



Monitoring Report:

The Principles of Public Administration

The former
YUGOSLAV REPUBLIC
of MACEDONIA

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LIST OF ABBREVIATIONS AND ACRONYMS

CAF	Common Assessment Framework
CCC	Centre for Civil Communications
ENER	Single National Electronic Register
ESPP	e-procurement platform
EU	European Union
EUR	euro
ISO	International Organization for Standardization
IT	information technology
LGAP	Law on General Administrative Procedures
MISA	Ministry of Information Society and Administration
MKD	Macedonian denar
MoE	Ministry of Economy
MoF	Ministry of Finance
MoI	Ministry of Interior
NGO	non-governmental organisation
PAR	public administration reform
PPB	Public Procurement Board
PPC	Public Procurement Council
PPL	Public Procurement Law
PPP	public-private partnership
PRO	Public Revenue Office
RIA	Regulatory Impact Assessment
SAC	State Appeals Commission
SAO	State Audit Office
SME	small and medium-sized enterprise
VAT	value added tax
WCAG	Web Content Accessibility Guidelines

INTRODUCTION

Following the comprehensive *Baseline Measurement Reports*¹ prepared by SIGMA in May 2015 for all European Union Enlargement countries against *The Principles of Public Administration*², SIGMA has continued to monitor the progress of public administration reform in each country. The focus of the specific topics within the Principles for assessment by SIGMA in 2016 was selected in co-operation with the European Commission.

This report covers four Principles for the service delivery area and three Principles for public procurement, under the public financial management area:

- The chapter on service delivery focuses on good administration as a key objective of public policies. It analyses the current state of development and implementation of citizen-oriented policy and the mechanisms for ensuring quality and accessibility of public services.
- The chapter on public procurement, under the public financial management area, systematically analyses the legislative framework for public procurement, developments concerning the institutional set-up in relation to performance of procurement functions and the functioning of the procurement review system.

Both are highly relevant for a more focused review. An in-depth review of the state of play of service delivery is relevant, as this area is a priority for the Government, and proper development of service delivery is important for a citizen-oriented administration. The systematic review of public procurement was done with a specific focus on the alignment of the public procurement regulations (including public-private partnerships and concessions) with the *acquis communautaire* and the capabilities of the Public Procurement Bureau, Public Procurement Council and the State Appeals Commission for Public Procurement.

The report covers the period from May 2015 to April 2016. It highlights the main developments, updates values for the indicators relevant to the Principles analysed and provides both short- and medium-term recommendations for reforms.

¹ SIGMA (2015), [Baseline Measurement Reports](#), OECD Publishing, Paris.

² SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris.



SERVICE DELIVERY

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-APRIL 2016

1.1. State of play

Since the Public Administration Reform (PAR) Strategy came to an end in 2015, there has been no comprehensive policy framework for public service delivery reform. The common vision is mainly limited to organisation-focused quality management, through the statutory application of the Common Assessment Framework (CAF) and International Organization for Standardization (ISO) standards. The lack of a comprehensive policy framework for service delivery reform has resulted in inconsistent and unsatisfactory use of mechanisms to improve the quality of services. It also hinders digitisation efforts, which lack harmonisation and offer a poor and heterogeneous user experience overall. Quality certifications are mandatory for organisations, but relatively little is done to identify the needs and burdens of users in order to re-engineer individual services for citizens. The situation is better for basic business-oriented services, where the country scores high in international rankings.

Four regulatory guillotine phases have simplified administrative processes, especially for businesses. However, recent trends of excessive legislative activity, low levels of compliance with Regulatory Impact Assessment (RIA) procedures and the poor quality of RIA reports risk reversing some of the progress made. RIAs suffer from a systematic lack of public consultation, despite the legal obligation to conduct it.

The Government made good administration a priority by revising the Law on General Administrative Procedures (LGAP). The revised Law was adopted by the Parliament in July 2015, and will come into effect in August 2016. It incorporates a significant number of SIGMA recommendations, notably by defining key principles of good administrative behaviour and stipulating explicit rights and duties in this area. Over 160 specialised material laws were harmonised with the new LGAP.

The accessibility of public services is not consistently upheld. There is good territorial coverage for some administrative services, but citizens do not benefit from the same ease of procedures as businesses. Many business-oriented services are accessible via one-stop shops, intermediaries and digital channels. Citizens, on the other hand, are obliged to deal with most administrative requirements in person or on paper. Accessibility for users with special needs suffers from inconsistent implementation and monitoring.

1.2. Main developments

Due to the complex political situation in the country, no major developments have taken place apart from adoption by the Parliament of the revised LGAP in July 2015. The Law will enter into force in August 2016, and current implementation efforts are focused on harmonising specialised material legislation (altogether some 164 laws) with the LGAP.

Since the PAR Strategy 2009-2015 came to an end, the Ministry of Information Society and Administration (MISA) has started preparing a renewed policy framework for public service delivery, in the form of the PAR Strategy 2016-2020.

2. ANALYSIS

This analysis covers four Principles for the service delivery area under one key requirement. The Principles cover the policy and practice of service delivery. There is particular focus on the strategic and legal framework for service delivery, and on the standards for access and quality of services. The Principles also refer to the procedural guarantees of good administration behaviour being applicable to service provision.

Key requirement³: Administration is citizen-oriented; the quality and accessibility of public services is ensured.

Indicator values

The policy and practice of service provision are examined through 3 qualitative indicators and a set of 14 quantitative indicators. Qualitative indicators analyse primarily the implementation of policies and legislation in the area of service delivery. Most of the quantitative indicators are based on data provided by the country, which was subsequently verified for the purposes of this report. Selected quantitative indicators are based on two international comparative studies, *Doing Business*⁴ and *Global Competitiveness Report*⁵.

Compared to the SIGMA 2015 *Baseline Measurement Report*⁶, this assessment finds that the Government shows less commitment to improving the quality of service delivery, both in person and online. This is reflected by a lower value for two of the three qualitative indicators. There is no follow-on strategy to the PAR Strategy 2009-2015 and, therefore no comprehensive action plan.

The lack of a strategy to follow the PAR Strategy 2009-2015 also has a negative impact on the collective level of digitisation, as there is no strategic direction for the development and delivery of digital services. The MISA's Strategic Plan 2016-2018 contains many ambitious initiatives, but it remains a plan that is largely developed, issued and led by a single line ministry and therefore lacks consistent commitment and buy-in across the Government.

Expenditure on general public services remains low in comparison with other small European countries, partly owing to a low level of public debt servicing cost but nevertheless indicating that general administrative services are provided without excessive burden to the budget.

³ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p. 69.

⁴ World Bank Group, [Doing Business 2015](#).

⁵ World Economic Forum, [Global Competitiveness Report 2015-2016](#).

⁶ SIGMA (2015), [Baseline Measurement Report: The Principles of Public Administration, The former Yugoslav Republic of Macedonia](#), OECD Publishing, Paris.

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	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	1	Extent to which citizen-oriented policy for service delivery is in place and applied.	2014	2	2015	1
	1	Extent to which policy and administrative preconditions for e-service delivery are applied.	2014	3	2015	2
	2	Extent to which the legal framework for good administration is in place and applied.	2014	2	2015	3 ⁷
Quantitative	1	Expenditure on general public services as a share of gross domestic product.	2014	4.1%	2015	4.4 ⁸
	2	Favouritism in decisions of government officials ⁹ .	2014	3.6	2015	3.3
	3	Percentage of users satisfied with public services.	2014	Not available ¹⁰	2015	Not available ¹¹
	3	Proportion of institutions using quality assurance tools and techniques (e.g. European Foundation for Quality Management, Common Assessment Framework and other international standards).	2014	43.8% ¹²	2015	49.1% ¹³

⁷ The 2015 indicator value has been raised from 2 to 3 due to a change in methodology, not due to significant substantive improvement.

⁸ Ministry of Finance, http://finance.gov.mk/files/ERP_2016_en.pdf

⁹ According to The World Economic Forum Global Competitiveness Index. Scale from 1 (government officials show favouritism to a great extent) to 7 (government officials do not show favouritism at all).

¹⁰ No surveys are available. Through scoreboards (voting buttons in public offices), 86.5% of users indicated that they were satisfied with the service received in 2014.

¹¹ Surveys are conducted with methodologies too diverse to make cross-government comparisons.

¹² CAF: 8 central government institutions; ISO: 47 (6 had both, hence a total of 49). The total reference number of central government institutions was 112. In the baseline measurement exercise, a share of 49.1% was calculated, which double-counted institutions that had both CAF and ISO certification. Information provided by MISA.

¹³ CAF: 10 central government institutions; ISO: 51 (7 have both, hence a total of 54). The total reference number of central government institutions is 110. Information provided by MISA.

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3	Average time needed to acquire a personal identification document (passport or ID card) after submitting the application.	2014	7-10 days	2015	7-10 days
	A. Passport ¹⁴		7-10 days		7-10 days
3	Share of institutions where customer satisfaction surveys are conducted on a regular basis (at least every two years).	2014	16.1% ¹⁶	2015	Not available
3	Average number of days needed to set up a business ¹⁷ .	2014	2 days	2015	1 day
3	Average cost of setting up a business ¹⁸ .	2014	0.6%	2015	0.1%
4	Number of one-stop-shops that provide the services for more than three different public institutions.	2014	2	2015	3
4	Number of services provided through one-stop-shops.	2014	153	2015	148
4	Percentage of wheelchair-accessible institutions.	2014	77.6% ¹⁹	2015	Not available ²⁰
4	Share of citizens who submitted paperless/electronic/digital income tax statements last year.	2014	Not available ²¹	2015	0.6%

¹⁴ Ministry of Internal Affairs. National legislation imposes a maximum of 15 days. A shortened procedure is available for a higher fee to obtain the document within 48 hours.

¹⁵ Idem.

¹⁶ Eighteen institutions out of 112. A collection of opinions was done in the framework of a "citizen journal", the e-services portal and scoreboards.

¹⁷ According to World Bank Group *Doing Business* report.

¹⁸ The percentage of income per capita, according to World Bank Group *Doing Business* report.

¹⁹ MISA.

²⁰ Uneven monitoring makes official figures on implementation progress difficult.

²¹ SIGMA was provided with the data on the percentage of tax declarations sent through the Internet, but the data encompassed a number of declarations in addition to personal income tax annual returns. The value for 2013 was 0.58%. Information provided by the Public Revenue Office.

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	4	Share of companies that sent their tax declarations using the Internet	2014	Not available ²²	2015	97.4% ²³
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Analysis of Principles

Principle 1: Policy for citizen-oriented state administration is in place and applied.

Due to the complex political situation, there is currently no comprehensive policy or action plan for improvement of citizen-oriented service delivery. The PAR Strategy 2010-2015 expired at the end of 2015, and a subsequent strategy has not yet been developed. With no comprehensive policy or action plan in place, the corresponding qualitative indicator rating has dropped compared to the SIGMA 2015 *Baseline Measurement Report*.

