

THIRD QUARTERLY ACCESSION WATCH REPORT

LISBON-SKOPJE-ATHENS
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*Third Quarterly
Accession Watch Report*

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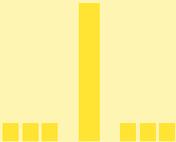
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WHERE ARE WE IN OCTOBER 2009?

The aim of the previous two Accession Watch Reports¹ was to pinpoint the shortcomings in fulfilling the benchmarks presented to the Republic of Macedonia by the European Commission (hereinafter: EC) in February 2008, and to stress the importance of their timely implementation for the purpose of obtaining a recommendation for opening accession negotiations in the EC 2009 Progress Report. If opening the issues of the obligations assumed by the Government were to result in additional efforts on the part of the institutions to fulfil the benchmarks, this quarterly report can note that the objective was achieved.

The topics addressed in previous reports were followed up by the media. Considering the fact that state institutions are not sufficiently open and transparent in their work on EU integration, the media regularly used the previous two reports not only as an additional information source, but also as a tool for informing the public on the European integration process in our country.

¹ First Accession Watch Report “The Government Should Work 24/7 on the EU Agenda”, 22 April 2009; Second Quarterly Accession Watch Report “Macedonia Needs a New Prime Minister for European Integration”, July 2009.

1. HOW LONG ARE WE GOING TO WORK UNDER PRESSURE?

In the last two-three months, the Macedonian public witnessed how the Government, the Parliament, and the other important stakeholders in the Republic of Macedonia intensified their work to fulfil the benchmarks for obtaining a positive EC Report this year.

The European Commission responded to the resignation of the Deputy President of the Government responsible for European Integration, Ivica Bocevski, which came at the worst of times for European integration. Brussels was continuously sending messages that the Government must immediately appoint a new Deputy President responsible for European Integration, who should assume the political obligation to complete the anticipated tasks. It was of utmost importance to make the most of the current state of affairs in the EU, favourable for Macedonia². Fortunately, the Macedonian Government understood the message of the European Commission and Vasko Naumovski was appointed Deputy President of the Government of the Republic of Macedonia responsible for European Integration on 10th July 2009.

The other public institutions also fulfilled their share of the responsibilities so that the European Commission can state the completion of the respective benchmarks in its Progress Report for the Republic of Macedonia this October. The Parliament of the Republic of Macedonia agreed to shorten its summer vacation,

so the Parliament was ready to work in full gear on 17th August 2009. In the period July-September, the Parliament adopted the remaining legislative acts for the fulfilment of benchmarks (for more information see the analysis of the individual benchmarks in Part II).

The Judicial Council, on the meeting held on 7th July 2009, appointed six judges from the candidates trained at the Academy for Training Judges and Public Prosecutors and made a decision to announce an open call for vacancies for appointing additional 9 judges at first-instance courts, who should also be Academy graduates³.

The Association of Local Self-government Units (ZELS) was active as well and on 29th July held a meeting on the implementation of the Framework Agreement on local level.

The Ministry of Economy opened a web-portal for enhancing the dialogue between the Ministry, the business and the academic community on important economic issues.

² See the Second Quarterly Accession Watch Report "Macedonia Needs a New Primer Minister for European Integration", July 2009, pg. 9.

³ Secretariat for European Affairs, Monthly Progress Brief, Accession Partnership, July 2009, pg. 4.

2. WITH SUCH A PACE – EU IS FAR AWAY!

The mobilization of all European integration relevant factors of the Republic of Macedonia, witnessed in the last 2-3 months, starting from the Government and all the way to the business community deserves recognition. Nevertheless, such an arbitrary implementation of reforms does not achieve the real goals identified. Reforms are not undertaken merely for the sake of reorganizing the political system in the state, but also to “Europeanize” the society in general, hence, the importance of the Copenhagen political criterion.

Recent developments in the field of completing the benchmarks, undoubtedly, impose the issue of quality and quantity of reforms, i.e., what kind of solutions are adopted and with what kind of procedure, and, finally, what is the pace of implementation of the obligations stemming from the Accession Partnership that the Republic of Macedonia has with the European Union. The quality of the tasks performed will be subject of analysis of the separate benchmarks in Part II herein, whereas in Part I we address the issue of quantity, i.e., the pace of Macedonia’s integration in the EU.

Namely, the Republic of Macedonia obtained the new draft Accession Partnership together with the EC Progress Report in November 2007. In February 2008, the key priorities from the Accession Partnership were raised to the level of benchmarks⁴, whereas the remaining short-term and mid-term priorities remained

unchanged. Last year, the EC Progress Report was not accompanied by a new Accession Partnership, and according to EC recent announcements, a new partnership will not be signed assigned this year either, as the priorities from the current partnership are still not completed.

As a reminder, the current Accession Partnership, apart from the 8+1 key priorities, (benchmarks), also contains 119 short-term priorities (33 of which are political, 2 economic, and 84 legislative) and 55 mid-term priorities (7 of which are political, 6 economic and 42 legislative), which is 182 tasks in total. In comparison, the 2005 Accession Partnership⁵ contained 5 key priorities, 119 short-term priorities (32 of which were political, 11 economic and 76 legislative) and 77 mid-term priorities (11 of which were political, 8 economic and 58 legislative), i.e., 201 priorities in total. This means that in the period November 2005 - November 2007, Macedonia fulfilled 201 priorities, and in the period November 2007 - November 2010 – provided the priorities will be fulfilled by then – Macedonia will have completed 182 tasks. In other words, in order to restore the previous pace of reforms for European integration of the Republic of Macedonia, the Government should work “48/7” on the European Agenda, i.e., double the current speed.

To further complicate matters, the public is perpetually reminded by Prime Minister Nikola Gruevski that the Government is working 24/7 and that success comes to those who work hard, pointing his

⁴ See explanation on the benchmarks in the First Accession Watch Report titled “The Government Should Work 24/7 on the EU Agenda” from 22 April 2009.

⁵ Council Decision on the principles, priorities and conditions set forth in the European Partnership with the Republic of Macedonia, Brussels, 9 November 2005, COM (2005) 557.

finger at the World Bank Report where Macedonia “succeeded” in ranking third place the group of reformer countries. The Prime Minister however, (intentionally or not) forgot to say that the best results are produced by the countries that **have** what to reform and that is why Rwanda and Kyrgyzstan are ranked higher than Macedonia, whereas the other Western European countries are ranked further down on the list⁶.

Since a new Accession Partnership is not expected, the last section of each benchmark in this report lists all of the other short-term and mid-term priorities in that specific area to serve as a reminder on that Macedonia needs to do in 2010.

3. METHODOLOGY

Subject of analysis is the process of implementing the key priorities (benchmarks) from the Accession Partnership by the Government of the Republic of Macedonia, as well as the operation of the Parliament of the Republic of Macedonia in adopting the legislation necessary for fulfilling the following benchmarks: 1) constructive and inclusive dialogue, especially in the fields that require consensus between all political parties, in the framework of democratic institutions; 2) effective implementation of the Police Law; 3) sustainable track record from the implementation of judicial reforms, strengthening the independence and capacity of the judicial system, completion of reforms in prosecution and

finalizing the appointment of the Judicial Council; 4) sustainable track record on the implementation of anti-corruption legislation; 5) recruitment and career advancement of civil servants should not be a matter of political interference, strengthening the merit-based career system and full implementation of the Law on Civil Servants; 6) reduce impediments to employment creation, with special emphasis on unemployment of youth and long-term unemployed; 7) enhancing the general business climate by further improving the rule of law, strengthening the independence of regulatory and supervisory bodies, speeding up legal proceedings and continuing registration of property rights, and the additional benchmark 8) implementation of Presidential and Local Elections in 2009 in compliance with the Electoral Code. The first benchmark – proper implementation of the commitments undertaken in the Stabilization and Association Agreement – is no longer subject of this monitoring, as the measures and activities anticipated by the Government’s Action Plan 2008 were already achieved within the set deadline.

3.1 Timeframe

Accession watch was initiated in November 2008 following the publication of the EC Progress Report for the Republic of Macedonia and will last until September 2009 with the cut-off date for the EC Progress Report 2009. Accession Watch will continue throughout 2010 as well. In the period November 2008 – November 2010, a total of seven quarterly reports will be prepared, plus the first

⁶ Doing Business, World Bank, for the period June 2008 – May 2009.

report⁷ addressing the period November 2008 – 31st March 2009. The second quarterly report⁸ addressed the period 1st April – 30th June 2009, and this report addresses the period 1st July – 30th September 2009.

3.2 Method of Analysis

The baseline for monitoring Macedonia's EU accession process shall be the documents developed by the Government of the Republic of Macedonia, the European Union, and the media coverage of EU-related issues in Macedonia. Government's main documents subject to analysis are the following: *"Measures and Activities for Implementing Key Priorities for EU Accession"*, March 2008 (hereinafter: Action Plan 2008); *"Blueprint on Implementing the Recommendations Contained in the EC Progress Report 2008"*, November 2008 (hereinafter: Blueprint); *"National Programme for the Adoption of the Acquis – 2009 Revision"*, dated 14th April (hereinafter: NPAA); *"Information on Implementing the Key Priorities from the Accession Partnership in the period November 2008 – May 2009"* (hereinafter: Information); *"Conclusions on the Implementation of Remaining Measures and Activities on the Fulfilment of the Key Priorities (benchmarks) from the Accession Partnership"* (hereinafter: Conclusions); *Monthly Progress Brief on the Implementation of the Accession Partnership for June and July*

⁷ First Accession Watch report titled "The Government Should Work 24/7 on the EU Agenda" was published on 22nd April 2009.

⁸ Second quarterly Accession Watch report titled "Macedonia Needs a New Prime Minister for European Integration" was published in July 2009.

issued by the Secretariat for European Affairs (hereinafter: Monthly Brief), as well as other strategic documents of essential importance in the sectors monitored. EC Progress Report 2008 shall be the reference point of analysis (hereinafter: 2008 Report), as well as the enlargement strategies, Accession Partnerships, Multi-Annual Indicative Planning Documents, IPA operational programmes, Component I project files for IPA 2007-2009, etc. ODIHR Report on 2008 elections shall also be in the focus of attention, having in mind the fact that recommendations contained therein became part of the Government's Blueprint.

14 media outlets will also be monitored, those being: seven daily newspapers (*Utrinski vesnik*, *Dnevnik*, *Vest*, *Vecer*, *Vreme*, *Nova Makedonija* and *Spic*) and prime-time current affairs programmes on seven TV stations with national and satellite coverage (*A1*; *Kanal 5*; *Sitel*; *Telma*; *MTV 1*, *Alfa* and *Alsat*)⁹.

Other methods such as interviews, desk research and questionnaires are also used. The methods and techniques will be upgraded in accordance with the areas subject to monitoring in 2010, and will depend on the recommendation for opening accession negotiations by the European Commission, as well as the date assigned by the Council of the European Union in December 2009.

⁹ Media Monitoring is a partnership project implemented with the NGO Info-Centre from Skopje.



WHERE ARE WE WITH THE BENCHMARKS?

1. IMPLEMENT PRESIDENTIAL AND LOCAL ELECTIONS 2009 IN COMPLIANCE WITH THE ELECTORAL CODE

The first benchmark concerns the elections and requires the State to (1) guarantee all future elections to be implemented in compliance with the Electoral Code and (2) timely decisions taken on election irregularities and passing appropriate sanctions to discourage such behaviour in the future.

The amendments to the Electoral Code enacted in October 2008 by the Parliament of the Republic of Macedonia were to create conditions for elections that would fulfil international standards. These amendments followed the ODIHR recommendations stemming from the elections held in June 2008. They concern: (1) political parties financing – accountability for publishing information on election campaign funding, and limiting the financial means used for campaigning; (2) media financing – responsibility for announcing advertising pricelists and securing equal coverage for all parties or candidates; (3) strengthened responsibility of the Broadcasting Council in regard to media monitoring; and (4) stricter sanctions for perpetrators.

The third quarterly report assesses the activities in the period July-September 2009, and related measures and activities anticipated for the implementation of the benchmark on fair and democratic elections, those being: 1) The report of the State Audit Office concerning the financing of the election campaigns of

political parties; 2) Activities related to the revision of the Voter List; 3) Proceedings of public institutions related to the election incidents and the cases involving physical and “economic” violence.

1.1 97% Discount

The State Audit Office (SAO) published its analyses¹⁰ on the political parties’ financial operations within a reasonable deadline. Subject of the audit performed by SAO were the financial reports on the election campaign and their compliance with the legislative regulation, particularly in regard to the total amount of funds, financial sources and expenses.

The reports confirmed the existence of gaps in the Election Code as well as in the law regulating the financing of political parties. The audit did not determine shortcomings or illegal operations on the part of political parties, but it did identify the fact that the media were among the greatest donors of political parties. This is a result of the legal possibility for media to provide threshold-free discount to political parties, which are not subject to the limitation of 20,000 EUR donations as are natural persons.

The report of the ruling party VMRO-DPMNE states that a certain media outlet had granted the ruling party an advertising discount of 97 percent, which value wise is equal to 1.8 million EUR. Such examples give rise to the dilemma on whether in this way media attempt to prove their loyalty to the party or are “investing in future (in)decent cooperation with the authorities. Whatever the reason, the close liaison

between the media and the political party, undeniably raises doubts on the existence of political corruption.

Such legal solutions and the obvious practice on the ground additionally burdens, and even disables the accurate checks of political parties’ financial operations, thus reiterating the need for further precision of the provisions regulating financing of political parties. The unlimited possibility for extending advertising discounts creates gaps for political parties to manoeuvre their financial reporting and spend more than they are reporting, thus derogating the legal obligation on limited campaign spending.

Subsequently, the political parties submitted financial reports which are in compliance with the legal obligations indicating that: (1) they did not spend more than 60 MKD and 180 MKD per registered voter at constituency unit on the General Elections and the Presidential and Local Elections respectively, and (2) in no case did the financing exceed the limit of 5,000 EUR by natural persons and 20,000 EUR by legal persons for election donations.

The response and initiative¹¹ of the Broadcasting Council to further

¹⁰ SAO reports on the political parties VMRO-DPMNE, SDSM, DUI and DPA are available at: <http://www.dzr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=268>.

¹¹ “There are indications that raise doubts and concerns with such loose definitions, and enable manipulations by certain media. Moreover, knowing that numerous governmental campaigns lasted for a whole year, it leads us to think about media abuse for political party goals. The present legislative vacuum provides incentives for operations that are not fully in compliance with the law and threatens the independence of the media. I appeal to all institutions, in particular the State Commission for Prevention of Corruption, State Electoral Commission, and the Broadcasting Council, in the shortest time possible to join efforts and revise the law in question. We are deeply concerned with the unregulated gap that provides for media manipulation and corruption.”, Zoran Stefanovski, President of the Broadcasting Council, statement published in Utrinski Vesnik in the article Media Donations to Political Parties Stink of Corruption, by Katica Cangova and Svetlana Unkovska, 16th September 2009, <http://www.utrinski.com.mk/>

regulate political advertising with adequate amendments to the Law on financing political parties is to be welcomed.

The same is true for the recommendations given by the State Audit Office. Specifically, the SAO proposed the following improvements to the electoral legislation¹²: (1) to include the media discounts within the total amount of donations spent by the parties; (2) monitoring the pre-election financial operations of political parties, and not just the submitted financial reports; and (3) financial reports should include political parties' transactions made on the closing day for the election campaign account. SAO's active involvement in the possible amendments to the electoral legislation will be necessary.

In July 2009, the Parliament of the Republic of Macedonia - with consensus - adopted the Law on Financing of Political Parties which promises greater transparency of the sources of funding of political actors.

1.2 Voter List update has not commenced

Voter List's update remains a priority task knowing the identified surplus of 200,000 voters. The activities on updating the Voter List must be implemented in due time and in a transparent manner, as an accurate Voter List is the basis for the organization of democratic elections, and a longer Voter List undermines election results.

After assuming the competences from the Ministry of Justice in compliance with the Electoral Code, the updating of the Voter List

became an obligation of the State Electoral Commission (SEC). Although SEC established a coordination body, comprised of 75 members, to implement activities, the Voter List was not transferred from the Ministry of Justice to SEC by 30th September 2009, although the deadline thereof was 1st September 2009. This supports the fact that Voter List updating activities have not been really initiated.

The State Electoral Commission reports¹³ on the need for adequate equipping of the Commission for the purpose of implementing the given task. SEC must obtain adequate resources, including relevant funds, to ensure quality updating of the Voter List. Equipping with human resources was initiated with the deployment of 75 employees from the Ministry of Justice to SEC, who will clean-up the Voter List. Interesting to note is that the same 75 employees from the Ministry of Justice worked on updating the Voter List. This raises two doubts - first, concerning their capacity considering the fact that Voter List-related problems have persisted for years now, and second, the issue of whether 75 are necessary to work full time on updating the Voter List once it will be cleaned-up, especially bearing in mind the fact that the general population records are planned to be fully computerized in nearest future¹⁴.

At the moment, SEC informs that activities were initiated by two pilot-projects in two municipalities – Gostivar and Vinica. The updating process will last until next September. The task also includes

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¹² Pages 3 and 4 from the SAO reports on the political parties VMRO-DPMNE, SDSM, DUI and DPA are available at: <http://www.dzr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=268>.

¹³ SEC Press Conference, media coverage from 11 September 2009, A1 TV, "Voter List to be Updated by 2012", Katerina Canevska Arsovska; Kanal 5 TV, "Enhanced Consultations on the Methodology for Updating the Voter List".

¹⁴ Computerization of the general population records is a priority of the Government included in the "E-Government" project.

the State Statistical Office, the Ministry of Foreign Affairs, the Ministry of Interior, and the Agency for General Population Records and the Ministry of Justice.

1.3 Violent incidents unsanctioned

Criminal proceedings against the perpetrators of election irregularities in 2008 will remain assessed as uncompleted in this quarterly report as well. As a reminder, in 2008 a total of 220 criminal charges on election irregularities were raised. The Monthly Progress Brief¹⁵ of the Government for July 2009 states that by mid July, 29 people were sentenced by the first-instance court with a verdict of imprisonment, i.e., all perpetrators will serve “imprisonment sentence in the total duration of 88 years”¹⁶. The perpetrator¹⁷ of the incident in the early 2008 Parliamentary Elections, which involved a casualty, was finally sentenced, but only with a 6-months probation sentence, which somehow confirms that MPs remain untouchable even in situations when their actions result in casualties.

The impression that the authorities are not interested in resolving election irregularities, incidents and violence from the June 2008 elections and March 2009 elections remains. This shows that the public institutions continue to ignore the election irregularities, leaving the public impression that election incidents go by unsanctioned.

¹⁵ Secretariat for European Affairs, Monthly Progress Brief, Accession Partnership, No. 07/2009

¹⁶ Secretariat for European Affairs, Monthly Progress Brief, Accession Partnership, No. 07/2009

¹⁷ The perpetrator in question is Talat Dzaferi, present MP from DUI.

1.4 “Economic violence” – common practice?

The new phenomenon “economic violence” which appeared in the course of the last Presidential and Local Elections, is a direct blow to civic freedom and democracy. The issue remains neglected by the public institutions. Despite the reports of foreign monitors on the frequent cases of pre-election intimidation and threats to citizens, as well as the audio tapes of such intimidations reported by the media, the Public Prosecution failed to act and investigate such cases.

Such failure to act on behalf of competent authorities suggests that election intimidations can become tolerated common practice that goes by unsanctioned. This fuels citizens’ mistrust in the election system, public institutions and the rule of law.

1.5 Other priorities from the Accession Partnership

In addition to the benchmark on the implementation of Presidential and Local Elections in compliance with the Electoral Code, the Accession Partnership imposes the following priorities: “*deliver prompt decisions on any election irregularities and impose penalties*” as part of the short-term priorities. This, in essence, means that all efforts to “conceal” election irregularities will be treated as omissions by the Republic of Macedonia, and a new list of tasks (new Accession Partnership) will be assigned only when the current tasks are implemented.

