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The former Yugoslav Republic of Macedonia

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DEMOCRACY AND THE RULE OF LAW

The Government's reaction to the economic crisis will constrain governance reform, which will become even more reliant on donors. Current public administration reform efforts seem to be only weakly supported and their target not fully adapted to the situation and the challenges. The drive for professionalisation may be too difficult for the current political system to digest. The main efforts should focus on strengthening checks and balances in the politico-administrative system (especially administrative justice and procedures as well as constitutionally independent institutions), consolidating the public finance system (including procurement/concessions) and improving the quality of policy-making and law-making systems.

Democracy

Democracy needs to be reinforced further in the former Yugoslav Republic of Macedonia (fYROM), and especially the checks on executive power. The reality is the predominant and omnipotent role of the executive branch which directly/indirectly controls the two other branches (legislative and judiciary).

There remains a lack of respect towards democratic institutions. Many years of cultural and social adjustment as well as reform efforts will be needed to develop this respect and build confidence, for example, in the notion that the involvement of other ministries, civil society and finally the "legislator", i.e. the Parliament, in a legislative process is more than a formality.

In general, a longer process of progressive adjustments will be necessary to reform and modernise fYROM to the point where democracy is strong and remains flourishing. These reforms will have to take place at the level of democratic debate, at a technical level and through the slow process of public education. Freedom House considers fYROM media as partly free.

Rule of Law

The extent to which the public governance system adequately respects the Rule of Law (i.e. a set of principles that require a separation of powers between the judicial, executive and legislative branches of government; laws that are clear and definite, proportional and prospective in nature; compliance with the law by government, individuals and economic operators; the proper functioning of the judiciary; and the consistent application of fair procedures by the administration) remains a source of concern.

The poor quality of legislation is still a common problem. Major reasons for the insufficient quality of legislation include: deficient law-drafting capacity in ministries and administrative bodies; inadequate consultation with regulated communities; excessive ambitions for the legislative agenda; poor translations of European laws and adoption of laws drafted by international consultants from alien contexts, resulting in a system rich in written laws but poor in laws that effectively regulate in accordance with their intended purpose; inadequate attention to implementation issues during drafting; constrained potential for parliament to scrutinise government proposals adequately.

Implementation of laws remains a problem. Poor translations of European laws and adoption of laws drafted by international consultants from contexts alien to fYROM's situation result in a system rich in written laws but poor in laws that effectively regulate in accordance with their intended

purpose. Another implementation problem is that the social and political role of the law is not fully understood. Frequently, public sector institutions do not hesitate to disregard legal provisions or binding procedures as they see fit. This problem seems to be a matter of legal culture, which needs to gradually evolve through a long-term process.

Constitution

According to its Constitution the State is based on the division of power into legislative, executive and judiciary and the relation between the three branches of power is based on balance and mutual control (article 8). However, the respect of these principles in implementation is not guaranteed. The Supreme Audit Institution has still not been granted Constitutional protection.

Parliament

The role of the parliament in law-making and in controlling the government is still very fragile. Individual rights of parliamentarians are not fully respected. It remains to be seen whether the new parliament-related legislation adopted in 2009 will lead to a more adequate participation of the parliament in the legislative process and facilitate parliamentary supervision and the executive branch of the state. This will depend, in part, on strengthening the administrative support to the legislature. The pressure of the legislative programme does allow Parliament to adequately perform its full legislative functions.

Government

The system for policy planning, policy-making and co-ordination is sound. The legal framework, adopted and upgraded in recent years, is essentially implemented, and the policy planning, development, and monitoring system is operative. Further efforts were made during 2009 to implement recent reforms introduced into the Rules of Procedure with respect to RIA and the strategic and policy planning process.

The General Secretariat continues to develop its potential as a central co-ordination body responsible for policy analysis and co-ordination and for organising the government business.

The Secretariat for European Affairs (SEA), responsible for managing European Integration (EI), has adopted a new structure and rules, and is now in the process of hiring staff for the high managerial positions, but the new structure appears overly complex. A State Secretary, whose main task has been to reshape the co-ordination system and the organisation of the Secretariat, has been appointed. There is also a reconstituted Working Committee on European Integration chaired by the Deputy Prime Minister responsible for European Integration. A sub-committee on EI looks at technical issues related to the specific chapters of the NPAA. About 35 working groups based on the *acquis* chapters were established by government Decision in November 2009. This year, the National Programme for Accession was adopted on time (December 2009 for 2010).

The observation made last year that the formal system for policy and law-making is underutilised and over-politicised continues to be valid, and the situation appears to have worsened. Due to over-politicisation of the policy process, policy decisions often ignore the good processes and procedures, and experienced professionals are bypassed. As a result, the policy system as a whole is underperforming and may not be able to sustain the pressure of negotiations.

Public Administration

The current Law on General Administrative Procedures still reflects the authoritarian understanding of the public administration of the past. It does not provide complete legal protection

against administrative decisions, stipulates unnecessarily complicated and lengthy procedures, and goes into regulatory details that would be better dealt with through secondary legislation or internal administrative rules.

The new Law on Public Employees, adopted in April 2010, suffers from serious shortcomings, which need to be addressed to bring it in line with EU standards of good legislation.

The internal organisation of administrative bodies needs to be rethought to allow for improved delegation of decision-making competence. The current situation, when almost all decisions are taken by the top of an administrative body (e.g. minister), is not only a major reason for inefficient internal organisation of administrative bodies, but has also an undesirable impact on the quality of administrative decisions and the accountability of civil servants. The merit system is not sufficiently anchored in the reality of personnel policy to provide assurance of professionalisation and impartiality, despite the amendments to the Law on Civil Servants of September 2009. The system of administrative organisation is fragmented, which may create difficulties for enforcement of the *acquis*.

The public expenditure management system in fYROM contains many of the preconditions for an effective and efficient administration characterised by control of public funds and political commitment to fiscal discipline, as evidenced by the measures taken to meet the original budget deficit target. However, lack of funding is a hindrance to the Ministry of Finance's plan for an IT upgrade to further integrate data sharing between the Budget, Treasury, Debt Management and Macro-Economic Departments.

