is still underway. This new ministry clearly offers a new central focus for public administration reform, but because it has been operating for only a few months, its capacities are still very weak in the field of public administration.

The new Public Administration Reform (PAR) Strategy has also introduced a renewed emphasis on the development of strategic planning and policy co-ordination in the General Secretariat and in ministries. A working group established in the General Secretariat has been given the task of co-ordinating and monitoring the implementation of activities in the Action Plan related to policy planning and development under the new PAR Strategy. It is however unclear to what extent the General Secretariat can benefit from the political support of the Council of Ministries in terms of strengthening the capacity for policy making, and whether both institutions are able to co-operate sufficiently with the Ministry of Finance, in particular for increasing the capacities of the ministries for medium term planning.

Recommendations

Considerable efforts have been invested over the past several years in the development of structures, procedures and human resources for policy co-ordination and planning within the General Secretariat and within ministries. However, in order to sustain and further develop these systems, it is also necessary for the political leadership to make better use of existing professional capacities.

The co-operation of the General Secretariat with the Ministry of Finance should be improved. The linkages between strategic planning and the budget development process are formally addressed in the Strategic Planning Methodology but need to be further strengthened in practice. Ministries should improve internal co-ordination and continue to develop their capacities for policy analysis, strategic planning, and legislative drafting.

The general rules for policy-making and reporting by ministries should be strengthened by ensuring the inclusion into the explanatory memorandum of the results of the RIA process and the reports on fiscal impact assessment.