2. PROMOTE A CONSTRUCTIVE AND INCLUSIVE DIALOGUE, IN PARTICULAR IN AREAS THAT REQUIRE CONSENSUS BETWEEN ALL POLITICAL PARTIES, IN THE FRAMEWORK OF THE DEMOCRATIC INSTITUTIONS

By definition, successful political dialogue implies a dialogue that happens regularly and covers all relevant societal issues and produces solutions that do not distinguish between “winners” and “losers”. In democratic societies the political dialogue takes place within the Parliament, and although alternatives and debates organized outside the system can help the political dialogue, they can never replace it. The measures and activities developed by the Government of the Republic of Macedonia¹⁸ in cooperation with the EU Mission in Skopje and later complemented by those contained in the Government’s Blueprint from November 2008¹⁹ were finally brought to completion.

¹⁸ Measures anticipated in the Government’s Blueprint are as follows: 1) implementing the new Parliament’s Rulebook; 2) implementing the Parliament’s Operational Action Plan; 3) Parliament consensus on matters concerning the implementation of the Framework Agreement; 4) guaranteeing consensus on matters related to the EU accession; and 5) cohabitation between the President of Government and President of State.

¹⁹ Measures and activities anticipated for fulfilling this benchmark and included in the Government’s document from March 2008 are as follows: 1) cohabitation between the President of Government and President of State; 2) Parliament’s consensus on matters concerning the implementation of the Framework Agreement; 3) establishing regular communication and cooperation within the Parliament; 4) intensifying Parliament consultations (for the purpose of adopting Parliament’s Rulebook by consensus); 5) Parliament’s Operational Action Plan; 6) operation of the National Council on European Integration; and 7) taking measures based on the findings of the Parliamentary Inquiry Committee concerning the clashes that took place in Parliament.

2.1 Law on Parliament sees the light of day

According to the Government’s Action Plan, the Law on Parliament was to be adopted in September 2008. The adoption thereof was delayed on several occasions. Even the work on the draft-text was delayed without any particular reason, although there are assumptions that such delays were done in light of securing broader consensus and representation of political parties’ interests. It is exactly in the last several weeks, that the major changes and adjustments to the law were made.

The Parliament’s Rulebook was adopted 18th July 2008, without the opposition. In the meantime, the opposition proposed amendments. The adoption of the Law on Parliament of the Republic of Macedonia was used by the opposition as a bargaining chip to re-introduce the amendments to the Rulebook earlier this spring counting on the fact that the time for debate in the Parliament is favourable. Amendments to the Rulebook, however, did not happen, but an agreement was reached that in due time the issue will be opened.

In the meantime, efforts were made to achieve broader political consensus for the adoption of the Law on Parliament of the Republic of Macedonia by all political parties represented in the Assembly voicing different interests and goals. Apart from the opposition’s persistence to amend the Rulebook, the Albanian political parties, and Nova Demokratija (New Democracy) in particular, insisted on legislative solutions on the use of the Albanian language in the Parliament of the Republic of Macedonia as the second official language. The Democratic Union for Integration (DUI), by means of changing sides on two

occasions, was of key importance for securing the necessary majority for the law's enactment.

The analysis of the Law on Parliament of the Republic of Macedonia in comparison to the Parliament's Rulebook and the Constitution of the Republic of Macedonia showed that the three acts regulate the same matter. All three acts are focused on the Members of Parliament and their authority and terms of office, while little attention is paid to the regulation of the Parliament's organization, and its operation.

The adoption of the Law on Parliament stemmed from the need to enhance its supervisory role, political dialogue and the transparency of the institution, as well as the MPs. Therefore, it is quite understandable that the law includes several provisions on financing the operation of the Parliament, the work of Parliamentary broadcasting channel, MPs contacts with citizens and the Parliament services.

The provisions related to the Budget Council within the Parliament of the Republic of Macedonia and the Parliamentary broadcasting channel is essential for the law because of their contribution to enhancing the political dialogue. The Budget Council is competent for planning and monitoring the expenditure of the budget allocated for the Parliament. The Parliamentary channel aims to provide public information on the work of the Parliament and creates greater political and civic culture. Both chapters of the law, if applied properly, will secure greater independence of the Parliament and shift the political dialogue from the leaders' meetings with the Government into the Parliament.

Finally, the law must address the issue of the clashes within the Parliament. It establishes a separate service on public order within

the Parliament, and bans carrying arms in the Parliament building. Time will show whether such provisions will secure a Parliament free of clashes and incidents.

2.2 Not even the Encyclopaedia shook up the Inter-Ethnic Relations Committee

The Inter-Ethnic Relations Committee fails to identify inspiring topics for discussion. Neither the high-school students in Struga, nor the initiatives for building churches/mosques on the Skopje square were not considered interesting enough for the Committee to take up a proactive role and develop a position to offer to the Parliament or the Government. The last in the line of "unattractive" events that failed, yet again, to catch the Committee's attention was the launch of the "Macedonian Encyclopaedia" promoted by the Macedonian Academy of Arts and Science (MAAS).

Consumed with disappointment and offended by the encyclopaedia's contents, the Albanian intellectuals were the first to react, followed by the Macedonian intellectuals, the politicians and, finally, the citizens. Seen from the positive side, the encyclopaedia demonstrated that the Macedonian society has matured for a democratic debate and peaceful conflict resolution on such delicate matters.

The public was disturbed by serious statements, most of them fuelled by the publication of the encyclopaedia. Nevertheless, the most serious statement that strongly impacted the inter-ethnic relations in Macedonia was the statement given by DUI's leader, Mr. Ali Ahmeti,

implying that the peace achieved in 2001 was violated²⁰. Unfortunately, not even this statement was enough to stimulate the Inter-Ethnic Relations Committee.

Regrettably, the encyclopaedia contains more scandalous benchmarks that do not affect just the Albanians in the Republic of Macedonia. Of course, if the MAAS tends to represent the culmination of Macedonian science²¹, it must get involved in more serious scientific research and analyses instead of being unfair competition for publishers by developing encyclopaedia with funds from the central budget. If MAAS aspires to become a serious institution, it must democratise within, and this implies the virtue to demand accountability from the people involved in this unwarranted epic.

The Inter-Ethnic Relations Committee should not deal solely with the procedure and majority required for legislation enactment. This Committee is the defender of the unity between all communities in the country.

2.3 European laws on public hearings at the NCEI

In the reporting period, the composition of the National Council

²⁰ In his statement on the debate broadcasted on TV Klan from Tirana, Ali Ahmeti said: "It has been eight years since the peace-making. Peace was restored after the signing of the Ohrid Agreement. This truce was violated by Blaze Ristovski, acting as the irresponsible and senseless soldier of his people". The statement was re-broadcasted in the current affairs programmes on several media outlets in the Republic of Macedonia - <http://www.a1.com.mk/vesti/default.aspx?VestID=114213>

²¹ Science in the Republic of Macedonia is not exclusive to the Macedonians!

for European Integration (NCEI) was subject to additional changes and gained two new members – the former NCEI member Natasa Savova Salkovska was replaced with the present Advisor to the President, Dimitar Mircev, and Ivica Bocevski was replaced by Vasko Naumovski as the present Deputy President of the Government responsible for European Integration. Changes were also made in the representative of the Association of Local Self-government Units (ZELS), where the former member Koce Trajanovski was replaced with Zoran Angelov, present Mayor of the Municipality of Stip.

According to the internal organization and the job classification system, the Council is to employ 12 people. This year, NCEI initiated its work with only two employees. In the aftermath of the elections, the Council was equipped with seven new civil servants. The process of candidate selection was led by the Parliament, while NCEI was not involved nor consulted in the recruitment process.

At the moment, the Council has nine employees, working in the Administrative Support Department (a political analyst, lawyer and a pedagogue), whereas the Department for Monitoring European integration has a business administrator, and two professors of Macedonian literature and South-Slavonic literature employed as advisors on European integrations and for monitoring the negotiations²². It is more than obvious that NCEI will have to wait a bit longer for the analyses that this Department needs to develop for NCEI-members with such educational background of the new recruits.

²² For more information on the operation of the National Council for European Integration see the Second Quarterly Monitoring Report on NCEI from September 2009, drafted by the Macedonian Centre for European Training for the NGO Info-Centre.

Despite all limitations, in the reporting period, NCEI managed to organize several important public debates and meetings, those being: public hearing on the working text of the draft-law on free legal aid²³; public hearing on the working version of the Criminal Procedure Code and the draft-amendments to the Criminal Code²⁴; meeting with Olli Rehn, Enlargement Commissioner in the European Commission²⁵; public hearing on the amended draft-law on Prevention of Conflict of Interests²⁶; public hearing on the amended draft-law on Civil Servants²⁷, and public hearing on the amended draft-Labour Code²⁸.

2.6 Other priorities from the Accession Partnership

In addition to the benchmark on political dialogue, the Accession Partnership identifies other tasks for the Republic of Macedonia. Some of them address the regional cooperation and development of good neighbourly relations where the Parliament plays the key role. Some of these commitments are currently being implemented, but others require additional efforts by the Government and the Parliament, those being: 1) *enhance the capacity of Parliament, notably by increasing its resources*; 2) *continue to cooperate fully with the ICTY and, in view of the possible return of files from the ICTY, meet all the necessary preconditions that would ensure due process*; 3) *continue to promote the*

transition from the Stability Pact to a more regionally owned cooperation framework and effective implementation of the Central European Free Trade Agreement (CEFTA); 4) *ensure good neighbourly relations, in particular by intensifying efforts with a constructive approach to find a negotiated and mutually acceptable solution to the name issue with Greece, in the framework of UN Security Council Resolutions 817/93 and 845/93 and avoid actions which could negatively affect them*; 5) *foster cooperation with neighbouring countries and ensure effective implementation, notably on cross border cooperation, the fight against organized crime, trafficking and smuggling, judicial cooperation, border management, readmission and the environment*; and 6) *promote regional dialogue, stability, good neighbourliness and cooperation.*

3. ENSURE EFFECTIVE IMPLEMENTATION OF THE LAW ON POLICE

The progress achieved in police reforms seems to be endangered with the enormous delay in the implementation of the measures anticipated for 2009. Almost without any exception, the implementation of anticipated activities is either lagging behind or has not been initiated at all, thus undermining the last year's progress made in this field. The Republic of Macedonia still needs to demonstrate results from the implementation of the reforms in this field, including active measures for eliminating influences over the Police and securing full professionalism, independence and unbiased behaviour.

Despite the criticism addressed at the Ministry of Interior (MOI), the Parliament of the Republic of Macedonia adopted the Law on

²³ 14 July 2009.

²⁴ 22 July 2009.

²⁵ 23 July 2009.

²⁶ 31 July 2009.

²⁷ 27 August 2009.

²⁸ 4 September 2009.

Internal Affairs in July 2009, almost six months behind the anticipated deadline. In record time, MOI succeeded in adopting the entire set of secondary legislation stipulating in detail the introduction of the carrier advancement system, thus fulfilling the conditions set forth in this benchmark. The Republic of Macedonia still needs to demonstrate implementation of reforms in this field, as well as implementation of active measures for eliminating influences over the Police, achieve the actual transformation into community policing by complete regulation of competences and authority of the State Security Authority (SSA).

In assessing achievements made as part of this benchmark, the present analysis will focus on the indicators addressed in the previous report.

3.1 Big shortcomings in the new Law on Internal Affairs

Despite its adoption with political consensus, the Law on Internal Affairs failed to take into consideration the comments and recommendations from civil society stakeholders²⁹. Time will show that the Law, in most part, will create problems.

What was expected from the law was to complete the transformation of the Police into a service for the citizens, which unfortunately was not achieved. The fears that in a non-transparent procedure MOI will attempt to strengthen the Police's position on the account of

²⁹ "It is our intention to be open, both for the expert public and the nongovernmental sector... to some extent we accept their recommendation, at this stage we are unable to accept some of them, but our goal is to improve conditions within the Police, change the old mindset from a different system" – statement given by Gordana Jankulovska for a BBC interview, July 2009.

human rights protection were confirmed. MOI completely ignored the indications of the existing risk from broad application of interception measures, as well as the recommendations for establishing efficient and independent internal control and standards mechanism. Nevertheless, encouraging is the fact that MOI is aware of the shortcomings in the law and is currently working on introducing the carrier advancement system, while other issues will be subject of analysis, debate and additional changes. Hence, Minister Jankulovska, in the BBC interview from July 2009, provided the following answer to the criticism coming from civil society: "Well, most probably an oversight was made in regard to these issues, in particular on the presentation of the law's concept indicating that our goal at this stage was to change the law in regard to the carrier system, whereas the matter in question falls under the chapter of public security – it is a fair carrier and recruitment system in the service...thus leading to complete depoliticisation of the Police".

If the Government is to demonstrate a truly reformed Police service, it will need to immediately - now that the Law on Internal Affairs is adopted - establish a broad working group that would include all stakeholders, including experts and civil society representatives, to draft amendments to the law aimed at creating greater supervision over the Police and transform the Security and Intelligence Authority (SIA) into a contemporary police service.

3.2 No external supervision of the Police

Police supervision remains unaligned with international standards even with the adoption of the Law on Internal Affairs. The provision

stipulating that MOI work will be supervised by the Parliament and the Ombudsman seems illogical³⁰. In no case can this represent an independent, unbiased and efficient mechanism for preventing police power abuse. Full harmonization with the European Convention on Human Rights and the Framework Convention on Protecting National Minorities has not been achieved, neither have the recommendations of the Committee against Torture been incorporated in the relevant acts. The proposal of the working group defining the new supervision concept for police was not integrated, and it seems that the law ignores the current supervisory mechanisms available to the other public bodies such as the Public Prosecution³¹, the judiciary³², and the local governments³³, not to mention civil society's control over the work of the Police in line with the European concept.

The law does not provide for any real control of the Parliament over SIA. The law stipulates that SIA should submit to the Parliament Committee its programme and report, but no provisions stipulate the possibility for the committee to give its feedback and propose follow-up actions. These solutions are in discrepancy with the Penitentiary Reform Strategy, and the new draft solution incorporated in the Law on Criminal Procedure (LCP). The issue of poorly coordinated reforms at the Ministry of Justice and the Ministry of Interior needs to be reiterated since it is unacceptable in the European integration process, especially when assuming the legislation and obligations in this field.

³⁰ Article 41, Law on Internal Affairs.

³¹ According to the Constitution of the Republic of Macedonia and Law on Public Prosecution, the Public Prosecutor is leading the investigation.

³² According to the LCP, the court decides about the lawful actions of the Police.

³³ Local governments are competent for appointing police station chiefs.

Such a system results with police-officers abusing power on regular basis.

No activities have been taken in regard to the European Parliament's recommendation on the Khaled El Masri case³⁴, who personally lodged criminal proceedings at the Public Prosecution. Because of the summer vacation in the courts in the reporting period, no progress was made in the Khaled El Masri's case suing for damages in national courts³⁵, nor can progress be reported in the misdemeanour proceedings in Basic Court in Skopje against 14 people charged with the organization and participation in the demonstrations on the city square from 26th March 2009³⁶.

In December 2008, Macedonia ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. This actions, however, seems to have failed to strengthen the fight against torture. The Optional Protocol is not implemented yet, nor has the national prevention mechanism been established. Frequent media coverage of this kind seems to have accustomed the citizens of Macedonia to torture and similar actions.

³⁴ 2008 Report, pg. 13.

³⁵ Interview with the lawyer of Kahled El Masri in Macedonia, September 2009.

³⁶ Interview with some of the organizers against who misdemeanour proceeding were filed.

3.3 Judiciary has no primacy in intercepting communications

The judiciary continues to fail in securing primacy in the implementation of interception measures, thus leaving the space for too broad use of such measures by the MOI. Although the NPAA anticipated measures to strengthen court supervision of interceptions on the level of government, such measures have not been discussed with the expert public, let alone incorporated, although the deadline for adoption was May 2009. In support of the urgent need for improving this situation is the present environment where – as never before – people believe that they are being intercepted and are reluctant to discuss politics in common telephone conversations³⁷.

3.4 The “secret police” goes legal in democratic Macedonia³⁸

Most of the comments to the Law on Internal Affairs were addressed to the role, competences and power of the SIA, which de jure was setup as a “secret police”, although the Constitution of the Republic of Macedonia does not provide such an organisation. This concept is in discrepancy with the Law on Public Prosecution, Law on Criminal

Procedure, the national concept on security and defence, as well as the legal standards and supervision rules for security and intelligence services endorsed by UN, OSCE and OECD. All expectations that the adoption of the Police Law – stipulating also public security – would finally provide solutions for state security following the example of contemporary European democracies remain unfulfilled.

It seems that the adopted law fails to achieve the standards set forth in the Macedonian Strategy on Modernizing the State Security Service, while another delay of these reforms are “justified” by alleged risks on the stability of the State. The current solution does not guarantee the rule of law and human rights protection, and fails to provide basis for eradicating arbitrary and political abuse for the benefit of the ruling political elites.

SIA should be focused on planning and implementing intelligence, processing and forecasting information, supervising and coordinating activities on the territory of the Republic of Macedonia. For that purpose, just as any other or similar services in the Western democracies, SIA should collect, analyse and assess data and information on the action of individuals, groups, organizations and foreign services on the territory of the Republic of Macedonia aimed against national security, and not act as an elite secret police from the former Eastern European countries.

There is no legal or factual basis for SIA to act as a secret criminal police on serious offences of organized crime. SIA cannot be part of the Police which under the management of the Public Prosecutor works on criminal investigations. The concept of judicial police³⁹ includes

³⁷ BBC journalist experience, as mentioned in the interview with Minister Gordana Jankulovska from July 2009.

³⁸ Most of the theses in this section were taken from the Opinion on the new Law on Internal Affairs developed by Transparency MK, and part of the project supported by FOSIM, as well as from the Conclusions from the round table organized on the topic “New Law on Internal Affairs through the Legal Lens”, May 2009, hotel “Arka”, Skopje.

³⁹ This is stipulated in the new draft Law on Criminal Procedure.

close cooperation with the heads of MOI departments, the Financial Police and the Customs Administration working together on detecting and raising charges against criminal acts under the competences of the Public Prosecutor. This - in our knowledge - cannot be expected from SIA. On the other hand, the Sector for Organized Crime is the most powerful sector within the MOI, with a long standing cooperation with SIA and the Public Prosecution, due to which there is no reason for this service to meddle with apprehending criminals.

SIA's competence on detecting and apprehending criminals raises concerns from the aspect of cooperation of the Police and the Prosecution with Europol and Eurojust as national security services. By rule, national security services are not subject to personal data protection standards, which are an important element of the international police cooperation.

Moreover, the law does not provide details on the *“special measures and methods on secret data collection”*, nor does it provide reference to any other law that also applies (Article 23). With the adoption of the Constitution of the Republic of Macedonia in 1991, all secondary legislation of MOI governing the powers of national security services (secret searchers, etc.) remained without legal effect and - as far as general knowledge is concerned - from that time onwards SIA is acting without special legally stipulated methods. The measures for secret data collection that temporary limit certain civic rights and freedoms can be applied only for legitimate purposes and based on the Law on Criminal Procedure, and only if the data cannot be collected in any other manner or if its collection implies disproportionate difficulties.

Also disputable are the solutions for using the data gathered by means of secret measures, along with the manner in which SIA will

operate, including its authority, responsibilities and rights, and its relation with the Public Prosecution. SIA must get rid of the policing component of its operation and focus on its core intelligence functions such as: identification and duly prevention of threats on national security obtained from foreign intelligence services or organizations and individuals involved in spying activities, sabotage, subversive actions or terrorism.

3.5 Finally a Carrier System in MOI

For the first time in the Republic of Macedonia, the Law on Internal Affairs introduced a carrier system in the Police structure. Ultimately, this will narrow the possibility for the politicisation thereof and eliminate excessive influences of the authorities. Accurate criteria and standards are expected to result in MOI carrier advancement and promotion based solely on expertise, competence and professionalism, thus eradicating the politicisation of senior police officers that led to power abuse⁴⁰.

Immediately after the adoption of the law, the Ministry developed and adopted the secondary legislative acts and rulebook, thus completing the legislative framework. The following by-laws were adopted: 1) Form and Contents for Service Identification Card and Badge, as well as the Manner of Issuing Service Identification Cards and Badges to Authorized Officers on Special and Civil Matters and Security and Intelligence Matters; 2) Rulebook on Training Employees at MOI; 3) Pricelist for MOI-issued Forms and Applications; 4) Manner and Procedure of

⁴⁰ Noted by the European Commission, 2008 Progress Report.