The Public Procurement Law is nearly fully compliant and harmonised with the new EC Public Procurement Directives, covering the classical and utilities sectors and all types of procurement (works, supplies and services). An area of serious concern, however, is the lack of positive developments in the Law on Public Private Partnership and Concessions. Legislation in this area remains unsatisfactory, and substantial amendments will be needed to bring it in line with EU requirements. A clear and strong leadership will be needed to implement it successfully.

Judiciary

Serious reforms remain necessary to build public faith in the professional competence, independence and integrity of the judiciary. In polls, judges have voiced concern about the exertion of political influence. The political dependence of the Judicial Council and direct political influence on the election and dismissal of judges has been publicly debated in 2009/2010. For a number of decisions abolishing legal regulations on the grounds of unconstitutionality, the Constitutional Court was exposed to intense political pressure. Attacks culminated in accusations by the Government that the Court's decisions had been partisan-influenced and obstructed many of the Government's legislative projects. The administrative justice system, including enforcement of judicial decisions, is not sufficiently strong to ensure that government and administration fully respect the principles of the rule of law.

Anti-corruption Policy

Corruption is a serious problem. The general weakness of the public integrity system is the result of the lack or poor quality of legislation and also of deficiencies in the implementation of the law by public sector administrative bodies and courts.

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since the Last Assessment

In the area of administrative law and in terms of the regulatory framework, the following developments deserve particular mention. The Law on Free Access to Public Information was amended in January 2010 and will come into effect on 1 June 2010. The amendments reduce the exemptions to free access to information, introduce a public interest test, shorten the deadlines for responses of public bodies to requesters, and strengthen the controlling instruments related to the Commission on Free Access to Public Information and the Administrative Court.

The new Law on Inspection was adopted in April 2010 and will come into force at the beginning of 2011. It regulates not only the principles, procedures and competences of the inspection services of state-level administrative bodies and of municipalities, but also the status of inspectors and their required qualifications.

Amendments to the Law on the Ombudsman, adopted in September 2009, have strengthened the Ombudsman's budgetary independence and competences vis-à-vis administrative bodies.

The Constitutional Court has significantly broadened the system of judicial control of administrative actions by rejecting a restrictive provision of the Law on Administrative Disputes (September 2009). This law now allows the right of appeal against all judgments of the Administrative Court.

Substantial amendments to the Law on Civil Servants (LCS) were adopted in mid-September 2009, one of which was further amended in March 2010. The amendments relate to several important issues, *inter alia* the scope of the law, the competencies of the Civil Servants Agency, entry requirements and recruitment procedures, mobility and internal competitions, salaries and horizontal career steps. The redefinition of the scope of the civil service could be the sign of a political will to reintegrate large parts of the public sector into a unified civil service system. The future use of the exceptional provision applicable to special groups of civil servants will show whether the legislator really intended to reverse the tendency to create a fragmented human resources system in the public sector. The Civil Servants Agency's status as an independent state body accountable to parliament has not changed. However, it has received, with the amendments to the LCS, new competencies that strengthen its position in relation to other administrative bodies.

In mid-April 2010, parliament adopted a new Law on Public Employees. Its implementation will start on 26 April 2011. The law suffers from serious shortcomings in terms of both methodology and content. The structure is unsystematic and inconsistent. The regulatory content fails to make a clear distinction between civil servants and public employees and, moreover, contains numerous substantive (material) regulations that are inappropriate and will cause problems and confusion when the law has to be implemented. The provisions on recruitment procedures do not exclude arbitrariness; rules on promotion do not exist; mobility is badly regulated; and the six biannual appraisals will impose an unbearable administrative burden on managers.

The government adopted on 7 April 2010 a Code of Ethics that applies to the Prime Minister, his/her deputies, ministers, deputy ministers (government members) and other office-holders appointed by the government. In article 1, the Code regulates their behaviour and work "in order to ensure respect of legality, professional integrity, efficiency and loyalty in the performance of their duties…based on the principles of transparency, efficiency and protection of human freedoms and rights". According to article 23 of the Code, compliance with its provisions is a matter of "moral and ethical liability".

With respect to the implementation of administrative legislation, in other words concerning administrative practice, the Annual Report of the Ombudsman is informative. In 2009 the Ombudsman dealt with 4456 complaints, which represents an increase of more than 20% compared with 2008. The Ombudsman states in this report that the increased number of complaints in 2009 can be interpreted as an indicator of the unsatisfactory quality of public institutions' work. The report deplores the fact that the most common type of violation of citizens' rights is the non-compliance of administrative bodies with legally prescribed procedural requirements. Another shortcoming is the long duration of court proceedings, in particular administrative court proceedings.

The system of Regulatory Impact Assessment (RIA) was officially launched on 1 January 2009, but it is not yet fully operational. RIAs have been undertaken for only a few laws. As for the RIA-related consultation process, business community representatives complained that they were frequently asked to give their opinion on a draft law within two or three days.

According to its 2009 report, the work of the Commission on Free Access to Public Information has entered a phase of consolidation, although it is still understaffed (14 posts out of 37 have been filled, with only four of the post-holders having a legal background) and is suffering in 2010 from a budget decrease of approximately 15% in comparison to the 2007 budget. In 2009 the Commission organised donor-funded training programmes for civil servants to raise the awareness in administrative bodies of citizens' right to a transparent public administration.

The Directorate for Personal Data Protection started to carry out inspections in 2009. According to its 2009 annual report, 97 inspections took place in public and private sector bodies in the areas of health, education, telecommunications, banking, local government and social protection. Many of the inspected bodies, especially public bodies, did not respond to the instructions given in the inspection decisions.

In December 2009 the OSCE Spillover Monitor Mission to Skopje prepared an analysis of the independence of the judiciary, based on the findings of a countrywide survey of the judges themselves. Out of 650 judges, 421 in total completed and returned the anonymous questionnaire. A report on the mission is published on the OSCE website: http://www.osce.org/documents/mms/2010/12/43347_en.pdf. According to this analysis, almost every fourth judge does not believe in the independence of the judiciary in fYR Macedonia. The executive power (the government, Ministry of Justice and Ministry of Interior) and the political parties are perceived as the strongest sources of pressure, and the Judicial Council is seen by the majority of judges as a biased and dependent institution that is susceptible to external/political influence.

