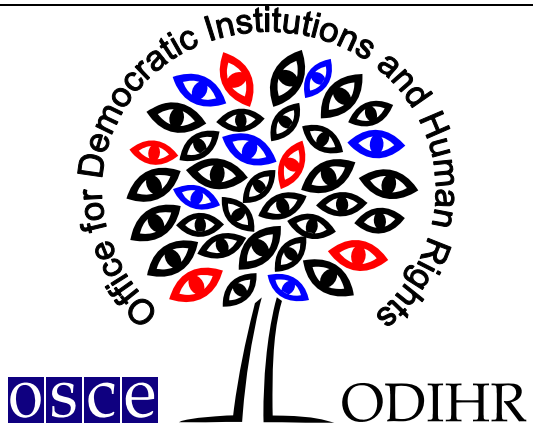
Warsaw, 1 December, 2008 Legis Paper-Nr.: 099/2007 (MA/DP) Rev. www.legislationline.org	

LAW DRAFTING AND REGULATORY MANAGEMENT IN the former Yugoslav Republic of Macedonia:

AN ASSESSMENT

November 2007

As Revised December, 2008

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Acknowledgments. The OSCE /ODIHR would like to express its gratitude to the following people for their contribution to the Report:

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1. INTRODUCTION

1.1 Background

In September, 2006 the OSCE Spillover Monitor Mission to Skopje (hereinafter, "OSCE SMMS") and the OSCE Office for Democratic Institutions and Human Rights (hereinafter, "ODIHR") discussed the need for and possibility of conducting a legislative assessment in the former Yugoslav Republic of Macedonia. The discussions resulted in an agreement to approach the authorities with a proposal for conducting an assessment. The OSCE SMMS, after having received appropriate background on the purpose of an assessment, presented the proposal to the appropriate authorities.

In a letter dated 28 December, 2006, the Macedonian Ministry of Justice wrote to the OSCE SMMS supporting the proposal to undertake "a preliminary analysis of the Macedonian legislative drafting process". On 16 January, 2007, the General Secretariat of the Government added its support to the proposed assessment of the Macedonian legislative drafting process. Such an assessment would in the General Secretariat's view help the Macedonian Government in its efforts to improve the quality of legislation and strengthen the rule of law.

This Assessment is based on the information collected through interviews with senior Government and Parliament officials as well as with other relevant interlocutors during two visits by an ODIHR Assessment Team to the former Yugoslav Republic of Macedonia, (hereinafter, "Assessment Team") as well as on the study of the existing legislative framework. The Assessment Team comprised of ODIHR staff members, OSCE SMMS Rule of Law Department staff, an international expert[1] and a local legal expert[2]. The visits by the Assessment Team took place from 19-23 May and from 25-29 June 2007.

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The Assessment Report was presented to the requesting authorities in January 2008. The update contained herein has been conducted in order to take into account the changes in the legislative framework for the passage of laws in the country, as well as ensuing political changes following the elections which took place in June 2008.

Further to the above, the most significant changes which took place in the year 2008, was the passage of amendments (following the mentioned elections) to the Rules of Procedure of Parliament, as well as amendments to the Rulebook of the Government, which has introduced the obligation of conducting regulatory impact assessments for draft legislation.

The ODIHR wishes to note, that this revised version of the Assessment Report, does not include a revision and update of Appendix 3: International Assistance to Legislative Strengthening and Regulatory Reform.

1.2 The assessment methodology

The purpose of an assessment is to collect, synthesize and analyze information with sufficient objectivity and detail to support credible recommendations for reform in the area in question. Information for the present assessment was collected, as already indicated, through semi-structured field interviews with pre-identified interlocutors,[3] as well as through compiling relevant domestic legislation and regulations. The field interviews were preceded by the sending out of questionnaires[4] to the intended interlocutors in order to provide a better overview of the purpose and scope of the visit and to allow time for preparation. The interviews aimed at gathering information on the procedures and practices in place, as well as on the international assistance efforts in related areas.[5]

The information gathered through field interviews and the collection of domestic laws and regulations were then analyzed in the light of generally accepted international standards in

[3] For the full list of interlocutors, see Appendix 1 to this report.
[4] The questionnaires are included in Appendix 2 to this report.
[5] An overview of international assistance is included in Appendix 3 to this report.

relation to legislation. There are two types of standard in particular which are relevant to the current assessment: "system standards", i.e. the standards expected of law making systems, and "standards for regulatory instruments", i.e. the standards expected of individual legislative instruments themselves. The former encompass:

- Coherence, consistency and balance between competing policies;
- Stability and foreseeability of regulatory requirements;
- Ease of management and oversight, and responsiveness to political direction;
- Transparency and openness to the political level and to the public;
- Consistency, fairness and due process in implementation;
- Adaptation to changing circumstances.

The latter encompass:

- user standards, e.g. clarity, simplicity and accessibility for private citizens;
- design standards, e.g. flexibility and consistency with other rules and international standards;
- legal standards, e.g. structure, orderliness, clear drafting and terminology, and the existence of clear legal authority for action;
- effectiveness standards, e.g. relevance to clearly defined problems and real-world conditions;
- economic and analytical standards, e.g. benefit-cost and cost-effectiveness; measurement of impacts on business, competitiveness and trade;
- implementation standards, e.g. practicability, feasibility, enforceability, public acceptance and availability of necessary resources.

2. EXECUTIVE SUMMARY

This assessment is a comprehensive study of both the formal procedures and the actual practices whereby legislation is prepared, drafted, adopted, published, communicated and evaluated in the former Yugoslav Republic of Macedonia. It identifies a number of

obstacles to achieving legislation that matches generally accepted international standards and a number of strategies that might be adopted with a view to overcoming those obstacles and improving the quality of legislation.

As a result of the assessment, the following obstacles have been identified:

- Most legislation is not based on a proper policy development process. There is a tendency to develop legislation without sufficient prior development of the policy which should be expressed in a particular law. Law making is too often a substitute for policy making.

- The "regulatory framework" is incomplete. Standardised arrangements with regard to the drafting of legislation in particular appear to be lacking.

- Consultation with stakeholders is poor, both when policies are being worked out and subsequently. Consultation within affected interests and the public at large has a vital part to play in improving the quality of legislation, but such consultation is not practiced as a matter of routine.

- There is a lack of specialist drafting resources, coupled with a lack of familiarity with modern legislative and drafting techniques.

- There is a lack of legislative or other guidance as to the terminology and style in which laws are to be drafted. The problems arising from the lack of specialist drafting resources are made worse by the absence of any common rules governing the drafting of legislation.

- The drafting of much legislation is less than satisfactory. The lack of specialist drafting resources combined with the lack of guidance no doubt accounts in part at least for many of the criticisms of the drafting of legislation encountered during the assessment visits.

- There is insufficient scope for secondary law-making. The current limits mean that laws are often excessively detailed and deal with matters that could more appropriately be dealt with in secondary legislation.

- There is a lack of effective verification procedures, i.e. checks, both of the underlying policy options and of the legislative draft itself. Checks have a vital role to play in the making of quality legislation, both at the stage at which the policy is being worked out, and later when the policy is being converted into law, but the procedures governing the preparation and approval of proposals within government are narrowly confined and are not always adhered to or are too easily circumvented.
- The parliamentary procedures are unsatisfactory and open to abuse to the detriment of transparency and public participation.

- Laws are sometimes amended at the last minute, but the amendments are not properly integrated into the text.

- There is little effective scope for citizens to initiate legislation. This is a consequence both of the high threshold (10,000 citizens), which is in practice very difficult to achieve, and the fact that sponsors lack the resources with which to prepare legislation.

- Many laws are not implemented or their implementation is delayed. It has become common for the implementation of laws to be delayed, for example, because the necessary administrative infrastructure has not been established or the necessary subordinate legislation has not been adopted.

- There is lack of official consolidated versions of laws that have been heavily amended.

- There is no systematic evaluation of the extent to which legislative goals have been achieved.

The assessment identifies a number of strategies that might be adopted with a view to overcoming those obstacles and improving the quality of legislation:

- The preparation of proposals needs to be based on an effective policy making process. There needs to be recognition that policy formation and law drafting are distinct processes, and that law drafting should follow on from policy formation rather than serve as a substitute for it.

- Sufficient time has to be allowed for the preparation of legislative proposals. It is essential that the understandable pressure to deliver is not at the expense of the time allowed for the preparation of legislative proposals, including for consultation with affected interests.

- The "regulatory framework" needs to be completed.

- The transparency and inclusiveness of the legislative process needs to be increased. Consultation with affected interests in particular needs to be dramatically improved.

- Specialist drafting resources need to be increased. The drafting of laws according to prescribed standards requires not only the adoption of standard drafting requirements, but also the availability of sufficient drafting expertise, which will in turn require investment in the selection and training of lawyers who have the aptitude and interest to undertake the task.

- The laws adopted by Parliament need to be seen as an integrated whole rather than as a series of essentially unconnected provisions, allied to which there needs to be a much greater emphasis on ensuring consistency and avoiding conflicting provisions.

- The scope for secondary law-making should be reviewed with a view to arriving at an agreed understanding of the scope for and limits to secondary law-making.

- An effective system of legislative verification should be adopted. The existing checks should be reinforced and extended to embrace operational features of the legislation as well as questions of legal compliance and the legal form, clarity and comprehensibility of the draft law.

- Co-ordination between Government and Parliament needs to be increased. Legislative programming and planning should be introduced at the level of the Parliament.

- The current legislative procedures should be revised, as is proposed, as part of the overall revision of the Parliament's Rules of Procedures. The aim should be a more transparent and inclusive legislative process in which the government does not possess the sole monopoly of legislation; in which outside groups and individuals participate in the making of legislation through an effective consultation process; and in which proposals are subject to effective scrutiny.

- Access to legislation needs to be improved. There is a need for the prompt publication of individual proposals as well as laws, for the provision of helpful explanatory information, and for the regular consolidation of legislation.

- Finally, there is a need for the evaluation of existing legislation. The responsibility of government and parliament does not end with the adoption of legislation.

3. THE CONSTITUTIONAL AND POLITICAL SYSTEM

The Macedonian Constitution (Official Gazette no 52/91, amendments published in Official Gazette nos. 1/92, 31/98, 91/01, 84/03 and 107/05; hereinafter "the Constitution") was adopted, following a referendum on independence, by the Parliament

of the former Yugoslav Republic of Macedonia (hereinafter the "Parliament") in November 1991. The Constitution has been amended on a number of occasions since, most notably in 2001 in implementation of the Ohrid Framework Agreement (below).
The Constitution is based on the separation of powers (Article 8) with the legislative power vested in the Parliament as the 'representative body of the citizens' (Article 61), the executive power in the President and the Government, and the judicial power in the courts.

The **Parliament,** in which the legislative power is vested, currently consists of 120 MPs (it ought be noted, that according to the new Electoral Code, 123 MPs will be elected in the next general elections. There have also been proposals in the past to increase this number to 133 MPs). Parliamentary elections take place every four years. The last elections took place in 2008. As well as the adoption of laws, the Parliament is responsible for their 'authentic interpretation', and for the ratification of international agreements (Article 68). Laws adopted by the Parliament must conform to the Constitution; all other regulations to the Constitution and the laws adopted by the Parliament (Article 51).