Operation of the Committee for Selecting Police Officer Candidates; 5) Manner and Procedure for Selection and Recruitment of People at MOI; 6) Manner and Procedure for Carrier Advancement of Authorized Officers; 7) Manner and Procedure for Performance Assessment of Authorized Officers, Assessment Report Contents, Assessment Form and Recordkeeping; and 8) Form and Content and Management of MOI Personnel Files⁴¹.

The law limits the discretionary rights in the appointment of senior management officers and anticipates a set of objective and somewhat measurable criteria for promotion purposes. The law is expected to increase the motivation of employees, and thus Police efficiency, as it introduces the carrier system with predetermined conditions and criteria on promotion, including the deadlines and the hierarchy therein.

The successful introduction of the new carrier system will undoubtedly depend on the delivery of training for all MOI employees. In the reporting period, the Training Centre in Idrizovo initiated training on the introduction of the carrier system as stipulated by the law. The initial training addressed the horizontal and vertical carrier promotion, manner and criteria for performance measurement, disciplinary actions and novelties in sanctioning and degrading police-officers. The training is lagging behind, and considering the anticipated timetable thereof it will not be completely implemented in 2009.

Although the Law introduced the carrier system, it failed to provide definitions for “authorized officers” and to stipulate criteria for assessing complexity of work, performance, and conditions, as well as

⁴¹ Although adopted, most of these by-laws are still not published in the Official Gazette. The assessment of their quality will be subject of the next quarterly report.

special duties and powers. Thus, the Police Law created a gap crucial for proper implementation.

The positions Minister, Deputy Minister and State Secretary⁴² are political functions and should not enjoy the status of authorized officer. In addition, concerns are raised with the solution that certain MOI employees are authorized officers, although in essence they are not civil servants⁴³. This indirectly is a disincentive for police-officers and undermines the carrier system from the very beginning.

3.6 Futile or fruitful fight against corruption within MOI?

In July, the Ministry of Interior presented its Annual Operation Report to prove that the Police work in a transparent manner. According to the report, in the first nine months of this year, criminal prosecution measures have been taken against 98 employees within the Ministry. 114 criminal charges were filed against 90 criminal acts, most of which (61) concern “abuse of official position and power”, four charges against “bribe acceptance” and four against “counterfeiting service identification documents”. On the grounds of carelessness, management officers were replaced in the police departments in Kicevo and Kumanovo⁴⁴.

⁴² In compliance with the new Law on Civil Servants, September 2009.

⁴³ This solution has financial implications, considering the increased number of authorized civil servants whose salaries are 30% higher, and enjoy 100% salary reimbursement when on sick leave and other benefits.

⁴⁴ MOI report, Fight against Corruption within the MOI 2007-2009, published on the Ministry's website on 21st September 2009.

Only in the reporting period more than forty border-police officers were arrested for accepting bribes. For the authorities this venture is a successful action against crime and corruption, but then: *“The last police action “Boomerang”, unfortunately, confirmed the impression that lack of clear criteria for employee recruitment, as well as criteria on carrier advancement and penalties for abuse practices in the Police and the institutions in general, can be destructive”*⁴⁵.

MOI finally admitted the existence of corruption among its employees and tried to address such mishaps. Nevertheless, such activities have raised concerns with the academic public and the civil society. Actions involving a large number of police officers suspected of corruption, including the lowest ranks, seem to be undertaken too frequently. This indicates that the problem within the Ministry is serious. The extent of corruptive behaviour needs to be determined and a systemic solution must be sought by the competent institution.

Initial assessments of MOI actions of this type raise concerns in terms of their success. Is the MOI system “conductive” to corruptive behaviour by police-officers, and is the fight against corruption selective and politicized? MOI initiated these actions back in 2007 with the apprehension of more than 45 police-officers, nine custom officers and three catering workers from the border crossing points in Tabanovce, Medzitlija, Deve Bair, Delcevo and Bogorodica on the account of accepting bribes. They were replaced with new employees. Two years later, history repeats itself. The concerns whether “Boomerang” will have the same destiny as the previous action “Snake Eye”, which did

not pass the courts, are justified. Will anyone in the Police be held accountable for this?

3.7 Political party cleansing or European reform?

For the purpose of reducing the number of police-officers pursuant to the Law on Internal affairs, a massive number of people will retire in the following 5 years. By 2010, 1,000 police-officers will retire, while by 2014 a total of 2,100 authorized staff will have retired. This measure is in line with the recommendations from the European Commission that warned on the excessive number of police-officers considering the size of the population.

Year	MOI employees	Macedonians	Other ethnic communities
2000	10.000	92%	8%
2003	11.500	84%	16%
2009	12.000	79,67%	20,33%

Table 1 – Overemployment trends in MOI⁴⁶

Retirement is just one way of decreasing the number of police-officers, and increasing the equitable representation of ethnic communities within the Police organization. This will accelerate the Police reform to achieve the projection set forth in the National Strategy on Equitable

⁴⁵ Statement of the Minister Gordana Jankulovska in an interview for Radio Free Europe, September 2009.

⁴⁶ Due to Police reforms, early retirement for 1,000 police-officers, text published in the daily Vest on 11th September 2009 and available at <http://www.vest.com.mk/?ItemID=B15E04094119F84584B9F44C4199CAF6>

Representation within the Police. Despite continuous increase of employees from ethnic communities, the fact the higher levels of the Police service are not involved in equitable representation is quite concerning. Bearing in mind the new carrier system, this problem will remain to be solved long-term.

Discerning are the provisions on massive retirement as they are based on the so-called “working experience with benefits”. All police-officers approaching their 40 years working experience will be retired in the following five years⁴⁷. The opposition labelled such a practice as political cleansing⁴⁸. This re-introduces the grounds for retirement to be working experience, rather than age. Such a provision is considered discriminatory in relation to other citizens, since MOI employees are deprived from the opportunity for voluntary retirement. Pension benefits will amount up to 80% of the average salary received in the highest income ten years from their employment, contrary to the stipulations for the general population whose pension benefits are based on the average income of their entire employment. In addition, police-officers will also be entitled to severance pay in the amount of five average wages. 180 million MKD have been anticipated in the MOI budget, 90 million of which for the year 2010⁴⁹.

The authorities cannot overlook the fact that changes in the Police of the Republic of Macedonia will not start, let alone end with the changes in the Police organization structure, or changes in the

functions within its human resource management organization. The essence of changes lies in the understanding that the power of the Police does not lie in the law, but rather in the art of protecting human rights and dignity, even when fighting crime, which unfortunately was not mirrored in the new Law on Internal Affairs.

3.8 National Crime and Intelligence Database adopted without political dialogue

In the reporting period, progress was made in terms of developing and establishing the National Crime and Intelligence Database to enable more efficient data exchange between the institutions involved in the fight against organized crime. The legislative framework was adopted by the Parliament in the first reading.

Unfortunately, as was the case with the Law on Internal Affairs, the procedure for adopting the Law on National Crime and Intelligence Database raised concerns. The law, due to criticism, was initially withdrawn from the Parliamentary procedure only to be enacted in the first reading procedure, in the absence of the opposition (which requested its complete withdrawal and a new draft-law) and without the support from the Parliamentary Committee for supervising interception measures taken by the Ministry of Interior and the Ministry of Defence⁵⁰.

Although the need for the National Crime and Intelligence Database is undisputable, the manner in which this area is governed

⁴⁷ Article 162, Law on Internal Affairs, Official Gazette of the Republic of Macedonia No. 92/2009.

⁴⁸ Statement of MP Jani Makraduli, transcript notes, Parliament of the Republic of Macedonia.

⁴⁹ Statement of Ivo Kotevski, MOI's Spokesperson.

⁵⁰ Transcript notes, 71st session of the Parliament of the Republic of Macedonia.

raises concerns. According to the opposition, the draft-law is non-constitutional and will not contribute to the efficient fight against crime and corruption. Key remarks are addressed on personal data protection and assumption of innocence, as well as the role and participation of the Public Prosecutor, the involvement or lack of involvement of the Ministry of Defence and the Intelligence Agency, the supervisory body, and the funding necessary for full implementation of the system.

Due to the delicate and sensitive nature of the protection of human rights and freedoms, the identified inconsistencies in the adopted law are unacceptable. Improving the draft-law text in a transparent procedure and with a broad consultation process and full political dialogue will be of crucial importance prior to its second reading.

The law, which is to introduce an integrated database system, will be enforced from the 1 January 2012 so as to allow the installation of the complete equipment, connecting institutions and staff training. Initially, according to the MOI Strategic Plan, the project was anticipated by the end of this year, while the overall investment amounts to 5.6 million EUR. This obligation was also anticipated in the National Strategy for Fighting Organized Crime from 2004.

The introduction of the National Intelligence Database aims to overcome problems and barriers in the inter-sectoral cooperation, such as insufficient coordination among the institutions, insufficient use of data, unduly data exchange, increased costs and irrational deployment of material and human resources, standardization of data formats at competent bodies, information exchange and cooperation with international organizations, exchange of analytical products and developing joint analyses, as well introducing an early warning system

that would generate and send electronic alarms to competent bodies dealing with investigations.

Assisted by the European Commission, the Republic of Macedonia became part of the regional project on establishing the system for international coordination of law enforcement agencies. Hence, in September 2009, the Ministers of Interior from Macedonia, Albania, Bosnia and Herzegovina, Croatia, Montenegro and Serbia signed the Memorandum of Understanding on the support and establishment of international coordination units within their law enforcement agencies. The project anticipates the creation of International Coordination Units tasked with supporting information exchange in international investigations and facilitating operational level communication.

3.9 Other priorities from the Accession Partnership

In addition to the benchmark on “effective implementation of the Police Law”, the Accession Partnership sets forth a number of other obligations for Republic of Macedonia to achieve. Some of these tasks are being implemented, whereas others require additional efforts. The other priorities foreseen are the following: 1) implement fully the rules applying to ethics, internal control, professional and human rights standards in law enforcement agencies, the judiciary and the prison administration, including by regular training; 2) prepare a national strategy and action plan for building up the capacity necessary to implement and enforce the acquis in each area covered by intellectual property law, with particular focus on the need to provide specialized training for law enforcement bodies, judges, prosecutors and customs

officials; 3) develop public awareness campaigns (on intellectual property) and improve cooperation among law enforcement bodies and between all relevant stakeholders; 4) build up the capacity necessary to implement and enforce the acquis (on intellectual property) and establish a satisfactory track record on investigation, prosecution and judicial handling of piracy and counterfeiting; 5) continue to implement the integrated border management action plan, develop the main databases for border management and ensure that they are connected, upgrade equipment for document analysis and border surveillance, ensure effective implementation of requirements for delivery of high-quality travel and identity documents and provide further training for staff; 6) provide adequate funding and training for implementation of the police reform. strengthen the coordination and cooperation between the police and other law enforcement agencies and strengthen the cooperation between criminal police and the public prosecutors; 7) develop and implement a comprehensive human resources and training strategy for the police and upgrade their equipment; 8) further intensify the fight against organized crime, notably by making better use of special investigative measure and by promptly issuing and following up international arrest warrants (including for computer crime, with a special focus on child pornography), and create an integrated intelligence system for inter-agency use in the fight against organized crime, including trafficking in human beings, arms and drugs; 9) strengthen efforts to implement the national action plan to combat human trafficking and the capacity to investigate computer crime; 10) implement the EC/Republic of Macedonia readmission agreement and negotiate readmission agreements with the countries of origin of transiting migrants; 11) ensure alignment of asylum and aliens acts with the relevant acquis.

4. ESTABLISH A SUSTAINED TRACK RECORD ON IMPLEMENTATION OF JUDICIARY REFORMS, AND STRENGTHEN THE INDEPENDENCE AND OVERALL CAPACITY OF THE JUDICIAL SYSTEM. IMPLEMENT THE REFORM OF THE PROSECUTION AND FINALIZE THE APPOINTMENT OF THE JUDICIAL COUNCIL

The Government's Action Plan from March 2008 and the eight measures anticipated therein⁵¹ are formally implemented, except for the fourth (operational IT-Centre for the judiciary) and seventh measure (supporting the strengthened role of Public Prosecutors in pre-trial procedure and in intercepting communications). This report will not include the qualitative analysis of these measures, as the Government, in the meantime, abandoned the implementation of this plan and developed a new Action Plan for this benchmark, which anticipates the following objectives: 1) sustainable track record from the judicial reforms, accompanied by the new structure of the Appeal Court and Higher Public Prosecution in Gostivar; 2) sustainable track record from the Administrative Court and amendments to the legislative framework in light of introducing the right to appeal in administrative lawsuits; 3) recruitment of graduates from the Academy for Training Judges and Public Prosecutors; 4) establishment of a fully operational unified data collection and processing system; 5) establishment of

⁵¹ More information can be found in the Second Quarterly Accession Watch report, pg. 29.

permanent control over appointments related to judicial reform plans and decided by the Judicial Council and Council of Prosecutors; and 6) improving budgeting and payment within the judiciary system, as well as improving human resource management.

4.1 Misdemeanour Law remains unaligned

In this reporting period, as was the case with the previous, no additional efforts were made in light of further alignment of laws with the Misdemeanour Law or in light of establishing new misdemeanour commissions. It seems that for some time now the number of misdemeanour commissions remains unchanged – 41, more than a third of which (16) have been established within the Ministry of Interior. The small number of misdemeanour commission established within local administrations raises concerns.

In the first six months of 2009, a total of 122,992 cases were filed in front of misdemeanour commissions, 56,895 of which concern 2008 workload, while 66,097 are newly filed misdemeanour charges. From the total number of filed cases in the first six months, 55,222 have been solved, i.e., almost 45%, which is a positive trend.

The absence of a tendency to establish misdemeanour commission within the newly established independent and regulatory bodies remains disappointing. Moreover, worrying is the fact that the number of misdemeanour lawsuits for which the Supreme Court applied the statute of limitations remains unknown. It seems there are no intentions of calculating the financial implications due to failure to act in misdemeanour cases.

4.2 Less than one third of cases executed

The Execution Law and the Execution Procedure Law continue to be implemented simultaneously in old execution cases filed in the Basic Courts throughout the country, although their transfer to executioners was delayed for 1 July 2010.

According to the data processed, the Ministry of Justice in the first six months of 2009 transferred 46,719 claims to executioners, 12,710 of which are collected, thus accounting for a realisation rate of 27%, which is by 2% higher than in 2008. Due to the low collection of claims submitted by the Attorney General, and with the intention to demonstrate success of the new execution system, the Ministry of Justice persists in abstracting the cases where public institutions appear as trustees in their analyses. Namely, when these cases are not considered, the collection rate is significantly higher and accounts for 48% in 2009.

The document prepared by the Secretariat for European Affairs⁵² in an attempt to provide reasons for low level of execution from public institutions states that *“execution claims addressed to the Attorney General of the Republic of Macedonia are not processed in accordance with the same timetable applied for claims addressed to the natural and legal persons, as the Attorney General, with the exception of initial administrative fees, is unable to settle in advance other execution claims, as they require significant budget funds”*. The state either has no interest to collect its claims or the execution fees are higher than the collectable debt? The reasons remain unclear, but one thing is sure

⁵² Information on the Realisation of Key Priorities from the Accession Partnership for the period November 2008 – May 2009, pg. 15. 30

– the state puts other debtors, whose claims have been successfully collected, in an unfavourable position.

4.3 Amended Mediation Law to make mediation popular

The amendments⁵³ to the Mediation Law⁵⁴ adopted by the Parliament on 10th September expands the scope of mediation to family and criminal disputes⁵⁵ (administrative disputes are once again exempted), regulates the role of the Chamber of Mediators, shortens the duration of the mediation procedure from 60 to 45 days, and stipulates the criteria for fees and costs for mediation cases. Moreover, the possibility for the court in the first-instance procedure to refer the parties to mediation is also foreseen.

It seems the amendments were directed to improve the operation and efficiency of mediation in Macedonia, as the previous implementation thereof was unsatisfactory. Although the success rate is high (above 77%), the number of mediation cases is extremely low. Hence, by July 2009, only 118 cases were initiated, 89 of which were accepted and 29 rejected. 69 from the accepted case were amicably settled, 15 cases have not been resolved and 5 were closed on the grounds of expired deadlines⁵⁶.

⁵³ Analysis of the enforcement of the Mediation Law remains inaccessible for the public. According to the law's rationale *"the information on the enforcement of the Mediation Law, submitted to the Government of the Republic of Macedonia, included the analysis of legal provisions, as well as overview of mediation activities, all for the purpose of ensuring an enforceable and modern law, as well as providing fast and cost-effective dispute resolution beneficial for both parties concerned."*

⁵⁴ Official Gazette of the Republic of Macedonia no. 114/09

⁵⁵ Administrative disputes are not included.

⁵⁶ Ibid., pg. 16.

4.4 Automated Court Case Management System is still not implemented

Almost all courts are late in the implementation of corrective measures set forth following the inspection performed by the Ministry of Justice in 2008⁵⁷. In circumstances when some courts still lack the required IT and software equipment for implementing these provisions and court administrations, one of the key anti-corruption measures in the judiciary – Automated Court Case Management System – is undermined.

4.5 European Court on Human Rights decisions can wait until 2010

In the previous reporting period the adoption of the Law on Republic of Macedonia's Representation in front of the European Court on Human Rights in Strasbourg and Law on Execution of Rulings Taken by the European Court on Human Rights was praised as positive step forward as it was expected to strengthen the Republic of Macedonia's alignment with the Strasbourg case law. The anticipated deadlines for putting these laws in effect have expired. The law remains letters on paper without actual efforts for enforcement. Combined with the situation in regard to Strasbourg rulings' execution, as well as the fact that no comments and publications on the European Court on Human Rights case law are made, the Government's plan to initiate the development of a methodology and mechanism on continuous monitoring and analysis of aligning national legislation with the European Court on Human Rights case law for 2010 is deemed unserious.

⁵⁷ In 2008, the Ministry of Justice performed inspections at all courts in the Republic of Macedonia. Most, but not all reports are available on the Ministry of Justice's website: www.pravda.gov.mk

4.6 Juvenile Justice

The procedure for appointing the members in the National Council on Prevention of Juvenile Delinquency is still underway. Activities related to the establishment of the juvenile correction facility are also late. The preparation activities for successful law enforcement however, are undertaken, the training of social work centre employees is underway and the information material in the form of operation manuals for the social work centres is developed. In light of monitoring law enforcement, the registries for inter-municipal social work centres recordkeeping and children aid and protection measures are developed and distributed, as well as the register on children and juveniles at risk aid and protection measures to be maintained by the Ministry of Labour and Social Policy.

4.7 Execution of sanctions without rules!

The implementation of the Execution of Sanctions Law depends on timely adoption of the secondary legislation; training delivered and improved conditions at the penitentiary facilities. Unfortunately, the implementation of these activities is late. Not enacted remain the following by-laws: for example, aligned internal rules for penitentiary and correction facilities, which is in the final drafting stage, although, according to NPAA, it was to be adopted in last March. The Strategic and Action Plan of the Agency for Execution of Sanctions sets the need on increased number of employees proportionate to the number of inmates at correction facilities. Amendments to the Execution of Sanctions Law are currently undertaken and exclude the establishment of the Training Centre for the benefit of the new centre following the

instructions from the Council of Europe experts. The Operation Plan on Education addressing all sectors at the penitentiary and correction facilities is currently being developed, while training is anticipated to commence by the end of the year. With a 2-months delay, the new detention ward at Skopje Prison was opened on 29th July 2009. This increased the prison's capacity for 170 people, thus its total capacity was increased to 310 people. Reconstruction and repairs of detention premises at Ohrid Prison are completed.

4.8 (Non)implementation of the new measure – Seizure of assets

The system of seizing assets is not operational and was established late. The premises were secured, the procedure for the recruitment of 9 people in the Agency was initiated and funds were secured. In cooperation with the Academy for Training Judges and Public Prosecutors, 14 seminars addressing seizure and temporary measures were organized in the period November 2007 - August 2009. 269 people attended the trainings, out of which: 121 judges, 96 public prosecutors, 12 expert administrators and 40 representatives from other institutions.