The MISA issued a Strategic Plan for 2016-2018 that includes government modernisation and digitisation initiatives. The plan does not compensate for the lack of a government-wide policy, because it is principally a work plan for one line ministry. Although it includes cross-governmental goals, the Strategic Plan consists of action items for the MISA with little responsibility shared with other institutions.

A legal obligation is in place to introduce CAF and ISO certification in all state institutions (see Principle 3). However, this alone does not constitute a comprehensive citizen-oriented service delivery policy.

There is no up-to-date catalogue or inventory of the public services delivered by state institutions. This would be an important starting point for monitoring, benchmarking and improving public services. A basic list, first compiled as part of the 2006 Citizen Charter, is still available²⁴. But there is no evidence that the list was used for actual service improvements or that it has been regularly updated. The Government is in the process of compiling a new list with more comprehensive information, such as the delivery agency, delivery channel and volume of transactions²⁵.

Notable administrative simplification has been achieved through the four phases of the Government's regulatory guillotine initiative since 2006. Over 90% of measures from Phases II and III have been implemented, as well as 85% of measures from Phase IV, which focuses on administrative simplification for small and medium-sized enterprises (SMEs). The effect of these measures on reducing administrative burdens is generally appreciated, at least by the business community. However, some issues of concern remain, such as the difficult and lengthy process of closing a business. Over 3 700 businesses are currently in the process of liquidation²⁶ and, according to the World Bank, the liquidation process can take almost two years²⁷.

RIAs are to provide a systematic assessment of the potential impacts of new regulation and to show whether it is likely to achieve the desired objective. RIAs have been mandatory since 2009. A revised, more comprehensive methodology was introduced in 2013, when management of the RIA process was

²² SIGMA was provided with the data on the percentage of tax declarations sent through the Internet, but the data encompassed a number of declarations in addition to corporate income tax annual returns. The value for 2013 was 38.78%. Information received from the Public Revenue Office.

²³ Online declaration of corporate taxes is mandatory, except for a small share of companies that fall below a given minimum value added tax (VAT) threshold. Information provided by the Public Revenue Office.

²⁴ <http://www.uslugi.gov.mk/grdnevnik.aspx>

²⁵ Information provided by the MISA.

²⁶ Information provided by the Central Registry.

²⁷ <http://www.doingbusiness.org/data/exploreeconomies/macedonia-fyr/resolving-insolvency>

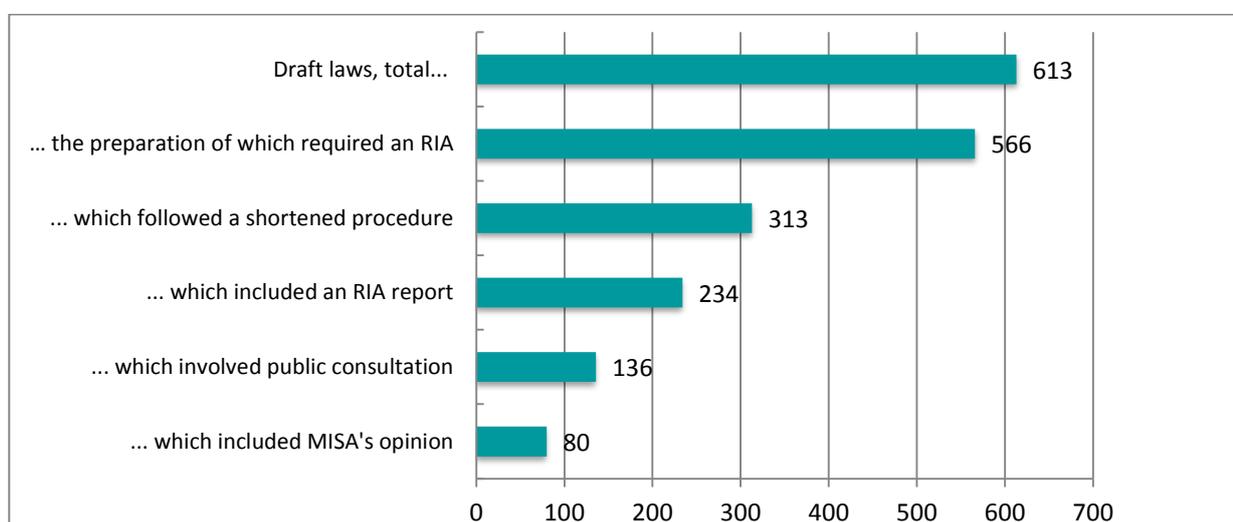
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transferred to the MISA. The General Secretariat of the Government ensures that draft laws submitted to the Government include an RIA²⁸.

However, RIAs encounter major challenges because of low compliance with procedures and the low quality of analysis. Excessive legislation proposed by the Government is an underlying problem: 614 legislative proposals were made in 2015, of which 566 required an RIA. This high number strains government resources for preparing, monitoring and processing RIAs. Excessive use of shortened procedures²⁹ in the preparation of legislation, combined with a period of generally only ten days for public consultations, seriously hampers opportunities for the public to comment on draft laws.

Official statistics illustrate the low levels of compliance with RIA obligations. MISA reporting for 2015 shows that 41% of draft laws included an RIA report³⁰, 24% complied with consultation rules, such as publication and consultation on the national legislation platform (the Single National Electronic Register, known as ENER), and 14% requested the mandatory opinion by the MISA (Figure 1). Monitoring by non-governmental organisations (NGOs) confirms the low level of public engagement sought by the Government³¹.

Figure 1: Government compliance with RIA obligations, 2015



Source: Ministry of Information Society and Administration.

Even where RIA reports are provided, the quality of impact assessments is often low. A sample of RIA reports shows little to no credible assessments or evidence for economic, social, fiscal or environmental impacts³². Post-implementation assessments are foreseen by law but are rarely undertaken³³. These negative issues undermine the positive effects of past regulatory guillotines.

The current institutional set-up foresees the MISA as the main agent of public sector reform. The MISA is tasked by law to set and promote a whole-of-government agenda in a wide range of areas: information society, information and communications technology, telecommunications and broadcasting, public service human resource management, training and capacity building, RIA

²⁸ Government Rules of Procedure, Official Gazette No. 36/2008, with subsequent amendments.

²⁹ Over 50% of legislative proposals (313) in 2015 used the shortened procedure. Information provided by the MISA.

³⁰ 234 of 566 legal drafts that required an RIA.

³¹ Regular monitoring and periodic reporting at www.ogledalonavladata.mk

³² Draft Law amending the Law on Sale of Agricultural Land in State Ownership, 2016; Draft Law on Tobacco and Tobacco Products, 2015; Draft LGAP, 2015; Draft Law Amending the Law on Packaging and Packaging Waste, 2015; Draft Law Amending the PPL, 2015; and Draft Law Amending the Law on Veterinary Health, 2015.

³³ *Centar za evropske politike* (2015), "Improving Performance of Public Administration: Current Experiences and Future Perspectives", Conference Proceedings, p. 21.

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compliance and quality, digital government, and local government digitisation³⁴. In addition, the MISA has been given the responsibility of steering service delivery reforms as part of the public administration reforms.

The governance arrangements have not proved to be effective for achieving harmonised levels of service quality. With just over 100 employees, the MISA lacks the resources to set standards, give assistance and promote equal levels of application across the whole range of its responsibilities. As the *de facto* steward of service delivery reforms, the MISA also has very little steering capacity or other measures to enforce compliance with service delivery standards. Fines are foreseen in some instances of non-compliance, but there is a lack of more advanced governance mechanisms (such as incentives, networking and sharing experiences, benchmarking and reviews) to ensure collective adherence to common standards.

The National Council for Information Society is tasked with improving central and local government digitisation. It is chaired by the MISA and is used to co-ordinate individual projects. There is no evidence of the Council taking a more strategic or political stance to promote a cross-government agenda in this area.

A legal framework exists for digital government (delivery of e-services), but there is no consistent application across government at this point. The Law on Electronic Management³⁵ establishes fundamental rights and obligations regarding electronic communications between government institutions, as well as between the Government and citizens. According to the Law, citizens can request interaction via electronic channels. The Law further obliges institutions to exchange data instead of asking service users to provide data that already exists within the administration (commonly known as a “once only” approach). It also sets reporting duties for institutions that develop web services or information systems, as well as the obligation to report any creation of information systems or significant modifications to the MISA.

One deficiency of the Law on Electronic Management is its weak governance provisions. It establishes the MISA as the lead institution of government digitisation. But aside from imposing monetary fines, the MISA is given little means to encourage or enforce collective commitment to digitisation. Its prerogative to oversee development of information systems has been of little effect so far, as institutions have been able to develop their information systems autonomously. The result is a high degree of heterogeneity in the level of digitisation in individual ministries and agencies.

The Law also gives the MISA the prerogative to keep a record of all electronic services provided by state-level institutions. A lack of resources to ensure compliance is observed in this area. The MISA issued a dedicated information request in early 2015, but by January 2016 had received responses from only 71 of 115 institutions (62%).

The Law on Electronic Signatures³⁶ transpose the European Union Directive on electronic signatures³⁷. Certified digital signatures can easily be obtained from one of the two certifying authorities, MK Telekom or clearing house KIBS AB Skopje³⁸. The initial cost to obtain the required hardware and software is EUR 18 to EUR 50 (MKD 1 100 to MKD 3 030), depending on the level of security required. Take-up and use are high among businesses, but take-up among citizens is hampered by the relatively high cost and few serious service offers directed to citizens (Principle 4).

³⁴ Law on Organisation and Operation of State Administration Bodies, Official Gazette No. 58/2000 with subsequent amendments.

³⁵ Law on Electronic Management, Official Gazette No. 105/2009.

³⁶ Law on Data in Electronic Form and on Electronic Signature, Official Gazette No. 34/2001.

³⁷ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures

³⁸ KIBS AB Skopje (<http://www.kibs.com.mk/en/default.aspx>) is a payment system operator providing settlement of small interbank payments and a provider of additional services in the common interest of the banks.

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The new LGAP reiterates some of the rights and obligations in the area of electronic services delivery. It confirms the “once only” principle, gives citizens the right to require electronic communications and prioritises electronic channels for government-to-government interactions. Quality of implementation will depend on the progress of digitisation in individual ministries, as well as on the diffusion of important enablers like the digital signature and a common interoperability framework.

A functioning interoperability layer is critical in order to materialise the “once only” provision of information from citizens to the Government. To this end, the Law on Electronic Management obliges all government institutions to exchange data, according to common standards defined by the MISA. The reality, however, is that the first interoperability framework developed by the MISA and the corresponding infrastructure are used by only four institutions: the Central Registry, the Customs Administration, the Agency for Real Estate Cadastre and the Public Revenue Office (PRO)³⁹.