The **Government,** which consists of a Prime Minister and Ministers, is elected by and accountable to the Parliament and may be dismissed by the Parliament. As well as proposing laws, the Government is responsible for their implementation. It has power to adopt secondary legislation and other regulations in the implementation of laws, as do individual ministries.

The **courts,** in which the judicial power is vested, decide cases on the basis of the Constitution, laws adopted by the Parliament, and international agreements ratified by the Parliament in accordance with the Constitution.[6] The Constitutional Court is responsible

[6] Whether the former Yugoslav Republic of Macedonia adheres to a monist or dualist theory of international law, with the consequence in the latter case that legislation would be required to give effect to the obligations assumed, is a matter which has apparently provoked discussion. Article 118 of the Constitution, which provides that international agreements once ratified in accordance with the Constitution

for the protection of 'constitutionality and legality' (Article 108). The Court, whose members are elected by the Parliament for a term of nine years, decides among other things on the conformity of laws adopted by the Parliament with the Constitution (but not on their conformity with international agreements ratified by the Parliament), and on the conformity of 'collective agreements and other regulations' with the Constitution and the laws adopted by the Parliament (Article 110).[7]

After independence the country laid the foundations for the transition to a market economy and a state governed by the rule of law. Inter-ethnic conflict was avoided, but 2001 was marked by a very serious political crisis and a brief armed conflict, which brought the country close to civil war. The basis for a lasting political solution to the crisis was eventually reached in the Ohrid Framework Agreement, a power sharing agreement signed by the leaders of the four major political parties on 13 August 2001. The Framework Agreement committed the signatories to introducing a number of constitutional amendments, legislative modifications and structural reforms designed to end the inter-ethnic tensions and restore a stable political environment. Constitutional amendments followed in November 2001, including the introduction of a double majority voting system for the adoption of the law on local self-government and laws directly affecting the culture, use of language, education, personal documentation and use of symbols.[8] Other important steps to strengthen the civic character of the state and to

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are part of the internal legal order and cannot be changed by law, may be construed as implying that it adheres to a monist theory.

[7] The Court receives in the region of 300 applications each year, approximately 10% of which are upheld.

[8] The principle of double majority voting is sometimes referred to as the 'Badinter principle', after the French constitutional scholar and former Minister of Justice Robert Badinter, who served as a consultant during the Ohrid negotiations. The principle, which is designed to protect ethnic minorities in parliamentary decision-making, means that laws with a significant impact on ethnic minority communities may not be adopted by a simple majority but require a 'double' majority, including a majority among political representatives of the minority. Ethnic Albanians hold 27 of 120 seats in the Parliament and could thus be easily overwhelmed under a simple majority rule. The Ohrid Agreement therefore provided for a mechanism by which any law affecting an ethnic-minority population must be passed by a majority of representatives of that ethnic minority as well as by an overall majority. Following revision of the 1991 Constitution after the Ohrid Accords of 2001, the former Yugoslav Republic of Macedonia became the only state in South Eastern Europe which the double-majority principle - a majority of citizens at state level and a majority at ethnic community level, irrespective of numbers and geographical location - enables the ethnic minority to block measures to which they are opposed. The agreement also provided for the creation of a new institution, the Committee on Inter-Community Relations, charged primarily with resolving any disputes arising from double-majority voting, in addition to having other prerogatives.

expand the rights of minorities have been taken in implementation of the Agreement. However, the speedy adoption of the remaining laws and legislative modifications envisaged in the Agreement is regarded as essential to maintaining peace and stability.

The most recent parliamentary elections were held in June 2008. Following these early elections, a new governing coalition was formed between VMRO Democratic Party for Macedonian National Unity and the Democratic Union for Integration (which is predominantly an ethic –Albanian party)[9]. The new government controls 82 of the 120 seats in the Parliament, giving it a much freer legislative hand than its predecessor.

4. EUROPEAN UNION ACCESSION

By far the most important incentive for legislation initiated by the government at the present time is the need to harmonise domestic legislation with the *'acquis communautaire'* as part of the process of accession to the European Union. The former Yugoslav Republic of Macedonia applied for membership of the European Union in March 2004 and became a candidate country in December 2005. The *National Programme for Adoption of the Acquis Communautaire,* which was approved by the Government in March 2007, envisaged the adoption of approximately 210 laws by 2010. A backlog of EU-related legislation built up after the elections in 2006, which the previous Government was endeavouring to clear. In order to clear this backlog, immediately following the elections in June 2008, the Parliament passed approximately 170 new laws or amendments. The Secretariat for European Affairs is responsible for the overall co-ordination of the preparation of the Macedonian version of the *acquis communautaire* within the Government (Law on Government Article 40-b).

[9] Additionally, smaller political parties such as PEI, DOM, SPM and others, are part of the newly formed Coalition.

5. THE LEGISLATIVE PROCESS

5.1 The normative framework

The normative framework governing the making of laws is provided by the Constitution (above); the Law on Government (Official Gazette nos 59/00, 12/03, 55/05, 37/06, 115/07); the Government's Rules of Procedure, (Official Gazette no 58/06 consolidated text, nos 5/07, 15/07, 26/07, as amended 51/08-16; 86/08-63); and the Parliament's Rules of Procedure (Official Gazette no 60/02). The latter have been revised following the 2008 elections (Official Gazette no 91/08).

5.2 The right to propose the adoption of laws

Under the Constitution the right to propose the adoption of laws is shared between the Government and MPs (Article 71). There is also a popular right of legislative initiative, which may be exercised by a minimum of 10,000 voters (Article 71). In practice most laws are proposed by the Government. Of the 594 laws adopted between 2002 and 2006, 567 were proposed by the Government, 26 by MPs and only one by popular i.e. citizens' initiative.[10]

5.3 Legislative Planning

The preparation of individual measures within the government takes place within what is on the face of it a sophisticated planning framework. The Government's Rules of Procedure require it to adopt a decision on its strategic priorities and an annual work programme (Articles 23-24).[11] The latter identifies all the legislation that the Government plans to bring

[10] Report on the Work of the Macedonian Parliament 2002-2006: www.sobranie.mk

[11] The Methodology on Strategic Planning and Preparation of the Annual Work Programme of the Government, which was adopted in 2003, describes the processes of identifying the strategic priorities of the Government as well as the preparation of the annual work programme. The government's most recent decision identifies three strategic priorities for 2008 (increasing employment and improving living standards, achieving full NATO membership, and 'continuation of the activities for the start of negotiations for EU membership'), to which are linked three priority targets (improving the investment climate, strengthening of the law-based state and the rule of law, and strengthening the administrative capacities of the public administration and local self government) (O.G No 82/2007).

forward in the course of the year. The General Secretariat of the Government is responsible for co-ordinating the preparation of the annual work programme. It is expected to estimate the number of pieces of legislation that can be passed through Parliament in the year, and to assess the extent to which the legislative demand is realistic given Parliament's capacity. The Methodology on Strategic Planning and Preparation of the Annual Work Programme of the Government (2003) identifies two important factors that may have a direct impact on the Government's ability to implement its work programme: the capacity of the Government to approve all the proposals in the work programme (whether it has enough time on its agenda to address all the issues) and the capacity of the Parliament to pass legislation. 'If too many pieces of legislation are going forward, creating a backlog, the Government needs to be sure that priority pieces of legislation are being addressed first.' Once adopted, the General Secretariat is responsible for monitoring of the annual work programme and for reporting on progress in implementation.[12]

5.4 The preparation of individual proposals

The preparation of legislative proposals takes places mainly within ministries.[13] The preparation of proposals is commonly undertaken by specially constituted working groups, the composition of the working group depending on the subject matter of the proposal in question. A working group usually consists of civil servants from the relevant ministry, academic specialists, representatives from other competent bodies, and representatives of different stakeholders. It will also include a representative from the Secretariat for Legislation (below).

The drafting of proposals in the sense of the translation of policy proposals into law takes place within ministries as part of the overall preparation of proposals. There is no centralised drafting service. The Secretariat for Legislation is has recently prepared, with

[12] Policy Development Handbook (2006), pp 8-9.
[13] The preparation of a proposal may be entrusted to an outside body, in which case the opinion of the relevant ministry must be obtained.

the assistance of GTZ, a manual on law drafting techniques.[14] Following adoption of the manual it is intended to introduce training in the preparation of laws for civil servants.

Consultation takes place in the course of preparation of proposals both within government and in theory with civil society. The Government's Rules of Procedure requires legislative proposals submitted to the government to have been the subject of inter-ministerial consultation (Article 68), and the memorandum that accompanies proposals submitted to the government must certify the extent to which this requirement has been complied with, and indicate the outcome of consultations. As regards consultation outside government, the Law on the Organisation and Operation of State Administrative Bodies (Official Gazette nos. 58/00 and 44/02) requires state administrative bodies to ensure consultation with citizens in the course of the preparation of laws and other regulations through publicising the details of proposed legislation, organising public debates, and obtaining opinions from relevant citizens' associations and other entities (Article 10). Also noteworthy here is the Methodology on Policy Analysis and Co-ordination (April 2006), which includes among the key principles for policy-making the principle that policies and legislation should be developed by 'transparent and consultative procedures'. In the *National Programme for Adoption of the Acquis Communautaire*, the Government affirms its commitment to promoting transparency and the involvement of all stakeholders in the decision-making process.[15]

Once a proposal has been prepared it needs to be approved by the government. A proposal submitted to the government must be accompanied by a memorandum summarising the proposal and providing information on, among other things, the options considered, the results of consultations, the recommended solution and its justification, the financial implications of the proposal and its expected impacts. The memorandum must also include information on the compatibility of the proposal with EU law (Government's Rules of Procedure, Article 73). Following amendments made to the Government's Rules of Procedure in March 2008 a formal regulatory impact assessment will also need to be carried out, with effect from January 1, 2009 on all proposals for laws other than those

[14] Secretariat for Legislation, *Rulebook on Nomotechnical Rules* (December 2007)..
[15] pp 7-8.

'submitted in emergency procedure' (Official Gazette no 26/2008)[16]. The General Secretariat, through its Sector for Policy Analysis and Co-ordination, is responsible for ensuring that ministries have complied with all the formal aspects of the preparation and presentation of proposals.[17]

Before a proposal is considered by the government, its financial implications, information on which should have been included with the proposal, are reviewed by the Ministry of Finance. The proposal is also reviewed by the Secretariat for Legislation, which is responsible for 'ensuring the consistency of the legal system', and for the provision of expert opinions on the conformity of proposed laws and other regulations with the Constitution, with the legislation of the European Union, and with international treaties ratified in accordance with the Constitution (Law on Government, Article 40). Although neither the Ministry of Finance nor the Secretariat's opinion is strictly speaking binding on the government, they appear to be treated with the utmost seriousness.