Transfer of seized assets from the courts to the Agency for Management of Seized Assets is underway, although the deadline thereof was end of June. The adoption of the secondary legislation is also late. The following acts are not adopted yet: 1) Rulebook on Recordkeeping of Seized Assets; 2) Rulebook on the Form and Content of Official Identification, Manner of Issuance and Retrievals; 3) Rulebook on Temporarily Seized Assets of State Bodies, Citizens' Associations and Foundations; and 4) Regulation on Security Standards and Storage,

Sales, Destruction of Seized Narcotics, Psychotropic Substances and Precursors and Procedure for Their Use for Scientific and Research Purposes, although scheduled for adoption in May 2009.

4.9 Judiciary – Human Resources

33 judge positions are still vacant. From 2008 until September 2009, the Judicial Council initiated 54 procedures, 46 of which on the grounds of incompetent and unconscious judicial performance and 6 disciplinary procedures resulting with the dismissal of 19 judges on the grounds of incompetent and unconscientious judicial performance, and with 5 judges submitting their letter of resignation, while the mandates of 33 judges were terminated on the grounds of fulfilling the retirement criteria; 2 disciplinary measures were taken and 2 judges were dismissed due to the permanent loss of ability for judicial performance.

The analysis of required judges and public prosecutors positions at Basic Courts and Public Prosecution Offices⁵⁸ resulted in the developed of a recruitment plan for filling in the vacancies with graduates from the Academy. According to the recruitment plan, the Judicial Council will select 15 candidates from the first generation of graduates, 10 candidates from the second generation and 10 candidates from the third generation. According to the anticipated activities, 15 candidates from the first generation of graduates will be appointed for judges by the time of the last Judicial Council meeting held on 1st September

⁵⁸ 15th April 2009, the Judicial Council determined the need of new judges, while the Council of Public Prosecutors did so on 14th April 2009.

2009⁵⁹. After the appointment of 6 judges from the first generation of graduates by the Judicial Council meeting held on 7th July 2009⁶⁰, on the meeting held on 1st September 2009, additional 9 judges were to be appointed exclusively from the Academy graduates. Unfortunately, due to the low number of applicants, only 7 judges were appointed⁶¹.

This resulted in 13 judges appointed at Basic Courts in the Republic of Macedonia from the Academy graduates, meaning that in order to complete the developed plan, two more candidates need to be appointed. This would absorb the entire first generation of candidates for judges graduated at the Academy for Training Judges and Public Prosecutors. From the beginning of 2009, the Judicial Council has also appointed 11 judges at Basic Courts, which have not undergone training at the Academy. By the end of 2011, it is anticipated for additional 23 Academy graduates to be appointed judges.

4.10 Independent judiciary

Despite the positive developments in the appointment of judges from the Academy graduates, the politicisation of the selection process continues and reflects the operation of the Judicial Council.

⁵⁹ The President of the Basic Court I in Skopje, as well as two judges at the Supreme Court and 11 judges to vacant positions in the courts in Bitola, Ohrid, Prilep, Gostivar, Tetovo and the two Basic Courts in Skopje, were appointed on this meeting.

⁶⁰ NPAA sets the beginning of March 2009 as the deadline for appointing judges from the first generation of graduates at the Academy for Training Judges and Public Prosecutors.

⁶¹ 4 vacant judicial positions at the Basic Court in Kumanovo, and two at the Basic Court in Tetovo were recruited. The open call for vacancies at the Basic Court in Veles anticipated two judicial positions, but only one candidate applied, whereas no applications were submitted for the Basic Court in Gostivar.

Controversial cases are in the public eye in this reporting period as well. The 3-months quest, accompanied by several delays in the appointment of the President at the Court in Skopje, first-instance and two supreme court judges, one of whom is the former Deputy Public Prosecutor, who after a five months trial in the Appeals Court in Skopje, was appointed judge at the Supreme Court, while the other was an Advisor to the President⁶² are just some of the most striking examples.

Judicial associates from Kumanovo accuse the judiciary for politicisation and the statement of the Minister of Justice dismissing judges taking unduly rulings. In addition, the situation with the judiciary can best be illustrated with the statement, or better said the “confession” of Vasil Grcev, President of the Judicial Council of the Republic of Macedonia, from 2nd July 2009. According to the articles in several daily newspapers, Vasil Grcev trying to explain the reasons why the Council has not appointed the Presidents of Skopje Court, first-instance and Supreme Court judges in the period of three months, stated: *“There are pressures of all types.”* The long list of pressures features the visit of the Appeal Court judge to the Prime Minister’s Cabinet from the 8th July 2009. Such controversies not only fuel speculations, but also offer evidence in favour of the claim that *“there is no sufficient evidence that the judiciary is completely independent”*⁶³.

⁶² The open call included 4 judges at the Supreme Court, but only two applicants received the necessary majority vote, so the open call was repeated.

⁶³ Erwan Fouere, EU Ambassador in Macedonia, *Vest*, 3rd July 2009.

4.11 Appeals Court’s ruling in EVN case – best event for August

The ruling of the Appeals Court in Skopje renouncing the controversial decision taken by Basic Court Skopje II in the EVN Macedonia vs. ELEM lawsuit was almost unanimously declared as the “pearl” event for August by all broadcasting and printed media participating in the poll “Pearl – Trash” of the Makfax agency and the nongovernmental organization “Transparency Zero Corruption”.

The decision was taken in a period of almost 4 months. It was immediately published on the website of the Appeals Court in Skopje. The ruling determined numerous irregularities and essential shortcomings in the first-instance procedure. By providing clear rationale and directions for eliminating the violation of procedure in the first trial, the case was returned for re-trial to the Basic Court.

4.12 Public Prosecution – human resources

10 public prosecutors were appointed from the candidates who graduated in the first generation at the Academy on the first open call for vacancies in 2009. Nine candidates were appointed, while 1 renounced the position after learning that he was deployed in the Public Prosecution Office in Radovis. The open call for vacancies from 30th June 2009 anticipated an additional public prosecutor from the first generation graduates at the Academy, whereas the open call from 23rd July 2009 anticipated additional 3 public prosecutors from the Academy candidates. However, only two additional candidates from the

Academy were appointed public prosecutors on 10th September and in the Public Prosecution Offices in Skopje and Stip, respectively. The open call for vacancies at the Public Prosecution Offices in Radovis and Strumica will be repeated.

According to the Appointment Plan, the Council has assumed the responsibility to appoint the candidates from the Academy as follows: second generation graduates by the end of 2010, and third generation graduates by the end of 2011.

Although the establishment of the Council of Public Prosecutors was expected to enhance the independence and quality in appointing public prosecutors, it seems that it looks up to the Judicial Council when it comes to controversial issues. Otherwise, how can one explain the appointment of a political party activist from the ruling party to the position Public Prosecutor in Kocani or the appointment of a former judge to the position Public Prosecutor in Skopje Office who three years ago was dismissed on the grounds of incompetent and unconscientious performance? Also questionable is the appointment of a person against whom an investigate procedure is underway for abuse of official position at the Cadastre. The controversy becomes even greater knowing that two public prosecutors with “suspicious” records were appointed with double majority vote. Both submitted their letters of resignation once the media disclosure of them.

Equally controversial was the awarding of tenure. After the Council previously awarded tenure to 8 prosecutors in the Public Prosecution and to 20 prosecutors in the four Higher Public Prosecution Offices on the meeting held on 20th July 2009, it decided to do the same for the prosecutors at the Basic Public Prosecution Offices. Applications were

submitted by 146 prosecutors from the total of 156 from 23 Basic Public Prosecutions. The Council extended tenure to 131 prosecutors, i.e., 90 percent of the total number, while 8 were dismissed on the grounds of incompetent and unconscientious performance and two of them on the grounds of misbehaviour in public office. Five prosecutors retired having fulfilled the relevant criteria.

Such dismissals, without proper procedures for determining (in) competence, are easily labelled “political”, as the transformation of public prosecutors’ terms of office was used as an excuse to “clean” the Public Prosecution of those whose term of office expired.

4.13 Academy for Training Judges and Public Prosecutors

The training of the third generation of candidates for judges and public prosecutors commenced 15th September. This generation consists of only 17 candidates compared to the first generation of 27 and the third generation of 25 trainees. This confirmed the allegations that the number of judges and public prosecutors is decreasing on the account of the large number of judicial and prosecution vacancies being recruited with the candidates from the first generation of graduates at the Academy⁶⁴, thus making it unattractive to apply for training.

The previous recruitment of Academy trainees indicated absence of interest for work in other towns throughout the country, so on certain open calls, insufficient number of applications was received. This was accompanied with the controversial discussion at the Judicial Council

⁶⁴ For more information, see the previous two quarterly Accession Watch reports.

on the approach for appointment of Academy candidates – according to their place of residence or the rank-list submitted by the Academy. The public was also distressed with the announcement of amendments to the legislative provision governing the termination of priority on the Academy rank-list for those candidates who would not apply on three consecutive open calls for judge vacancies. According to the announced changes, it is obvious that the public bodies are considering options to sanction “uninterested” candidates, and thus avoid the demographic policy, which might require more planning efforts rather than fruitless investment in human resources that might never become judges and public prosecutors.

4.14 Administrative Court

In this reporting period, the Administrative Court appointed additional 3 judges to handle the workload. The Court now functions with a total of 24 judges. The recruitment procedure for the 20 vacancies in total anticipated with the 2009 NPAA is completed in the following manner: 12 court clerks and 18 administrators, thus making the Administrative Court operational with 52 professionals and court police.

According to the statistics, up to June 2009, the Administrative Court recorded a total of 9,154 unresolved cases dated from 1st January 2009; 4,017 new cases registered; 13,171 cases in total, 3,200 of which are resolved and 9,971 cases are not resolved as of 30th June 2009. Notably, according to the data on 2009 cases, it seems that in May 2009 - 513 new cases were recorded, 564 cases were recorded

as solved, while in June 2009 – 663 new cases were recorded and 668 cases were recorded as solved. These data show a positive trend of operation at the Administrative Court and successful coping with incoming cases.

As regards performance assessment, the 20 judges at the Administrative Court were assessed as follows: 14 judges were assessed as very good and 6 judges were assessed as good, while the President of the Administrative Court’s performance was assessed as very good.

4.15 Public must be informed on judges’ performance

Annual performance assessment⁶⁵ of all 655 judges, implemented in an alphabetical order of Appeals Districts⁶⁶ was initiated on 7th May 2009 and ended with the Council meeting held on 6th July 2009 and the performance assessment of court presidents. Based on the Assessment Report prepared by the Judicial Council, from the total of 26 court president 11 or 42.31% were assessed as very good, 10 or 38.46 %, were assessed as good, 4 or 15.38% were assessed as satisfactory and one court president or 3.85% was assessed as unsatisfactory. From the total number of judges, 247 or 43.64% were assessed as very good⁶⁷, 150 or 26.50 % were assessed as good⁶⁸, 124 judges or 21.91% were assessed

⁶⁵ The Judicial Council of the Republic of Macedonia adopted the decisions on the judges and court president’s performance assessment upon previously submitted proposals of the Council’s three-member commission and by means of majority vote from the total number of Council members.

⁶⁶ Performance measurement is done by means of the following assessments: very good, good, satisfactory and unsatisfactory.

⁶⁷ Exceeded the quantitative and qualitative performance criteria.

⁶⁸ Fulfilled the quality and quantity aspects of their operation.

as satisfactory, and 45 or 7.95% were assessed as unsatisfactory. This shows that 92.05 % of the judges received positive performance assessments or achieved results pursuant to the criteria on the quality, quantity and other indicators as set forth in the Rulebook on Judge Performance Assessment, while the performance of 7.95% was assessed as negative.

According to the Rulebook, judges with unsatisfactory performance have the right to compliant by applying for re-assessment. According to the information obtained from the Judicial Council of the Republic of Macedonia, approximately 80 such applications were submitted. The established commissions started reviewing these applications in September. Based on Article 41 of the Law on Judicial Council and the Rulebook on Judge Performance Assessment Procedure and Criteria, the performance assessment is one of the criteria for appointment at higher instance courts.

The Supreme Court of the Republic of Macedonia⁶⁹ on the general session held on 26th May, adopted new guidelines on judicial performance and submitted them to the Judicial Council. According to the new standards for 2009 performance assessment, in the information obtained⁷⁰, it has been noted that standards were lowered⁷¹.

⁶⁹ Who made an (failed) attempt at exempting himself from the performance measurement for 2008.

⁷⁰ *Utrinski vesnik*, No. 3014 from 19th June.

⁷¹ *Utrinski vesnik* No. 3014 from 19th June „...so the criminal cases and investigations and the number of completed cases should be 14 instead of 17. The standard for investigative actions is 30 cases, while for misdemeanours is 100. As regards the execution of sanctions, for different criminal cases and security measures 35 will be calculated as one completed criminal case. As regards criminal council decisions – 5 decisions will be calculated as one criminal case. As for the claims of lower value, the norm will be set at 30 cases, property disputes – 17, family disputes – 25, while labour cases and contested

The 2009 Judicial Council Report is expected to provide more details and to be more transparent. Hopefully, novelties will be introduced in its operation and what was recently known simply as legal obligation on paper will become reality. The first public meeting of the Judicial Council took place 1st September 2009.

4.16 Court administration is still a mirage

It seems the efficiency of the judiciary largely depends on the court administration (expert associates, typists and intakers). In its 2008 report, the Judicial Council stated that: “*the number of expert councillors and associates is insufficient; administrative vacancies are not recruited; some courts operate under poor material and working conditions, while bigger courts are overloaded with cases*”⁷². Although 115 recruitments were anticipated for 2009, the Judicial Budget Council announced open calls for only some of them. Namely, the Judicial Budget Council approved 56 vacancies. However after submitting the application for securing budget funds thereof, the Ministry of Finance approved only 22.

claims - 20. Fifty cases under the category of claims will be calculated as one dispute case. Norm on executive cases is set at 140. Special norms are set for courts with broad competence, where investigations are reduced to 10 cases, as well as with adult criminal cases, whereas juvenile criminal cases are 14. From known reasons, organized crime cases will be given different treatment. Thus, courts where judges prosecute cases in this subject matter will have to solve at least one case per month. Due to the complexity and scope of cases, the court president can decide not to assign additional cases to a judge working on this type of cases. As for the Appeal Court, on monthly basis, the judges should complete 20 appeals in criminal and juvenile matters, two appeals in organized crime matters, and 50 misdemeanour appeals. In litigation proceeding, the orientation norm is 25 cases, for all civil, labour and commercial matters. 20 to 25 cases shall be considered norm for administrative judges, except for those dealing with misdemeanour cases, where the number of solved cases should amount 50.”

⁷² 2008 Report for the Judicial Council, pg. 15

4.17 Information and Communication Technologies

Although activities set in the ICT Strategy for the Judiciary (2007-2010) were accelerated in the reporting period, the general assessment is that the implementation thereof is late. The outcomes of the measures undertaken cannot be assessed, while possible problems and gaps cannot be identified.

The human resources at the IT-centres within the courts were completed. At the moment, a total of 40 IT officers are employed at courts (3 at the Supreme Court, 2 at the Basic Court 2 in Skopje, one per each court and 12 under temporary contracts funded by USAID, as foreign donor). This situation must be changed if current reforms are to be sustainable. Procurement of hardware equipment, software system and software applications including updating and maintenance is partially implemented. New IT equipment was purchased⁷³, and the procurement procedure on servers for all courts required for the operation of the ACCMIS started. What remains to be done is the procurement of appropriate software applications on management, WAN, monitoring and network services.

Although this reporting period was marked by activities undertaken for the purpose of securing complete operation of the new Automated Court Case Management System – ACCMIS, the implementation of some activities is late. ACCMIS software was installed at all courts, while

⁷³ 720 PCs and 450 network printers for the judiciary and 150 PCs and 150 network printers for the Public Prosecution. 54 Appeals Courts in Skopje and Bitola and Basic Courts in Kriva Palanka and Ohrid. Information on the Realisation of Key Priorities from the Accession Partnership for the period November 2008 – May 2009, pg. 21.

14 courts have entered all lawsuits in the system. At the moment, four of the planned eight courts are fully using ACCMIS and are able to generate automated reports. As regards ACCMIS application use, training for 2200 employees in the judiciary is underway, with 564 intakers, 627 typists, 304 expert associates and 20 court administrators being already trained. Training is also delivered for all judges, and 200 of them are already trained.

4.18 Transparency used as an excuse to procure computers?!

Automation of the judiciary system was intended as a measure for making the judiciary more transparent by securing public access to court rulings. Therefore, the procurement of the computers does not mean anything when there is no public access to information. Although delayed, the NPAA measure on public access to court rulings anticipated for 30th April 2009 was initiated. Recently all courts established operational and dynamic websites where citizens can obtain information and data on judicial authorities, case law, contact information, etc. Although scarce in information, the websites are updated. This trend must continue with full speed so that the process can become sustainable and attention must be paid to capacity building on website updating. Uploading the so called personal data protected court rulings on court websites was initiated pursuant to the Law on Personal Data Protection and the opinion obtained from the Personal Data Protection Directorate. This implied deletion of personal data from court rulings, except for personal data of court council members, i.e., judges, attorneys-at-law, as well as other legal proxies participating in legal proceedings.

The Ministry of Justice developed the legislation database which at the moment contains 17,269 laws, by-laws and other regulations published in the Official Gazette of the Republic of Macedonia from 1945 until July 2009. At the same time, the database was adjusted to WEB and local use at any court. All courts were connected to the Official Gazette and thus have access to the database of the Official Gazette containing laws and by-laws from 1945 up to date. The Display module was set showing information on court operation, court case schedule per courtroom, as well as on-line communication with case parties via TOUCH SCREEN windows installed at courts with broader jurisdiction. As part of the IT strategy implementation and aimed at improving the transparency of the judiciary, the first-instance courts installed Internet and Anti-virus protection.

There is no legal framework for the full operation of the new judiciary IT system. The NPAA anticipates that by 30th April 2009, the Ministry of Justice will adopt the Rulebook on the Operation of IT Systems at Courts, but it is still not adopted. The rulebook is of key importance in light of full operation of all ICT investments in the judiciary and therefore must be adopted as soon as possible.

4.19 Other priorities from the Accession Partnership

The other priorities anticipated in the Accession Partnership for this area are the following: 1) fully comply with the European Convention on Human Rights, the recommendations made by the Committee for the Prevention of Torture, as well as the Framework Convention for the Protection of National Minorities; 2) implement fully the rules applying to ethics, internal control, professional and human resource

standards in law enforcement agencies, the judiciary and the prison administration, including by regular training; 3) set up effective mechanisms to identify, pursue and penalise all forms of discrimination by State and non-State bodies against individuals or groups; 4) further enhance the protection of women's rights and children's rights; 5) implement the national law on personal data protection. Sign and ratify the additional protocol to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flow; 6) further develop initial and continuous training in the Academy for Judges and Prosecutors; 7) complete the setting-up of the new court structures and allocate appropriate resources to ensure that they are fully operational and enhance their efficiency; 8) ensure proper and full execution of court rulings.

5. ESTABLISH A SUSTAINED TRACK RECORD ON IMPLEMENTATION OF ANTI-CORRUPTION LEGISLATION

The anti-corruption policy is defined as one of the key priorities in the Republic of Macedonia's accession process in the European Union. Previous Progress Reports show continuous advancement in this area achieved by the Republic of Macedonia⁷⁴. Nevertheless, the noted continuous (but slow) progress from the last period does not guarantee

⁷⁴ Analysis of Macedonia's Progress in the accession process, MCET – working document - 01/2008, November 2008, available at: http://www.mcet.org.mk/documents/doc_download/18-working-paper-analysis-analytical-and-progress-reportsmkd

full implementation of this benchmark by default and without additional efforts and expressed political will to focus on the priorities identified by the European Commission.