The bulk of automated data exchanges between institutions take place via alternative bilateral arrangements. Whenever a new business is registered, for example, the real-time data exchanges between the Central Registry and other institutions take place outside of the Government’s interoperability framework.

To improve the situation, the MISA developed a second interoperability framework, which is designed to be compatible with the European Interoperability Framework⁴⁰. The aim is not to replace the already existing interoperability layer but to complement it, and to operate both in parallel. Implementation of the second framework is underway, but is slow due to low levels of digitisation in some institutions and the fact that the registers for population, motor vehicles and drivers’ licenses are not available in digital format⁴¹.

The value for the indicator on citizen-oriented policy for service delivery is 1. The value for the indicator on policy and administrative preconditions for e-service delivery is 2.

Since the PAR Strategy expired at the end of 2015, no long-term vision or action plan has been formulated for service delivery improvement across the Government. Individual laws and initiatives exist, but they do not add up to a comprehensive service quality policy centred on individual services and their users. The Government has shown its commitment to reducing administrative burdens through several regulatory guillotines. However, there is a risk that the positive impacts will be undermined by excessive recent legislative activity, non-compliance with RIA procedures and low-quality RIA reports. The institutional set-up for service delivery reforms remains problematic. The MISA is the formal steward, but it has limited resources and powers to promote common service quality standards and ensure consistent application. A relatively solid legal framework for digital government is in place, but application is inconsistent. This leads to highly heterogeneous levels of digitisation and limited interoperability between the information systems of different institutions.

Principle 2: Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.

Since the SIGMA 2015 *Baseline Measurement Report*, the Government has revised the LGAP, and it was adopted by the Parliament in July 2015. The revised LGAP will take effect in August 2016. The Law takes into account a significant number of SIGMA’s recommendations for improvement of the existing legislative framework. The number of detailed provisions was reduced, which in turn reduced the size and complexity of the Law. Its scope was expanded to cover not just administrative acts in the narrow sense, but also rights and duties in the provision of information and general public services.

Despite this progress, it is too soon to see the impacts of the new legislation once it is implemented on the overall quality of the public administration, so they are not yet reflected in the qualitative indicator value compared to the SIGMA 2015 *Baseline Measurement Report*. At the same time, more favouritism

³⁹ Information provided by the MISA.

⁴⁰ European Commission, COM (2010) 744, Annexes 1 and 2.

⁴¹ SIGMA interviews with the MISA.

in decisions of government officials was reported in 2015 than in 2014, so the relevant quantitative indicator regressed from 3.6 to 3.3 out of 7 points.

The new LGAP is designed to take precedence over material laws. The government identified 164 material laws with special regulations that needed to be harmonised with the new LGAP to ensure that these pieces of material legislation are in line with the minimum standards established by the new LGAP. Harmonisation of the legislation was completed in the Parliament by the end of April 2016⁴².

The new Law explicitly defines the principles of legality, equity, equal treatment, proportionality, lawful exercise of discretion, impartiality and objectivity. The Law also includes further requirements to ensure a right of hearing, to provide reasons for administrative decisions, to inform citizens of their right to appeal decisions, and to provide procedural rules for amendment, suspension and repeal of administrative acts.

Consultations with civil society organisations are rare and have little impact on decisions by the public administration (analysis under Principle 1)⁴³. The revised LGAP did not benefit from comprehensive stakeholder engagement. The RIA report for the draft Law cites only opinions provided by government institutions and one minor public sector union. No other non-government stakeholder opinions are included. The quality of the RIA is accordingly low, and it envisages no impacts whatsoever in the areas of economy, society, state budget, environment or public administration. The full draft of the revised LGAP was published on the public consultation platform (ENER) on 25 December 2014, with a deadline for submission to the Government's General Secretariat by 31 December⁴⁴ 2014.

Even though the revised LGAP also covers administrative acts of general interest, such as provision of information and services, it does not provide explicit rules for involving non-government stakeholders when taking such decisions. This reflects the limited stakeholder involvement when drafting the Law.

Digital initiatives to improve stakeholder involvement have had little impact. Analysis under Principle 1 illustrates the inconsistent use of the public consultation platform, ENER, and the related quality issues of RIAs. A website for co-operation with NGOs was established by the General Secretariat, but it is mainly designed to provide information⁴⁵. A more interactive platform was created in 2012 to allow NGOs and the wider public to interact directly with ministries and agencies⁴⁶, but it contains mostly outdated information, and there is virtually no activity aside from official government announcements.

The Government has initiated work on open government data. The Law on Public Sector Data Use (2014) is an attempt to transpose the EU's 2013 Directive on Public Sector Information. The MISA operates the online portal www.otvorenipodatoci.gov.mk, which contains over 100 datasets from 11 government institutions to view or download.

The baseline value of the indicator on the legal framework for good administration is 3.

A revised LGAP was adopted in 2015 and will become effective in August 2016. The Law takes into account international standards and a significant number of SIGMA's recommendations. 160 material laws were harmonised with the LGAP. Consultations with civil society on administrative decisions with general impact are not frequent. Even during revision of the LGAP, the Government did not actively pursue wide consultations with NGOs or the public. This explains why the revised Law is rather weak on provisions to involve civil society more actively. Digital initiatives to improve co-operation with NGOs, including the open government data initiative, have had little impact so far.

⁴² Ditto.

⁴³ SIGMA interviews with NGOs and the business community.

⁴⁴ RIA report on the draft LGAP, published on ENER on 25 December 2014.

⁴⁵ www.nvosorabotka.gov.mk

⁴⁶ <http://e-demokratija.mk>

Principle 3: Mechanisms for ensuring the quality of public service are in place.

The first set of standards for quality in service delivery was formulated in 2006, through the Citizen Charter. The Charter is still available on the Government Services website⁴⁷, but has not been actively maintained or effectively used to improve the quality of individual services in recent years.

The quality assurance tools of the CAF and the ISO standard 9001:2008 are not only encouraged, but have been a legal requirement for all public authorities at state and local levels since 2013⁴⁸. Implementation is progressing: at the central government level, almost 50% of institutions have a certification for either the CAF or ISO, or both – up from 43.8% in 2014.

The MISA introduced a few measurement initiatives to support quality management: a Quality Barometer built around the CAF principles and a Mystery Shopper exercise that surveys waiting times and customer satisfaction (Table 1). The Quality Barometer is largely a self-assessment exercise, but it integrates results from the Mystery Shopper and dedicated satisfaction surveys to make up 300 of the maximum 1 000 points. Traffic light pushbuttons are installed in institutional buildings to allow individuals to indicate satisfaction or dissatisfaction after a visit.

Table 1. Results of the Quality Barometer and Mystery Shopper exercises, top six institutions, 2014

Quality Barometer, 2014		Mystery Shopper, 2014	
Institution	Total score (out of 1 000)	Institution	Customer satisfaction score (out of 5)
Central Registry	813	Central Registry	4.33
Public Revenue Office	755	Ministry of Justice, Office for Civil Register	4.08
Customs Administration	743	Public Revenue Office	4.04
Ministry of Internal Affairs	714	Public Employment Agency	4.02
Agency for Real Estate Cadastre	694	Customs Administration	3.95
Health Insurance Fund	693	Pension and Disability Insurance Fund	3.94

Source: Ministry of Information Society and Administration, various reports.

The impact of these measures on improving overall service quality has been limited. The tools are still in a pilot phase that comprises 11 central-government institutions and 3 local-government institutions. This is a rather small sample compared to the total of 110 state-level institutions and 80 municipalities that could potentially be covered. Moreover, the Quality Barometer and Mystery Shopper exercises were last conducted in 2014, so there are no recent results.

One of the major shortcomings is that the current tools mainly measure quality at the level of institutions and offices, rather than at the level of individual services. Aside from a few forerunners

⁴⁷ www.uslugi.gov.mk/grdnevnik.aspx

⁴⁸ Law on Introduction of a System of Quality Management and Common Framework for Assessment, Official Gazette No. 69/2013, with subsequent amendments.

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(such as the Central Registry), government institutions do not use advanced tools to identify the problems users face when dealing with major life events, such as giving birth to a child, declaring the death of a family member or dealing with chronic health issues. There was no evidence of the use of customer journey maps or other tools to systematically detect excessive burdens on service users.

Customer satisfaction surveys are conducted autonomously by some institutions, with methodologies too diverse to make cross-government comparisons. The surveys by the Statistical Office, for example, provide details on methodology and publicly report the results⁴⁹, while the Customs Administration uses rudimentary web questionnaires on issues like corruption or satisfaction of business users on its website www.customs.gov.mk. These questionnaires have poor usability, with no indication of their methodology or whether data is still being actively collected, and there is no public reporting of results.

Taken together, these circumstances result in a situation where institutions have few effective means and little instruction on how to identify deficiencies in the delivery of public services. There is a lack of central guidance, such as handbooks or help to implement common standards. No systematic sharing of experiences takes place, which means that good practices in forerunner institutions do not systematically benefit the rest of the administration.

The context for basic business-oriented services is different, because there have been notable, positive impacts from the service modernisation efforts. It is easy to start a business (the country is ranked 2nd of 189 countries in the World Bank's global ranking⁵⁰), to declare and pay corporate taxes (7th), and to apply for construction permits (10th). These services are readily accessible via intermediaries and online one-stop shops.

In other areas, businesses face more complicated and lengthy procedures. There is, for example, no central gateway for obtaining information on application for or renewal of licenses, except for import-export licenses (Principle 4). Businesses must seek information, apply and submit documents directly at the offices of the ministry concerned, which in most cases can only be done in the capital. Closing down a business is a cumbersome process that can take almost two years⁵¹.

Service modernisation efforts have had very little impact on individual users. Ambitious legal provisions like the "once only" and "no wrong door"⁵² policies are ineffectively implemented. Citizens often have to resubmit information that the administration already holds⁵³. There are no dedicated one-stop shops for citizens, and most digital service and information offers are of poor usability and accessibility (Principle 4). This is mainly due to the lack of effective guidance on quality assessment and a weak governance set-up for service delivery modernisation.

Training of public officials supports the implementation of CAF and ISO certification. A micro-training system offers remote training via employees' personal computers on issues such as involving citizens in strategic planning. In 2014, 1 734 state sector employees were trained this way⁵⁴, and 112 civil servants were trained on the "no wrong door" principles, but no further training was conducted in 2015. The MISA Strategy 2016-2018 foresees the establishment of a Functional Training Academy. No evidence could be found on training conducted on advanced service delivery approaches, such as service re-engineering, customer journey mapping or design thinking in service delivery improvement.

⁴⁹ Report of the 2015 survey: www.stat.gov.mk/Dokumenti/izvestaj/IzvestajAnketaZadovNaKorisnici2015.pdf.

⁵⁰ World Bank Group, [Doing Business 2015](#).