As a preliminary to its consideration by the Government, a proposal is reviewed by the General Collegium, made up of the Secretary General of the General Secretariat and the state secretaries of the line ministries, which examines whether the materials are ready and properly prepared for the Government sessions. If a proposal is incomplete or otherwise lacking, the General Collegium advises the relevant Ministry accordingly. Once a proposal has been cleared by the General Collegium, it is referred to one of three standing committees: on the Political System, on the Economic System and Current Economic Policy, and on Human Resources and Sustainable Development (Government's Rules of Procedure, Articles 30-33). The relevant committee makes a report with recommendations to the Government. The proposal is also reviewed by the Legal Council, which provides expert opinions upon the request of the Government and at their own initiative in connection with, inter alia, the rule of law and legal system issues, protection of human rights and property (Government's Rules of Procedure, Article 39). It is then discussed at the next session of the Government and, if approved, submitted to the Parliament.

[16] The assessment must be carried out in accordance with the methodology set out in Official Gazette no. 37/2008.
[17] Policy Development Handbook, p 26.

5.5 Preparation of proposals by MPs

MPs are supported in the preparation of proposals by the Sector for Legislation of the Parliament, but very few laws are proposed by MPs (above).

5.6 The parliamentary stages of the legislative process

The current legislative procedure is essentially a two-stage procedure: a first reading or 'proposal' stage at which the Parliament decides whether there is a need for the law, and a second reading or 'draft law' stage at which the Parliament having decided that the law is needed decides whether to approve or reject the law itself. There may also be a third reading or preliminary draft law stage (see point 5.6.5).

5.6.1 The regular procedure

The procedure begins with a formal proposal for adopting a law, the content of which is prescribed by the Parliament's Rules of Procedure (Articles 133 and 135). The proposal must include the constitutional basis for adoption of the law, the reasons for its adoption, the basic principles on which the law is based, and an outline or description of its content, which may be in the form of the draft law itself.

The proposal must be accompanied by an explanatory note (Article 136). The explanatory note must cover an assessment of the state of affairs in the area that is to be regulated by the law, an assessment of the implementation of the existing provisions in that area, the aim or purpose to be achieved by regulating relations in the proposed manner, and the likely implementation and compliance costs of the proposed law.

The proposal is submitted to the President of the Parliament, who must distribute it to MPs and the appropriate working bodies or committees within 5 days of its submission (Article 138), and put it on the agenda of a Parliamentary session within not less than 30 days of its submission, i.e. at least 30 days notice must be given of the putting of the proposal on the

agenda, which period may be reduced to not less than 15 days in the case of proposals that are not 'complex or extensive' (Article 139). Where a proposal is not submitted by the Government it must be referred to it with a request for its opinion (Article 140).

5.6.2 The first reading

The first reading comprises the review of the proposal by the appropriate 'working bodies', i.e. committees, and its debate in plenary.

Before it is discussed by the Parliament (in plenary), the proposal is examined by the appropriate committee(s) and by the Legislation Committee (Article 142). Committees examine proposals from the perspective of the need for the adoption of the law, the principles upon which it is based, the basic relations being regulated and the manner in which it is proposed that they be regulated. The Legislation Committee examines proposals from the perspective of their conformity with the Constitution and the legal system (Article 145).[18]

Committee meetings are attended by a representative or delegate of the government when a government proposal is under discussion. Academic and other experts may be invited to attend, as may representatives of local self-government, trade union, non-governmental and other organizations, institutions, and associations of citizens. Decisions are taken by a majority vote of attending members, which majority must constitute at least one third of the total number of members of the Committee.

At the debate in plenary the Parliament decides whether there is a need to adopt the law. If it decides that there is a need, it passes a resolution approving the proposal to adopt the law. Proposals are adopted by a majority of votes cast, which majority must constitute at least one third of the total number of members of the Parliament (Article 149).

[18] The European Affairs Committee examines the conformity of proposals with EU law.

5.6.3 The second reading

The Rules of Procedure envisage the adoption of a proposal being followed by the preparation of the draft law as described above. If the Parliament decides there is a need for the law, i.e. if the proposal is adopted, the draft law must follow within 60 days (Article 141). The normal practice, however, is for the two stages to be combined (below).

The second stage likewise comprises review of the draft law by the appropriate committee(s) and its debate in plenary. Amendments may be made at this stage, which may be submitted by the Government, by MPs, and by committees. There is also a right of popular amendment, which may be exercised by 10,000 voters.

5.6.4 Voting requirements

Laws are normally adopted by a simple majority of voting members, which majority must constitute not less than one third of the total number of MPs (Constitutional Amendment X; Parliament's Rules of Procedure, Article 164). Certain laws, however, require for their adoption a 'special majority'. Laws that are directly related to culture, use of languages, education, personal documents and use of symbols require a 'double majority', i.e. a majority of voting members *and* a majority of voting members belonging to minority communities, as do laws on local finance, local elections, municipal boundaries and the City of Skopje. There are variations on the double majority principle. For example, constitutional amendments and the law on local self government require a two thirds majority of the total number of MPs, within which there must be a majority of the total number of MPs belonging to minority communities. The scope of application of the double majority principle was controversial in the last parliament. The Parliament's Rules of Procedure provide for disputes over the application of the principle to be settled by the Committee on Inter-Community Relations (Article 164; Constitutional Amendment XII).

A special majority may also take the form of an absolute majority or two thirds majority. An absolute majority is required for the law governing parliamentary elections and the Parliament's Rules of Procedure (The Constitution, Articles 62 and 66). The adoption of 'organic' laws on the other hand requires a two thirds majority of the total number of MPs. The Constitution envisages the adoption of laws by a two thirds majority vote of the total number of representatives for the following organic laws: the coat-of-arms, flag and national anthem (Article 5), the organisation and work of bodies of state administration (Article 95), the judicial system (Amendment XXV), the public prosecutor's office (Amendment XXX), local self-government (Amendment XVI), and defence of the Republic (Article 122).

5.6.5 A 'third' reading

Where a law is 'complex or extensive', the Parliament may require the preparation of a 'preliminary draft law' (Article 150). A preliminary draft law goes through the same process of review and debate as a draft law. A public debate can also be carried out on a preliminary draft law (Article 156). The advantage of this procedure, which is used only infrequently, is that it allows for wider consultation and debate than the normal two stage procedure.

5.6.6 Laws that are not 'complex or extensive'

The Rules of Procedure offer alternatives to the regular procedure that may be used in the case of laws that are not 'complex or extensive'. The most important of these is the so-called 'shortened procedure'. Under this procedure the two stages of the legislative process are effectively combined, with the proposal to adopt the law and the draft law itself both being submitted for discussion at the same session of the Parliament. If the Parliament approves the proposal the draft law is then considered at the same session (Article 152). Of the 594 laws adopted between 2002 and 2006, no less than 442 were adopted using this procedure, with 112 being adopted under the regular procedure, and 40 under the

emergency procedure (below).[19] There is also a summary or accelerated procedure under which a proposal goes through the normal two stage procedure but according to an accelerated timetable (Article 172).

5.6.7 The emergency procedure

There is also an emergency procedure, resort to which may be had in order to prevent or eliminate major disturbances in the economy, in the interests of the security and defence of the country, or in cases of major natural disasters, epidemics diseases or other extraordinary and urgent needs (Article 175).

5.6.8 The adoption of laws related to the *acquis*

The current legislative procedures are not regarded as a barrier to the adoption of laws related to the *acquis communautaire.* Depending on the complexity and extensiveness of the issues being regulated, these laws may be adopted under the regular two stage procedure or the shortened one stage procedure.

5.7 Proposed amendments to the procedure

The adoption of new parliamentary rules of procedure has been under discussion for some time with a view among other things to increasing the efficiency of the legislative process. The Parliament adopted new Rules of Procedure in July 2008 immediately after the elections (Official Gazette no 91/08). Under the amendments to the legislative procedure, which come into effect in October 2008, the plenary debate at the first reading stage will only take place if a minimum of 15 MPs request it. (The report of a twinning project with Slovenia described the then current first reading as "fruitless"[20]) The first reading may be followed by a public discussion on the proposal. The second reading will comprise review and amendment of the draft law in committee followed by review of the draft law in plenary; the debate in plenary however will be confined to those provisions that have been amended. All amended laws will go to a third reading.

[19] Report on the Work of the Parliament of Macedonia 2002-2006: www.sobranie.mk
[20] EU CARDS, *Twinning assistance to the Parliament* (September 2005), para 3.4

5.8 Promulgation, publication and entry into force

Once the Parliament has adopted a proposed law, it is submitted to the President of the Republic and the President of the Parliament for signature and promulgation (The Constitution, Article 75). Where the Parliament has adopted the proposed law by a two thirds majority of the total number of MPs (above), the President of the Republic must sign the proposed law. Where the Parliament has not adopted the proposed law by a two thirds majority, the President of the Republic may refuse to sign, but if the Parliament subsequently adopts the law by a majority vote of the total number of MPs the President of the Republic must sign the law (The Constitution, Article 75). There is no deadline within which the President must exercise his right of veto, which has caused problems on several occasions.

Laws must be published before they come into force. Normally they are published in the Official Gazette within seven days of adoption and come into force on the 8th day after publication at the earliest; exceptionally, they may come into force on the day of publication (The Constitution, Article 52). Laws may not have retroactive effect unless it is to the citizen's advantage (The Constitution, Article 52).

5.9 Subordinate law making

Laws commonly empower the government and ministries to make regulations for the purposes of their implementation. There are however severe restrictions on what may be done by way of regulation. In particular, regulations may not be used to determine the rights and duties of legal or natural persons or to define the competences of other bodies (Law on Government, Article 35; Law on the Organisation and Operation of State Administrative Bodies, Articles 55 and 61). This in turn has consequences for the amount of detail contained in laws. Before regulations are made by the government or ministries, the opinion of the Ministry of Finance must be sought - on their financial implications, as must the opinion of the Secretariat for Legislation - on their conformity with the Constitution, the laws adopted by the Parliament, international treaties ratified in

accordance with the Constitution, and the legislation of the European Union where the regulations transpose EU requirements.

6. ANALYSIS OF THE CURRENT SITUATION

One of the comments made to the Assessment Team in the course of our interviews was that law making in the former Yugoslav Republic of Macedonia tends to be tackled "in much the same way as it has been done in the past." The Assessment Team's overall sense is indeed of a legislative system that has yet to fully adjust to the new and unfamiliar demands being made upon it. The analysis and discussions contained herein, suggest a number of obstacles in particular to achieving legislation that matches generally accepted international standards:

The "regulatory framework" is incomplete. The "regulatory framework" refers to the standard arrangements for preparing legislation, including requirements as to the procedures to be followed and the form and style in which legislation is to be drafted. Standardised arrangements with regard to the drafting of legislation in particular appear to be lacking (below).

Most legislation is not based on a proper policy development process. There is a tendency to develop legislation without sufficient prior development of the policy which should be expressed in a particular law. Law making is too often a substitute for policy making. A Policy Development Handbook, which was issued in November 2006, sets out with commendable clarity the steps in the policy process, but these steps are not always followed, in part because they are new and unfamiliar, but in part also because the resources with which to do so are lacking. Indicators of the lack of effective policy-making include an over-reliance on legislation as a means of achieving policy goals with insufficient consideration being given to alternatives; there is too great an emphasis on legislation as the principal or only means of achieving policy goals. Another is the development and adoption of laws without any or enough evidence to support the proposed solutions. The Methodology for Strategic Planning and the Development of the Annual Work Program of the Government together with the Methodology for Policy Analysis and

Coordination provide the framework for an effective policy making process but that framework has yet to be fully implemented.