The achievement rates of these priorities, as well as the general situation as regards the anti-corruption policy were assessed in the 2008 Progress Report and include comments, those being: the fragmented legal system continues to make the monitoring of this field difficult; shortcomings in the legal framework governing financing of political parties and election campaigns were addressed after the elections and a track record of implementation needs to be established; there are gaps in the conflict of interests law, notably as regards civil servants; some shortcomings in the legal framework hampered the fight against corruption, in particular as regards the use of special investigative measures and the delivery and enforcement of court decisions. Also, the Report notes that recommendations from the State Commission on the Prevention of Corruption (SCPC) and from the State Audit Office (SAO) are too rarely followed, that checking of asset declarations is sporadic and that SCPC needs to be more fully engaged as regards awareness-raising and engagement with the public on fight against corruption. As regards the strengthened coordination among anti-corruption bodies, as one of the short-term priorities, the Report marks that a centralized mutually accessible intelligence system which would strengthen operational coordination among law enforcement agencies and watchdog bodies, remains to be established.

5.1 What were we waiting so far?

These comments have been appropriately addressed in the last “Action Plan on fulfilling the Key Priorities from the Accession Partnership”⁷⁵ adopted by the Government of the Republic of Macedonia which anticipates a set of measures and activities for the complete realisation of the set priorities. Despite the undisputable focus on the priorities from the accession process however, in the period from its adoption and until the cut-off date for the new Progress Report for the Republic of Macedonia unanswered remains the question on why did we wait for the last moment to assume a more serious (24/7) political engagement to fulfil the well-known priorities, or in other words – what were we waiting for so far?

Significant progress was noticed as regards the proper application of legal provisions on financing political parties and election campaigns. As noticed in the last quarterly report, the political parties submitted their financial reports on the election campaigns. Also, the State Audit Office (SAO) audited the financial operations of the four largest political parties, selected according to the risk assessment method (VMRO-DPMNE, DUI, SDSM and DPA) and published the final audit reports on the 5th August. The reports were uploaded on the SAO’s website on 14th September 2009⁷⁶. The amendments to the Law on Political

⁷⁵ Action Plan on measures and activities for the fulfilment of key priorities from the Accession Partnership, SEA, May 2009.

⁷⁶ For VMRO-DPMNE: http://www.dzr.gov.mk/Uploads/2008_2009_%20VMRO_DPMNE_ZBIREN.pdf; for SDSM: http://www.dzr.gov.mk/Uploads/2008_2009_SDSM_ZBIREN.pdf; for DUI: http://www.dzr.gov.mk/Uploads/2008_2009_DUI_ZBIREN.pdf; and for DPA: http://www.dzr.gov.mk/Uploads/2008_2009_DPA_ZBIREN.pdf

Parties Financing were adopted within the deadline set thereof⁷⁷ and aim at “securing transparency and publicity in the sources of financing of political parties. The law will also strengthen the supervision of the financial operations of political parties, and will set the procedure for action upon the financial reports”⁷⁸. The enactment of these amendments in compliance with the OSCE/ODIHR recommendations completed the positive trend of fulfilling the comments contained in the Report of the European Commission (EC) as regards political parties and election campaign financing.

The comments on the legal gaps in the Law on Preventing Conflict of Interests were also properly addressed. The enactment of amendments to the Law on Preventing Conflict of Interests⁷⁹ by the Parliament from 10th September, *inter alia*, provides specific legal definitions of the term “conflict of interests” (harmonized with the OECD definition), as well as the term “official” which in addition to elected and appointed officials now includes civil servants and persons with special authority, which is in compliance with the comments contained in the 2008 Progress Report.

77 Law on Political Party Financing Adopted Smoothly at the Parliament, *Nova Makedonija*, 29th July 2009, <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=7299101121&id=9&setIzdanie=21750>

78 <http://www.vlada.mk/?q=node/4028>

79 <http://www.dksk.org.mk/images/stories/pdf/zakon%20za%20izmenuvanje%20i%20dopolnuvanje%20na%20zakonot%20za%20sprecuvanje%20sudir%20na%20interesi%20%28114-2009%29.pdf>

5.2 Media express interest for the findings of the State Audit Office

Improvements were made by public bodies and anticorruption enforcement actors to comply with SAO recommendations. The position of SAO in the anti-corruption system is notably strengthened, as well as its role as the independent body which properly implements its competences.

The media expressed interest for all SAO reports, providing a critical public debate on the irregularities identified therein. Appropriate response by the bodies identified in SAO reports is lacking, as well as the feeling of responsibility and accountability of the people identified therein, in particular the appointed officials. Continuous resolute operation of the SAO (under full capacity and implementation of legal competences), accompanied with the enhanced position in the public opinion, create a situation where ignoring the reports is no longer possible (in other words, the selective approach was abandoned). It remains to be seen whether time will create public pressure to prompt appropriate response and accountability.

Despite the visible qualitative improvement of other public bodies regarding SAO recommendations in the last months, it is still not possible to assess the final effects as the ultimate resolution of such cases requires time.

5.3 SCPC can do better

Progress was noted in the position of State Commission for Prevention of Corruption (SCPC), which undertook significant activities in different fields during this reporting period. SCPC played an active role in drafting the amendments to the Law on Preventing Conflict of Interests⁸⁰, while its recommendations and proposals were accepted by other institutions involved in the process, thus allowing us to assess that SCPC worked under full capacity in fulfilling its mission.

Moreover, on 9th September, SCPC initiated an awareness campaign on corruption's negative effects. Assessment of this campaign's effects is impossible at this moment, and although campaigns as tools on improving the prevention of corruption in Macedonia are by far insufficient, the fact that SCPC finally responded to the Progress Report's comments on the need for its strengthened engagement in public-awareness should be welcomed.

SCPC demonstrated enhanced involvement as regards the assets declaration submitted by elected officials. As part of its duties, on 3rd July, SCPC filed misdemeanour charges against 22 current and 7 former mayors on the grounds of failing to submit their asset disclosure declarations within the legally stipulated deadline⁸¹. Here, we would like to note that such responsiveness was expected knowing that proceeding upon such cases is considered standard practice, established by all previous SCPC compositions, in line with the legal provisions stipulated in the Law on Preventing Conflict of Interests.

It must be noted that SCPC failed to proceed in conflict of interests cases when it was publicly announced⁸² that several Municipal Council members in the Municipality of Karpos and the City of Skopje were also members of Management Boards at different public enterprises, which is contrary to the provisions in the old law and the amended Law on Preventing Conflict of Interest. SCPC's indifference becomes more worrying knowing that one of the Councillors at the City of Skopje from VMRO-DPMNE publicly requested the SCPC to investigate his case: *"If the Anti-corruption Commission determines conflict of interest in the appointment of these members, I am willing to withdraw from the Board position"*. This is only one of the facts supporting the claim that capacity building at SCPC aimed at strengthening its independence is not completed. Concerns are raised whether failure to act in these cases is due to the fact that the SCPC President is still holding three positions at different institutions herself.

Not undermining the remarks as regards SCPC addressed in the previous quarterly reports (whose resolution will be monitored in the forthcoming period), one must note that in this reporting period, SCPC demonstrated greater action and engagement in the implementation of its competences. It remains to be seen whether the information presented in item 1.1 from the benchmark for free, fair and democratic elections in conjunction with the 97% discount for political party advertising at one media outlet, which despite the political holds no economic logic, will be provocative enough for SCPC to undertake relevant actions.

⁸⁰ http://www.dksk.org.mk/index.php?option=com_content&task=view&id=139&Itemid=33

⁸¹ <http://www.mia.mk>

⁸² <http://novamakedonija.com.mk/NewsDetal.asp?vest=9119935457&id=14&setIzdani e=21785>

5.4 Improved communication

Positive trends were noted as regards the activities on strengthening coordination between anti-corruption bodies addressed by several comments in the Progress Reports and requiring fast solutions. Measures and activities in the field were focused on the establishment of the National Crime and Intelligence Databases (NCID), as a platform for integrating data held by the MOI, the Customs Administration, the Financial Police, the Directorate for Preventing Money Laundering and other institutions competent for fighting crime and corruption⁸³. The establishment of NCID would provide a systemic solution for enhanced cooperation between anti-corruption bodies, and improve their coordination by introducing a centralized intelligence system. The draft-law on the National Crime and Intelligence Databases is in the Parliamentary procedure, and quite late considering the cut-off date for the new 2009 Progress Report.

Late adoption, however, would not imply stand still in the process, and is, in any case, the lesser evil compared to the second (hypothetical) option – enactment of the law in the fast-track procedure – from at least two reasons.

The first reason is related to the sensitive issues as regards personal data protection, which might lead to legal solutions of poor quality overlooking the thin line between the need for efficient fight against corruption and crime and the need for full human rights protection, a law adopted in the fast-track procedure would, most probably, lead to human rights violations by means of unauthorized use of NCID data.

The second reason lies in the serious comments raised by MPs from the opposition concerning the first draft, which must be taken into account if the law is to be adopted with a broad consensus. Bearing in mind the fact that the Government knew that such a law must be adopted since November 2007 - as it was part of the draft Accession Partnership - the opposition argues that there was ample time to develop consensus by means of a broad consultation process.

Be as it may, the opposition decided to accept the reality for the sake of the European agenda of the country. Any pressures to adopt the law without incorporating opposition's comments would have had negative effects on the fulfilment of the political dialogue benchmark. The conclusion is that despite the fact that the adoption of the law is late, the activities undertaken and the dynamics thereof provide for a positive assessment as regards the fulfilment of the anti-corruption policy.

5.5 Other priorities from the Accession Partnership

The other priorities stipulated in the Accession Partnership in the area of anti-corruption policy are as follows: 1) ensure an adequate follow-up to the recommendations made by the State Commission Against Corruption and the State Audit Office; 2) implement fully the recommendations made by the Group of States Against Corruption (GRECO); 3) strengthen the administrative capacity needed to implement the rules adopted on the financing of political parties and electoral campaigns. Impose effective sanctions in case of infringements; 4) follow up the reviews carried out of discretionary rights of certain

⁸³ <http://www.vlada.mk/?q=node/3489>

public officials; 5) ensure full implementation of the Law on Public Access to Information; 6) further strengthen the cooperation among institutions; 7) complete the implementation of the strategy to fight corruption; 8) enforce regulations related to the prevention of conflict of interests, in line with international standards.

6. ENSURE THAT RECRUITMENT AND CARRIER ADVANCEMENT OF CIVIL SERVANTS IS NOT SUBJECT OF POLITICAL INTERFERENCE, FURTHER DEVELOP A MERIT-BASED CARRIER SYSTEM AND IMPLEMENT FULLY THE LAW ON CIVIL SERVANTS

The Government's Blueprint from February 2009 anticipated the following activities and measures for implementing the benchmark ensuring professional, depoliticised and efficient public administration: 1) strengthening human resource management capacities at public administration bodies, 2) proper implementation of the Law on Civil Servants, 3) system on continuous training of all civil servants, and 4) improving the quality of law-drafting procedures. This analysis of measures implemented took into account the comments provided in the 2008 Report: *"there are inadequate structures and insufficient administrative capacity for human resource management, policy development, strategic planning, and internal coordination and planning. In particular, there is still no fully functional network of human resource management units in line ministries. While some units exist, they deal*

*exclusively with personnel issues and are under-equipped to handle training/performance appraisal issues."*⁸⁴

6.1 Equipping achieved – in terms of quantity

In May 2009, the Civil Servants Agency (CSA) published an "Analysis of human resource management organization at public administration bodies in the Republic of Macedonia" (hereinafter: Analysis) prepared by the network of human resource management sector/departments (hereinafter: Network). According to the published analysis, the Network commenced the implementation of activities⁸⁵. In brief, the Analysis shows that: 1) on central level, 88.5% of public administration bodies have established HRM departments/sectors in comparison to the municipalities, where 76% have done so by means of their human resource management organization acts; 2) on central level, an average of 5.9 jobs are anticipated per public administration body, whereas the municipal administration average is 4.3 jobs per municipality; 3) the recruitment for the anticipated jobs at central level bodies accounts for something less than 60%, while on the municipal level only 1/3 of anticipated jobs were recruited, according to the job classification, most common are management and administrative positions; 4) at more than 50% of central administration bodies, HRM civil servants did not attend any training; and 5) most frequent activities of HRM departments are training and professional training and personnel record-keeping.

⁸⁴ 2008 Progress Report for the Republic of Macedonia, pg. 12.

⁸⁵ More information on the establishment of the network (March 2009), as well as the results of the analysis were presented in the Second Quarterly Accession Watch report (July 2009).

Evidently, public administration bodies equipped their HRM sectors/departments. Namely, according to CSA⁸⁶, the number of newly recruited civil servants in the period April 2008 - April 2009 is 67 civil servants, which is almost double in comparison to the last year's figure.

For the purpose of securing complete, timely and good quality equipping of HRM sectors/departments at public administration bodies, the Network's coordination task force developed an "Action Plan for overcoming shortcomings in the human resource management sectors/departments"⁸⁷ (hereinafter: Action Plan), and submitted it to the Government in July 2009. The Action Plan sets forth one general goal and seven special measures to be achieved by implementing several activities. According to the Action Plan, the activities and measures are to be implemented in the period 2009-2012.

Aimed at achieving the general goal "*equipping (quantitative and qualitative) of HRM sectors/departments*" the following measures were set: 1) establishing the e-database comprised of contact data of "central HRM departments"; 2) establishing HRM departments at all public administration bodies; 3) defining HRM functions and their complete and appropriate operation; 4) standardization of HRM jobs and recruitment for anticipated jobs; 5) introduction of human resource management standards – deadline: December 2012; 6) training of HRM civil servants; 7) establishing e-Registry on human resource management (deadline: December 2009).

⁸⁶ "Analysis of the human resource equipping at human resource management departments", 15 April 2008. The total number of employees at HRM sectors/departments in the period 2007-2008 amounted to 66 servants, 18 of which are managerial staff, 25 expert staff and 23 administrators.

⁸⁷ Download: www.ads.gov.mk

6.2 Quality changes in 2012

By 30th September 2009, the HRM Action Plan realised the first measure, i.e., CSA created the contact database in July 2009, whereas the fourth measure is partially realised, meaning the Network's coordination task force drafted the Rulebook on HRM Standards, which as of July 2009 is in the governmental procedure. All other measures are accompanied by deadlines set for end of 2010, except for the measure on training civil servants anticipated as a continuous process for the period up to 2012. For all these measures, the Action Plan anticipates quarterly monitoring in the period 2010-2012 that would enable improved feedback on the measures implemented. The pace with which the implementation of the anticipated activities and the final output thereof in particular from the aspect of HRM sector/department actual operation and capacity improvement and quality remains to be seen. The implementation of HRM Action Plan and the effects thereof will be subject of assessment and analysis in the next period.

The deadlines set forth indisputably raise the question why some activities are anticipated to last until 2012, especially having in mind the public administration reform project worth 2 million EUR and supported by IPA 2007. Namely, the project's goal is to "*contribute to a professional public administration that will enable appropriate implementation of the rule of law in compliance with national legislation, provide high-level services to the citizens in a transparent manner, taking due account of EU regulations and best practices and in which the public will have trust*"⁸⁸. This project is comprised of 5 components, those being: Component 1 – further development and coordination

⁸⁸ Project fiche on public administration reform under IPA 2007, Component I, pg 3.

of implementation of the public administration reform strategy; Component 2 – capacity building of the General Secretariat – Sector for Strategy, Planning and Monitoring and Sector for Policy Analysis and Coordination to strengthen the capacity of the Government for strategic planning and policy making, monitoring and coordination; Component 3 – capacity building of the General Secretariat - Sector for the implementation of the Ohrid Framework Agreement – equitable representation; Component 4 – capacity building of the General Secretariat - Sector on policy analyses and civil society coordination; and Component 5 – capacity building of CSA for human resource management and development. This component anticipates CSA capacity building on training management, strategic planning and implementing follow-up activities, establishing coordination mechanism with other HRM sectors/departments, and capacity building for the implementation of the National System on Training Coordination. It is obvious that in the course of IPA programming, account was taken of other short-term priorities from the Accession Partnership (see item 6.7).

The general conclusion is that most of the commitments set forth in the Blueprint concerning capacity building for HRM sectors/departments in public administration bodies were properly addressed; hence the question why has the IPA project not started yet knowing that it was programmed back in 2007.

6.3 How to get employment in the public administration?

According to the National Programme on the Approximation of Legislation (NPAL), CSA submits weekly and quarterly reports to the Secretariat for European Affairs concerning: (1) the number of announced open calls and vacancies, and (2) the implemented exams, number of candidates, and quarterly reports on new recruitments. The following table presents the data on the number of announced open calls, vacancies and recruitments in the third quarter, as well as for the whole 2009.

	1 January – 22 September 2009			1 July – 22 September 2009		
	Open calls	Vacancies	Recruitments	Open calls	Vacancies	Recruitments
Central level	70	369	1.067	35	147	548
Local level	55	149	169	29	75	82
TOTAL	125	518	1.236	64	222	630

Data show that more than 50% of the new civil servant recruitments were performed in the third quarter, which is probably due to the Local and Presidential Elections. Obviously, most of the recruitments were on central level (86.3%), whereas only 169 civil servants (13.7%) were recruited on the local level. In other words, the average is two administrators per municipality which strikes as odd having in mind the other short-term priorities from the Accession Partnership (see item 6.7).

Nevertheless, the data on the number of temporary employments at public administration bodies (PAB) are unavailable as such records are not kept. It is speculated that their number is high. Distressing is the fact that often management positions at public administration bodies are occupied by people working under temporary contracts, as was the example with the State Secretary of the Secretariat for European Affairs, who in the aftermath of Mr. Bocevski's resignation was dismissed.

The 548 central level recruitments include also the open calls announced in September 2009 and they anticipate employment of 400 civil servants under "K5" sub-account - equitable representation of ethnic communities⁸⁹. In August 2009, 290 work contracts were delivered to recruited administrators, thus increasing the number of recruitments under the Framework Agreement commitment to 690, by September 2009.

According to the Deputy Prime-Minister in charge of European Integration⁹⁰, by 31st August 2009, approximately 65% of NPAL anticipated employments were realized, whereas from the aspect of the benchmark-related capacity building, 76% of anticipated employments were realized. As regards the IPA institutional building, the realization rate is 36% (51 of the anticipated 197 employments were realized), and 21 are underway. Analysis of such recruitment at public administration raises the question on how is the Government planning employments and whether it takes into account the two key aspects, that is: 1) will this "quantitatively enhanced" public administration be able

to perform the forthcoming EU accession tasks in a competent and efficient manner, having in mind the fact that the major workload for achieving full-fledged EU membership will have to be performed by the public administration; and 2) were the employments of more civil servants for the purpose of fulfilling the benchmarks inevitable knowing the Government's position from October 2008 when it claimed that 90% of benchmarks were fulfilled, and will this mean that the remaining 24% of benchmark-related employments will not be made now that it is obvious that the benchmarks are fulfilled.

As a reminder, the 2008 Report noted the following on the public administration: *"Objective and merit-based criteria are not consistently used in recruitment and promotion. There is a lack of transparency and accountability in recruitment decisions by individual administrative bodies and the CSA lacks mechanisms for assuring the legality and regularity of those decisions. Senior management positions are often filled externally without sufficient regard to professional qualifications and experience, in contravention with the law on the civil service. An important weakness of the current framework is that it does not allow for internal promotion based on merit: this has de-motivating effect and favours bad practices. Too little attention has been given to the need to ensure continuity and retain relevant expertise"*⁹¹.

6.4 No rewards, only sanctions!

The Civil Servants Agency summarized the results from the 2008 civil servants' performance assessment and developed an Overview.

⁸⁹ <http://www.sep.gov.mk/Default.aspx?ControlID=NovostiDetali.ascx&NewsID=1374>

⁹⁰ Report of the Commission for European Affairs, 3 September 2009, available at www.sobranie.mk

⁹¹ 2008 Progress Report for the Republic of Macedonia.

According to the Overview, which is not available in full, from a total of 8088 civil servants on central and local level, 7202 have been assessed accounting for approximately 89%. From a total of 144 public administration bodies, 112 institutions submitted reports to CSA accounting for 78% of the total number of institutions with such an obligation. Improvement in this regard was noticed compared to the previous year when only 56% of institutions submitted reports to CSA.