⁵¹ World Bank Group (2016), [Doing Business report](#), "Resolving Insolvency" indicator for Macedonia

⁵² Citizen requests are handled even if they are sent to an institution that has no legal responsibility over the matter. The institution is obliged to transfer the request to the proper one.

⁵³ SIGMA interviews with various government institutions, NGOs and businesses.

⁵⁴ MISA 2016-2018 Strategy.

There is no common service-centred vision for quality assessment and improvement. CAF and ISO certification are a legal requirement and help to advance organisation-wide aspects of quality management. But there is no effective measurement of the user experience in public service delivery, which limits the administration's capacity to systematically identify burdensome services and redesign them. Basic business-oriented services have seen tangible improvements, and the country scores high in the relevant international rankings. But providers of citizen-oriented services have demonstrated fewer efforts and have received little effective guidance for service delivery modernisation.

Principle 4: The accessibility of public services is ensured.

Territorial coverage is good for basic administrative services. Applying for identification cards and passports is possible in 30 branch offices of the Ministry of Interior (Mol) across the country. Declaring personal income tax is possible in over 50 locations of the PRO across the country. Dedicated vehicles (mobile stations) travel the country to allow application and renewal requests for personal identification documents (operated by the Mol) and declarations of personal income tax and payment of broadcasting fees (operated by the PRO).

Basic business-oriented services benefit from very dense territorial coverage, thanks to online services and one-stop shops, and also to a wide network of intermediaries. Over 1 200 registered agents, such as accountants and attorneys, are legally entitled to conduct the formal procedures to set up a business on behalf of the applicant, to make changes to the trade register or to declare corporate taxes⁵⁵. They use certified digital signatures for authentication. Primary administrative fees for the services are set by the authorities, but registered agents are free to levy additional fees to cover their costs.

Three one-stop shops group business-oriented services for more than three public institutions. Each requires applicants to authenticate requests with a certified electronic signature:

1. The Central Registry has operated a one-stop shop for registering businesses since 2006. Since 2014, the online procedure is mandatory at www.crm.com.mk. The institution automatically exchanges relevant data and thereby fulfils legal obligations for company founders with the PRO, the State Statistical Office, the Employment Agency, and (optionally) commercial banks.
2. An online portal, <http://exim.gov.mk>, operated by the Customs Administration, provides companies with a single interface to apply for import, export and transit licenses, as well as to enquire about trade quotas. Companies can apply for 60 different licenses from 10 institutions.
3. Requesting a construction permit online is mandatory since 2013 at www.gradezna-dozvola.mk⁵⁶. The portal is operated by the National Association of Municipalities and the Ministry of Transport and Communications. The electronic procedure includes exchanges with the municipality where the construction is envisaged, the Agency for Real Estate Cadastre, the State Administrative Inspectorate and other agencies, depending on the type of construction project.

The online portal www.uslugi.gov.mk does not qualify as a one-stop shop. It is an information site that provides virtually no transactional services. Instead, citizens have to visit the offices of individual ministries or agencies to obtain most administrative services, certificates or documents. The mobile stations mentioned previously only provide the services of the Mol or the PRO.

Electronic delivery of business-oriented services is advanced in some areas. This includes the procedures for setting up a business, mentioned earlier, applying for import-export licenses and

⁵⁵ The number of registered agents was provided by the Central Registry.

⁵⁶ Rules for the implementation of the procedure for obtaining a building permit electronically, Official Gazette No. 80/13.

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obtaining a construction permit. It also includes registration for domestic and foreign investors, accessing the land register⁵⁷, registering new employees⁵⁸ and declaring and paying corporate taxes⁵⁹.

Online declaration of corporate revenue tax and value added tax (VAT) has been possible since 2006, and mandatory since 2013. In 2015, 97.4% of companies used the electronic channel. The remaining 2.6% are companies that do not meet the minimum VAT threshold for mandatory online declaration⁶⁰.

Most online services for businesses require a certified electronic signature that is defined in national legislation (Principle 1). Take-up is high with larger companies, but owners of SMEs are more hesitant, due to the elevated cost and still-limited application possibilities. They often use the services of intermediaries, such as accountants, to declare corporate taxes.

Electronic service delivery to citizens is lacking in development. Even basic information provision online suffers from a very large diversity in quality, timeliness and presentation. Many websites contain a lot of outdated information and data, and most do not follow any common standards for design or content, at either state or local levels⁶¹. This is linked to the lack of effective steering and co-ordination of digital government matters described under Principle 1.

Ease-of-access to government information is complicated by unhelpful graphical design. Many official websites have an excessive use of logos and images that do not conform to a common design language (Box 1)⁶². Images are often used to substitute for text-based information, which makes it difficult to find information when using search engines or common text search tools. Moreover, it makes it close to impossible for users with special needs to access information.

⁵⁷ www.katastar.gov.mk/en

⁵⁸ www.avrm.gov.mk

⁵⁹ www.ujp.gov.mk

⁶⁰ Information provided by PRO.

⁶¹ Municipalities' online services and information offerings were subject to an assessment conducted by the Ministry of Local Self-Government, made available in draft form to SIGMA ("Study for existing e-services provided by the municipalities and the needs and opportunities for the introduction of new e-services").

⁶² Examples: MISA (www.mio.gov.mk), Ministry of Justice (www.pravda.gov.mk), Ministry of Agriculture, Forestry and Water Management (www.mzsv.gov.mk), Ministry of Culture (www.kultura.gov.mk), Ministry of Labour and Social Policy (www.mtsp.gov.mk) and Ministry of Education and Science (www.mon.gov.mk).

Box 1: Reporting of corruption and bribery on government web pages

Reporting of corruption and bribery offers a good example of the uneven quality of the Government's online presence, as well as the lack of presentation standards.

A common logo exists for "Reporting on Corruption", but there is no common approach on whether, where and how to use it. Some websites display it in a prominent position on the webpage, others at the very bottom⁶³. Some websites use their own custom logo⁶⁴, while others do not display an anti-corruption logo at all⁶⁵. Still others use the image but don't link it to any information or service⁶⁶.

The State Commission for Prevention of Corruption uses a custom logo to link to a poorly designed page with information and a rudimentary reporting service⁶⁷. On a more positive note, the Customs Administration prominently displays an anti-corruption logo (albeit a custom logo) and links it to a well-designed reporting page⁶⁸.

Take-up of digital signatures is very low with individual citizens. This is mainly due to the relatively high cost and low utility for citizens. The only useful service for citizens that requires a digital signature is declaring personal income taxes, which occurs once a year. Given the low take-up, it is no surprise that fewer than 1% of citizens declare their taxes online. The rest file paper declarations⁶⁹.

Personal income tax declarations are not pre-filled by the PRO at this point, but this is planned for the next year. Since October 2015, a new service offers the possibility of paying taxes and broadcasting fees online. No data on take-up was available at the time of assessment.

Electronic health cards were introduced in 2012, and 1.6 million people possess one today. The card facilitates the provision of healthcare services offline and online. Healthcare institutions and providers can record transactions if they have the necessary equipment. Some patient and treatment information can be maintained electronically by healthcare professionals, but this recent change has seen little take-up so far. Individual citizens can use their health card to access information online, for example to track the status of reimbursement claims. The card is not yet used for more advanced services, such as electronic prescriptions, practitioner referrals or electronic health records.

Citizens interacting with their Government via digital means today face different requirements for identification and authentication. Declaring taxes requires a certified digital signature using both hardware and software tokens, while the electronic health card only provides digital authentication for services by the Healthcare Insurance Fund, which does not include services by the Ministry of Health. Other services, such as online payment of taxes, function with user/password combinations.

Accessibility for users with special needs is embedded in the legislation. The country ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the Law on Prevention of and Protection from Discrimination bans all forms of discrimination based on mental and physical disability. The Law on Construction, along with two specific rulebooks⁷⁰, sets provisions to

⁶³ Examples: MISA (<http://www.mio.gov.mk/>) Mol (www.mvr.gov.mk).

⁶⁴ Examples: Ministry of Defense (www.morm.gov.mk), Customs Administration (www.customs.gov.mk) and Ministry of Transport and Communications (www.mtc.gov.mk).

⁶⁵ Examples: Main Government website (www.vlada.mk), Ministry of Economy (www.economy.gov.mk) and Healthcare Insurance Fund (www.fzo.org.mk).

⁶⁶ Examples: MISA (www.mio.gov.mk), Mol (www.mvr.gov.mk) and Ministry of Transport and Communications (www.mtc.gov.mk).

⁶⁷ www.dsk.org.mk/index.php?option=com_content&task=view&id=141

⁶⁸ www.customs.gov.mk

⁶⁹ Data provided by PRO.

⁷⁰ Rulebook on the manner of providing unrestricted access, movement, residence and employment of persons with invalidity to and within buildings and Rulebook on standards and norms for urban planning.

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ensure seamless physical access to public buildings, and Web Content Accessibility Guidelines (WCAG) are promoted for government websites.

In practice, implementation is slow. The Law on Construction (Article 170) set 2015 as the deadline to make all public buildings accessible and confers responsibility for monitoring to the Ministry of Transport and Communications and the Ministry of Labour and Social Affairs. However, monitoring is very patchy. Only 40 state-level institutions have developed accessibility action plans that are centrally monitored. This represents less than one-third of the 144 state-level institutions. At the local level, 45 institutions have action plans that are centrally monitored, which represents just over half of the 85 local government units in the country⁷¹.

Uneven monitoring makes official figures on implementation progress difficult to interpret. According to government information, suitable wheelchair access is available at 180 state-level facilities and 165 municipal facilities. As there is no 2015 information on methodology or on the total number of facilities at either level, it is not possible to calculate the share of wheelchair-accessible facilities.

Third parties have compiled data on wheelchair accessibility for educational facilities. An NGO reports that in 2014, 44% of public secondary schools had an access ramp, 10% had adapted their rooms and 1% had an internal elevator⁷². The British Council reports for the same year that 41% of public vocational secondary schools had an access ramp and 35% had rooms adapted to the needs of people with movement restrictions⁷³.

Compared even to the limited progress on accessibility of in person services, there has been virtually no progress on web accessibility. Many government websites have poor selection and presentation of content, which poses challenges to any user seeking information. These challenges are greatly exacerbated for users with special needs. The MISA's promotion of the WCAG 2.0 (also known as ISO/IEC 40500) has had little effect so far, as many government websites continue to have high barriers to accessibility (Box 2).

⁷¹ Data provided by the Ministry of Labour and Social Affairs.

⁷² Open the Windows (2014), "Secondary schools in Macedonia and assistive technology". See also <http://zeroproject.org/practice/macedonia-open-the-windows-2/>.

⁷³ Isahi-Paloshi, A. et al. (2014), "[Inclusion in secondary vocational education : Handbook on working with special educational needs students](#)", British Council, Skopje.