Consultation with stakeholders is poor, both when policies are being worked out and subsequently. Consultation within affected interests and the public at large has a vital part to play in improving the quality of legislation, but such consultation is not practiced as a matter of routine. The comment was made to us that the setting up of a working group is seldom seen as an opportunity to "open the doors to new people with new ideas." Where stakeholders are consulted there is no guarantee that their views will be properly considered in the preparation of final proposals. Representatives of leading non-governmental organisations suggested to us that the level of transparency and accessibility to the legislative process was if anything declining.

There is a lack of specialist drafting resources, coupled with a lack of familiarity with modern legislative and drafting techniques. Drafting is a specialised task calling for greater expertise than is sometimes acknowledged. It cannot be assumed that people will automatically know how to do this. Some training in modern drafting techniques has been provided with international assistance,[21] but there are not enough skilled drafters to draft the amount of legislation that is needed, particularly at a time when the legislative system is adjusting to new and unfamiliar demands.

There is a lack of legislative or other guidance as to the terminology and style in which laws are to be drafted. The problems arising from the lack of specialist drafting resources are made worse by the absence of any common rules governing the drafting of legislation. There are said to be considerable variations in drafting style with different ministries taking different approaches. Overall there is a need for specialist expertise, guidance on the terminology and style in which laws are to be drafted, and training for those involved in the drafting of proposals. As we have noted, the Secretariat for Legislation has prepared a drafting manual with the assistance of GTZ.

The drafting of much legislation is less than satisfactory. The lack of specialist drafting resources combined with the lack of guidance no doubt accounts in part at least

[21] An overview of international assistance is included in Appendix 3 to this report.

for many of the criticisms of the drafting of legislation we encountered. There is no question that considerable efforts are devoted to ensuring that laws are expressed in a clear and concise manner, that ambiguities are avoided, and that provisions are mutually consistent and harmonised. However, it is equally clear these efforts do not always meet with success. One of the major weaknesses of the current system is the failure to check the consistency of draft laws with other legislation. Although a check is undertaken by the Parliament's Legislative Committee, that by itself is not enough to prevent conflicts appearing. We were given the example of the working group preparing amendments to the Electoral Code. Although all members of the working group, including the MPs, were of the view that the provisions on electoral campaign financing needed to be examined in the light of other applicable provisions from other connected laws to see if there was a need to change them, the view taken was that this was outside the remit of the working group and that another working group would need to be set up to do this. Such an approach inevitably results in partial and conflicting laws.[22] The practice of making last minute amendments that are not then properly integrated into the text also affects the intelligibility of legislation.

There is insufficient scope for secondary law-making. The scope for secondary law-making is narrowly confined. There are good reasons for imposing limits on secondary law-making, above all in terms of preventing the abuse of power, but the current limits mean that laws are often excessively detailed and deal with matters that could more appropriately be dealt with in secondary legislation. Excessively detailed legislation imposes additional strains on the legislative system, creating as it does a need for frequent amendments as circumstances change.

There is a lack of effective verification procedures, i.e. checks, both of the underlying policy options and of the legislative draft itself. Checks have a vital role to play in the making of quality legislation, both at the stage at which the policy is being worked out, and later when the policy is being converted into law, but the procedures governing the

[22] Such a situation cannot be remedied afterwards as the Constitutional Court cannot examine the compatibility of laws with other laws but only with the Constitution.

preparation and approval of proposals within Government are narrowly confined and are not always adhered to or are too easily circumvented. A commitment to 'good process' is lacking so that it is possible to avoid the checks laid down, for example with regard to the financial implications of proposed measures. It is not uncommon, we were told, for ministries to claim that legislative proposals have no financial implications, with the result that decisions are not only taken on the basis of incomplete information but that the resources for their implementation are not then available.

The parliamentary procedures are unsatisfactory and open to abuse to the detriment of transparency and public participation. The adoption of new procedures is currently under discussion. As regards the existing procedures, the single stage shortened procedure is intended to be only available in respect of proposals that are not 'complex or extensive', but there is a tendency to claim that proposals are not complex or extensive in order to curtail debate and to speed up their adoption. On the other side, there is a reluctance to use the extended procedure, which does allow for greater public involvement. As two commentators point out, there is ample scope under the current Rules of Procedure for citizens' and other stakeholders' active participation in the legislative process, but that scope is seldom realised.[23] In theory it is possible for citizens to participate in the work of parliamentary committees, but in practice this seldom happens. Despite the possibility given in the Parliamentary Rules of Procedures, citizens are not often invited to participate in the work of the Parliamentary committees when a draft law is being reviewed. Whether citizens are invited depends on the President of the Committee. In the short term, these measures may be successful in getting proposals adopted but this may be only at the expense of creating problems when it comes to their implementation. Speed of adoption may be at the expense of popular approval.

Laws are sometimes amended at the last minute, but the amendments are not properly integrated into the text. The Law on Free Access to Public Information, for example, was amended at the last minute, in response to criticisms made by the Open Society Institute- Soros Foundation among others, but the law was not reviewed and the

[23] Belicanec and Gradiski-Lazarevska, "The impact of citizens on the procedure for the adoption of laws."

amendments properly integrated. This we were told is by no means an uncommon experience.

There is little effective scope for citizens to initiate legislation. This is a consequence both of the high threshold (10,000 citizens), which is in practice very difficult to achieve, and the fact that sponsors lack the resources with which to prepare legislation. We were given the example of the proposal for a law on handicapped persons, which was approved by the Parliament, but which was not drafted within the time limit laid down, principally because the sponsors lacked the necessary resources. One solution to this problem would be for the government to take over the preparation of a proposal that has secured the necessary approval, or for the Parliament set up its own drafting unit.

Many laws are not implemented or their implementation is delayed. It has become common for the implementation of laws to be delayed, for example, because the necessary administrative infrastructure has not been established or the necessary subordinate legislation has not been adopted. This can lead to a "legal vacuum" in which neither the previous law nor the new law in practice applies. A dramatic example is provided by the Law on Courts and the Law on Administrative Disputes which transferred the Supreme Court's jurisdiction to review administrative decisions to a new Administrative Court, which has yet to be set up, with the result that there is currently no possibility of the review of administrative decisions.

There is lack of consolidation. Access to individual laws is said not to be a problem, but there is lack of official consolidated versions of laws that have been heavily amended, forcing lawyers and others to rely on what were described to us as "home-made consolidated versions". Where laws have been consolidated their provisions are sometimes re-numbered, which creates scope for confusion.

There is no systematic evaluation of the extent to which legislative goals have been achieved. The Policy Development Handbook recommends that once a law has come into force the relevant ministry should monitor its implementation as a preliminary to evaluating

the effectiveness of the policy given effect in the law. Monitoring and evaluation, however, seldom take place on any systematic basis. Lack of resources is the most commonly cited reason for the lack of systematic monitoring and evaluation.

7. RECOMMENDATIONS

A number of strategies may be adopted with a view to improving the quality of legislation depending on the circumstances of the country in question. The following seem to us most relevant in the case of the former Yugoslav Republic of Macedonia:

The preparation of proposals needs to be based on an effective policy making process. **"**Perhaps the most useful step in improving the quality of legislation would be the recognition that policy development is an essential precursor to law drafting."[24] There needs to be recognition that policy formation and law drafting are distinct processes, and that law drafting should follow on from policy formation rather than serve as a substitute for it. Effective policy making implies the adoption of modern policy making techniques, including policy analysis and regulatory impact analysis where appropriate; the adoption of a more sparing approach to the use of legislation as a means of achieving policy goals; and the introduction of a system of policy verification, a more systematic approach to which "forces into the open the necessity to treat policy choice and development as a distinct process."[25]

The "regulatory framework" needs to be completed. There is a framework but it is incomplete. In particular, there is a need for the framing of directives governing such matters as the procedures to be followed at different stages in the drafting process, uniform rules as to the application and operation of particular kinds of legislative provisions, and standard requirements as to the form, terminology and style in which legislation is to be drafted, and checklists of various kinds both as a starting point for a systematic approach to a particular stage in the process and as an aid in reviewing the work done at a particular

[24] *Ibid.*, para 3.2.
[25] *Ibid.*, para 3.2.1.

stage. These directives should be drawn up by the Government and endorsed by the Parliament, which would leave no room for doubt about the standards expected of Macedonian legislation.

Sufficient time has to be allowed for the preparation of legislative proposals. There is a sophisticated legislative planning framework, coupled with a recognition of some of the factors that may affect the Government's ability to implement its legislative programme (above). At the same time, the Government's programme is ambitious one, especially in relation to the adoption of the *acquis.* It is essential that the understandable pressure to deliver is not at the expense of the time allowed for the preparation of legislative proposals, including for consultation with affected interests. "Undue hurry driven by short-term political objectives is a significant factor contributing to defective law."[26]

The transparency and inclusiveness of the legislative process needs to be increased. There needs to be consultation within government and with outside interests, both when the policy is being worked out and subsequently when a draft has been prepared, for which time has to be allowed. Consultation with affected interests in particular needs to be dramatically improved.

Specialist drafting resources need to be increased. The drafting of laws according to prescribed standards requires not only the adoption of standard drafting requirements, but also the availability of sufficient drafting expertise, which will in turn require investment in the selection and training of lawyers who have the aptitude and interest to undertake the task. This might be pursued as a matter of general legal education as well as of specialist training.

The laws adopted by Parliament need to be seen as an integrated whole rather than as a series of essentially unconnected provisions, allied to which there needs to be a much greater emphasis on ensuring consistency and avoiding conflicting provisions. When

[26] OECD, *Law Drafting and Regulatory Management in Central and Eastern Europe* Sigma Papers: No 18 OCDE/GD(97)176, para 3.1.

drafting a law regulating a specific area, it is necessary to examine all laws which address that area in order to check their consistency and make appropriate amendments in order to avoid any possible conflicts of legislation.

The scope for secondary law-making should be reviewed with a view to arriving at an agreed understanding of the scope for and limits to secondary law-making. The making of secondary legislation also needs to be treated with the same degree of importance as primary legislation.

An effective system of legislative verification should be adopted. The National Programme for Adoption of the Acquis Communautaire envisages the Secretariat for Legislation's position being strengthened with a view to promoting higher quality laws, standardisation of "nomo-techniques" (i.e. drafting techniques) and consistency with EU law.[27] As part of the these efforts, the existing checks should be reinforced and extended to embrace operational features of the legislation as well as questions of legal compliance and the legal form, clarity and comprehensibility of the draft law. A system for guaranteeing the linguistic quality of laws should be put in place, in order to avoid terminological/grammatical problems and to sustain the integrity of the language. This is particularly important in the current context of approximation to the *acquis* and the transposition of many new terms in the Macedonian legal system. Also, since all the laws are translated to Albanian, quality check of these translations should be instituted. Quality check of the translations of international treaties ratified by Parliament should be also introduced, with a special procedure for correction of errors in the translation.