The first generation of candidates for judges and public prosecutors completed their training at the Academy for Judges and Public Prosecutors in 2009. According to the annual report of the Academy, 13 graduates were selected for judges and 10 for public prosecutors in June 2009. More than 85% of all judges and public prosecutors participated in 2009 in continuing professional training.

Main Characteristics

Ministries and administrative bodies are in charge of drafting legislation (laws, secondary legislation) on matters that fall within their respective scope of responsibilities. As underlined in previous Sigma assessment reports, the poor quality of legislation remains a general problem. The main deficiencies are the tendency to over-regulate, contradictory provisions, poor systematic order, and incomprehensibility due to bureaucratic or technical language. The reasons for the poor quality of legislation are diverse. First and foremost, it is obvious that the law-drafting capacity in ministries and administrative bodies is insufficient in terms of both the quantity and quality of human resources. The time pressure imposed on law-drafting bodies from the outside also explains the frequently unsatisfactory quality of the products. The process of law-drafting is also impeded by the lack of co-ordination between the various bodies and ministries that are involved in drafting laws. Finally, parliament does not have the capacity to fulfil its constitutional responsibility to substantially examine draft laws. The urgent need to improve the legislative process became evident on 8 and 12 April 2010, when parliament amended the Labour Law twice within four days, with each of the two amendments containing changes to just a single article.

The large number of regulations abolished by the Constitutional Court in 2009 on the grounds of unconstitutionality is not only an indicator of the quality of the laws in general but also proves the Court's professionalism and independence. However, with respect to its decisions the Constitutional Court has been exposed to intense political pressure. Attacks culminated in blunt accusations by the Prime Minister that the Court's decisions had been partisan-influenced and had obstructed many of the government's important legislative projects.

The current Law on General Administrative Procedures is still rooted in the old Austrian tradition that had inspired the former Yugoslav administrative law. It reflects the authoritarian understanding of the public administration of the past, does not provide complete legal protection against administrative decisions, establishes unnecessarily complicated and lengthy procedures, and goes into regulatory details that would be better dealt with through secondary legislation or internal administrative rules. In addition, several issues that are important for a modern administration are not regulated by the law.

The internal organisation of administrative bodies needs to be rethought to allow for improved delegation of decision-making competence. The current arrangement, whereby almost all decisions are taken by the top level of an administrative body (e.g. minister), is not only a major cause of the inefficient internal organisation of administrative bodies, but also has an undesirable impact on the quality of administrative decisions and the accountability of civil servants.

The good performance of the Directorate for Personal Data Protection deserves to be highlighted. Despite a relatively small number of staff (only 20 civil servants) and a modest budget of approximately 190,000 EUR, the Directorate has managed to successfully execute its functions and to establish its position and reputation within the system.

Reform Capacity

In previous assessment reports Sigma had pointed out that the Civil Servants Agency, due to its legal status as an "autonomous state body accountable to parliament", had no effective legal and political instruments to ensure the correct implementation of the Law on Civil Servants by other administrative bodies. The amendments to the law did not address this structural problem but attempted to resolve the problem by several other legislative means. Since the implementation of these amendments started in March 2010, it is still too early to judge whether the new legal and managerial instruments given to the Agency will in fact strengthen its capacity to drive the reform of

the civil service and raise it to a level of professionalism and depoliticisation that is compatible with prevailing standards in EU Member States.

In September 2009 a legislative project to draft a new Law on General Administrative Procedures was announced, but so far no actions have been taken in this regard. Apparently there is no body or institution within the system that is in a position to take the lead in approaching this key area of public administration reform.

INTEGRITY

Main Developments since the Last Assessment

Corruption is still one of the most pressing problems in the former Yugoslav Republic of Macedonia[1], although some legislative activities related to anti-corruption were undertaken in the past year.

The Law on Conflict of Interest was amended in September 2009. Now the scope of the law also covers, in addition to elected or appointed officials, professional civil servants. The law regulates the compatibility and incompatibility of officials' work with other jobs or private activities, the way to act in the event of a conflict of interest, the limitations of employment after termination of duties, and the procedure and measures that might be taken in cases of conflict of interest.

The State Commission on the Prevention of Corruption is the main implementation body of the Law on Conflict of Interest. It has the competence to initiate a procedure for dealing with a conflict of interest of a civil servant. The civil servant against whom such a procedure has been initiated has the right to complain to the competent court against the Commission's decision. The court is obligated to decide on the matter within three months (article 29 of the law).

Regarding asset declarations of civil servants, the State Commission stated in its 2009 annual report that numerous bodies and institutions had not submitted their mandatory semi-annual reports on the status of submission of such declarations.

On 26 March 2010 the State Commission elected a new president, exactly one month after expiry of the term of office of his predecessor. Upon his election the new president stated that he would put emphasis on increasing the openness and transparency of the Commission's work as well as its visibility to the public.

The Law on Financing of Political Parties was amended in July 2009. Regarding financial donations to political parties, amendments to article 16 of the law reduced the amounts that are allowed to be given to parties (e.g. legal entities are now allowed to donate amounts of up to 150 average salaries, whereas the previous law had allowed amounts not exceeding 200 average salaries). If a donation exceeds the maximum amount, the party is obliged immediately or at the latest within 15 days to return to the donor the difference between the legally allowed amount and the amount that was actually donated (article 16, paragraph 2). The amendments also specified the manner in which political parties were to publicise their donations and the obligation of political parties to submit quarterly reports on their donations to the Ministry of Finance, the State Audit Office, and the Public Revenue Office.

Political parties' annual accounts of their financial operations, which are to be sent to the Ministry of Finance, the Public Revenue Office, the Central Register and the State Audit Office, must

1 Transparency International's Corruption Perceptions Index (CPI) for 2009 indicates that fYR Macedonia ranks 71 out of 180, with a rating score of 3.8 on a scale of 0 to 10, which is a minimal improvement in comparison to the previous year, when it was rated 3.6 and its ranking was 72 out of 180 countries.

also be published on the political parties' websites and in at least one daily newspaper, as required by the amended paragraph 4 of article 26 of the Law on Financing of Political Parties.