Box 2: Number of accessibility problems on selected government web pages

The following are the number of “known problems” under WCAG 2.0 (AA level)⁷⁴. These government websites were tested on 20 March 2016 using www.achecker.ca.

- Ministry of Health, www.moh.gov.mk: 232
- Healthcare Insurance Fund, www.fzo.org.mk: 167
- Ministry of Transport and Communications, www.mtc.gov.mk: 119
- Government portal, www.vlada.mk: 109
- Government online services portal, <http://uslugi.gov.mk>: 108
- MISA, <http://www.mio.gov.mk>: 57
- Ministry of Labour and Social Affairs, www.mtsp.gov.mk: 57
- Public Revenue Office, www.ujp.gov.mk: 28
- Ministry of Education and Science, www.mon.gov.mk: 19
- Central Registry, www.crm.com.mk: 16
- Pension and Disability Insurance Fund, www.piom.com.mk: 16

There has been a clear bias towards improving business-oriented services, at the expense of citizen-oriented services. Businesses benefit from a dense network of intermediaries as well as functioning one-stop shops and online services. The certified digital signature, although it is expensive, is of use to many businesses. Citizens do not benefit from the same ease of access to public services. Aside from local service delivery for some state institutions, there are no intermediaries, one-stop shops or notable digital services to significantly facilitate dealing with administrative matters. Accessibility of services suffers from patchy implementation of laws, standards and guidelines. This results in an unsatisfactory experience overall for users of in-person and online services, including those with special needs.

⁷⁴ Web Content Accessibility Guidelines (WCAG) is an international standard for web content accessibility that meets the needs of individuals, organisations, and governments. AA refers to an intermediate level check-list, against which compliance is tested.

Key recommendations

Short-term (1-2 years)

- 1) The MISA should collaboratively develop a service delivery strategy for the state administration. The development should involve stakeholders and users throughout all stages, from design to monitoring and evaluation of implementation of the strategy.
- 2) The Government should review the governance set-up for service delivery modernisation, including digitisation of public services, in order to match strategic goals with available resources.
- 3) The Government should provide incentives to improve the quality of RIAs and stakeholder engagement in them. To achieve compliance with procedures, the Prime Minister's Office should make a firm commitment to stop any draft legislation from going forward if the RIA procedure has not been followed.
- 4) The MISA should conduct a comprehensive stock-taking exercise on government information systems, databases and registers (except those which are strictly for internal use only). The creation or substantial modification of an information system should be subject to rigorous review to ensure a strong business case.
- 5) The MISA should set and enforce common web publishing guidelines, developed in collaboration with end users, to ensure better selection and presentation of online content.
- 6) As recommended in the SIGMA 2015 *Baseline Measurement Report*, the MISA should finalise the preparation and publishing of a comprehensive inventory of public services offered to citizens and businesses, including information on the scope of services, conditions and requirements for access to services, fees, time limits for handling requests and service-level agreements.

Medium-term (3-5 years)

- 7) The MISA should promote user orientation and design thinking in the public administration. It should help to build and share good practices for developing services with users instead of only for users. Public awards could help showcase exceptional practices in this area and their impacts.
- 8) The Government should strive for a more open, transparent and proactive administration by encouraging sharing information rather than withholding it. In addition to regulations, this should be facilitated by creating the right incentives, providing training, encouraging informal communities and sharing good practices.
- 9) The Government should strengthen its commitment to improving accessibility for users with special needs. There should be clarity on which body is the lead authority on monitoring and enforcing implementation for in person and digital services. New governance levers should be trialled, such as "naming and shaming" through public reports on accessibility in institutions or establishing the right to compensation for users in cases of non-compliance.
- 10) As recommended in the SIGMA 2015 *Baseline Measurement Report*, the MISA should foster development of the official public service portal <http://uslugi.gov.mk/>. The portal should evolve from a static information site to a platform where citizens and the administration can interact on service delivery as well as on service transformation (e.g. by continuous trialling of new feedback mechanisms).



PUBLIC FINANCIAL MANAGEMENT – PUBLIC PROCUREMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-APRIL 2016

1.1. State of play

The rules governing public procurement in the country provide a detailed, prescriptive legal framework, with key institutions and review mechanisms in place. The public procurement legislation is largely in line with the European Union (EU) procurement Directives with few, but significant, deviations, in particular the use of the lowest price criterion, e-auctions and negative references. The EU Defence Directive has not been transposed. There is a lack of full public consultation on proposals for amendments to the Public Procurement Law (PPL). The system benefits from an advanced e-procurement platform (ESPP), which assists efficient and transparent procurement.

The Public Procurement Bureau (PPB) has a clear strategy and action plan for the development of the public procurement system, which includes working with other stakeholders. It assists contracting authorities and economic operators through its monitoring and day-to-day advisory and training activities. However, the PPB has been hampered in its role by not having a duly appointed director since September 2014. The main role of the Public Procurement Council (PPC) is to grant prior approval to contracting authorities in relation to the use of technical specification and selection criteria in specified cases. The process for obtaining approval from the PPC has resulted in significant additional burdens for contracting authorities and a negative impact on the quality of technical specifications. There has been no significant increase in the level of competition, which was one of the intended benefits of this new approvals system, and the decision-making lacks transparency. There is limited activity in the field of concessions and public-private partnerships (PPPs), and the PPP Council, set up in 2013 to have an advisory role in the area of PPPs, is not operational.

The structure of the remedies system formally complies with the *acquis*, although some provisions of the Remedies Directive have not been transposed.

1.2. Main developments

The PPL was amended twice in 2015 and once in January 2016. The changes primarily concerned the operations of the PPC and its establishment as an independent state body, with effect from January 2016. Another important change was the requirement to use electronic procurement for most procedures, increasing from 30% in 2016 to 100% by 2018. In other areas, development has been limited.

2. ANALYSIS

This analysis covers three Principles for public procurement under two key requirements. It includes a short analysis of the indicators of the Principles and a systematic analysis of the legislative framework, developments concerning the institutional set-up related to performance of procurement functions, and the functioning of the procurement review system following changes related to public procurement introduced in 2015.

Key requirement⁷⁵: Public procurement is regulated by duly enforced policies and procedures that reflect the principles of the Treaty on the functioning of the European Union and the European Union *acquis*, and are supported by suitably competent and adequately resourced institutions.

Indicator values

The key requirement for harmonisation with the EU Directives for public procurement, as well as the establishment of institutional structures and arrangements, is examined through Principles 10 and 11, based on six qualitative indicators. The indicators concern; the legal basis for public procurement, the associated instruments or functions, and implementation of the law and related rules. Principle 10 has two indicators that describe the extent to which the legislation is complete and enforced and the openness to the public of the administrative bodies involved in policy making. Principle 11 has four indicators. The first two indicators concern the extent of development and implementation of the policy framework and the existence and performance of dedicated institutions for central procurement functions. The third and fourth indicators under Principle 11 focus on monitoring, reporting and general availability of information, advice and guidance concerning public procurement procedures and public contracts.

The legislation is largely compliant with the EU *acquis*, but does not cover some areas, such as defence, and some provisions in the PPL are problematic. The level of harmonisation with other laws is acceptable. Legislation is implemented on time with complementary regulations and measures to support institutions. Public procurement functions are allocated to competent institutions and relevant regulations regarding their functioning are published. However, the PPP Council, set up in 2013, is not operational, and the operations of the PPC have not improved the effectiveness and efficiency of the public procurement system.

⁷⁵ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, 96.

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	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator Value
Qualitative	10	Extent to which public procurement legislation is complete and enforced.	2014	4	2015	4
	10	Nature and extent of public consultations during the process of developing regulations for public procurement and monitoring their use and appropriateness.	2014	2	2015	2
	11	Extent to which policy framework for public procurement is developed and implemented.	2014	3	2015	3
	11	Extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources.	2014	2	2015	2
	11	Comprehensiveness of systems for monitoring and reporting on public procurement proceedings and practices.	2014	3	2015	3
	11	Clarity, timeliness, comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders.	2014	4	2015	4

Analysis of Principles

Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields and are duly enforced.

The PPL⁷⁶ covers both the classic and utilities sectors in considerable detail and is largely in line with the *acquis*. The fundamental policy goals of value for money, competition, transparency, equal treatment and supporting integrity are referred to as principles underpinning the PPL⁷⁷. Concessions and PPPs are subject to a separate law.

The PPL was amended twice in 2015. The first amendment (May 2015)⁷⁸ includes provisions relating to the requirements to obtain prior approval and the operations of the PPC. Other changes include requirements to increase the use of electronic procurement⁷⁹ on tender documents and modifications related to negative references. The second amendment (November 2015)⁸⁰ primarily concerns the PPC. It establishes the PPC as an independent state authority with legal capacity, and it consolidates, amends and updates existing provisions in the PPL concerning the PPC. Another minor amendment to the PPL was adopted in January 2016⁸¹.

There are few, but significant, provisions in the PPL that do not fully align with the EU Directives on public procurement, most notably the requirement to use the lowest price as the award criterion in most of the cases, obligatory use of e-auctions, and the use of negative references and consequent exclusion from public tender processes⁸². The PPL is generally clear, but the new prior approval requirements and operations of the PPC have introduced an additional layer of regulation and bureaucracy.

There are extensive secondary legislation, rulebooks and guidebooks which support the implementation of the PPL and are easily available from the website of the PPB⁸³. No major obstacles in terms of harmonisation with other laws have been identified⁸⁴. The general transparency of the public procurement system is enhanced by the operation of the ESPP. Contracting authorities are required to publish contract notices and tender documents on the ESPP for all contracts covered by the PPL, save where exceptions or exclusions apply as provided for in the PPL. Tariffs for registering to use the ESPP are higher for foreign economic operators than for national operators⁸⁵. The PPL does not apply to contracts of a value of less than EUR 500 (MKD equivalent). The PPL does not address the issue of contract management, and there is currently no guidance available from the PPB on this complex and important issue. The PPL includes potentially severe financial and criminal penalties

⁷⁶ PPL, Official Gazette No. 136/2007, with subsequent amendments.

⁷⁷ PPL, Article 2.

⁷⁸ Law Amending the PPL of 12 May 2015, Official Gazette No. 78/2015 (Amending Law 78/2015).

⁷⁹ Article 13 of Amending Law No. 78/2015 requires use of electronic procurement for the conduct of most procedures, increasing from 30% in 2016 to 50% in 2017 and 100% by 2018.

⁸⁰ Law Amending the PPL, Official Gazette No. 192/2015 (Amending Law No. 192/2015).

⁸¹ Law Amending the Law on Civil Servants of 14 January 2016, Official Gazette No. 27/16, with subsequent amendments to the PPL deleting the reference to the APTIS certificate of English-language competence required of certain officials. This was a general amendment applying to a number of laws, not just the PPL.