Co-ordination between Government and Parliament needs to be increased. Legislative programming and planning should be introduced at the level of the Parliament. Parliamentary procedures should be introduced in order to guarantee the feasibility and proper implementation of the plans and the proper management of the legislative process. At a minimum, the government should be required to submit its annual work programme to the Parliament.

[27] p 9.

The current legislative procedures should be revised, as is proposed, as part of the overall revision of the Parliament's Rules of Procedures. The scope for abuse inherent in the existing procedures needs to be curtailed, for example, by tackling the question of what is meant by a less complex or extensive proposal. The scope of application of the Badinter principle also needs to be agreed. The aim should be a more transparent and inclusive legislative process in which there are opportunities for MPs and parliamentary committees as well as citizens to legislate – a process, in other words, in which the government does not possess the sole monopoly of legislation; in which outside groups and individuals participate in the making of legislation through an effective consultation process; and in which proposals are subject to effective scrutiny.

Access to legislation needs to be improved. There is a need for the prompt publication of individual proposals as well as laws, for the provision of helpful explanatory information, and for the regular consolidation of legislation. In order to avoid confusion, the existing numbering should be retained (or tables of derivations and destinations introduced). Draft legislation has to be readily accessible and existing legislation consolidated and made more user-friendly.

Finally, there is a need for the evaluation of existing legislation. We see this as involving: "post-legislative scrutiny" of the operation and effectiveness of selected important legislation, underlining that the responsibility of government and parliament does not end with the adoption of legislation; procedures for regular amendment based on proper evaluations; and the systematic revision of existing laws.

Appendix 1. List of Interlocutors:

Parliament

Mr. Zarko Denkovski – Secretary General, Macedonian Assembly

Ms. Snezana Guseva – State Advisor, Macedonian Assembly

Ms. Anita Ognjanovska – Chief of Cabinet of the Secretary General, Macedonian Assembly

Mr. Marjan Madzovski – Chief of Cabinet of the President of the Macedonian Assembly

Ms. Liljana Ivanovska – Head of Department, Macedonian Assembly

Ms. Blagorodna Dulik - Member of Parliament, President of the Legislative Committee, Macedonian Assembly

Ms. Maja Ermilova Levkova - Head of Department, Macedonian Assembly.

Government

Mr. Sali Sali – State Advisor, General Secretariat of the Government

Ms. Liljana Kostik – State Advisor, General Secretariat of the Government

Ms. Suzana Nikodijevik Filipovska – Head of Department, General Secretariat of the Government

Mr. Numan Limani – State Secretary, Ministry of Justice

Mr. Nikola Prokopenko – Head of Unit, Ministry of Justice

Ms. Dimitar Todevski – State Advisor, Ministry of Finance

Ms. Tanja Kostovska – Associate, Ministry of Finance

Ms. Ana Angelovska – Associate, Secretariat for European Affairs

Ms. Maja Fuzevska – Associate, Secretariat for European Affairs

Ms. Lila Pejcinovska Miladinovska – Secretary, Secretariat for Legislation

Ms. Evica Dimoska – State Advisor, Secretariat for Legislation

Ms. Liljana Mitevska – State Advisor. Secretariat for Legislation

Mr. Goran Cvetkovski – Head of Legal Department, Agency for Civil Servants

Constitutional Court

Mr. Mahmut Jusufi – President of the Constitutional Court

International Organizations

Ms. Aferdita Haxhijaha Imeri – Program Officer, UNDP

Ms. Kathy Stermer, Senior Democracy Adviser, USAID

Ms. Nena Ivanovska, Legal Coordinator, DPK Consulting

Ms. Joseph Traficanti, Chief of Party for the Macedonia Court Modernization Project, DPK Consulting

Mr. Chris Henshaw – Country Director, National Democratic Institute, Office in Skopje

Mr. Scott Gesler – Program Director, National Democratic Institute, Office in Skopje

Mr. Patrick Paquet – First Secretary, European Commission Delegation in Skopje

Ms. Marina Kurte – Advisor on European Integration and Legal Issues, European Commission Delegation in Skopje

Mr. David Falcon – Policy Advisor, Global Opportunities Fund for Re-Uniting Europe

Ms. Magdalena Saldeva – National Consultant, Global Opportunities Fund for Re-Uniting Europe

Ms. Magdalena Makrevska – Task Manager, European Agency for Reconstruction

Ms. Miriam Fuchs – Program Manager, European Agency for Reconstruction

Ms. Jasminka Varnalieva – Private Sector Development Specialist, World Bank - Macedonia

Mr. Thomas Meyer – Manager of the Regional Fund, GTZ

Ms. Veronika Efremova – Coordinator of the Legal Program, GTZ

NGOs and experts

Ms. Natasha Postolovska – Polio Plus NGO

Mr. Kire Milovski - Youth Educational Forum NGO

Mr. Aleksandar Stojanovski – Youth Educational Forum NGO

Mr. Branko Adzi Gogov – Women's Lobby NGO

Ms. Daniela Dimitriovska – Women's Lobby NGO

Ms. Marija Gelevska – ESE NGO

Ms. Rosana Popovska- MOST NGO

Mr. Darko Aleksov – MOST NGO

Mr. Vladimir Misev – Institute for Democracy, Solidarity and Civil Society NGO

Ms. Tatjana Trendafilova – Euro Balkan Institute NGO

Ms. Renata Deskoska Trenevska – Law Faculty Justinianus Primus, Skopje

Ms. Ana Pavlovska Daneva – Law Faculty Justinianus Primus, Skopje

Mr. Jeton Shasivari – South East European University, Tetovo

Mr. Temelko Ristevski – Faculty of Social Sciences, European University, Skopje

Mr. Zoran Gavrilovski – Civil Society Resource Center NGO

Ms. Neda Korunovska – Open Society Institute Macedonia (Soros) NGO

Appendix 2. Questionnaires Provided on the Legislative Process

General Questions on Legislative Process – Executive Branch

1. Does your ministry have its own specialist unit of law drafters? If not, who undertakes law drafting? If it is the Ministry legal officers, do their job descriptions mention this task? Is experience with drafting an asset for applicants to these positions?

2. Have you outsourced consultants for law drafting projects? If so, where did they mostly come from? (e.g. international consultants/donor agencies, academia, NGOs) Whose budget has borne the costs?

3. Is it common for more than one law drafter to be involved in the drafting of particular legislation? Does a law drafter engaged on primary legislation work as a member of a team of ministry officers that includes policymakers?

4. How is the quality of law drafting monitored? (e.g. by supervisors)

5. Who undertakes the drafting of secondary legislation? Is it the same staff who draft primary legislation?

6. How are annual legislative plans drawn? Who coordinates the submission of ministry inputs to the cabinet of ministers/prime minister?

7. How are decisions to initiate a new legislative project taken? Does this happen at the ministry level or at the Cabinet level?

8. How does the government collectively determine its priorities with respect to the proposed new legislative projects?

9. Are timetables set for the preparation of each draft (or otherwise known as a "law proposal")? Who and how monitors them?

10. Does each draft, before it is introduced to the Parliament, have to undergo approval by the Government?

11. Is the compliance of policy proposals or policy options with the requirements of the Constitution verified during the policymaking stages? If so, how?

12. Is the compliance of policy proposals or policy options with the requirements of the extant law verified during the policymaking stages? If so, how?

13. Is a check carried out whether new legislation is required at all, as the matter may already be dealt with under the existing law or through an alternative instrument (e.g. administrative action, public awareness raising, etc.)? In what instances a decision may be taken that the issue in question can be addressed by an alternative instrument? How is the decision taken? What factors are taken into consideration?

14. Are outside advisers used in the policymaking? If so, in what instances?

15. Do you think stakeholder consultation can be employed in policymaking?

16. Are policymaking and law drafting undertaken as distinct exercises? Are they undertaken by different units or the same team? If by different units, at what stage does the law drafter step in? How is the policy communicated to the drafter?

17. How is the process of law drafting carried out? What are the usual steps that the law drafter follows? In your view, is there room for improvement? If so, what should be done?

18. How is the compliance of draft legislation with the requirements of the Constitution verified during the law drafting stages? In your view, is there room for improvement? If so , what should be done?

19. How is the compliance of draft legislation with the requirements of the extant law verified during the law drafting stages? In your view, is there room for improvement? If so, what should be done?

20. How is the cost assessment done? Does the assessment focus solely on the impact on the budget of the State or the impact on other governmental authorities' (e.g. local governments, autonomous units) budgets is assessed as well? Are these authorities made part of the consultations? In your view, is there room for improvement? If so, what should be done?

21. Does it happen that a team of officers from more than 1 ministry drafts a particular law? How is the process coordinated? Who and how monitors the progress of law drafting?

22. Are stakeholders consulted in the law drafting process? If so, in what instances?

23. How is consultation organized? In your view, is there room for improvement? If so, what should be done?

24. When do the law drafter's responsibilities in connection with a draft end? Is the law drafter responsible for proofreading all version of the draft?

25. What formal steps have to be followed when secondary legislation is being made? Do these differ according to the type of secondary legislation?

26. Who decides that secondary legislation has to be prepared for the purpose of giving effect to particular primary legislation? Do any maters require the collective consent of the government before this is undertaken?

27. Is secondary legislation ever prepared in the course of the same drafting process as the primary legislation with which it is concerned?

28. Who undertakes the policymaking with respect to secondary legislation? Are they the same unit that developed the policy for primary legislation?

29. Are stakeholders consulted?

30. To what extent can the original law drafters be involved in drafting amendments put forward in the Parliament?

31. What does a rapporteur presentation at the committee discussion of the draft typically consist of? Who is normally nominated to present the draft? Is it one of the actual drafters?

32. Do official of the drafting ministry follow the progress of the draft in the Parliament? How is it done?

33. If the Government concludes that a draft currently being considered by the Parliament needs to be altered, can the drafting ministry itself draft the necessary amendments and put them before the Parliament? If so, how is this arranged?

34. Which Unit in the Ministry maintains the central registry of legislation? Is the central registry computerized?

35. Is there a database which contains all laws? Who can access this database? Does it contain drafts?

36. Does your Ministry have ready access to all legislation that is likely to concern it? Do the staff who undertake law drafting in your Ministry have access to a full set of legislation?

37. Are any groups eligible to receive free copies of legislation (e.g. judges, bar associations, etc.)?

Questions on Legislative Process - Parliament

1. How are the parliamentary legislative agendas compiled?

2. How are the committee session agendas prepared? Are they communicated to external actors? Who can be present at the sessions?
3. How is the process of law drafting carried out? What are the usual steps that the law drafter follows? In your view, is there room for improvement? If so, what should be done?

4. How is the compliance of draft legislation with the requirements of the Constitution verified during the law drafting stages? In your view, is there room for improvement? If so, what should be done?

5. How is the compliance of draft legislation with the requirements of the extant law verified during the law drafting stages? In your view, is there room for improvement? If so, what should be done?

6. How is the cost assessment done? Does the assessment focus solely on the impact on the central State budget or the impact on other governmental authorities' (e.g. local governments, autonomous units) budgets is assessed as well? Are these authorities made part of the consultations? In your view, is there room for improvement? If so, so what should be done?