The State Audit Office, which is in charge of auditing the financial reports of political parties on the financing of electoral campaigns, published in August 2009 its final reports on the financial conduct of political parties during the early parliamentary elections of 2008 and the presidential and local elections of March 2009. Regarding the four major political parties that participated in these elections, the State Audit Office reported that their financial reports and activities had been in line with the legal regulations.

However, in its reports the State Audit Office pointed out the following problem. According to the Electoral Code (article 83, paragraph 4), organisers of election campaigns are obligated to transfer to the state budget the difference between the legally allowed amount of donations and the actual amount in all of the cases in which the donations exceed the established limits. This provision does not apply to donations of broadcasting and printed media that are given in the form of discounts for services provided to political parties (article 83, paragraph 3 of the Code). This exception constitutes a crucial loophole in the law. Given the fact that broadcasting and printed media are among the largest donors to the organisers of election campaigns (e.g. the discount given by a national television channel to one of the political parties was 97.42% – which amounted to 1,867,000 EUR – as stated in the report of the State Audit Office), the Office has pointed out that such provisions leave room for potential abuse and result in decreased revenues for the state budget.

The Law on Parliament, adopted in August 2009, regulates the work of parliament, but also some of the rights and duties of members of parliament (MPs). Regulations in this new law related to the rights and duties of MPs partly overlap with or duplicate provisions in the Law on the Members of Parliament and – as far as provisions on MPs' asset declarations are concerned – the Law on the Prevention of Corruption. The Law on Parliament significantly improves the working conditions of MPs by enabling the employment of "external collaborators". Every five MPs are to be assisted by one external collaborator employed by the General Secretary of the Parliament for the duration of the MPs' mandates. Moreover, a parliamentary institute can be established (article 42 of the law) in order to "strengthen the legislative, control and analytical and research capacity" of parliament. The law also introduces new instruments to facilitate parliamentary supervision and control of the activities of the government and of state administrative bodies.

The Law on the Establishment of an Additional Condition for the Performance of Public Office (the "Law on Lustration") was amended at the end of May 2009. The amendments concerned the work of the Commission on Verification of the Facts (Lustration Commission) and the status and working conditions of its members. The Commission started to implement the law in September 2009 by requesting the submission of statements by the President of the Republic, MPs, government members and mayors of municipalities (243 officials in total). By the end of 2009, it had verified 61 of these statements, i.e. it confirmed that the office-holders had fulfilled the additional criteria to the effect that they had not been informants or collaborators of the secret services during the period specified in the law. Moreover, statements of members of the judiciary and of the Ombudsman and his senior staff were also processed in 2009.

However, at the end of January 2010 the Constitutional Court stopped the whole process by issuing a temporary order. In its final decision, at the end of March 2010, the Court ruled that four main provisions of the "Law on Lustration" were unconstitutional, including the regulation that the law was applicable not only during the period up until 1991, when fYROM became independent and adopted its new Constitution, but also for the period prior to entry into force of the law in 2008. As a

consequence of this judgment of the Constitutional Court, the "Law on Lustration" cannot be implemented without a thorough review and substantial changes.

The Law on the Prevention of Money-Laundering was substantially amended at the end of April 2010. The main purpose of the amendments was to adjust the legislation to the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money-laundering and terrorist-financing and to the Directive 2006/70/EC concerning the definition of a politically exposed person and the technical criteria for simplified customer due diligence procedures.

Main Characteristics

The amendments to the Law on Conflict of Interest represent an improvement of the previous legislation. They offer more precise legal definitions of the purpose of the law and of a conflict of interest, gift, official, public authority and duty, but they also provide some new provisions that strengthen the position of the State Commission for the Prevention of Corruption in the implementation of the Law on Conflict of Interest. The new legislation, in combination with the very recent change in the office of the President, could be seen as the start of a new phase of positive developments in this area of anti-corruption measures, although it is still too early to undertake a final assessment.

The general weakness of the public integrity system, however, is not first and foremost the result of the lack of legislation or its poor quality. More crucial are the deficiencies concerning the strict and correct implementation of the law by public sector administrative bodies and by the courts. The frequently observed lack of respect towards the law and towards democratic institutions cannot be remedied in the short or medium terms, in particular not by simply changing the legislation. This problem seems to be a matter of legal culture, which needs to gradually evolve in a long-term process only.

For the repressive side of anti-corruption measures, an independent, competent, impartial and effectively functioning judiciary is of utmost importance. Such a judicial system, however, is not in place. An OSCE analysis of the independence of the judiciary, based on the findings of a countrywide survey of the judges themselves[2], revealed significant shortcomings in the judicial system and confirmed previous and current Sigma findings as well as public perceptions that the judicial system in fYR Macedonia requires substantial improvements.

In this context it is worth noting that many rulings of the European Court of Human Rights (ECHR) in cases involving citizens of fYROM also indicated systemic shortcomings in the judiciary that resulted in the infringement of citizens' rights as defined in article 6, paragraph 1 of the European Convention on Human Rights and Basic Freedoms, in particular the right to due process. With the passage of two new pieces of legislation at the end of May 2009 – the Law on Representation of fYROM before the ECHR and the Law on Execution of the Decisions of the ECHR – the country's legislators responded to the rulings of the ECHR.

The political dependence of the Judicial Council and direct political influence on the selection and dismissal of judges have been publicly debated in 2009/2010. In March 2010 the government announced a legislative initiative to amend the Constitution related to the composition of the Judicial Council and to the manner of selection of its members. The amendments were announced as

2 For details, see 2010 SIGMA's 2010 assessment report on Civil Service and Administrative Law in fYR Macedonia.

necessary to increase the independence of the Council and to preserve the respect of the merit principle in the selection and promotion of judges.

Reform Capacity

The decision establishing the Government Council for the Implementation of the Action Plan on the Fight against Corruption 2007-2011 was amended by the government in June 2009 in order to specify more frequent meetings of the Council: instead of meeting at least once every three months, the Council is to meet at least once a month. The Council is chaired by the Prime Minister and its members include the Vice Prime Minister on European Integration and the Ministers of Justice, Interior and Finance. More frequent meetings of the Government Council could lead to an intensification of its work.

PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

Main Developments Since Last Assessment

In 2009, the economic downturn reduced revenues and encouraged the government to contain spending in order to achieve its fiscal deficit targets. However, fYROM was not hit as badly as other countries of the region and it did not need to apply for support from the IMF. It might however only be a matter of time before the economic crisis begins to affect the country, negatively impacting on possibilities for further reform.

There have been some minor changes in the area of public expenditure management **PEM** over the last year. Positive steps include allowing the carry forward of unspent capital allocations into the next year and amending the rule whereby 20% - formerly 30% - of capital allocations must be spent in the first half of the year or be surrendered. . Some progress has been made in developing a consolidated cash-based budget statement incorporating state, local government and funds budgets, with consolidated municipality budget data available internally to the Treasury Department. Furthermore, the authorities have suggested that capital investment programmes are being better managed as the technical expertise of budget users has increased and output indicators are increasingly being used to evaluate expenditure programmes. While these are positive steps, data should be published to quantify the degree of improvement.

No progress was made in developing the budget preparation process to strengthen fiscal discipline, facilitate the process of prioritisation between the main policy areas, and improve expenditure and revenue projections. With two supplementary budgets in 2009, it is not surprising that no strategic changes to the formulation process were made. While the original budget deficit target was met, it seems to have been achieved mainly by deferring payment orders until January 2010 (thereby carrying forward costs into the next year) and by increasing emphasis on revenue collection, including through wide scale imposition of heavy fines. The importance of expenditure cuts deriving from genuine policy changes is unclear.

A new law on **PIFC** was adopted in July 2009. This law aims to clarify the PIFC concept and give clear responsibility to heads of budget users. It requires the adoption of a multitude of by-laws for procedures, standards and control activities. The CHU is currently working on 10 by-laws and guidelines with the help of the Dutch bilateral support. None of the by-laws has so far been adopted but the PIFC Department is optimistic regarding their finalisation before end of July 2010, as required. The law's implementation schedule has proved to be too ambitious regarding appointments to positions such as Heads of Financial Affairs Units and Regularity Officers. Only a small number of budget users have taken the required initiatives. The PIFC Department has organised awareness raising events of the new PIFC Law in twenty-five budget users and training in ten pilot budget users. A new version of the PIFC policy paper is being discussed internally within the Ministry of Finance (MoF).

In order to develop **External Audit**[3], the State Audit Office (SAO) of fYROM updated its Development Strategy and formulated its strategic goals for 2010-2014 in December 2009. A draft

SAO Law and the Audit Authority (AA) Law, which will establish the AA as an institution independent form the SAO and from all managing and controlling structures for DIS were adopted and came into force in May 2010. Already in 2009, the SAO submitted the annual report for 2008 not in September (as was required by the old law) but in June, which is the deadline of the new SAO Law. To make reports more user-friendly, the SAO designed a new format for the annual report and regular audit reports. During a special government session in February 2010, the Government discussed the annual report in the presence of the General State Auditor and took decisions based on it, setting deadlines for activities to remedy shortcomings. The first examination for the qualification of Chartered State Auditor took place on 6 March 2010; 25 auditors passed the exam.

Main Characteristics

fYROM's public expenditure management system contains many of the attributes of an effective and efficient administration characterised by control of public funds and political commitment to fiscal discipline, as evidenced by the measures taken to meet the original budget deficit target. Staff in all departments visited clearly have technical knowledge and ability. The treasury system tightly controls expenditures and produces timely and informative reports on budget evolution and deviations. The Liquidity Commission, which comprises senior staff from relevant Departments, has a good record of ensuring liquidity to meet essential expenditure commitments.

Nevertheless, previously identified weaknesses remain, with no major changes having been implemented in the past year. These include difficulties in retaining staff (which may have been exacerbated by the need to apply a recruitment freeze in response to the financial crisis), the absence of information on the impacts of current budget decisions on the budgets of future years, and the fact that a consolidated set of accounts is not produced at year-end for parliamentary approval.

In particular, the detailed expenditure proposals presented in November cannot be robust since the overall budget and economic strategy framework is poorly defined and is based on macroeconomic projections prepared in May, despite the fact that the Macro-Economic Department clearly has the skills to provide updated data in a timely manner. There seems to be a mistaken belief that the accuracy of the initial projections is unimportant because supplementary budgets will ensure that the budget deficit target is met anyway. This approach ignores the serious weakness of relying on supplementary budgets; no strategic changes can be made to the budget process due to the resource and time constraints imposed by the supplementary budgets. Unless this changes, little improvement will be made in the area of public expenditure management. Plans to introduce advanced concepts such as full programme budgeting need to recognise the need to first address the more fundamental weaknesses of PEM.

The legal basis for **PIFC** has improved but the relationship and inter-linkage between the Law on Budgets and the PIFC Law are unclear with regard to financial management and control. In most organisations, the head of the organisation is also the "manager" for the whole organisation. Many managers believe that managerial responsibilities can only be carried out properly if the head of the organisation takes all decisions[4]. PIFC arrangements cannot work effectively under such conditions. Although the new legislation encourages internal delegation, it will take some time for new internal control arrangements to turn into new management arrangements. Progress has been made in establishing and staffing internal audit units, but no evidence is available regarding the quality and of internal audit reports and their acceptance by managers. fYROM is at a relatively early stage in the

4 See also SIGMA assessment 2010 "General Administrative Law Framework and Public Service"

development of PIFC, during which the importance lies in developing the basics for financial management and control systems and internal audit.

Although **External Audit** and the SAO are still not mentioned in the constitution, the new draft Law on SAO should provide the institution with better financial independence (its budget will be approved directly by Parliament) and opens possibilities for a more risk-based approach to the choice of audits. The impact of audit reports on the way in which audited budget-users carry out financial management is still rather limited, but efforts are made on both sides (SAO and government) to change this. No overall opinion is given on the annual budget execution report, and proper discharge procedures still need to be developed. Performance audit is in an early stage, but its importance is increasing for the SAO. While developing performance audit should in principle be welcomed, it should not divert resources necessary away from for the further development of financial audit methodology and skills. The impact of performance reports will remain very limited as long as the SAO cannot count Parliament as a real partner.