In the course of 2009, the promotion practice at central public administration bodies, contrary to the provisions from the Law on Civil Servants (LCS), was almost eradicated. In addition to the calculation of the civil servants' salary according to the system set forth in Chapter IV (salary base, title benefits), the carrier benefit (level A) is also a regular feature thereof. However, monetary rewards are not paid due to the anticipated Government's anti-crisis measures in the wake of the global economic crisis. Therefore, civil servants assessed as "exceptional" are not rewarded accordingly.

On local level, and in particular in municipalities where the government changed, civil servants were degraded and even dismissed, with the excuse of adjusted human resource management organization at the organisational level. Indicative is the example of the Municipality of Demir Kapija⁹² where four out of the total ten civil servants were dismissed.

On the other hand, according to CSA data, up to this moment in 2009 a total of 35 disciplinary procedures were implemented, 28 of

which at the central administration, and 7 in local administrative bodies. In the third quarter, 3 disciplinary procedures are implemented on local level and one procedure on central level, indicating a decrease in comparison to 2008 data when 181 disciplinary procedures were implemented in total.

6.5 Law on Civil Servants – win-win politics

1st July 2009, the Government submitted the draft-amendments to the Law on Civil Servants to the Parliament of the Republic of Macedonia only to withdraw it shortly afterwards without sufficient explanation thereby causing opposition's reaction. One of the explanations was that the draft-law was withdrawn so as to include the opposition's suggestions. In that period, the draft-amendments were reconsidered by the Committee of Ministers (Prime Minister, four Deputy Prime Ministers, Minister of Justice and the Government's General Secretary) and discussed with SIGMA.

The draft-law was re-submitted to the Parliament 19th August 2009. Again, the opposition criticized the fact that the new draft does not offer specific provisions that would lead to professional and capable public administration, and that "*the law is mere make-up, poorly applied and long overdue*"⁹³. Most of the comments coming from the opposition and the experts were addressed to the provision according to which the Government appoints the State Secretaries with five years terms of office, which in addition to state administration service, can

⁹² Text published in the daily newspaper DNEVNIK, 25 August 2009.

⁹³ Radmila Sekerinska, MP from SDSM, statement published in "Utrinski vesnik", 26 August 2009.

also be appointed from the lines of public administration employees. Some experts were against such a solution. The parliamentary majority requested the comments to be submitted in writing and expressed the willingness to accept some of them.

Finally, on the session on 10th September 2009, the Parliament of the Republic of Macedonia adopted the Law on Amending the Law on Civil Servants. All oppositional political parties unanimously supported the adoption of the amendments, precisely 77 from the 78 attending MPs voted in favour, no votes against, and only one MP (from Nova Demokratija) sustained from voting.

At the end, both the parliament majority and the opposition expressed their satisfaction from the joint work and success achieved in terms of adjusting the positions as regards the adoption of the law. In that spirit, the opposition stressed that *“such broad consensus, in the extent possible should become practice in the operation of the Parliament by means of continuous and open dialogue with the opposition whose foremost interest goes in line with improving legal solutions offered by the government, and against lucrative political party and daily politics’ interests”*⁹⁴. Similar was the statement of the ruling majority which emphasized that *“it is a real pleasure when we can demonstrate European behaviour for such an important piece of legislation, when we are able to listen to each other and reach an agreement on issues important for the Republic of Macedonia”*⁹⁵.

According to the new Law on Civil Servants, State Secretaries will be appointed by the Government, but they will hold the status of appointed officials whose terms of office correspond with the terms of office of the body appointing them, i.e., the Government. It remains unclear why they are included in the Law on Civil Servants since they no longer hold the status of civil servants. In brief, following are some of the novelties introduced: 1) better definition of the scope of public administration; 2) better conditions for professionalisation of public administration, and the senior management pool in particular; 3) redefining CSA competences and enhancing its supervisory role; 4) introducing the possibility for public administration recruitment via internal open calls to serve as incentives for expert and trained civil servants’ promotion and decrease contracting candidates with less experience; 5) accelerated procedure on civil servants recruitment via open calls; 6) introducing mandatory decision-taking on recruitment from the short-listed candidates; 7) public administrative bodies must submit to CSA annual reports on tailored-training delivered; 8) detailed stipulation on acquiring the right to carrier benefits, as part of the net salary base; 9) CSA continues to act as the second instance appeal body for complaints lodged by civil servants against decisions of first instance bodies taken under disciplinary procedures; 10) introducing an obligation of public administration bodies to submit to CSA annual reports on taken disciplinary decisions; 11) securing greater CSA control over the work of central and local administrative bodies in law enforcement, in particular recruitment and promotion.

The example on the adoption of the Law on Civil Servants with a consensus between all political parties demonstrates that when forced, the Government accepts the suggestions from the opposition,

⁹⁴ Vlado Buckovski, MP from SDSM, 72 session of the Parliament of the Republic of Macedonia, 10 September 2009.

⁹⁵ Silvana Boneva, MP from VMRO-DPMNE, 72 session of the Parliament of the Republic of Macedonia, 10th September 2009.

thus indirectly contributing to the political dialogue. Nevertheless, whether the Law on Civil Servants with its present solutions will fulfil the expectations, primarily depends on the quality of the secondary legislative acts and their proper implementation. In the following period, the Macedonian Centre for European will monitor the drafting of the by-laws and will duly respond as part of its quarterly Accession Watch reporting.

6.6 No money for training

In order to implement the Training Strategy 2009-2011, the CSA developed an Annual Basic Training Programme for Civil Servants. This was followed by an Operation Plan in January 2009. In the period July-September 2009, the central level civil servants training were implemented according to the planned schedule as shown on the following table:

No.	Training title	Number of training sessions
1	Advanced administrative training	8
2	Introduction to e-Governance	2
3	Budget and financial management	4
4	Middle Management Training – module 5	4
5	Public administration and state service	2
6	Project cycle - 2 modules	5
TOTAL		25

25 trainings were delivered to a total of 500 trainees. This figure is lower than the number of training delivered in the second quarter when a total of 54 training sessions were organized for more than 850 trainees as a result of the annual summer vacation, on which we warned in the previous quarterly report. Overview of local level training is not possible, as the central database does not keep records on the training delivered for local administrations.

In August 2009, the Government of the Republic of Macedonia awarded new premises to the Civil Servants Training Centre (MRT building). At the moment the ownership of the premises is transferred from the present holder (MRT) to CSA, accompanied with the development of the plan for fully equipping the Centre for training delivery needs for civil servants. CSA is currently developing the 2010 Civil Servants Training Programme.

On the second meeting of the coordination body for the 2009 Civil Servants Training Programme it was stressed that additional efforts are needed for coordinating training and exchange of information.

Unfortunately, funds for training civil servants suffer major cuts with each budget adjustment. Activities for public administration capacity building and establishing efficient public administration capable of implementing EU and NATO integrations are implemented as part of the “K” account. This programme is implemented by two sub-accounts: K2 – skills building and upgrading and K5 – equitable representation of communities. The following table provides an overview of funds in K2 sub-account with each adjustment to the Budget of the Republic of Macedonia:

	All central budget accounts		"K" account in total		"K2" sub-account for CSA	
	amount (000s MKD)	% adjustment	amount (000s MKD)	% adjustment	amount (000s MKD)	% adjustment
Initial 2009 budget	20.331.331		331.410		23.000	
1 adjustment to the 2009 budget	18.715.863	-8%	296.472	-11%	13.500	-41%
2 adjustment to the 2009 budget (September)*	17.605.514	-13%	189.250	-43%	7.779	-66%

* During the development of this report, the second adjustment to the budget was only a proposal

The data shows that with the budget adjustment, in average all programmes were decreased by 8% (first adjustment), i.e., by 11% (second adjustment) in regard to the initially budgeted funding. The "K" account, however, was decreased by 11% and 43%, respectively, which is a significantly higher cut compared to other accounts. Such budget cuts are even higher in the "K2" sub-account for the CSA, whose funding is anticipated for civil servants training, where funds were decreased by 41% with the first and by additional 25% with the second budget adjustment, i.e., a total of 66% cut from the initially budgeted funds.

The 2008 Progress Report for Macedonia listed that *"Comprehensive training for civil servants is not yet in place. Not all annual training programmes were submitted to the CSA on time and funding still depends largely on donor contributions. Partly because of the unsystematic approach, training is sometimes of poor quality or limited relevance"*.

6.7 Acting transparency

The practice of the Government, the line ministries and the other public institutions not to publish drafts of legislative acts, let alone other secondary legislation (regulations, decisions, rulebooks, etc.) continues. In its Blueprint, the Government anticipates *"mandatory publication of legislative acts' working versions on the websites of line ministries (pg. 21)"*, whereas the revised NPAL states that *"as of 1 January 2009, the procedure on drafting legislation will be improved by applying regulatory impact assessments and consultations with stakeholders."* Distressing is the fact that this simple, technical obligation is not being adherently applied by line ministries.

The situation is the same as regards the publication of secondary legislative acts important for the implementation of relevant laws. On the meeting of the Committee for European Affairs (3rd September 2009), the Deputy Prime Minister for European Integration emphasized the importance of *"strengthening the capacity on monitoring the secondary legislation, as not all secondary legislative acts are adopted on Government's meetings, but by individual institutions"*⁹⁶. On the same meeting it was also stressed that *"MPs do not have insight in the quality of such acts, as well as the manner of their implementation in different fields such as health care, judiciary, agriculture, etc."*⁹⁷.

On the other hand, one must stress the effectiveness and professional operation of the Parliament of the Republic of Macedonia.

⁹⁶ Report of the Committee for European Affairs, 3 September 2009, available at www.sobranie.mk

⁹⁷ Igor Ivanovski, MP from SDSM, Report of the Committee for European Affairs, 3 September 2009.

Namely, all legislative acts submitted by the Government as proposals for consideration and final adoption are immediately uploaded on the website of the Parliament (<http://www.sobranie.mk>), accompanied by minutes from Parliament Committees meetings, as well as the plenary sessions.

In the period July-September 2009, draft-laws and/or other documents were published on the relevant websites of the following line ministries: Ministry of Interior (draft-law on examination and marking of fire arms and ammunition, draft-law on criminal intelligence database, draft-amendments to the Law on Asylum and Temporary Protection), Ministry of Labour and Social Policy (draft-amendments to the Law on Employment and Employment of Foreigners, draft-amendments to the Law on Mandatory Capital Pension Insurance, draft-amendments to the Law on Pension and Disability Insurance in Emergency Procedure, draft-law on the sign language, draft-amendments to the Law on Disabled Persons Employment), Ministry of Economy (draft-law on public-private partnership), Ministry of Local Self-government (draft-strategy for the regional development in the Republic of Macedonia 2009-2019, Rulebook on the methodology for developing regional development plan documents), Ministry of Information Society (working version of the e-Governance Strategy 2010 - 2012, draft-law on e-Management, National Strategy on Information Society Development and its Action Plan, National Strategy for Electronic Communication Development with IT)⁹⁸.

⁹⁸ Websites of the Ministry of Environment and Ministry of Agriculture, Forestry and Water Supply have not been updated for some time now, and thus cannot be assessed.

6.8 Other priorities from the Accession Partnership

In addition to the benchmark set forth, the Accession Partnership anticipates many other tasks that the Republic of Macedonia must fulfil to advance its progress. Some of them are being implemented, while others require significantly increased efforts. On this occasion we would like to reiterate the following commitments: 1) sustain implementation of the Ohrid Framework Agreement, with a view, inter alia, to promoting inter-ethnic confidence-building; 2) strengthen the transparency and accountability of the local administrations, in particular strengthen internal control and audits; 3) establish a satisfactory standard of municipal tax collection throughout the country; 4) develop the capacity of municipalities to manage State-owned land; 5) ensure that the number and competence of staff of municipalities are sufficient; 6) complete the decentralization process; 7) ensure effective implementation of the code of ethics for civil servants; 8) strengthen administrative capacity, notably by developing the capacity for strategic planning and policy development, as well as enhancing training, and develop the general strategy on training for civil servants; 9) implement effectively the measures adopted to ensure transparency in the administration, in particular in the decision-making process, and further promote active participation by civil society; 10) pursue implementation of the reforms of the law enforcement agencies; 11) ensure adequate administrative capacity to programme and manage IPA funds effectively; 12) further develop the capacity of the administration to implement the Stabilisation and Association Agreement; 13) further implement the strategy on equitable representation of non-majority communities by adequate resources and effective fines on failure to achieve goals set.

7. REDUCE IMPEDIMENTS TO EMPLOYMENT CREATION, AND ADDRESS IN PARTICULAR, YOUTH AND LONG-TERM UNEMPLOYMENT

The seventh benchmark concerns the reduction of impediments to job creation, with a special emphasis on youth and long-term unemployment and anticipates the following measures and activities: 1) proportionality of minimum health insurance; 2) lower threshold on minimum health insurance contributions; 3) active employment measures, in particular targeting the young population; 4) completion of life-long learning preparations; 5) enactment of the vocational education and training plan (reflecting the labour market status).

2008 Report confirms the fulfilment of measures anticipated in the Government's Action Plan (proportionality of minimum health insurance, lower threshold for minimum health insurance contributions). What remains to be implemented is: active employment measures, in particular targeting youth and long-term unemployed, completion of life-long learning preparations and the adoption of the VET programme reflecting the labour market status.

The third quarterly report addresses the active employment measures anticipated under the Operational Plans covering the last three years (OP 2007, OP 2008 and OP 2009) and the analysis of their effect on decreasing unemployment among youth and long-term unemployed. It also addresses the potential conflict of interests at the National Agency for European Educational Programmes and Mobility (hereinafter: National Agency) and its contribution to the achievement of the benchmark No.7. VET programmes in the country are also addressed in the present report.

7.1 Vulnerable unemployed groups remain vulnerable

In 2008 Report in the section on the third measure (active employment measures, in particular targeting the young population), the European Commission (hereinafter: EC) emphasizes that despite the activities taken, unemployment is still an important issues, in particular among young people and less educated. According to EC, despite measures undertaken by the authorities to improve the labour market situation, the mismatch between supply and demand is still a sizeable one⁹⁹.

The Government, in its strategic and operational documents also states that young people's integration on the labour market remains an important problem despite interventions aimed at its resolution. The high number of young unemployed people is, inter alia, due to the insufficient job creation, the mismatch between the educational system and labour market demand, absence of working experience, as well as low interest for start-up businesses¹⁰⁰.

The Government expects the implementation of Operational Plans, including increased coverage of young people, to decrease the number of unemployed within this target group along with the first employment seeking timeframe.

In 2007, the Government initiated the adoption of Operational Plans including active employment programmes and measures (hereinafter: OP).

⁹⁹ 2008 Report, pg. 28.

¹⁰⁰ National Action Plan for Employment 2009-2010, December 2008.

As of 2007 onwards, every year the OP on employment increase the number and type of active employment measures with the following dynamics: from 5 programmes in 2007, to 5 programmes and 11 sub-programmes in 2008 and 9 programmes and 13 sub-programmes in 2009. The three years period did not only increase the programmes and relevant funds, but also the coverage of various target groups. The following table provides the coverage of beneficiaries and necessary funds for OP 2007-2009:

	OP 2007	OP 2008*	OP 2009**
1. Coverage of beneficiaries	8.300	9.200	13.929
2. Necessary funds (in million MKD)	297,7	663,2	795,0

* OP 2008 and the Self-Employment Programme

** OP on amending the OP 2009

7.2 Where are the young people employed?

Data available from the Employment Agency of the Republic of Macedonia (hereinafter: EARM) was used to assess the measures' outputs. According to EARM, by 31st July 2009, the number of unemployed in the Republic of Macedonia is 340,776. 68,221 of them are registered as unemployed solely for the purpose of exercising the right to health insurance¹⁰¹, while 39% or 134,408 of the registered unemployed are in the age group 15-34 years. Official data on unemployment among young people covering the last 18 months (31st January 2008 until 31st July 2009) shows significant changes. Unemployment among people at the age of 15 to 34 years is slowly, insignificantly decreasing from 151,617 to 134,438 people.

¹⁰¹ www.zvrm.org.mk

In details, at the age group 15-19 there is a decrease by 2,705 people, at the age group 20-24 by 5,442 people, at the age group 25-29 by 4,845 and at the age group 30-34 by 4,187 people. In summary, unemployment among young people at the age group 15-34 decreased by 17,179 people in total and in the 18-month period, whereas the overall unemployment decrease for the same period accounts for 19,962 people. Interesting is the fact that the enormous share of young "newly employed" account for whole 88%. Under the assumption that all youth targeted by OP 2007, 2008 and 2009 (internships, training and re-training) have found employment, they still account for slightly more than 2,000 people. It remains unclear where are the other young people employed.

7.3 The longer you wait, the easier you find a job!

As regards the long-term unemployed, data on their age structure was available by the end of 30th June 2009, according to which their number was 347,622. 199,939 of the unemployed, or 58% of the total number of unemployed, are waiting for employment for more than 2 years¹⁰². Data on long-term unemployment movements for 2008 and 2009 (31st January 2008 until 30th June 2009) indicates significant changes. The number of people waiting for employment for more than 3 years was reduced by 1,033 whereas of those waiting for employment for more the 4 years by 5,822. The number of long-term unemployed waiting for more than 5 years dropped from 158,678 to 153,251 people or by 5,427 people. More surprising is the fact that unemployment among those who have waited the longest – more than 8 years – decreased by

¹⁰² Authors' calculation based on unemployment and unemployment structure data for 2008 and 2009 held by EARM.

4,696 people, or from 108,351 to 103,655 people. Assuming that all three OPs resulted in the employment of planned and targeted long-term unemployed (approximately 2,000), it remains unclear where the others found jobs. The fact that the number of unemployed waiting for employment for more than 2 years increased by 6,560 people in the same period is quite indicative. One can only draw an absurd conclusion that in Macedonia people entering the labour market for the first time face more difficulties in comparison to those who have waited longer.

7.4 The explanation behind the “success”

Unemployment did not drop only with these groups. According to EARM, the number of unemployed as of March is continuously dropping, so from 351,278 in March it dropped to 340,776 in July. As a result, in the first three months of 2009, the State Statistical Office (SSO) also recorded a total drop of 6% in comparison to same period last year¹⁰³.

While EARM¹⁰⁴ hurried to justify this “success” in the fight against unemployment with the implementation of OPs, the Government¹⁰⁵ believes it is due to the continuous enhancement of administrative capacities of relevant institutions competent for introducing the active employment measures. In the absence of relevant analyses, one can only speculate on the reasons behind the unemployment drop. Considering the circumstances, the numerous employments via

temporary employment agencies at public administration bodies, which we witnessed in the last period, are a possible explanation of the utter illogical situation on the labour market.

On the other hand, economic indicators are also unfavourable. So, the number of employees in the first six months of this year compared to the same period last year was reduced by 6.4%, while the number of employees in the industry dropped by 6.3% in June, by 7.5% in July and by 9.8% in August, compared to the same months in 2008¹⁰⁶. Only for July, the industrial output dropped by 19.8%, and the export by 37.4%¹⁰⁷. When factoring in the GDP drop in the first two quarters of 2009, the Macedonian economy has officially entered into recession¹⁰⁸.

The Government, in particular the EARM and the Ministry of Labour and Social Policy (MLSP) as the main pillars of the employment policy, must offer detailed analyses and reports to explain such inconsistencies. The public is entitled to know whether favourable trends are developed to fight unemployment resulting from the successful implementation of action and operational plans on employment, or if this is a matter of political interventions.

¹⁰³ State Statistical Office, Communication No. 2.1.9.22 from 29th June 2009.

¹⁰⁴ Information from EARM website: www.zvrm.org.mk

¹⁰⁵ Monthly Progress Brief Accession Partnership, No. 06/2009 and No.07/2009, Government of the Republic of Macedonia, Secretariat for European Affairs

¹⁰⁶ State Statistical Office, Communications No. 6.1.9.54 from 31st August 2009, No. 6.1.9.44 from 29th July 2009 and No. 6.1.9.59 from 29th September 2009.

¹⁰⁷ State Statistical Office, Communications No. 6.1.9.53 from 26th August 2009 and No. 7.1.9.09 from 9th September 2009.

¹⁰⁸ State Statistical Office, Communication No. 3.1.9.05 from 18th September 2009.