⁸² PPL, Articles 160, 40, 47 and 48, and Chapter XII transitional provisions (e-auctions).

⁸³ PPB website: www.bjn.gov.mk and ESPP website <https://e-nabavki.gov.mk/>

⁸⁴ Analysis of legislation and responses to direct questions asked by SIGMA during the interviews with state institutions, contracting authorities and economic operators.

⁸⁵ List of Rates for the Fees for Using the Electronic System for Public Procurement of 30 March 2012, Official Gazette No. 44/2012. The rate for foreign economic operators is EUR 200 compared to MKD 2 000 to MKD 8 000 (approximately EUR 32 to EUR 130) for national economic operators.

applying to contracting authority employees and office holders in institutions for failure to comply with procedural and other requirements under the PPL⁸⁶.

Concessions and PPPs are subject to a separate law, the Law on Concessions and Public-Private Partnerships⁸⁷ (Concessions and PPP Law). The fundamental goals of transparency, non-discrimination, proportionality, efficiency, equal treatment and mutual recognition are referred to in the Law, which is to a large extent compliant with the *acquis*⁸⁸. The Ministry of Economy (MoE) is the competent authority for PPPs, tasked with providing support and development for PPPs and keeping and maintaining the PPP Register of awarded contracts⁸⁹. The MoE has established the PPP Unit for this purpose. There is a non-operational PPP Council (Principle 11).

The Concessions and PPP Law was amended three times in 2015⁹⁰. The amendments concern a prohibition on the use of government bonds in payment for the concession fee, use of e-communication regarding real estate rights and arrangements applying to the expiry and reprocurring of PPP or concession contracts. In 2015, a rulebook on the use of e-auctions for awarding PPP contracts was issued following amendments to the Concessions and PPP Law in 2014⁹¹. The regulatory framework governing concessions and PPPs only provides a set of basic regulations. Implementation of Concessions and PPP legislation is limited in practice. In 2015, the PPP unit recorded the award of five PPP contracts on the PPP Register and two PPP contracts for which procedures were commenced but not completed⁹². The total number of contracts listed on the PPP Register in the period 2012 to 2015 was 22⁹³. The State Appeals Commission for Public Procurement (SAC) received appeals in relation to five PPPs and three concessions, which primarily concerned procedural errors⁹⁴. This is a high level of appeals in relation to the number of contracts awarded, but this may reflect the high profile and high value of PPP contracts.

The EU Defence Directive⁹⁵ has not been transposed into national law. Article 6 of the PPL provides that the rules of the PPL apply in the field of defence, subject to some exceptions where the essential security interest of the country may be adversely affected.

The legislation is largely compliant with the *acquis* but does not cover some areas, such as defence, and some provisions in the PPL are problematic. The level of harmonisation with other laws is acceptable. Legislation is implemented on time, with complementary regulations and measures to support institutions. The value of the indicator measuring the extent to which legislation is complete and enforced is 4.

In principle, the National Electronic Registry of Legislation (ENER)⁹⁶ constitutes a mechanism for facilitating public involvement in the legislative process, with the PPB nominally in charge of collecting and processing the comments in the case of procurement legislation. In 2015 there was consultation

⁸⁶ PPL, Articles 231-a to 231-c and 232-a to 232-u.

⁸⁷ Concessions and PPP Law, Official Gazette No. 6/2012 with subsequent amendments.

⁸⁸ Concessions and PPP Law, Article 8.

⁸⁹ Concessions and PPP Law, Article 14 lists the competencies.

⁹⁰ Official Gazette No. 33/2015; Official Gazette No. 104/2015; and Official Gazette No. 215/2015.

⁹¹ Law Amending the Concessions and PPP Law, Official Gazette No. 144/2014.

⁹² Data provided by the PPP Unit in an e-mail to SIGMA on 11 March 2016. This data is not consistent with data obtained from the PPP Register website (accessed on 17 March 2016), which lists two PPP contracts completed in 2015 (based on date of signing the contract) and one annex to a contract signed in 2013. The PPP register shows 20 PPP contracts registered in total.

⁹³ SIGMA interview with the PPP Unit. Grantors of PPP and concession contracts must file notification of the award to the PPP unit for entry on the PPP Register. According to the PPP Unit, this is not always done, and so these figures cannot be relied upon as a fully accurate reflection of the level of activity.

⁹⁴ Data provided by SAC.

⁹⁵ Directive No. 2009/81/EC, as amended.

⁹⁶ <https://www.ener.gov.mk>

on the first set of amendments to the PPL⁹⁷, including preparation of a Regulatory Impact Assessment report. However, the public consultation was launched at a very late stage of the elaboration of the legislative drafts, and timescales were short⁹⁸. The amendments to the PPP and Concessions Law were published on the ENER, but no comments on the proposals were received by the PPP Unit⁹⁹. Given the incomplete nature and short timescales of public consultation in the case of the first set of amendments to the PPL and the failure to consult the public on the second set of amendments to the PPL, the value of the indicator for the nature and extent of public consultations during the process of developing regulations and monitoring their use and appropriateness is 2.

The legislation is largely compliant with the *acquis* but does not cover some areas such as defence. Some provisions in the PPL are not aligned with the European public procurement Directives, such as the use of the lowest price criterion and negative references (blacklisting). Some areas outside the *acquis*, such as low-value contracts, contract management and monitoring remain unregulated or minimally regulated. The consultation processes for amending the PPL have been insufficient or non-existent.

Principle 11: There is a central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.

The PPB is responsible for developing, implementing and monitoring public procurement policy, in addition to a wide-ranging list of other activities including co-ordination with the EU. The PPB is a body of the public administration within the Ministry of Finance (MoF) and has the capacity of a legal entity¹⁰⁰. The PPB's activities and tasks are divided between two departments, the Department for Normative Affairs, Training and International Co-operation (staff of nine) and the Department for ESPP, Analysis and Information Technology (IT) Support (staff of ten). In addition, there are 4 accounting staff and 1 human resource manager, making a total of 24 staff¹⁰¹.

The current public procurement strategy¹⁰² and action plan for the development of the public procurement system covers the period 2014-2018. The action plan is regularly reviewed by the PPB¹⁰³. Not all of the measures for 2015 have been carried out. There has been slippage on a number of measures, with reallocation of some measures to later years in the current version of the action plan. However, the effective exercise of the PPB's statutory roles has been compromised for some time because no appointment has been made to the post of Director, which has been vacant since September 2014. The value of the indicator measuring the extent to which the policy framework is developed and implemented is 3.

Guidance and manuals published on the PPB website are updated as necessary to reflect changes in legislation and practice. The PPB also provides a telephone support service. Information is generally made freely available without delay and is user-friendly¹⁰⁴. The value of the indicator measuring clarity, timeliness, comprehensiveness and accessibility of information to contracting authorities and entities, economic operators and other stakeholders is 4.

⁹⁷ Amending Law No. 78/2015.

⁹⁸ Amendments published on ENER on 20 February 2016 without prior consultation concerning the preparation of the published amendments. Initial draft report published on ENER on 27 February 2015. Final report published 20 April 2015. Information from <https://www.ener.gov.mk> (accessed 18 March 2016).

⁹⁹ SIGMA interview with the PPP Unit.

¹⁰⁰ PPL, Article 14 lists the activities assigned to the PPB. PPL, Article 12 refers to the PPB's legal capacity.

¹⁰¹ Information provided in an e-mail from the PPB to SIGMA dated 11 March 2016.

¹⁰² *Strategic Priorities of the Public Procurement Bureau for Further Development of the Public Procurement System 2014-2018*, published on the PPB website.

¹⁰³ SIGMA interview with PPB and a follow-up e-mail from PPB dated 17 March 2016. The Action Plan is regularly reviewed at least every six months (i.e. it was last reviewed in early March 2016 and the previous review was in November 2015).

¹⁰⁴ SIGMA interview with contracting authorities on 9 March 2016

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The PPP Council was established in June 2013. It is intended to have an advisory role in the area of PPPs and is composed of 15 members drawn from ministries, the General Secretariat of the Government, the PPB, the Association of Local Self-Government Units, the business community and other experts¹⁰⁵. However, the PPP Council is not operational¹⁰⁶.

Other important institutional stakeholders are the State Audit Office (SAO), the Public Prosecutor's Office, the Commission for Protection of Competition and the State Commission for Prevention of Corruption. The PPB has co-operated with the SAO in drafting a manual for public procurement audit. The SAO, the Public Prosecutor's Office and the PPB have established formal mechanisms for co-operation regarding the findings of audit reports. There has been co-operation between the PPB and the State Commission for Prevention of Corruption on raising the knowledge and awareness of public procurement¹⁰⁷.

In October 2013, amendments to the PPL were adopted related to setting up the PPC, which became operational in May 2014. Until 31 December 2015, the PPC was formally part of the PPB, within the MoF. With effect from 1 January 2016, the PPC was established as an independent state body with the capacity of a legal entity. The PPC was established with the goal of stimulating competition and promoting the fundamental principles of transparency, value for money and non-discrimination. The PPC currently has 6 members, with 1 member still to be appointed, plus 32 staff and a budget of EUR 370 000¹⁰⁸.

The primary role of the PPC is to consider applications for approval made by contracting authorities in specific circumstances. Contracting authorities must obtain approval from the PPC prior to publishing a contract notice in the following circumstances:

- Approval of technical specification: a contracting authority must seek approval where the contracting authority has, in relation to a supplies contract: 1) undertaken a market analysis¹⁰⁹; and 2) established by means of this analysis that there are insufficient economic operators in national and international markets to meet the requirements of the technical specification¹¹⁰.
- Approval of selection criteria: a contracting authority must seek approval where the contracting authority: 1) proposes selection criteria, other than those relating to a personal situation and suitability to pursue a professional activity; 2) has undertaken a market analysis; and 3) has established by means of this analysis that there are insufficient manufacturers in the national market who can fulfil these criteria¹¹¹.

In 2015, the PPC received a total of 19 407 applications¹¹². Of those applications, 14 626 related to the approval of technical specifications and 3 212 to the approval of selection criteria. The approval rates

¹⁰⁵ Concessions and PPP Law, Article 13, covers the establishment and membership of the PPP Council.

¹⁰⁶ SIGMA interview with the PPP Unit. The PPP Council has not met and is not active.

¹⁰⁷ SIGMA interview with PPB.

¹⁰⁸ SIGMA interview with PPC. This is the core budget of the PPC. It does not include the remuneration paid by the contracting authorities to the experts. From 20 January 2016, the PPC was able to charge contracting authorities a fee of EUR 20 (MKD equivalent) per application for approval (PPL, Article 14-m(2)).

¹⁰⁹ PPL, Article 36-a (4) to (7): The market analysis is very limited. Contracting authorities contact manufacturers to ask them whether they can meet the requirements for the technical specifications or selection criteria. The Centre for Civil Communications *Report on Monitoring of Public Procurements, January - June 2015* (p. 17) highlights practical problems arising from the lack of sufficient foreign competition to meet the statutory minimum level of required competition.