Reform Capacity

Lack of funding hinders the Ministry of Finance's plan for an IT upgrade to further integrate data sharing between the Budget, Treasury, Debt Management and Macro-Economic Departments. While "technical assistance overload" of the system should be carefully avoided, this particular topic could be addressed through a technical assistance project. Apart from facilitating more rapid and automated production of data to enhance up to date analysis, an objective of such a project should be to produce consolidated budget data for all budget users. Another objective should be the development of a process that allows for the timely incorporation of both macro updates from the Macro-Economic Department and the impact of new policy proposals into the budget formulation and monitoring process. The overly ambitious plan to introduce Programme Budgeting for 2012 should be carefully considered and evaluated in light of the more fundamental PEM weaknesses that need to be addressed. With ongoing support from the Netherlands, the CHU is further developing **PIFC**. While the legal basis continues to be improved and instructions for its implementation are prepared, there seems to be little political will in the MoF to commit itself, through a policy paper based on a gap analysis that would clearly outline objectives and the required activities to reach them, supported by time planning and distribution of responsibilities.

Through several years of support from the Netherlands Court of Audit (first under a Twinning, now under a bilateral support project), the **SAO** has continued to address the current shortcomings and further develop the professional capacity of its staff. While the SAO has proved its technical capacity for changes and improvements in audit work, an enhancement of its capacity to contribute to improving the system of financial management of the public administration is needed. Financial audit and audit of financial statements also has to be further aligned with international standards.

PUBLIC PROCUREMENT

Main Developments Since Last Assessment

Positive developments continue to take place in the practical implementation of the new Public Procurement Law (PPL) in the fYROM which came into effect at the start of 2008. In October 2008, the PPL was amended by the Law on Amendments and Modifications to the Law on Public Procurement, which has introduced some substantive changes. Minor amendments to the PPL are currently under preparation in order to harmonise the PPL with the newly amended Criminal Code. Some new pieces of secondary legislation (regarding training and electronic publication of procurement notices) were adopted during 2009. A comprehensive overhaul of the PPL is planned for late 2010, to finalise the harmonisation process and to take into account the experience of the two years of implementation.

Since September 2009, the Public Procurement Bureau (PPB) has been functioning as a separate legal body under the responsibility of the Ministry of Finance. The resources of the PPB have been slightly strengthened (two new experts were employed in 2009). Some revised and new guidelines, together with tender forms and contract documents, have also been published and are regularly used by contracting authorities, and are helping to further improve the public procurement system. The PPB has delivered extensive training on a range of procurement issues to the procurement community (the Training of Trainers programme was finalised in November 2009). An e-procurement system operated by the PPB has been significantly upgraded (January 2010).

The new independent State Appeals Commission (SAC) (established in November 2008) reached full operational capacity during 2009.

However, there has been no progress in the area of concessions and public-private partnerships (PPPs). The concessions law, adopted in 2008, has not proved successful (no projects have yet been awarded under the new law). Work on a new concessions/PPP law has started (in 2008), but the timeline for its adoption still remains unclear. The Ministry of Economy is supposed to submit a draft PPP/concessions Law to the Government in May 2010. The Parliament is expected to adopt the new Law during the summer.

The EU Delegation in Skopje has plans for significant IPA technical assistance for the PPB and the SAC (to be started at the end of 2010 and amounting to EUR 1 million and EUR 200,000 EUR respectively).

Main Characteristics

The PPL is practically fully compliant and harmonised with the new EC Public Procurement Directives. The PPL covers the classical and utilities sectors and all types of procurement (works, supplies and services), except for concessions. The rules concerning the utilities sector are provided in a separate chapter. The PPL also contains provisions for remedies and for the establishment and operation of the SAC and PPD. The exemptions allowed by the PPL for contracting authorities in the classical sector and for utilities are in line with EC rules. The new PPL implements all the new instruments regulated by the EC Directives (apart from dynamic purchasing systems), such as

competitive dialogue, framework agreements, central purchasing bodies and electronic procurement.

Some provisions of the Directives are, however, not fully transposed (mostly those dealing with utilities and remedies). The rules for utilities do not reflect the more relaxed regime permitted under EC Directive 2004/17/EC, such as the freedom for utilities to decide which procurement procedure to use, flexibility on the award of contracts under framework agreements, the availability of periodic indicative notices, and qualification systems. fYROM should consider introducing a regime for utilities that is fully harmonised with Directive 2004/17/EC.

The PPB has supported the implementation of the PPL very well, through a range of activities including training, guidelines, standard form documents and day-to-day telephone and e-mail assistance. The PPB website (http://javni-nabavki.finance.gov.mk) is comprehensive and easily accessible. Electronic publishing of notices for contracts over the national threshold is obligatory and the system functions well. The e-procurement system (ESPP https://e-nabavki.gov.mk), upgraded recently (January 2010) with the assistance of the USAID e-Gov project, not only handles all procurement notices but also enables contracting authorities and economic operators to publish and access all other tender documents, ask and answer questions during the tendering procedure, and submit and evaluate bids and conduct e-auctions. The PPB, in co-operation with the Law Faculty in Skopje and the USAID World Training, has established a Public Procurement Training Centre. A group of 48 trainers has been trained through the Training of Trainers programme, which ended in November 2009. The trainers will deliver courses to the public procurement community throughout the country, based on the manual elaborated by the PPB. The annual training plan, adopted by the PPB, is available on its website.

The total value of the procurement market in fYROM amounts to EUR 776 million (12 % of GDP), and the government and other public institutions are the main trading partners for many businesses.

The establishment of the SAC at the end of 2008 was a positive step in addressing concerns about the operation of the remedies system. During 2009, the SAC became fully equipped, it moved to new premises (May), hired support staff (five new employees). However, because of financial difficulties and cuts in public expenditures, it has not yet reached the planned full staffing level (19). In 2009, the SAC received 1,044 cases (960 appeals, 34 requests for continuation of the procedure, 34 requests for cancellation), of which 996 were resolved. Of the 960 appeals received, 429 were refused, 249 accepted, 151 rejected, and 105 withdrawn. As of October 2009, a new SAC website (http://www.dkzjn.gov.mk) provides access to information on the public procurement review system and the work of the SAC (including the texts of all decisions taken).