7.5 VMRO-DPMNE's National Agency

The National Agency for European Educational Programmes and Mobility (hereinafter: National Agency) is responsible for the management of the Community Programmes *Life-Long Learning* and *Youth in Action*, but it has not been accredited yet. 2008 Progress Report states advanced preparation in light of Community Programmes management.

In the wake of the 2009 Progress Report for the Republic of Macedonia, the National Agency is undertaking activities to improve its visibility, including presentations (announcing calls for proposals for the *Youth in Action* Programme for young people in the Republic of Macedonia¹⁰⁹), organizing panel discussions (EU possibilities for Western Balkan youth and students), printing brochures, daily newspaper advertisements, billboards, etc.

3rd September 2009, the first 7 grants were awarded under the *Youth in Action* Programme¹¹⁰. The grant contacts were awarded in person by the European Commissioner for Education and Culture, Jan Figel. The honour to shake the Commissioner's hand was given to the non-governmental organization "Youth Forum – OKO" from Struga.

For the purpose of this report, we asked the National Agency to provide us with the list of grant beneficiaries. Unfortunately, we received the following reply: *"As regards your request for detailed information,*

I would like to inform you that the website of the National Agency is currently under construction and in the following period all information on the organizations awarded financial support through the "Youth in Action" Programme will be uploaded accordingly. In the publication of information on grant-benefiting organizations, the National Agency will apply the equal access to information principle. We would like to refer you to our website where the requested information will be published." At the cut-off date for this quarterly report (30th September), the names of the grant-awarded organizations were still not uploaded on the National Agency's website.

Such behaviour on behalf of the National Agency cannot be explained. Moreover, the situation becomes obvious when visiting the website of the Municipality of Struga learning that the contact person for the non-governmental organization "Youth Forum – OKO" from Struga is a certain Nelkoski Bosko, who is also the present Director of the National Agency, but also a member of the Executive Committee of VMRO-DPMNE's Union of Youth. His political activism was conformed on the press conference held on 2nd September at the VMRO-DPMNE's communication centre¹¹¹, when he decisively defended the successful implementation of VMRO-DPMNE's programme for education development.

The audacity of the responsible employees at the National Agency does not end here. Notably, Jovan Poposki's story is no less but identical. He is also a member of "Youth Forum – OKO" from Struga, and simultaneously holds the position of the head of the General Education Sector at the National Agency.

¹⁰⁹ <http://www.na.org.mk/index.php/detali-za-novost/items/prezentacija-yia-030909.html>

¹¹⁰ <http://www.na.org.mk/index.php/detali-za-novost/items/dodeluvanjegrant.html>

¹¹¹ <http://video.aol.co.uk/video-detail/-02092009/1938702568>

The fact that the National Agency awarded a grant to the non-governmental organization whose members hold high-ranking positions at the National Agency is irresponsible, shameful and harmful for the country, especially as the agency is awaiting accreditation from Brussels. Such blatant conflict of interests ought to be rigidly sanctioned. The Government must immediately dismiss these people, while the National Agency must develop the Rulebook on Preventing Conflict of Interests if Macedonia is to obtain the long-awaited accreditation from Brussels in nearest future. Only then can we demonstrate to the European Commission that the National Agency deserves to retain the attribute “national” and not to act as a political party agency.

7.6 VET – Status Quo

The Vocational Education and Training Programme is not published, nor is the report on the operation of the Vocational Education and Training Centre (hereinafter: VETC). VETC’s website was under construction on several occasions, and always under the pretence of “temporary”.

Little information on what has been done as regards the VET Programme can be found in the June Monthly Progress Brief of the SEA¹¹². The brief informs of VETC’s new premises, the development of guidelines for programming, organizing and implementing electives, and also on the introduction of internships in four-year vocation education and training. It also developed and distributed the plan on

various profiles and skills lacking on the labour market, and pursuant to the OP 2009. VETC also participated and organized several trainings.

Obviously, VET reforms take place away from the public eye and the pace is too slow. Macedonia’s participation in the *Life-Long Learning* Programme (in particular Leonardo Da Vinci component intended for VET) can significantly improve the current situation. This is why the Government cannot play around with the National Agency so that the accreditation would be granted as soon as possible.

7.7 Other priorities from the Accession Partnership

In addition to the benchmark, the Accession Partnership anticipates a number of tasks which the Republic of Macedonia must implement in order to progress in its European integration processes. Some of them are currently being implemented, others require increased efforts. Other commitments assumed are: 1) continue to improve the quality of education by providing the follow-up funding for infrastructure and staffing necessary to implement thoroughly recent reforms in the education sector; 2) continue to improve the labour market performance and to reduce unemployment, in particular by taking additional measures to address youth and long-term unemployment and by modernising the social security and educational system; 3) continue transposition of the acquis and strengthen the related administrative and enforcement structures, including the Labour Inspectorate; 4) ensure administrative capacity to implement social inclusion and social protection policies; 5) ensure a functioning and representative social dialogue; 6) take further efforts to improve the situation of persons with disabilities; 7) develop permanent mechanism for social dialogue; 8) develop

¹¹² Monthly Progress Brief Accession Partnership, No. 06/2009, Government of the Republic of Macedonia, Secretariat for European Affairs

long-term social inclusion policies and enhance access to the labour market of vulnerable groups; 9) further enhance social protection policies; 10) develop mechanisms to monitor the situation of persons with disabilities; 11) complete the legislative and administrative framework for the management of the Lifelong Learning and Youth in Action Programmes and strengthen the implementing bodies; 12) continue efforts to improve the quality of education, including primary education and to create a modern vocational education and training system and a higher education sector linked with the labour market and economic needs and promoting of regional cooperation in the field of higher education; 13) align with the EU acquis on mutual recognition of professional qualifications, including training provisions, and develop the required administrative structures; 14) further develop all areas of statistics, achieve full harmonization in key areas in terms of frequency, scope, classifications, timeliness and quality and put in place a uniform management and production system; 15) put in place a well coordinated national statistical system; 16) finalise and implement the strategy development on the mainstreaming of entrepreneurship education based on successful donor pilot projects.

8. ENHANCE THE GENERAL BUSINESS ENVIRONMENT BY FURTHER IMPROVING THE RULE OF LAW, STRENGTHENING THE INDEPENDENCE OF REGULATORY AND SUPERVISORY AGENCIES, SPEEDING UP LEGAL PROCEDURES AND CONTINUING REGISTRATION OF PROPERTY RIGHTS

The fulfilment of this benchmark has been addressed by six measures, those being: (1) setting the framework on systematic Regulatory Impact Assessment; (2) implementing the second and third package from the regulatory guillotine; (3) simplification of procedure on company closure and further advancement of the “one-stop-shop” system; (4) further improvement and simplification of custom procedures for small and medium-sized enterprises; (5) improved independence of regulatory and supervisory bodies; and (6) completion of the electronic cadastre.

According to 2008 Report, slow court procedures, weak regulatory and supervisory bodies lacking independence and resources often prevent market competition. Weak rule of law and weak institutions are not always capable of creating level playing field for all market participants. Numerous ad hoc changes to legislation governing the business environment prevent creation of foreseeable and stable business environment.

The subject of this quarterly report will be the implementation of anticipated measures and analysis of their contribution to improving the business environment in Macedonia. The business environment will

be scrutinized from the aspect of regulatory reforms, as well as the proper implementation thereof.

8.1 Good framework – bad picture

The Regulatory Impact Assessment (RIA) is the reform that lies in the heart of the business climate advancement. “Testing” the planned regulation as regards its impact on the business environment and the outputs thereof combined with the stakeholders’ consultations provides better quality, transparency and predictability of the legislation. Legislation adopted in this manner, by principle, guarantees its broad acceptance and successful implementation.

The Government of the Republic of Macedonia invested great efforts in this reform process, which was bilaterally supported through the BERIS and GOFRE projects¹¹³. From the technical aspect, RIA reforms were successfully implemented. Concerns are raised as regards its proper implementation – an area where we are continuously underachieving. The main objective of a transparent regulation, which is not conflicting and does not produce additional costs and is foreseeable, has only been partially achieved. According to large foreign investors in the country, legislative regulation can sometimes be so imprecise that the competent institutions are puzzled as regards its explanation. The issue of insufficient and untimely information on anticipated legislation was also stressed.

Exemplary is the case of the Law on Custom Operations, whose provisions were cancelled in the procedure in front of the Constitutional Court of the Republic of Macedonia, and whose literal enforcement by the Customs Administration¹¹⁴ led to the withdrawal of licenses held by several large companies in the forwarding business¹¹⁵. Now, the companies in question will have to initiate proceedings in front of competent courts so as to restore their operation licenses. In addition to the initial costs incurred, this will also mean loss of potential profits and litigation costs.

The best example of the RIA’s failure would be the Energy Law, under which EVN filed the commercial lawsuit against Macedonia in Washington¹¹⁶. This law protects the monopoly position in the electricity market of the state-owned ELEM and is not aligned with the European *acquis* and the provisions from the European Energy Community Treaty¹¹⁷. The Minister of Economy already announced efforts in light of Energy Law’s alignment.

¹¹⁴In the last quarterly report, we addressed the fact that the Customs Administration considered the said provisions as unclear.

¹¹⁵“Constitutional Court Rules in Favour of Fersped”, Sonja Madzovska, *Utrinski vesnik*, 17th September 2009.

¹¹⁶Second Accession Watch Report titled “Macedonia Needs a New Prime Minister for European Integration”, July 2009, pg.73

¹¹⁷Non-alignment of the legislation was addressed by the EC and the Energy Community which offered its expert and technical assistance for the alignment process. EC sent an unbiased message that the course of this case will impact the assessment of the country’s progress made in terms of two key benchmarks: business climate and judiciary. Accession Partnership under the chapter “Energy” explicitly calls upon the commitment the state has assumed under the Energy Community Treaty and related to the full implementation of the gas and electricity market *acquis*. Alignment of the legislation with the *acquis* aims at opening up the electricity market for competition.

¹¹³ Projects of the World Bank and the Embassy of the United Kingdom in the Republic of Macedonia.

If RIA is to provide a comprehensive filter in light of ending the fast-track adoption of poorly developed laws, which soon enough are proved to be non-constitutional and therefore revoked, why did such an important law governing the energy market organization and set as priority in the Accession Partnership pass the RIA “test” prior to entering the Parliament procedure? The conclusion is that too often laws fail the RIA test, not only in terms of the Macedonian Constitution, but also of the European acquis.

For RIA to become a systemic tool guaranteeing the quality and alignment of the national legislation with the European acquis, proper and non-selective application is needed, as well as further enhancement of expert and administrative capacity at institutions. Only quality implementation of this measure will persuade investors in the attractive investment and business climate in the country. In its Conclusion, the Government of the Republic of Macedonia also insisted on full implementation of Regulatory Impact Assessment¹¹⁸.

8.2 Guillotine of the bureaucracy

The analyses of the business climate in Macedonia regularly identify the imprecise legislation, overlapping regulations as negative sides, and in particular the incapable, cumbersome bureaucracy tasked with

the adherent enforcement of the legislation. Combined, they hamper the doing business conditions, prolong permits and license issuance, foster corruption and increase overall business costs.

The regulatory guillotine, or scanning legislation for the purpose of eliminating unnecessary laws and by-laws, was one of the reforms attempted by the Government in the last three years¹¹⁹. According to the scarce information, the second stage of the regulatory guillotine is underway addressing the individual institutions, i.e., sectoral legislation, although the deadline for the completion of the reform was the end of 2007¹²⁰.

Despite the undoubted commitment to this project and governmental efforts for its successful implementation, the business sector reactions refer to the conclusion that much more needs to be done to improve the legislation and provide better public services aimed at “bussinesscraty”¹²¹.

Single global business overview indicates the long list of delayed, deferred or irreparably lost investments as a result of the unreasonably long bureaucratic procedures. Anticipated investment in more than 40 petrol stations by LUKOIL is still hampered by tangled property rights issues, additionally complicated with the slow registration of property

¹¹⁸ The Conclusions state that 1. the General Secretariat of the Government of the Republic of Macedonia shall consider RIA free laws as incomplete and shall not forward them to the Parliament for adoption; 2. all line ministries must forward draft-laws to interested parties and timely post them on their websites and on the website www.ener.gov.mk; 3. the General Secretariat of the Government of the Republic of Macedonia shall submit the report on all laws submitted to the Government and subjected to RIA.

¹¹⁹ Project supported by USAID, World Bank and the Embassy of the United Kingdom and envisaged in 3 stages.

¹²⁰ The website www.regulatornagitina.gov.mk is no longer functional while the Government’s website dedicated to the project has not been updated since 2007, i.e., from its official opening, Government’s Progress Report on the Implementation of Key Priorities from the Accession Partnership.

¹²¹ Regulatory Guillotine, Zoran Stavrevski, column at www.vicpremier.gov.mk

rights, construction permit issuance and irrationally long procedures for obtaining business licenses¹²². For the last two years, the company is attempting to resolve the problems related to 17 land sites, and was unable to start construction on any of them¹²³. Due to similar reasons, the Slovenian company “Merkator”, which has already purchased the land and settled the construction fees, is still waiting for the required permits and approvals, while in the meantime, it redirected its planned investments elsewhere in the region¹²⁴.

For the purpose of allowing greater transparency and participation of stakeholders in the process on eliminating obstacles and simplifying administrative procedures and regulations, the single electronic registry of existing legislation, including the working versions and draft-laws of ministries, was to be established, but is late (see item 6.7).

The system (www.ener.gov.mk) is functional, but is irregularly and selectively updated. This was probably identified by the Government as well, so in the last and single Information on the Realisation of Key Priorities, it tasked the General Secretariat to ensure regular updating of the electronic legislation registry¹²⁵. Obviously criticism worked, as in the last quarter, the electronic portal is being continuously updated with most recent information.

¹²² Information from the Chamber of Commerce of the Republic of Macedonia provided on the meeting with OECD representatives and Macedonian companies and foreign investors in Macedonia, *Kapital*, issue no. 505 from 2nd June 2009.

¹²³ “Lukoil Cannot Disburse Investment Money”, *Kapital*, issue no. 504 from 25th June 2009.

¹²⁴ “Macedonia Hampers Merkator’s Investment”, *Kapital*, pg. 12-13, issue no. 506 from 9th July 2009.

¹²⁵ Information on the Realisation of Key Priorities from the Accession Partnership for the period November 2008 – May 2009, Government of the Republic of Macedonia, Secretariat for European Affairs, May 2009, pg. 36

8.3 Fast entry- slow exit

In 2008 Report, the European Commission confirmed that steps are made to improve the legislation on the introduction of the “one-stop-shop” system for start-up businesses. Scrutinizing individual activities, the Commission stated progress achieved in regard to eliminating impediments for market entry and exit, but concluded that improvements are still needed.

Focused on the pinpointed shortcomings, the Government’s Action Plan anticipated measures on simplification of procedures on company closure, as well as further simplification of custom procedures for SMEs.

“Doing Business” report confirmed the positive outcomes of the “one-stop-shop” system in light of eliminating impediments for market entry, where Macedonia achieved another leap on the ranking list¹²⁶. With the 4 procedures, 4 hours and minimum business start-up cost, Macedonia ranked sixth in the “Business Start-Up” category, thus making a leap from the 13th position in the world for 2008¹²⁷.

The situation is dramatically different as regards the elimination of market exit impediments¹²⁸. Under the category “Business Closing”, Macedonia holds the 129th place. World Bank experts calculated that closing a business in Macedonia lasts for almost 3 years (2.9), while it costs 28% of the assets value, and trustees can recover measly 20.9

¹²⁶ In the recent World Bank report Macedonia ranks 32 from the 182 covered countries, and among the 10 most reformed countries, which speaks of the fact that is has a lot to reform. For Macedonia’s summary, visit www.doingbusiness.org/reformers

¹²⁷ For states’ rank, visit www.doingbusiness.org/economyrankings

¹²⁸ In the case of business insolvency and the inability to service its debts.

cents for each USD claimed from the company¹²⁹. Calculations indicate the need for greater efficiency of the company liquidation procedure, both in terms of time and procedure costs.

The Central Register of the Republic of Macedonia (hereinafter: CRRM) provides interesting insight. According to their information, approximately 6,100 companies were registered and 4,600 were deleted from registration in the first seven months of 2009¹³⁰. CRRM informs that the number of liquidated companies would be much higher if the procedure for registration termination is not so expensive and complicated. Company registration requires 4 hours and 2,500 MKD, while the registration termination lasts at least 45 days and costs 4,000 MKD¹³¹, provided the company in question does not have unsettled claims from trustees or the State.

Business closure is much more complicated, expensive and long when the bankruptcy procedure is initiated. In such cases, only the appointment of bankruptcy manager is charged with 9,000 to 25,000 MKD. This ultimately results in companies (in particular small and micro enterprises with low cash flows) being prevented to cover such costs and therefore unable to close the company or continue the business. The information that from the total of 100,000 companies registered at the Central Register, only 75,000 are active, and in May 2009 the accounts of high 44% were blocked is exemplary of the above said.

¹²⁹ For the overview of Macedonia's 10 indicators, visit www.doingbusiness.org/Reformers/ReformersClub.aspx

¹³⁰ In comparison, last year the number of newly opened companies (13,673) was twice as big as the number of closed (6,651).

¹³¹ When adding the costs for the notary and liquidator's service, as well as costs for securing necessary documents, the total amount of costs might easily raise to 20,000 MKD.

The Ministry of Economy (hereinafter: ME), and the Bankruptcy Department therein in particular, established the bankruptcy procedure database in early 2008. ME analyses show that 336 bankruptcy procedures in total have been registered from the establishment of the database by 30th June 2009 with an average duration of 4.6 years.¹³². Main reason behind the long duration of such procedures is the overlapping legislation applied to the procedures¹³³. Analysis of procedure duration pursuant to the legislation indicate that 28 procedures are led under the first law in effect with an average duration of 13.99 years, while the second law was applied in 169 procedure with an average duration of 5.39 years and the most recent one governs 139 procedures with an average duration of 1.36 years.

Such analyses clearly indicate the need for “regulatory guillotine” of the bankruptcy legislation in light of shortening their average duration¹³⁴. Training for bankruptcy law enforcement agencies, in particular continuous training for bankruptcy judges and councils will contribute to overcoming identified barriers as regards company closure, and therefore to improved business climate.

¹³² Information on bankruptcy procedures in the Republic of Macedonia, situation from the 30th June 2009, Ministry of Economy, Skopje, July 2009.

¹³³ Three separate laws are in effect: 1. Law on Forced Settlement, Liquidation and Bankruptcy from 1989, 2. Law on Bankruptcy from 1997 and 3. Law on Bankruptcy from 2006.

¹³⁴ Other reasons for delaying bankruptcy procedures are: complexity of procedures with large number of trustees and debtors; number of procedures on setting property and monetary claims; lack of documents on property tenure, as well as untangled property rights relations. Similarly, in its last report, USAID as the single factor hampering the duly implementation of bankruptcy procedures identified the Cadastre. (BizClir: Macedonia' Agenda for Action, March 2009, pg. 80-85).

8.4 Simplified procedures – accelerated business

One of the measures from the Government's Action Plan whose implementation was assessed positively is the one related to simplification of custom procedures for small and medium-sized enterprises. The Government's third set of anti-crisis measures included additional efforts to simplify customs operation by improving the "one-stop-shop" system¹³⁵.

This means that custom duties for commodity import and export can be calculated at company premises in addition to the customs terminals without any time limitations. According to the information held by the Customs Administration, by July 2009, a total of 26,000 or 25% from the total export manifests (106,000) and 13,000 or 8% from the total import manifests (148,000) were processed under the simplified customs procedure¹³⁶. Customs Administration works on increasing the simplified procedure application, in particular to import, but that depends on the capacity of different inspectorates performing the supervision of economic operators.

Customs Administration is one of the rare public institutions which provide regular monthly reports on the progress achieved in terms of commitments stemming from the National Programme for the Approximation of Legislation¹³⁷. Moreover, it publishes a bimonthly

bulletin with information for economic operators, and the broader public and publicizes the novelties introduced. Customs Administration's website offers information necessary for economic operators, as well as interactive communication web-based tools.