¹¹⁰ PPL, Article 36-a (1), (3), (4), (5) and (7): The minimum required number of manufacturers ranges from three to five national manufacturers and three to five foreign manufacturers, according to the value of the contract and type of procedure.

¹¹¹ PPL, Article 36-a (2), (3), (4), (6) and (7): The minimum required number of manufacturers, as per footnote 101.

¹¹² SIGMA interview with PPC.

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in 2015 were: approval of technical specifications, 50.3% approved and 49.7% refused; approval of selection criteria, 51.1% approved and 48.9% refused¹¹³.

In order to make a decision on the application for approval, the PPC may, in some cases, make the decision itself without expert assistance. It did so in approximately 20% of cases in 2015. It may also seek, or be obliged to seek in certain cases, the assistance of experts to provide expert opinions. The cost of the expert opinion is determined in accordance with a Tariff Book¹¹⁴ and is paid by the contracting authorities seeking approval from the PPC¹¹⁵. The PPC maintains a register of experts registered by area of specialisation. There are currently approximately 400¹¹⁶ experts on the register.

Significant aspects of the operations of the PPC are not at all transparent or not sufficiently transparent. The call for experts was made publicly, but the register of experts is not available publicly, and concerns have been expressed about the quality of the experts used¹¹⁷. Decisions of the PPC are not published. In certain cases, the reasons for the decisions are inconsistent with previous decisions¹¹⁸ or not sufficiently well explained to contracting authorities, with consequent uncertainty on the part of contracting authorities as to what further steps they must take¹¹⁹.

The process for obtaining approvals from the PPC has resulted in additional burdens for contracting authorities, requiring market analysis to identify specified numbers of manufacturers of supplies, an approvals process with the costs of experts paid by contracting authorities, as well as additional time required for the many procurement processes¹²⁰, even for low-value procurements¹²¹. There has also been a negative impact on the quality of technical specifications used by contracting authorities in procurement processes¹²².

One of the aims underlying the requirement for approval from the PPC is to increase transparency. There has been a decline in the number of contracts awarded without prior publication of a contract notice since the PPC commenced operations (Figure 1). This is a positive development from a transparency perspective and should increase competition and improve value for money.

¹¹³ Data provided by the SAC.

¹¹⁴ http://www.bjn.gov.mk/bjn-portal/wordpress/wp-content/uploads/nov_tarifnik.pdf

¹¹⁵ The PPC invoices contracting authorities for expert fees incurred on a monthly basis. According to data provided by the PPC to SIGMA, remuneration paid to experts was MKD 86 400 in 2014 (the PPC was operational from May 2014) and MKD 89 006 182 in 2015 (some of the 2015 payments related to expert opinions provided in 2014). The amount of expert fees was not published in the Annual Report of the operations of the PPC 2014. SIGMA was provided with a copy of the PPC's responses to applications under the Freedom of Information Laws by the Centre for Civil Communication for data on the amount that contracting authorities were invoiced by the PPC in 2015. The figures provided by the PPC to the Centre for the period 1 January to 31 December 2015 totalled MKD 135 447 750.

¹¹⁶ SIGMA interview with the PPC.

¹¹⁷ SIGMA Survey of Contracting Authorities, March 2016 (SIGMA Survey 2016). The survey was conducted in the period 16-25 March 2016. It comprised a dozen questions sent to representatives of 1 350 contracting authorities (practically all contracting authorities registered on Electronic System of Public Procurement, ESPP). Replies to the survey were delivered anonymously online. In total, 165 responses were received within abovementioned period

¹¹⁸ SIGMA Survey 2016.

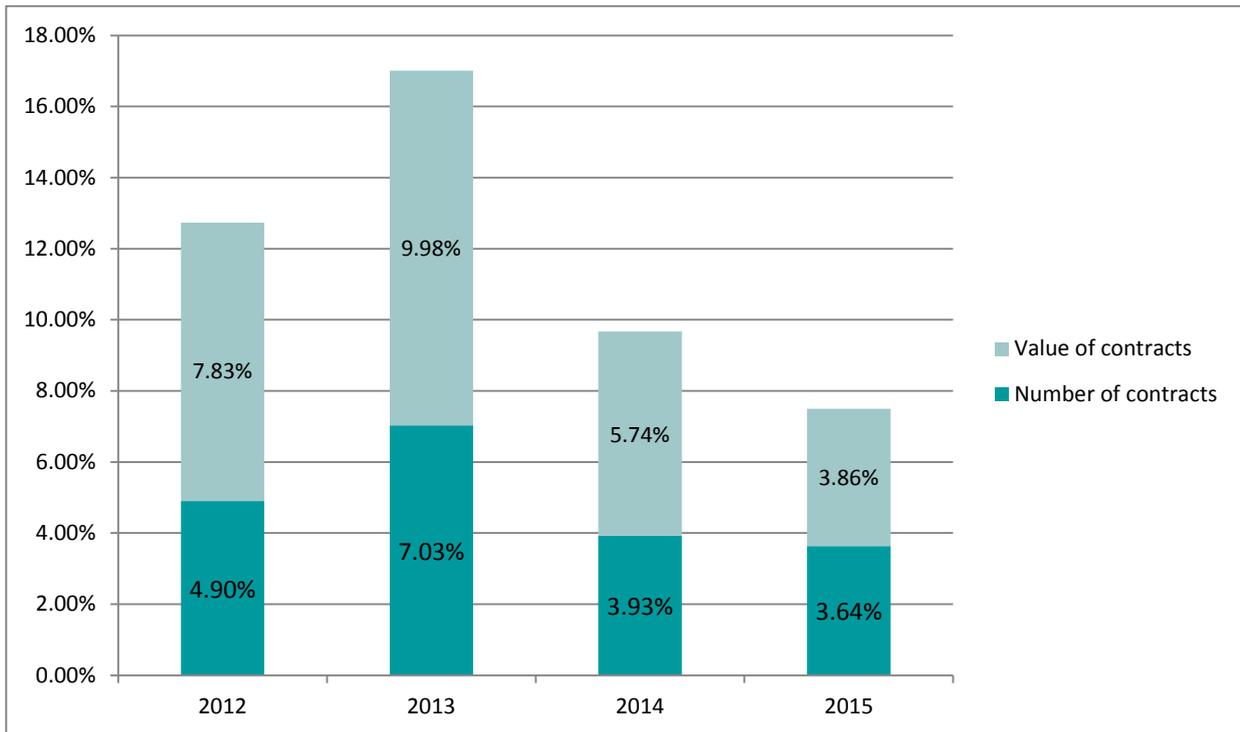
¹¹⁹ Meetings between SIGMA and contracting authorities, ministries and NGOs, 7-10 March 2016.

¹²⁰ SIGMA Survey 2016: 27% said that obtaining PPC approval takes on average 15 to 30 days, and 13% said more than 30 days.

¹²¹ SIGMA Survey 2016: contracting authorities' opinions about the efficacy of the additional requirements introduced in the last two years (market analysis and prior approvals from the PPC) are perfectly split one third considers them as negative, one third as neutral and one third as positive. However, significantly more procurement experts expressed strong negative opinions (24%) than strong positive opinions (16%).

¹²² SIGMA interviews with contracting authorities, business organisations, ministries and NGOs. SIGMA was consistently informed that the PPC has, in certain cases, required that the quality aspects in technical specifications be reduced to a very low level in order to encourage more economic operators to participate in the process, and that contracting authorities are lowering quality requirements in their specifications at the market analysis stage to ensure they can demonstrate sufficient levels of competition and thus avoid the PPC approvals process.

**Figure 1. Contracts awarded without prior publication of notice
(as share of all contracts awarded)**



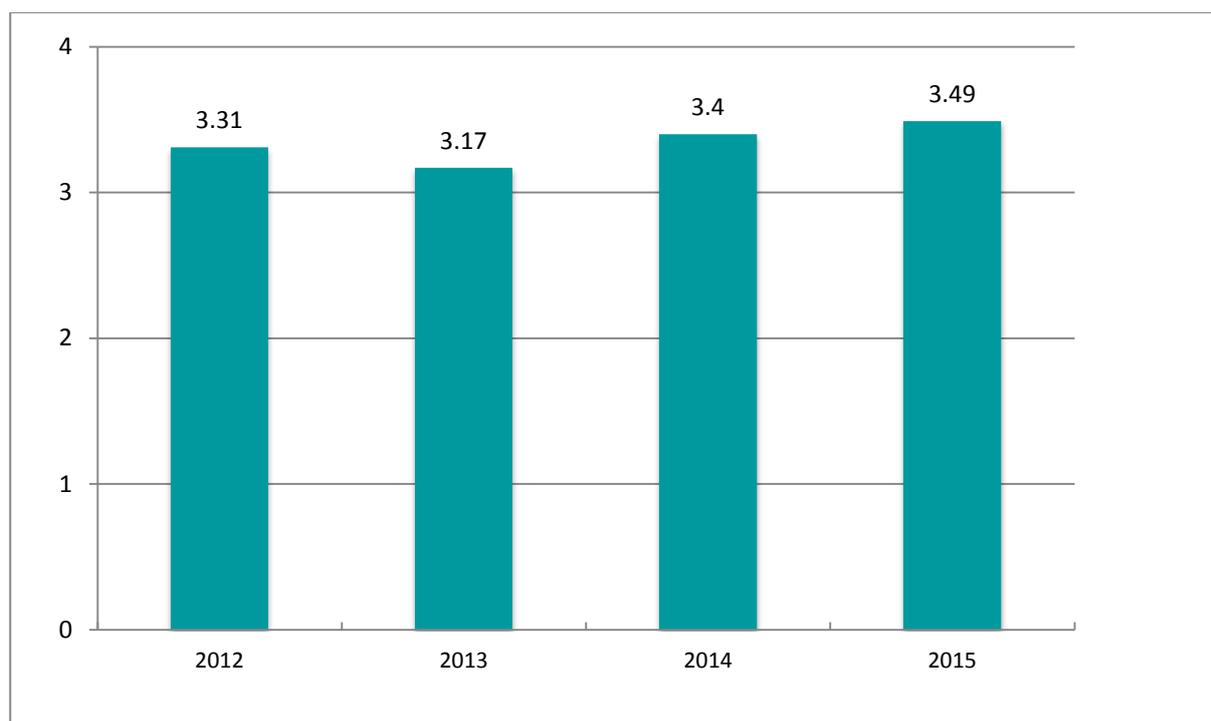
Source: Public Procurement Bureau.