The other main area of serious concern is the lack of positive developments in the PPP and concessions Law. Legislation on concessions and PPPs remains unsatisfactory, and several amendments to the concessions law will be needed to bring it in line with EU requirements. For the law to be successfully implemented in practice, clear and strong leadership will be needed. A centre of expertise is also needed to support contracting authorities in preparing projects, conducting contract award procedures, and preparing contract management for PPPs and concessions. In its 2008 assessment, SIGMA pointed out the need for significant modifications to the then newly adopted Concessions Law if it is to comply with EU requirements and good international practice. However, the Concessions Law, which falls under the responsibility of the Ministry of Economy, has still not been amended.

Reform Capacity

The Public Procurement Bureau (PPB) has certainly proven its ability, skills and capacity to develop the public procurement system, although for some of its work it has received external assistance. The PPB's work is of high quality, dynamic and highly appreciated by the procurement community.

However, the PPB will need adequate resources for the further and extensive strengthening of its central capacity. Support for implementing the Public Procurement Law (PPL) and for introducing new business models — such as central purchasing, framework agreements, and e-procurement — will continue to be major challenges in the coming years and will require the PPB's full attention and commitment. The PPB will also require continuing government support, especially in terms of resources and stability.

The newly established SAC has proved to be a mature institution that copes well with its obligations.

The same positive picture still does not apply to the Ministry of Economy's work on concessions/PPPs. Work on the preparation of a new PPP/concession law, which started in 2008, has not yet produced concrete results (the draft is expected to be submitted to the Government in May 2010). Stronger leadership is needed for drafting and then implementing the new concessions/PPP Law. Further efforts will shortly be needed to build institutional capacity — ideally by creating a centre of expertise.

PROCUREMENT/CONCESSIONS STATISTICS for 2009[i]

A. Number of contracting entities[ii]		
Central government	**104**	
Regional and local authorities	**93**	
Other (bodies governed by public law)	**710**	
Utilities	**60**	
Total number of contracting entities	**967**	
B1. Awarded[iii] public contracts/Contracting entities	**Total (estimated) value (Mio EURO)**	**Total number[iv]**
Central government	238.8	1087
Regional and local authorities	38.3	642
Other (bodies governed by public law)	310.9	5445
Utilities	128.3	792
Total public contracts awarded	716.3	7966
B2. Awarded concessions/Contracting entities	**n/a**	**n/a**
Central Government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total concessions awarded		
C1. Awarded public contracts above the EU thresholds[v]	**n/a**	**n/a**
Works[vi]		
Services[vii]		
Goods[viii]		
Mixed contracts		
Total public contracts above the EU thresholds		
C2. Awarded concessions above the EU thresholds	**n/a**	**n/a**
Works[ix]		

Services[x]		
Other		
Total concessions above the EU thresholds		
D. Procurement methods used[xi] (above the national thresholds[xii])		
Open procedure	535.2	6909
Restricted procedure	126.0	37
Negotiated procedure with prior publication of a notice	27.3	75
Negotiated procedure without prior publication of a notice[xiii]	22.9	865
Other procedures (competitive dialogue, etc)	4.9	80
D1. Low- value procurement ***(estimated)***	59.4	14823
E. Participation rate (average number of submitted tenders)		
Works	/	4
Services	/	3
Goods	/	5

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

	Name of Contracting Authority	Main Activity	Annual procurement
1.	Public Enterprise for Management of Residential and Commercial Properties	General public services	83.0 mil eur
2.	Ministry of Education and Science	Education	75.7 mil eur
3.	fYROM Power Plants	Utilities	63.7 mil eur
4.	Agency for State Roads	General public services	44.8 mil eur
5.	General and administrative matters division - Government of fYROM	General public services	28.5 mil eur
6.	Ministry of Information Society	General public services	26.6 mil eur
7.	Ministry of Culture	Sport and culture	25.2 mil eur
8.	EVN fYROM	Utilities/Private JSC	23.1 mil eur
9.	Directorate for Technological Industrial Development Zones	General public services	16.7 mil eur
10.	PE fYROM Forests	General public services	16.4 mil eur

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2009 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

	Subject of contract	Name of CA	Contractor	Value (eur)	Time of exec.
1.	Construction and equipment of 145 school sport halls	Ministry of education and science	Granit AD	68.7 mil	3 years
2.	Construction of part of the national stadium and additional fields	Public Enterprise for Management of Residential and Commercial Properties	Beton AD - Skopje	58.8 mil	4 years
3.	Construction of new buildings for Constitutional court and State Archives of fYROM	General and administrative matters division - Government of fYROM	Granit AD	24.8 mil	2.3 years

4.	Purchase of lap-tops for students and teachers	Ministry of Information Society	CT Computers Belgrade and CT Computers Skopje	11.7 mil	n/a
5.	Construction works - East Industrial Zone	Public Enterprise for Management of Residential and Commercial Properties	Mavrovo Inzenering	11.2 mil	1.6 years
6.	Supply of equipment and installation for project Old Theatre	Ministry of Culture	Svetlost teatar Belgrade	11.1 mil	n/a
7.	Supply of oil	Public Transport Enterprise - Skopje	Makpetrol AD Skopje	10.0 mil	2 years
8.	Construction of regional road	Agency for State Roads	Beton AD - Skopje	8.2 mil	1.5 years
9.	Excavating and transport services for coal	fYROM Power Plants	Group of bidders	8.0 mil	1 year
10.	Supply of oil and oil derivates	Thermal Power Plant - Negotino	OKTA AD - Skopje	7.8 mil	1 year

[i] Statistics should cover contracts awarded in the period 1 January 2009 – 31 December 2009

[ii] As for 31 December 2009

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

[iv] Please indicate whether the data include the low value contracts

[v] Please indicate whether the data include contracts awarded by the utilities sector

[vi] above 5.150.000€

[vii] above 137.000€ for public institutions, 412.000€ for utilities

[viii] above 137.000€ for public institutions, 412.000€ for utilities

[ix] above 5.150.000€

[x] above 137.000€

[xi] Both for public contracts and concessions

[xii] Including contracts above EU thresholds

[xiii] Including single-source procurement

POLICY-MAKING AND CO-ORDINATION

Main Developments since the Last Assessment

General Context

The system in the former Yugoslav Republic of Macedonia for policy planning, policy-making and co-ordination is sound. The legal framework that was adopted and upgraded over the past years has essentially been implemented, and the policy planning, development, and monitoring system is operative. Further efforts were made during the past year to implement recent reforms introduced in the Rules of Procedure with respect to regulatory impact assessment (RIA) and the strategic and policy planning process.