7. Are stakeholders consulted in the law drafting process? If so, in what instances? How is consultation organized? In your view, is there room for improvement? If so, what should be done?

8. When do the law drafter's responsibilities in connection with a draft end? Is the law drafter responsible for proofreading all version of the draft?

9. Who drafts amendments put forward in the Parliament? To what extent can the original law drafters be involved?

10. What does a presentation at the committee discussion of the draft typically consist of? Who is normally nominated to present the draft? Is it one of the actual drafters?

11. Do official of the drafting ministry follow the progress of the draft in the Parliament? How is it done?

12. If the Government concludes that a draft currently being considered by the Parliament needs to be altered, can the drafting ministry itself draft the necessary amendments and put them before the Parliament? If so, how is this arranged?

13. In what instances does the Parliament take evidence from officials, experts or members of public when considering a draft? How often does this happen?

Appendix 3. International Assistance to Legislative Strengthening and Regulatory Reform

This Appendix describes the donor landscape and programmatic activities in relevant areas implemented by other international actors. The international actors are presented in the order in which they were met.

OSCE Spillover Monitor Mission to Skopje

http://www.osce.org/skopje/

The OSCE Mission to Skopje has been extensively involved in a number of activities, projects and initiatives supporting Macedonia's legal and political system. There is an extensive list of the Mission's projects that have encompassed legislative components and technical assistance to the drafting process. The Mission has also frequently been represented in working groups, in public debates and in a number of instances has commented, made suggestions and provided analysis.

The Mission has been involved in legislative drafting in various fields. Most notable examples are the preparation of the new Law on Police (and some of the auxiliary legislation) and legislative amendments to the criminal legislation (both procedural and substantive), such as the new provisions on trafficking in human beings (including the Law on Foreigners, the standard operational procedures and other secondary legislation), family violence, abolishment of imprisonment for defamation in media, witness protection, surveillance, anti-corruption and organized crime (ratification of the Palermo Protocol), Law on Juvenile Justice, Law on Cooperation with the International Criminal Tribunal for former Yugoslavia, etc. In 2004 the Mission also supported the drafting of new Constitutional amendments and, later on, the legislation stemming from these

amendments such as the new Law on Courts, Law on Judicial Council, Law on Ombudsman and more recently, Law on Public Prosecution Office, Law on Council of Prosecutors and Law on Judges Salaries.

The Mission was involved in the drafting of the Electoral Code in 2006 and more recently, in an ongoing project focused on the improvement of the electoral legislative framework. Other recent Mission activities have also incorporated assistance to the drafting in the local self-government field, Law on Equal Opportunities between Women and Men and the Law on Religious Communities, Law on Broadcasting Activity and the Law on Free Access to Information of Public Character.

The Mission's approach, whenever involved in legislative interventions, has always been to promote inclusiveness, transparency and expert and public consultations in the law-making processes. Also, proper policy making as a process preceding the legislative drafting has always been fostered in the relationship with the authorities. The Mission's legislative contributions always follow the Mission's program objectives and have been coordinated with the Council of Europe's Venice Commission and the ODIHR on some occasions.

United Nations Development Programme (UNDP)

http://www.undp.org.mk/

The United Nations Development Programme (UNDP) has been present in the former Yugoslav Republic of Macedonia since 1997. The country programme has been fully rooted within the country's development agenda and aligned with country's commitment for achieving EU integration and the Millennium Development Goals. The UNDP substantive focus is in three key areas; (1) decentralization and good governance, (2) social inclusion, and (3) environment. In contrast with other States of the OSCE, the UNDP does not focus its work on providing support to the parliament in the country. The UNDP assists the Secretariat for European Affairs with donor co-ordination activities (please see report at: http://www.undp.org.mk/default.asp?where=focusarea&group=10).

UNDP also monitored and evaluated the electoral legislation (proxy voting in particular), which they identified as their only experience with legislation and the law-making process.

At the time of our meeting, UNDP were considering engaging in a project proposed by the Government of supporting the development of a public administration institute which would provide professional development for public servants. It is not clear what professional development would entail, but the public servants involved could include those responsible for the regulatory environment.

European Union

http://www.delmkd.ec.europa.eu/

Although the former Yugoslav Republic of Macedonia became an EU candidate country in December, 2005, the EU mission to Skopje has been in operation since January 1998. The EU mission has an important monitoring role to play in the country, not least in the preparation of the EU Progress Reports.

The EU has been providing and continues to provide a large amount of assistance in various areas. The EU assistance so far has been provided primarily through the programs of PHARE, CARDS and European Agency for Reconstruction. EU assistance will now go through the so called instrument of pre-accession (IPA) as the assistance provided falls within the ambit of this newly created Instrument for Pre-Accession Assistance (IPA). The webpage of the EU mission in Skopje states that the "IPA aims to provide targeted assistance to countries which are candidates or potential candidates for membership of the EU. In order to achieve each country's objectives in the most efficient way, IPA consists of five different components: transition assistance and institution building; cross-border cooperation; regional development; human resources development; and rural development. For candidate countries, measures relating to regional, human resources and rural development will be available under the relevant components which are designed to prepare for the implementation of EU cohesion and agricultural policies

after accession. This requires that the country has the administrative capacities and structures to take responsibility for the management of assistance. In the case of potential candidate countries, such measures will be implemented through the transition assistance and institution building component." The IPA plan for 2007-2009 can be found on the website of the EU Mission (http://www.delmkd.ec.europa.eu/en/bilateral-relations/eu-assistance/IPA.htm)

With regard to the legislative process, the EU assists the State bodies in planning and sequencing the approximation process - through the European Partnership Agreement, which indicates what the EU considers to be priority areas. EU assistance to the country regarding legislation has been primarily oriented towards the process of adoption of the EU policies and *Acquis Communautaire*. It is also worth mentioning the EU project dealing with the Parliament, which involved a twinning exercise with the Slovenian Parliament. One result of the project is the drafting of the new Draft Rules of Procedure of the Parliament, which are still pending adoption at the moment of drafting this annex.

European Agency for Reconstruction

http://www.ear.europa.eu/macedonia/macedonia.htm

The European Agency for Reconstruction (EAR) focuses on reform in several areas. The priorities which have been identified for the next few years include improving the independence of the judiciary and building the administrative capacity of justice institutions and law enforcement agencies. EAR is running projects which include setting up an academy for training of judges and prosecutors, projects on anti money laundering and personal data protection.

EAR has allocated a large amount of resources to the part of the programme on good governance and civil society. For instance, in 2007, a twinning programme with the Dutch Ministry of Finance was supported to increase internal financial control of public funds. The twinning project also involved assistance in drafting laws on public internal

financial control that are in line with EU legislation, and provided expertise, advice and training in financial management, control and internal audit.

It is also understood that the EAR conducted the twinning project of the country's parliament with the Parliament of Slovenia.

To the best of our knowledge, no specific work has been done on improving the process of law-making itself.

United States Agency for International Development (USAID) – National Democratic Institute for International Affairs (NDI)

http://macedonia.usaid.gov/

http://www.ndi.org/worldwide/cee/macedonia/macedonia.asp

The United States Agency for International Development (USAID) conducts a Parliamentary development programme. The implementing partner for this programme is the National Democratic Institute for International Affairs (NDI). The programme aims at supporting parliament, political parties, and civic groups in forging legislative bodies at both the national and local level.

NDI has been in fact working with the Parliament for six (6) years. Through the programme, they have contributed to 'opening up' the Parliament to the public by organising open days, and assistance to committees with organizing and holding public hearings as well as, regular communication of members of parliament with their constituencies. NDI has also been providing assistance with the amendments to the Parliament's Rules of Procedure. It is apparent that NDI works exclusively with the Parliament.

USAID has been involved in programmes aimed at strengthening legislative drafting skills. This included training for the Secretary and Deputy Secretary of the Legislative Committee. The training programme also resulted in the preparation of a legislative

drafting manual, and a study tour to Boston, United States. However, some of the people trained have moved on to other employment following the last change of government.

USAID also works on strengthening civil society through large scale comprehensive projects, it has a programme supporting the reform and increased capacity of the courts and training for the judiciary. Furthermore, USAID provides support to political parties.

OECD- SIGMA Project

https://www.oecd.org/document/4/0,3343,en_33873108_33873854_35045060_1_1_1_1,00.html

The Sigma Project of the OECD is well known for its work on legislative assessment. Sigma conducted several assessments in the then candidate countries of Central and Eastern Europe before they joined the EU in 2004.

In the former Yugoslav Republic of Macedonia, Sigma has not conducted a full-fledged legislative assessment survey, but is supporting the reform efforts in priority areas through its work on the following projects: Civil Service Reform and Public Administration Co-ordination and Assistance (March 2007 - ongoing); Advice on Amendments to the Civil Service Law (October 2004 – ongoing, together with the Ministry of Justice of the former Yugoslav Republic of Macedonia); Policy-making and Co-ordination; Assistance to the Government Secretariat (April 2006 – ongoing); Financial Control and External Audit; Control and Audit of Pre-Accession Funds (February 2007 - ongoing); Seminar on Internal Audit and Financial Control in relation to EU Pre-Accession Funds (July 2006 - ongoing); Public Procurement Legislative and Institutional Support (March 2007 - ongoing); Assistance in the Development of the Public Procurement System (September 2004 – ongoing). In the past, Sigma also conducted Public Procurement Legislation Analyses (June 2003 – April 2004).

DFID PAR Project (Department For International Development, of the United Kingdom)

The DFID "Support for Public Administration Reform in Macedonia Project", which was a long term project coming to its formal conclusion (second phase thereof) in March 2006, focused on building capacity within the Macedonian State bodies to conduct policy coordination and strategic planning. It also aimed at building capacity within ministries to implement the country's obligations vis-à-vis the European Union and other international organisations. Another major component of the DFID PAR Project was also the development and implementation of the Law on Civil Service and assisting the development of the Macedonian Agency for Civil Service in undertaking a range of responsibilities.

In general, as a result of implementation of the DFID PAR Project, the General Secretariat of Government was changed from a body providing only administrative and logistical support to the Government to an organisation capable of providing substantive planning and policy support. The General Secretariat was reorganised as a result of the PAR Project, and now includes the Sector for Planning and Monitoring and the Sector for Policy Coordination. Staff was assigned to these Sectors, and is plays a role in helping the Government adopt strategic plans, create linkages between priorities and the budget, and ensuring that items reaching the Government sessions are better coordinated and in line with Government priorities.

In the process of implementing all components of the project – assistance on the development and amendment of legislation, such as the Law on Government, the Government Rules of Procedure, and the Rulebooks of the General Secretariat, was also provided. Furthermore, the PAR Project included a training component for Government staff and many training workshops for Ministry staff.

World Bank

www.worldbank.org/mk

The World Bank (WB) focuses on providing assistance to the economy and emerging markets.

In the former Yugoslav Republic of Macedonia, the focus has been the regulatory environment for business and foreign investment. A major report was conducted by the WB in 2005 on the legal system. The report described the level of contract enforcement and enforcement of judgements from the point of view of foreign investment. The Report showed the problems with the judiciary and it lead to the design of a reform package, with a particular focus on the judiciary. The reform began with constitutional amendments.