Another aim underlying the requirement for approval from the PPC is to stimulate the competitive business environment by ensuring that contracting authorities are not using unduly restrictive technical specifications or selection criteria which inappropriately restrict the market and reduce the level of competition. However, since the establishment of the PPC in May 2014, the average number of tenders per procedure for supplies contracts has not shown a significant increase¹²³ and, despite the obligation to include foreign manufacturers in the market analysis, the number of contracts awarded to foreign economic operators remains low and continues to decline¹²⁴.

¹²³ Centre for Civil Communications Monitoring Local Public Procurements, Report No. 7, 2015 uses a sample of 40 monitored contracts and shows a decline in average numbers of bidders per tender procedure since March 2014. The figures for the six-month periods analysed are: October 2012 to March 2013 - 2.2; April to September 2013 - 2.4; October 2013 to March 2014 - 3.0; April to September 2014 - 2.7; and October 2013 to March 2015 - 2.4.

¹²⁴ Data provided by the PPB. Number of contracts awarded to foreign economic operators as a percentage of total contracts awarded under the PPL: 2012 - 1.2%; 2013 - 0.57%; 2014 - 0.36%; and 2015 - 0.33%.

Figure 2. Average number of tenders submitted in entirely electronic procedures



Source: Public Procurement Bureau¹²⁵.

It is difficult to assess the direct impact of the activities of the PPC on the market in general, as change, or lack of change, may be attributable to a combination of factors, such as other changes to the PPL and wider economic, political and market issues.

Public procurement functions are allocated to competent institutions, and relevant regulations regarding their functioning are published. However, the PPP Council is not operational and the operations of the PPC have not improved the effectiveness and efficiency of the public procurement system. The value of the indicator measuring the extent of coverage by dedicated institutions of central procurement functions and of regulations defining their roles, responsibilities, working practices, staffing and resources is 2.

Procurement is monitored by the PPB using the ESPP, which is also used for reporting purposes. Information is generally publicly accessible from the ESPP and can be analysed. Information from the ESPP covers the phases in procurement from publication of contract notices to contract award, including contract notices, procurement documents and contract award notices. Manual data collection is also undertaken by the PPB for procurement processes, using paper-based procedures¹²⁶. However, procurement planning is not currently covered, nor is the contract management/delivery phase, and accurate data on participation is not available. Limited information is published on contracting authorities' own websites¹²⁷. The Centre for Civil Communications (CCC) is an active non-governmental organisation (NGO) with expertise in public procurement. The CCC's work includes monitoring, surveys and reporting on public procurement, including analysis of sampled procurements providing more detailed publicly available data and commentary on the implementation of public

¹²⁵ The data in Figure 2 is for the exact number of bids received via the ESPP. The PPB told SIGMA that this is currently the most reliable data for analysing levels of competition. The PPB's data on paper-based tender procedures, which is less reliable due to human factors, shows a decline in the number of paper-based bids received, from 2.9 in 2014 to 2.53 in 2015.

¹²⁶ The requirement for e-procurement for all contracts by 2016 should improve data coverage and reliability.

¹²⁷ SIGMA interviews with NGOs, *CCC Recommendations for Easier Access of Microenterprises to Public Procurements*, February 2015.

procurement¹²⁸. The value of the indicator for comprehensiveness of the monitoring and reporting system and clarity, timeliness and comprehensiveness of information available is 3.

There is a clear policy framework and allocation of functions to competent institutions. The requirements for prior approval from the PPC, whose decisions lack transparency, are creating additional burdens on the contracting authorities without strong evidence of a positive impact on the effectiveness and efficiency of the public procurement system. The ESPP includes good and accessible monitoring and reporting functions for procurements conducted electronically. In addition, there is manual data collection. The current monitoring arrangements do not fully address procurement planning and contract management or provide accurate data on participation.

Key requirement¹²⁹: In case of alleged breaches of procurement rules, aggrieved parties have access to justice through an independent, transparent, effective and efficient remedies system.

Indicator values

The key requirement for the establishment of an independent, transparent, effective and efficient remedies system is examined through six indicators. Two are qualitative indicators that consider the presence and operation of an effective review body and the level of availability of relevant information. Two are quantitative indicators that assess the timeliness of the review procedure, the accessibility of the review system for economic operators and the functioning of the review system in terms of the extent to which initial review decisions are appealed.

The structure of the remedies system is largely in line with the *acquis*. The system provides for rapid and effective handling of complaints and is easily accessible to economic operators, although in some cases the cost may be prohibitive. Decisions are published promptly, but the SAC website is not user-friendly.

	Principle no.	Indicator	Baseline year	Baseline value	Assessment year	Indicator value
Qualitative	12	Presence of procurement review and appeal bodies covering the functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources, including the integrity of their work.	2014	3	2015	3
	12	Presence of user-friendly procurement review website including timely publication of decisions and statistics, with adequate research functions.	2014	3	2015	3

¹²⁸ For example, *CCC Monitoring of Public Procurements: January-June 2015* and *CCC Monitoring Local Public Procurements*, Report No. 7, 2015.

¹²⁹ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, p 100.

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Quantitative	12	Actual processing time of complaints related to procurement compared with the maximum legal requirements.	2014	53%	2015	53%
	12	Number of cases in which the procurement review body exceeded the legal maximum processing time in relation to the total number of complaints.	2014	0%	2015	0%
	12 ¹³⁰	Number of complaints in relation to the number of tender notices published.	2014	3.8%	2015	3.2%
	12	Share of complaints in procurement that are challenged to the next judicial level.	2014	11.5%	2015	14.9%

Analysis of Principle

Principle 12: The remedies system is aligned with the acquis standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.

Public procurement review procedures are regulated by Chapter X of the PPL. The PPL provides that the SAC is the competent body to resolve appeals in the contract award procedures prescribed by the PPL as well as for concessions and PPPs. The SAC is also entrusted with appeals lodged against decisions adopted by the PPC^{131,132}. In addition, the SAC is required to act *ex officio* with reference to 12 major violations listed in the PPL¹³³. The SAC is an independent state authority with the capacity of a legal entity, financed from the state budget. It has 5 members, including the Chairperson, supported by 14 staff.

Any economic operator having a legal interest in the award procedure which has suffered damage, or may suffer damage, as a consequence of possible violations of the PPL may initiate an appeal. The state attorney may also issue a review procedure. In addition, contracting authorities may appeal against a decision of the PPC, in which case they do not have to pay a fee.

However, the fees to be paid by economic operators filing an appeal vary between EUR 100 and EUR 400 (MKD equivalent) plus an administrative fee¹³⁴. The level of fees may be a disincentive in some instances, particularly where the potential appeal is in relation to a low-value contract¹³⁵.

The time limits for submitting appeals are short: eight days in regular procedures and three in the case of simplified competitive procedures. The time limits are calculated from the date of specified actions or decisions listed in the PPL. These timescales are shorter than those under the EU Remedies

¹³⁰ Data in the two last rows is from the SAC Annual Report 2015, pages 10 and 12.

¹³¹ PPL, Article 200 lists the competencies of the SAC.

¹³² SIGMA interview with the SAC. On appeals against PPC decisions, the SAC does not tend to evaluate the substance of the opinions of the experts, but focuses on procedural omissions.

¹³³ PPL, Articles 210 and 211.

¹³⁴ Administrative fee is MKD 250 (approximately EUR 4). SAC website: <http://www.dkzin.mk>

¹³⁵ SIGMA interviews with representatives of business organisations.

Directive¹³⁶. The effect of an appeal is to suspend the signing and performance of the contract that is the subject of the appeal¹³⁷. In 2015, the SAC received 626 appeals and made decisions on 610 of those appeals¹³⁸. Appeals lodged with the SAC are published on the SAC website¹³⁹. Contracting authorities and the PPC have five working days from the date of receipt of the appeal to submit a complete dossier of documents to the SAC. Failure to submit the complete dossier of documents is a criminal offence¹⁴⁰.

The SAC is required, in most cases, to make a decision within 15 days of receipt of the submission of the dossier of documents. If the SAC fails to make a decision within the relevant statutory time period the Chairperson and members may be punished by imprisonment. The average time for the SAC to adopt a decision is eight days¹⁴¹. Processing time for appeals has improved recently due to the improved functionality of the SAC's internal IT system, which includes the ability to scan the dossier of documents received and enhanced search functions¹⁴². Cases are allocated for decision making on a random basis by the IT system. The SAC has a range of remedies available, including annulment of concluded contracts and framework agreements in certain cases. The PPL does not include provisions for alternative penalties in case of ineffectiveness and is not fully aligned with the EU procurement Directives. The remedy of damages is pursued through the courts. Failure to comply with the SAC decision means that the contract award procedure is deemed to be non-compliant with the PPL¹⁴³. Decisions of the SAC may be appealed to the administrative courts. Judges from the administrative court have participated in the PPB's general annual training programme¹⁴⁴. The value of the indicator measuring the presence of procurement review and appeal bodies covering the functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources, including the integrity of their work is 3.

Decisions, with reasons, are published promptly on the SAC website¹⁴⁵. However, the website is not sufficiently user-friendly. The search facilities are very limited: interested parties find it difficult to navigate efficiently through the entire body of its decisions, and there is no way to search the decisions by reference to specific Articles of the PPL, or by theme or subject matter. The value of the indicator measuring the presence of a user-friendly procurement review website, including timely publication of decisions and statistics, with adequate research functions is 3.

The structure of the remedies system is largely in line with the *acquis*. The system provides for rapid and effective handling of complaints and is easily accessible to economic operators, although in some cases the cost may be prohibitive. Decisions are published promptly, but the SAC website is not user-friendly.

¹³⁶ Directive 89/665/EEC, with subsequent amendments.

¹³⁷ PPL, Article 217.

¹³⁸ SAC Annual Report 2015.

¹³⁹ <http://www.dkzjn.mk>

¹⁴⁰ PPL, Article 232-r (2).

¹⁴¹ Data provided by the SAC.

¹⁴² SIGMA interview with SAC.

¹⁴³ PPL, Article 220 lists remedies and requirement to comply with a SAC decision.

¹⁴⁴ SIGMA interview with the PPB.

¹⁴⁵ Publication of decisions checked on the SAC website (accessed 18 March 2016).

Key recommendations

Short-term (1-2 years)

- 1) The Government should analyse the benefits of the prior approvals system against the burdens it entails and identify the limited activities which have been genuinely beneficial to the operation of the public procurement system as a whole. It should abolish the PPC and reallocate any genuinely beneficial activities to other existing institutions.
- 2) The MoF should prepare a draft law on defence procurement.
- 3) The SAC should put into place an easily-navigated, web-supported search engine that enables searches of the body of its decisions and through relevant case law of the administrative courts.

Medium-term (3-5 years)

- 4) The Government should prepare a new draft law on concessions to implement the new EU Concessions Directive (2014).
- 5) The MoF should review and revise the PPL for full compliance with the new EU procurement Directives (2014), including remedies provisions, and submit corresponding draft legislative amendments to the Government after early, appropriate and full public consultation.

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