The General Secretariat continues to develop as a central co-ordination body responsible for policy analysis and co-ordination, as well as for organising government business. The Secretariat for European Affairs has defined its structure and is now in the process of hiring staff for the senior managerial positions.

However, the observation made last year that the official system was under-utilised and over-politicised continues to be valid, and the situation appears to have worsened. Due to over-politicisation of the policy process, policy decision-making often disregards the good processes and procedures that have been developed, and experienced professionals are bypassed. As a result, the policy system as a whole is underperforming.

General Secretariat

The strategic planning process for 2010–2012 was implemented according to the new methodology adopted last year, which puts more emphasis on alignment with the budget and with the National Programme for Accession (NPA). The quality of strategic plans prepared by ministries varies, but ministries are making efforts to improve their performance in this regard.

The government's Annual Work Programme was adopted on time and according to the new structure. It is comprised of three chapters: initiatives that have to be adopted by parliament, initiatives that are approved only by the government, and finally initiatives that represent the regular business of the government. The Annual Work Programme has been aligned with the NPA. There is a need to increase contacts and co-ordination between the General Secretariat and the Ministry of Finance, develop programme budgeting, and strengthen the link between the budget and the policy planning process. Efforts in this direction are now being supported by the World Bank.

Serious attempts have been made to apply RIA to all draft laws and especially to regulations that are expected to have significant impacts. The RIA methodology has been simplified, and most laws are accompanied by RIA forms. Formal checks of the RIA forms are carried out by the Economic Policy and Regulatory Reform Sector in the General Secretariat. Unfortunately, the RIA forms and the explanatory memorandum have not been integrated, which has caused ministries to repeat the same information in both documents.

Phase III of the Regulatory Guillotine, now underway, is focusing on building competitiveness and improving the business climate through various measures. Regular communication is being maintained with the business community to seek ways of improving and reducing restrictive regulations.

The electronic circulation of documents for sessions of the government has completely replaced paper circulation.

The General Secretariat has continued to organise and deliver training on policy planning and policy-making for ministries and government agencies. This advanced-level training focuses on practical skills in programming and budgeting, including the formulation of indicators and monitoring.

Ministries

There is a growing understanding of the importance of co-ordination and analysis in the early stages of the policy and law-drafting process. However, under pressure due to the tight deadlines and increased production of legislation, ministries tend to squeeze the stages of the policy development process, which sometimes leads to legislation of poor quality. Although ministries now generally conduct RIA for draft laws, the quality of RIA is not yet at the desired level. Ministries' capacities for policy development and RIA need to be further developed.

Strategic planning and policy analysis units have been formally introduced into the structure of all ministries. However, these units are still weak and more efforts are needed to integrate them into the planning, budgeting and policy development processes within ministries.

Management of European Integration

The Secretariat for European Affairs (SEA) has adopted a new structure and the necessary internal rules, but the new structure still appears to be overly complex (seven sectors and about 20 units). A state secretary has been appointed, with the main task of reshaping the co-ordination system and the organisation of SEA. Ten new appointments were made, but the staffing level is nevertheless only around 60%.

The Working Committee on European Integration has been reconstituted. It is chaired by the Deputy Prime Minister responsible for European Integration and its members include the state secretaries of ministries. Regular monthly sessions are held to look at progress in the implementation of the National Progamme for the Adoption of the *Acquis communautaire* (NPAA).

A sub-committee on European integration looks at technical issues related to the specific chapters of the NPAA. Its members are the heads of the European integration sectors in ministries, and it is chaired by the State Secretary of the SEA.

About 35 working groups, matching the chapters of the *acquis*, were established by a government decision in November 2009.

This year, the National Programme for Accession (NPA) was adopted on time, in December 2009 for 2010.

Main Characteristics

There is an excellent legal framework for the policy system, which includes the Rules of Procedure and updated methodologies and instructions. The procedures for inter-ministerial

consultations are clear, and it seems that ministries consult each other on important items well in advance of the formal consultations required by the Rules of Procedure.

The organisation primarily responsible for policy co-ordination is the General Secretariat. The Secretariat for European Affairs and the Legislative Secretariat also play an important co-ordinative role in the policy system. The General Secretariat is well-structured and has the mandate and sectors to perform the necessary functions of supporting the Prime Minister and the government in their collective responsibility for making policy decisions.

The Secretariat for European Affairs (SEA) is still in the process of staffing, and it is therefore not yet as effective as it should be.

The strategic and work planning systems are well established and operational, and mechanisms link the Strategic Priorities of the Government with the Annual Work Plan and the NPA. In the absence of programme budgeting, the link to the budget is not as strong as it should be. Three-year ministerial strategic plans are linked to the government-wide planning documents.

There is a growing awareness of the importance of impact assessment in the policy process, and serious efforts are being made to observe RIA procedures, although the quality of these procedures remains variable and quality checks are overly formal. However, the RIA process should be integrated into the rules for policy-making, especially the requirement for Fiscal Impact Assessment and the requirement to include an assessment of impacts in the explanatory memorandum that accompanies the RIA form. Excessively complicated procedures and forms should be avoided at this stage in the development of policy-making capacity in ministries.

Overall, the policy-making and co-ordination system in fYROM has the design characteristics and to a large extent the human capacity required to produce good policy. Its main weaknesses at this point are over-politicisation and the under-utilisation of professional civil servants' capacities by the political leadership. As a result, the system that has been put in place over the past ten years is underperforming and there is a risk that its effectiveness will decline over time.

Reform Capacity

An urgent prerequisite for the maintenance of the existing system and for future reform is the improved and more consistent use by the political leadership of the structures, procedures and human resources that have been developed for policy co-ordination and planning within the General Secretariat and in ministries. The capacity for reform as well as the interest in improving the policy system are present within the administration, but political interest in this regard is less certain.