The WB also provided legal and judicial technical assistance, in the field of administrative disputes (Legal and Judicial Implementation and Institutional Support Project- LJIIS) with the aim of improving the effectiveness of the judiciary and the overall business climate. The programme also increased the capacity of ministries to implement key laws. Although the focus was on improving the situation for business and foreign investment, the work on administrative disputes is beneficial not only to business, but also to individual citizens affected by decisions of the administration.

Another important project conducted by the WB is the BERIS project which was launched in 2005. The project was designed to address the issues raised in the survey conducted by FIAS (Foreign Investment Advisory Service), which indicated that most of the respondents considered lack of clarity in existing regulations (72%), instability of laws and regulations (60%), and corruption in the public sector (87%) as major and very

severe problems impacting the business environment in Macedonia.[28] The BERIS project involved two main elements. The first element was the so-called 'Guillotine Law', which aimed to cut out all unnecessary regulations, permits, licences. A special sector was established in the Secretariat of Government to carry out this work. To date, 2000 pieces of legislation (laws and by-laws) have been annulled. The remaining (valid) legislation will be placed on an on-line register. Each deletion of a law required justification and the process was very labour intensive. The commerce sector was asked also for their opinion on laws they considered . The process was scheduled to be finished by September 2007. The second element concerns regulatory (including financial) impact assessments. For the purpose of ensuring that such assessments are conducted for all new laws, a consultant was hired by the WB, and placed within the Secretariat of Government. The consultant is to assist in introducing the concept as a practice and conducting training thereon. The introduction of regulatory impact assessment in relation to business regulations may also have resonance in ordinary regulations.

In terms of working on the legislative process as such, the WB has not chosen this as an issue of focus thus far.

GTZ

http://www.gtz.com.mk/

Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH, conducts a number of law reform projects in South-Eastern Europe, including in the former Yugoslav Republic of Macedonia. From the meeting and from the promotional material, it can be gathered that the programmes include, broadly speaking, legal reform in the economic sector, and legal reform connected with the approximation of national laws with the laws of the European Union.

[28] http://www.worldbank.org.mk/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/MACEDONIAEXTN/0,,contentMDK:20551034~menuPK:304492~pagePK:141137~piPK:141127~theSitePK:304473,00.html

The two main programmes run by GTZ in the former Yugoslav Republic of Macedonia includes assistance in environmental protection, and social services; GTZ also provides legislation and EU-approximation advisory services in the Association process with EU, approximation of legislation to EU standards (see: http://www.gtz-la.com.mk/) and Advisory legislative services in selected fields of the economy. One such project is the Open Regional Fund (ORF) which covers south eastern Europe, including Macedonia.

At the time of the meeting, further components to the programmes had just been approved and these are the establishment of post-graduate programmes in EU law in the region (with mutual recognition of studies undertaken), training on the rules of UNICTRAL (United Nations Commission on International Trade Law) and regulatory impact assessment (together with the World Bank). At the time, GTZ was also working on a Manual on norm drafting techniques, together with the Secretariat of Legislation of the Government (http://www.sz.gov.mk/). The manual is not available yet.

From the meeting and promotional material, it may be concluded that GTZ is dealing with a number of selected and key areas of legal reform, which involves looking also at specific aspects of the legislative process, namely, openness and transparency in law-making, drafting skills, but also implementation and enforcement (which is particularly important in the business sector). There is no mention in the legal reform programme or in the project on support to the law approximation process, of a policy formulation component of the assistance. The GTZ itself notes that further assistance work should be provided to not only ensure approximation, but to strengthen the institutions to ensure stability and sound law enforcement.

Open Society Institute (OSI) Soros Foundation

http://www.soros.org.mk

The Open Society Institute (OSI) runs a Law Programme, which focuses on providing support to judicial reform and assistance in improving, freedom of information, anticorruption, human rights protection and harmonization of legislation in line with EU

acquis. The Law Program implements its activities in cooperation with the Open Society Justice Initiative – Budapest and with national and international partner organizations.

In terms of assistance in improving the freedom of information, OSI worked with the authorities on the Law on Free Access to Information. In the next three years, the Freedom of Information sub-program will focus on monitoring and implementing the Freedom of Information Law and on its improvement. Work on the freedom of information also includes building of the capacity of those who hold the information.

OSI also has five lawyers working in the Ministry of Interior on the approximation of laws with the EU *aquis*. The lawyers placed within the Ministry are tasked to support the work of the Legal and Human Resource Sector in the process of developing the normative and legal regulation falling under the competencies of the Ministry and stemming from the Strategy on Police Reforms and the new Police Law.

OSI also works on human rights related issues, and implements a sub-programme in cooperation with five partner organizations: the coalition "All for Fair Trials" from Skopje, the Civil Initiative Centre from Bitola, the Centre for Democratic Development from Tetovo, Forum on Protecting Rights of Roma "ARKA" from Kumanovo and "Izbor" from Strumica. The NGO network provides free-of-charge legal aid for alleged victims of police misconduct. The project focuses on the illegal use of force by the police and assisting the development of an effective mechanism for protecting the rights of alleged victims.

A part of the OSI Law programme also includes a project on transparency, accountability and anticorruption Initiatives. OSI works on strengthening transparency and accountability of central and local administration in particular sectors. Priority areas that will be in the focus of this subprogramme are budgeting, education and justice, freedom and security.

Through its Law Programme the OSI has worked on various laws but has not focused on the entire legislative process.

Appendix 4. The Basis for OSCE ODIHR's Lawmaking Reform Assistance Activities

In transition countries,[29] efforts to improve the quality and the effectiveness of their legislation have been assisted in a sporadic and fragmentary manner with a variety of understandings of the notions involved, and a wide typology of activities associated with these notions. Little work was done in terms of methods for supporting these efforts, whilst considerable resources have been devoted to the building or strengthening of institutions involved in law-making. The most comprehensive attempt to take stock of law drafting practices in selected countries and to point out crucial issues to be considered when creating or reviewing regulations on law drafting was conducted under the SIGMA programme[30], a joint initiative of the European Union and the Organization for Economic Co-operation and Development[31]. Created in 1992 with a focus on EU candidate countries[32], this programme has provided support to decision-makers and public administrations in their efforts to modernize "public governance systems." Within this overall framework, a project aimed at helping the countries to improve their law drafting methodology and techniques was launched in 1996[33]. Efforts to improve the quality and the effectiveness of legislation have also been supported, though on a lesser scale, by the Council of Europe's Law-making Project[34].

[29] The term "transition country' broadly refers here to countries undergoing a comprehensive process of political and/or economical transformation.
[30] SIGMA – Support for Improvement in Governance and Management in Central and Eastern Europe.
[31] For more information on this programme, refer to: https://www.oecd.org/pages/0,2966,en_33638100_33638151_1_1_1_1_1,00.html (last visited 15 March 2006)
[32] Ten of the countries with which SIGMA has been working on law drafting and regulatory management issues since 1996 are now EU Member States. Since 2001 the Programme has been assisting countries of the Western Balkans in building their public institutions and systems in the framework of the Stabilisation and Association Process (SAP) agreed with the EU.
[33] SIGMA Paper No 18, *Law Drafting and Regulatory Management in Central and Eastern Europe* (1997) - OECD.
[34] For more information on this project, refer to: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Law_making/ (last visited 15 March 2006)

For long, the primary focus of the OSCE ODIHR's assistance was on providing *ad hoc* legal advice on individual pieces of legislation, when the process of their drafting and consideration was ongoing. While doing so, the ODIHR recurrently noted that some of the shortcomings identified in the texts found their cause in the manner in which the legislative process was managed or regulated. Therefore, specific recommendations related to procedural matters, including mechanisms for making the process more transparent and more inclusive or for monitoring the implementation of legislation, have been made to the legislators with varying degree of success. Experience has shown that the most effective laws are the result of a legislative process, which is managed in its entirety, operates on the basis of a set of comprehensive, uniform and coherent rules, and allows for consultations with those to be affected by the legislation or responsible for its proper enforcement. There was an obvious need to look beyond individual pieces of legislation and interview those involved in the process with a view to getting an overall picture of a particular country's entire legislative process, including the structure and interaction of the institutions involved. In this endeavour, particular attention was to be given to the concept of 'legislative transparency', which is specifically referred to in two key OSCE documents[35], and to take into consideration recommendations or special interests manifested in discussions that took place in OSCE Human Dimension Implementation Meetings in 2002, 2003 and 2004 as well as at the 2004 Human Dimension Seminar on Democratic Governance. Among these recommendations, it is worth recalling the following[36]:

a. Access to laws and legislative documents, including primary and secondary legislation, court rulings, draft laws and legislative agendas, should be ensured.

[35] "*Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (…) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone;*" (paragraph 5.8, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990). "*Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*" (paragraph 18.1, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991).

[36] These recommendations are extracted from the original documents.

b. Legislative proceedings should be open to the public.

c. Legislative transparency should be fostered at all levels of governance, including local self-governance.

d. Public consultation should be an indispensable element of legislative process. Both legislatures and the executive branch should encourage public consultation.

e. Parliamentary proceedings, including committees meetings, should be open to the public.

f. Minutes and records should be entirely available to the public. Reading rooms and internet could be used to this end.

g. The ODIHR's legislative assistance work should pay greater attention to the underlying attitudes and factors that affect the way laws are prepared and drafted and should place more emphasis on promoting citizen participation in the political process besides elections.

h. The OSCE's work with legislatures should be expanded. An inventory of standards related to structures, procedures and practices of democratic parliaments should be developed.

i. To promote strengthening of democratic practices within parliaments of the participating States, the OSCE should assist with the development of rules of procedure and legal frameworks.

j. The ODIHR should provide assistance to participating States with regard to law drafting in a decentralized state structure, with focus on specifics of enforceability issues at the local level.

Appendix 5. Translation (Unofficial) of the Accompanying Documents to a drat Law and the Ministry of Finance Financial Impact Assessment Sheet.

Republic of Macedonia

Stamp of the proposing Ministry and its Archive No.

MINISTRY OF _____

TO THE SECRETARY GENERAL OF THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA

NAME AND TYPE OF MATERIAL: _____

CONCORDANCE WITH THE GOVERNMENT PROGRAMME _____
Please refer to the exact place of this material in the Programme. Please indicate if the material is not in the Programme

CONCORDANCE WITH ARTICLE 68 OF THE RULES OF PROCEDURE:

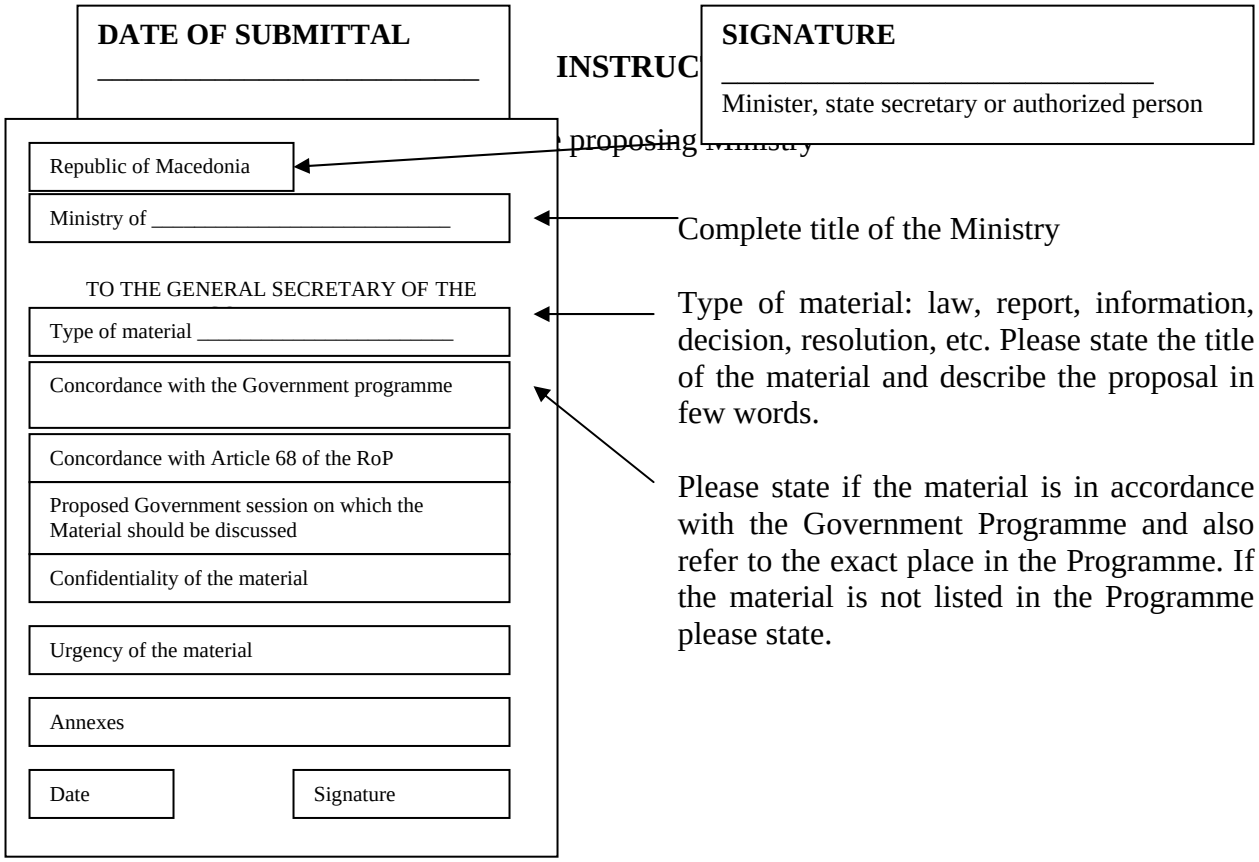
YES **PARTLY** **NO**

PROPOSED GOVERNMENT SESSION ON WHICH THE MATERIAL SHOULD BE DISCUSSED:
_____

CONFIDENTIALITY OF THE MATERIAL: _____

URGENCY OF THE MATERIAL: _____
Please justify the urgency

ANNEXES:

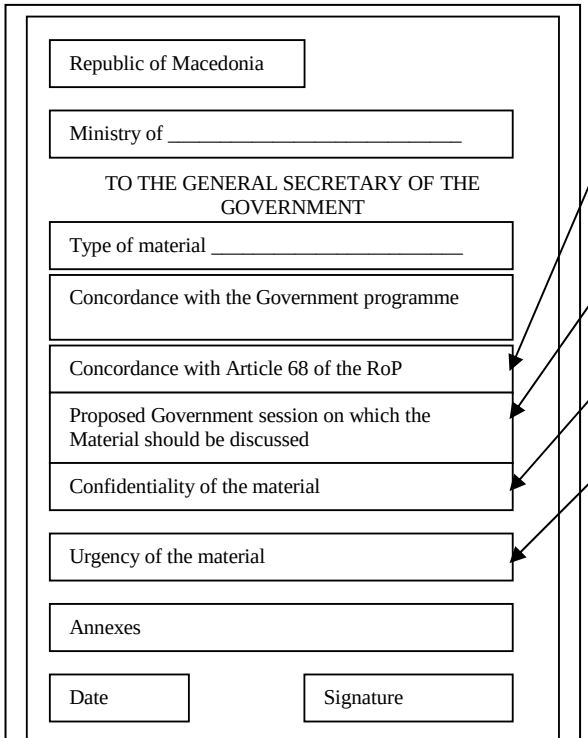


INSTRUC proposing Ministry

Complete title of the Ministry

Type of material: law, report, information, decision, resolution, etc. Please state the title of the material and describe the proposal in few words.

Please state if the material is in accordance with the Government Programme and also refer to the exact place in the Programme. If the material is not listed in the Programme please state.

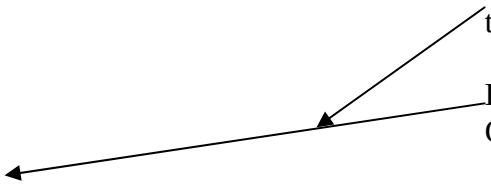


In this box the proposing Ministry should state whether the material has been harmonized with the other ministries.

Proposal of the Ministry on which Government session, depending on its urgency, the material should be discussed.

Should the material be discussed on an open or closed Government session.

If the material is urgent please justify the urgency.



What annexes are submitted together with the material.

Date of submittal of the material to the Government

Mandatory signature of the Minister, State Secretary or authorized person

REPUBLIC of MACEDONIA

Ministry of _____
_____

MEMORANDUM

TITLE (as it is in the accompanying letter) _____
_____
_____
_____

SIGNITURE: _____
(of the minister, state secretary or other authorized person)

SKOPJE, _____2003
(date of submitting the material to the General Secretariat)

1. **Overview:**

2. **Option considered (pro and cons arguments):**

3. **Results from consultations with line ministries, other state administration bodies and organizations:**

4. **Harmonization with EU legislation** (annex)

YES NO

5. **Recommended solution (with justification):**

6. **Fiscal implications of the proposed materials:**

7. **Expected impacts:**

8. **:Statement of the Secretariat of legislation**

9. **Key elements for informing the public:**

1. **Overview:** The Ministers i.e. the Government are briefly informed on the issue that the proposing minister is asking them to consider and decide upon.
2. **Option considered (pro and cons arguments):** what options were considered by the proposing minister giving essential information on each, preferably with a one or two sentence commentary. The commentary should include the major implications, including the pros and cons.
3. **Results from consultations with line ministries, other state administration bodies and organizations:** This section should identify those Ministries, NGO's, and other target groups for which this proposal would have a major impact, and highlight those which have been consulted and have substantive unresolved concerns. It is important that these views are reflected frankly and accurately in the Memorandum.
   Note that the purpose of this section is not to list all the Ministries that agreed with the proposal, nor to give minor comments not so important for an argument, but related to formats and drafting.
4. **Harmonization with EU legislation:**
   Considering the fact that the ministries and other state organs have the primary responsibility in the harmonization with the EU legislation, with the statement of concordance they declare the manner in which they have conducted the harmonization, EU measures which are transposed, degree of harmonization, data for translation and used technical help. Fulfilling of the statement should be made according to the methodological rules which are in annex of the form.
5. **Recommended Solution (with justification):** This section should indicate the recommended option, and advance the case as to why the recommended option has been chosen over the alternatives. Where possible, links should be pointed out to the Government's strategic priorities and other commitments and CoM decisions. Considerations based cost-effectiveness and on public attitude are also useful in this section.
6. **Fiscal implications of the proposed materials:** Based on the FIA, this section indicates the expected cost of the recommended option, and, where appropriate, suggests the source of funding (e.g., Ministry's own funds, next year's Budget, reserve, etc.).
7. **Expected impacts:** Briefly summarize the impact this decision may have on such things as the public, target groups, taxpayers, the economy, employment, the environment, etc. This summary should draw on the analysis and any quantitative research contained in the package.
8. **Statement of the Secretariat of legislation:** indicate if the material was reviewed and certified by the Secretariat of Legislation in terms of conformity with EU legislation.
9. **Key elements for informing the public:** This section should suggest small number of messages that should be used when announcing and/or explaining this decision and why the GoM decided to adopt it. This is particularly important in cases where a decision can be expected to be unpopular with the public.

Form for the Assessment of the Fiscal Implications from the Proposed Regulations and General Legal Acts Submitted for Their Adoption to the Governemnt

1. Title of the proposal:		2. Ministry/organ of the state administration			
3. Goal of the Proposal		4. Type of the proposal:			
5. Contact person and its position		6. Contact details			
7. Activities:					
8. Type of request:	( ) EU regulation ( ) Other new regulations	( ) New Programme ( ) Enlarging/ decereasing of the existing program	( ) Re-allocatipon of the funds between two programs ( ) Integration of two or more programs		
9. Goal of the request/ proposed activity:					
10. Reference to the Government program:					

11. Fiscal implication:	**(in thousands of denars)**			
	Current year	**Second year**	**Third year**	**Fourth year**
A. Overall expenditures related to the proposal Salaries Goods and Services Capital Transfers Total				
B. Approved funds for the proposal Salaries Goods and Services Capital Transfers Total				
C. Change (difference) with the approved funds (B-A) Salaries Goods and Services Capital Transfers Total				
D. Disposable funds with the re-allocations (from other activities and programs within the organ) Salaries Goods and Services Capital Transfers Total				
E. Net implications over the funds of the organ (C-D) Salaries Goods and Services Capital Transfers Total				
F. Increase/decrease of the incomes				
G. Additional sources of financing and sharing the expenditures Source: _____				
Net increase / decrease of the number of employees in relation to the proposal				
12. What guarantees, loans or other real or potential obligations shall arise for the Government (which are not mentioned in the items 11 A to G)				
13. Provide explanation if there is a request for				

additional funds in the current fiscal year or it is outside the regular cycle of the prepation of the budget.	
14. Date of the completion of the assessment:	
15. Date of submission of the analysis to the Ministry of Finance for obtaining its opinion:	
16. Date of receiving the reply of the Ministry of Finance:	
17. Modifications required by the Ministry of Finance:	
18. Reply of the Ministry which proposes the act:	
19. Reply of the Ministry of Finance:	
20. Is the opinion of the Ministry of Finance appended:	
21. Approved/Date:	

_____ __/__/_____ Day / month / year

Signature of the State Secretary or the Director of the organ

_____ Signature of the Minister

____/_____/____ Day / month / year.

Appendix 6. Statistical Information.

The Report on the Work of the Parliament of Macedonia 2002-2006 (www.sobranie.mk) provides the following information on the Parliament's legislative activity over that period:

- 809 laws were put on the agenda /submitted;
- 594 were adopted;
- 47 laws were not adopted, ie defeated (45 from MPs and 2 from the government);
- 24 laws were withdrawn (14 by MPs and 10 by the government);
- 116 laws did not proceed beyond the first phase;
- 8 laws did not proceed beyond a preliminary draft;
- 20 laws were not considered at all.