Customs' transparency, advancement and facilitation of administrative import/export procedure were positively assessed by the business sector¹³⁸ and the European Commission¹³⁹. Comments addressed to the Customs Administration concern the equal treatment of all market participants¹⁴⁰.

8.5 From one mistake into another

Institutions competent for stipulating "the level playing field" for market competition, as well as competent for control and supervision of their adherent application must be free from any financial, political or other influence. To achieve operational and financial independence of regulatory bodies, the Government's Action Plans anticipate measures and activities, efforts and significant financing¹⁴¹.

¹³⁸ Information of the Union of Chambers of Commerce in Macedonia, downloaded from <http://www.sojuzkomori.org.mk>

¹³⁹ 2008 Progress Report, European Commission, pg.70-71

¹⁴⁰ Criticism was addressed to CA's procedures when withdrawing the custom licenses, and in particular to the Administration's reaction upon the Constitutional Court's cancellation of legislative provisions on which the CA based its decisions on withdrawing the licenses. The Customs Administration did not revise its decisions as yet, although a month has passed from the court ruling.

¹⁴¹ Capacity building of these institutions was also financed with EU funds (CARDS and IPA) and under bilateral projects (GTZ, GOFRE, BERIS).

¹³⁵ One of the measures included expanding the use of simplified custom procedures to a larger number of companies. third set of anti-crisis measures, Zoran Stavrevski, download from www.vicpremier.gov.mk

¹³⁶ Customs, Bulletin of the Customs Administration in the Republic of Macedonia, July-August, issue No. 12, pg.14-15

¹³⁷ Monthly reports are available at www.customs.gov.mk

Nevertheless, in the Macedonian economic history, the year 2009 will be remembered as the year with the highest number of lawsuits between the State and the foreign investors in Macedonia, also from the aspect of indemnity claims. Previous quarterly reports informed on the arbitration petition lodged by the Austrian EVN in front of the Commerce Arbitration Court in Washington¹⁴². In the meantime, the lawsuit which EVN lost in front of the first-instance court is returned for re-trial by the Appeals Court. It remains to be seen whether the Basic Court will use this opportunity to demonstrate unbiased operation and rule of law.

EVN's arguments on discrimination on the national electricity market also include decisions¹⁴³ taken by the Energy Regulatory Commission (ERC)¹⁴⁴ pursuant to contested provisions from the Energy Law¹⁴⁵. Encouraging is the fact that the Government, in its Conclusions (pg.8), pays special attention to the obligation on respecting the operational independence of ERC *"notably related to decisions on electricity pricing and adoption of the Rulebook on Tariffs"*.

While the "energy" war has not calmed, one can see the ignition of

another, the "chocolate" war. In front of the same Commercial Arbitration Court in Washington, Macedonia will again occupy the defendant's seat, this time facing the charges filed by the Swiss "Swisslion"¹⁴⁶. In 2008, the Public Prosecutor did not succeed in its application to the Basic Court on terminating the purchase agreement¹⁴⁷, but the Commission on Securities (hereinafter: CS) immediately afterwards declined Swisslion the title to manage shares and the title to dividend¹⁴⁸. SC's decision was revoked by the Constitutional Court, in the aftermath of which the Ministry of Economy filed an appeal in front of the Basic Court. It is unclear why the Ministry of Economy is not attempting amicable settlement or arbitration, but is quietly expecting the lawsuit's start¹⁴⁹. In the meantime, investments planned by Swisslion-Agroplod, although disburseable, were frozen until the final dispute resolution¹⁵⁰.

For the time being, competition protection from the Constitutional Court was requested by the third mobile operator in the country, the Austrian VIP. The Commission on Protection of Competition (hereinafter: CPC) in August 2009 rejected VIP's complaint on competition distortion made by the other two mobile operators, namely Cosmofon and

¹⁴² EVN claims indemnity also for the lost reputation and profit, which probably amounts to up to 1 billion USD.

¹⁴³ This is a matter of electricity price-setting, which in EVN's opinion is not cost-reflective and also favours MEPSO and ELEM, by allowing them to recover the giant portion from the electricity price.

¹⁴⁴ EC's 2008 Report notes that administrative capacity of ERC for regulating the markets is insufficient, while the independence thereof must be strengthened, in particular in relation to price-setting under market conditions with insufficient competition (pg.47).

¹⁴⁵ The Energy Law entered the alignment procedure with the European directives; interview with the Minister of Economy, Fatmir Besimi for *Kapital*, 12th August 2009, issue no. 513, pg.28

¹⁴⁶ Three years ago Swisslion became the majority owner of Agroplod from Resen, when it procured the majority stock share on an open call.

¹⁴⁷ Ministry of Economy's argument was that Swisslion did not fulfil its part of the investment agreement, i.e., investment of 7 million EUR in two years.

¹⁴⁸ In the CS's procedure on denying the title to shares, Swisslion indicated the existence of conflict of interests on behalf of the CS President, which at the time of Agroplod's privatization was the director of the Agency for Privatization.

¹⁴⁹ "Government to Face 'Chocolate' Lawsuit", Goran Rizaov, *Dnevnik*, 18th September 2009.

¹⁵⁰ "Investments in Agroplod Frozen", Maja Bajalska, *Kapital*, issue no. 517 from 24th September 2009.

T-Mobile¹⁵¹. VIP, inter alia, is complaining on the unduly long time taken by the CPC to respond to its complaint, as well as the absence of a rationale whether practices on unrealistic low prices were detected¹⁵². CPC, which is also competent for monitoring the telecommunications market, is the body responsible to act in cases of determined violation of market rules governing the fair competition. According to VIP, in this case the CPC failed to perform its duty on active market competition protection¹⁵³.

Encouraging is the fact that the Government, in its Conclusions (pg.8), insisted on the independence of the regulatory and supervisory bodies' decisions and regulations, both from the government and the relevant institutions. It remains to be seen whether the Government will adhere to its own recommendations.

8.6 Property registration is difficult!

Last but not the least important measure from the Action Plan for enhancing the business environment is the establishment of the property cadastre for the entire territory of the country and the introduction of the electronic cadastre. According to SEA's Information, by mid June the Property Cadastre was established and covered 88.78% of the territory of

the Republic of Macedonia¹⁵⁴. In technical terms, the Government again completed its homework, but problems arise in the Cadastre operation.

Despite the obvious progress, citizens and businesses complain on long deadlines for the registration of their property rights. The inability to register one's property rights slows down the right to property disposal and investments, which often leads to lost profits and even cancelled investments. Investors, both domestic and foreign, do not invest their funds without the property title security, which includes undisputable property rights and fast issuance of title deeds.

Investors, inter alia, are mostly concerned with the slow operation of the Cadastre. For the last two years, EVN is unable to register its property at the Cadastre¹⁵⁵, while LukOil faces problems with as high as 17 land sites. The most recent example of Cadastre's inefficiency was the property title of Komercijalna Banka for the property of the former "Makedonija Tabak"¹⁵⁶. According to Komercijalna Banka, for whole four years the Cadastre is not executing the court ruling and refuses to issue the title deeds for the building in question despite the several applications addressed to the Cadastre, and the letters addressed to the Prime Minister!¹⁵⁷ When the Bank announced the building for lease, another company appeared presenting the title deeds.

¹⁵¹ According to VIP, on the tenders announced by the Government and the National Bank of the Republic of Macedonia, the competitors bided with discounted prices thus abusing their dominant market position.

¹⁵² VIP claims that other bidders provided 0 rates for telephone impulses; prices lower than roaming service and handset costs in an attempt to increase and/or keep the market share and thus eliminate the market competition.

¹⁵³ Interview with the VIP's Chief Executive Officer, *Dnevnik*, 19th September 2009.

¹⁵⁴ Government of the Republic of Macedonia, Secretariat for European Affairs, Monthly Progress Brief, Accession Partnership, no. 06/2009, Skopje, June 2009, pg. 6

¹⁵⁵ Information of the Union of Chambers of Commerce in Macedonia

¹⁵⁶ It is a matter of an administrative building with a total area of approximately 10,000 m², awarded to Komercijalna banka under the court ruling in effect from 2005, and based on collecting the security for unsettled claims.

¹⁵⁷ "Komercijalna bank Seeks Responsibility for the Illegal Entrance in 'Makedonija tabak'", Daniela Trpcevska, *Utrinski vesnik*, 14th September 2009.

In the meantime, the previously referred „Doing Business“ Report, under the category “Property Right Registration” ranks Macedonia on the 63rd position. Bank’s calculations indicate that it takes 58 days and 5 different procedures to register the property rights, while such a venture would cost you 3.2% of the property value. From the total of 10 indicators assessed, property rights registration is the lowest ranking category following the “Construction Permitting” (137) and “Enforced execution” (64).

Modernization and completion of the Cadastre covering the entire territory of the Republic of Macedonia ought to provide accurate and complete documents that would facilitate property rights for the companies. Efficient land and real estate registration procedure would result in the achievement of the short-term priority on enhancing the legal certainty of economic operators, as anticipated in the Accession Partnership.

8.7 Other priorities from the Accession Partnership

In addition to the benchmark, the Accession Partnership anticipates a number of tasks which the Republic of Macedonia must implement in order to progress in its European integration processes. Some of them are currently being implemented, other require increased efforts. The other priorities listed in the Accession Partnership related to this area are: 1) proceed with the registration of land and real estate and strengthen the cadastre in order to enhance legal certainty of economic operators and improve the functioning of market economy mechanisms; 2) step up efforts to safeguard the sustainability

of the electricity market, in view of the country’s commitments to liberalisation, by eliminating the existing distortions due to non-cost-recovery prices and by strengthening the regulatory institutions and the physical infrastructure; 3) continue efforts to integrate the informal sector into the formal economy; 4) upgrade the country’s infrastructure, in particular for energy and transport, in order to strengthen the competitiveness of the economy at large; 5) remove the remaining barriers to establishment and to provision of cross-border services facing natural or legal persons from the EU; 6) introduce in the legislation a differentiation between provisions of services through permanent establishment and provision on a temporary basis; 7) make progress in the removal of remaining restrictions on capital movements; 8) establish a credible enforcement record in the area of anti-trust and focus on the most serious infringements of competition law; 9) establish effective *ex-ante* control of State aid; 10) Strengthen the administrative capacity of the Commission for Protection of Competitions and provide the adequate budget and staff; 11) fully ensure the transparent and non-discriminatory application of competition law; 12) further align the legislation with the EU anti-trust and State aid *acquis* and further improve the enforcement record in the areas of anti-trust and State aid control; 13) increase awareness among government institutions, businesses and the general public; 14) continue to align the legislation on the internal electricity and gas markets, energy efficiency and renewable energy sources with the *acquis* in order gradually to open up the energy market for competition; 15) continue to strengthen the independence of the Energy Regulatory Commission; 16) fulfil the obligations arising from the Energy Community Treaty as regards the full implementation of the *acquis* on the internal gas and electricity market and on cross-border exchanges in electricity; 17)

enhance administrative capacity in all energy sectors, including the Energy Agency in the area of energy efficiency and renewable energy resources; 18) continue efforts to ensure adequate supply of energy and to develop and implement an energy policy in line with the obligations under the Energy Community Treaty; 19) define and implement an industrial strategy conducive to growth and innovation; 20) introduce systematic assessment of the impact of new regulations on enterprises; 21) strengthen resources of the SME department and the SME agency and ensure implementation of SME strategy and Action Plan and the European Charter for Small Enterprises; 22) continue work on regulatory simplification, “regulatory guillotine” and reduction of bureaucratic barriers to doing business; introduce regulatory impact assessments; 23) further develop support mechanisms for SMEs and improve access for SMEs to financial services; 24) define and implement an industrial strategy conducive to growth and innovation; 25) align the law on technological/industrial development zones with the acquis.



POSSIBLE SCENARIOS AND RECOMMENDATIONS

The conclusion of the analysis of the 8+1 benchmarks is that Macedonia – finally – succeeded in fulfilling the benchmarks set by the EC in February 2008. Therefore, it is realistic to expect that the Progress Report for the Republic of Macedonia in October 2009 will include a recommendation for opening negotiations.

In the meantime, several developments favourable for Macedonia have occurred on the European arena. Notably, the Irish citizens voted in favour of the Lisbon Treaty on the referendum organized 2nd and 3rd October, while on the Elections held in Greece 5th October, the opposition won and is given the mandate to form the new Government.

1. THE NEW POLITICAL REALITY

The Lisbon Treaty will provide more efficient and reformed mechanisms for the operation of the European Union. It will also introduce many new policies on the European level (climate change, environment, energy, public services, public health, civil protection, regional policy, data protection, economy, research, trade policy, tourism, sports, etc.) and strengthen the Union's institutional framework, thus eliminate the obstacles to further EU enlargement.

The Macedonian public vigorously followed the election campaign in Greece, where George Papandreou indicated the “red lines” in the name negotiations, but also impartially stated that if his party wins the elections, the new government will not put the future EU enlargement on hold.

The new reality brought about with the Lisbon Treaty, also goes in favour of Macedonia. On the EU level, the Member-States will, most probably, start to create alliances in light of harmonizing their positions and lobbying for better positions, with special attention paid to optimal protection of national interests. Therefore, the Republic of Greece will be reluctant to create unwarranted disputes with the other Member-States, especially not during the Swedish Presidency, as it was decisively stated that Macedonia should start accession negotiations. The Swedish Presidency is, to a large extent, responsible also for putting the Western Balkan among the priorities of the following presidential Troyka (Spain, Belgium and Hungary).

This makes us believe that Greece will think twice before it endangers its positions within the Union by “vetoing” Macedonia’s date for opening accession negotiations. Nevertheless, what is most certain is the fact that Greece will look for any excuse to prevent Macedonia’s opening of negotiations.

2.LET’S BE CONSTRUCTIVE

Knowing that last year Macedonia was not given the recommendation for opening negotiations due to failure to fulfil the Copenhagen political criteria, it is very likely that Greece will lucratively monitor the developments in Macedonia in the period from the EC Progress Report publication on 14th October until the meeting of the Council of the EU in mid December 2009, looking for arguments that would enable tacit prevention of accession negotiations with Macedonia without a solution to the name dispute.

As a reminder, the political criteria include democracy, rule of law, stable institutions and protection of minority rights. Thus, special attention should be paid in the forthcoming period on preventing any “outrageous events” such as the one related to the “Macedonian Encyclopaedia”. In this period, it will be of utmost importance not to waste our energy on issues that directly undermine the democratic capacity and the multicultural character of the State, such as, for example, the new initiative for changing the Coat of Arms. The Government will have to refrain from additional provocations to Greece, while VMRO-DPMNE ought to cancel the construction of the Memorial Park for the children refugees located on the border crossing Medzitlija.

3.THE DATE REQUIRES WORK

In the forthcoming period, the State’s full potential should be focused on working on the date for opening accession negotiations, which includes preparations for the implementation of all activities following its setting.

Provided Macedonia gets a date for opening negotiations, 2010 will be the year when the EC will perform the so-called “screening” of national legislation and the institutional framework, thereby assessing the alignments of Macedonian laws and institutions with the EC acquis. The screening will also include assessment of efficient enforcement of adopted legislation, thus all possible conflicting provisions, inconsistencies and inefficiency of existing legislative solutions will spring to the surface. Once the screening process is completed (which in average lasts 6-8 months), the screening report is submitted to all

Member-States so that they can prepare their negotiating positions for the 35 Chapters from the Stabilization and Association Agreement.

This process also lasts for about 6 months, thus indicating that Macedonia in reality or under the best case scenario can expect to start negotiations in 2011. The Government will have to use this period wisely and prepare its administration, in particular the negotiation teams, to prioritise the chapters in order to efficiently open and close negotiations and – most important – to prepare its negotiating positions for all 35 Chapters. These activities would serve the purpose of achieving maximum quality and speed of negotiations. Upon the completion of negotiations, apart from the Government and the administration, the entire Macedonian society should be prepared for EU membership.

4. MACEDONIA NEEDS “HUNDRED FLOWERS”!

Evidently, the Government will have to bear the greatest burden of European integration, but other stakeholders, including non-governmental organizations, must give their impetus as well. Our contribution to this process is the following developed scenarios, accompanied with argumentation and recommendations for the Macedonian government. Hopefully, by debating the different scenarios, the EU will recognize the democratic capacity of a country aspiring for EU membership.

The sequence of the scenarios below is according to our assessment of their likelihood, starting from the most unlikely to the most likely.

For the purpose of this exercise, we have taken the titles of four from the five scenarios which the EU developed and analysed in the 90s, prior to taking the decision to enlarge with Central and Eastern European countries.¹⁵⁸

¹⁵⁸ The five scenarios developed were: 1) Triumphant Markets; 2) Hundred Flowers; 3) Shared Responsibility, 4) Creative Societies and 5) Turbulent Neighbourhoods.

SCENARIO I

HUNDRED FLOWERS		
Assumptions	Arguments	Recommendations
<p>1) EC recommends opening of accession negotiations in its 2009 Progress Report in October</p> <p>2) EU Council decides to start accession negotiations with Macedonia</p> <p>3) Name dispute is not a condition for starting negotiations</p>	<p>1) Macedonia fulfilled the set benchmarks and demonstrated ability to start negotiations</p> <p>2) Lisbon Treaty eliminates the institutional barriers and enlargement continues</p> <p>2b) Lisbon Strategy cannot be achieved without the EU integrating Western Balkans</p> <p>3) Name dispute is a bilateral issue between Greece and Macedonia and must not be a conditions for EU membership, as this puts the Council in a problematic situation from the aspect of respecting international law because of Macedonia's lawsuit in the Hague</p>	<p>1) Government of the Republic of Macedonia, from the publication of EC Report - 14th October until the meeting of the Council of EU in December - must be careful not to harm Macedonia's position by providing Greece with arguments that Macedonia does not fulfil the political criteria</p> <p>2) Government is actively and constructively continuing negotiations on the name dispute and capitalizes on the fact that Greece has a new government.</p> <p>3) Government is undertaking an analysis of Member-States' interests in all policies in order to be able to optimally position itself in the negotiations. In addition to the bilateral assistance, it is desirable to also use the negotiating experiences, in particular of the new Member-States.</p> <p>4) As part of the negotiation working groups, the Government includes representatives from civil society (NGOs, chambers, trade unions), thus providing for all stakeholders' interests to be accounted for.</p> <p>5) Government promotes the negotiation teams, their expertise and credibility for citizens to develop trust, and thus maintain the support for EU accession.</p>

SCENARIO II

TURBULENT NEIGHBOURHOODS		
Assumptions	Arguments	Recommendations
<p>1) EC recommends opening of accession negotiations in its 2009 Progress Report in October</p> <p>2) Greece puts veto in the Council of the EU and Macedonia does not get a date for opening negotiations</p> <p>3) Name dispute is the reason behind the veto.</p>	<p>1) Macedonia fulfilled the set benchmarks and demonstrated ability to start negotiations</p> <p>2) Lisbon Treaty does not change the decision-making process on EU enlargement policy (consensus)</p> <p>3) Greece feels threatened by Macedonia and does not trust the good will of the Government to quickly resolve the dispute, defending its position with the persistency with which the Government of Macedonia insists on the double formula and referendum</p>	<p>1) Government, despite everything, is actively and constructively continuing the name dispute negotiations and a solution is reached within the shortest time possible</p> <p>2) In the shortest time possible, the Government consolidates the political actors in Macedonia and creates a non-partisan national strategy on dealing with the veto effects</p> <p>3) In the interest of its rating, the Government must not indulge in satanization of Greece, the opposition and critically-minded experts and NGOs and make Macedonia the “victim” of the new European conspiracy.</p> <p>4) Government must not use the veto as the alibi for discontinuing reforms, leading Macedonia into international isolation.</p> <p>5) Government continues to lobby intensively, in particular the Presidential Troyka (Spain, Belgium, Hungary) and other Member-States in light of deblocking the process and uses all means that can contribute (NGOs, chambers, artists, media, etc.)</p> <p>6) Government develops good neighbourly relations in the region, creates allies and demonstrates leadership by initiating the development of the regional energy strategy on the level of the Regional Cooperation Council.</p> <p>7) Ruling majority must not allow early elections in Macedonia.</p>

SCENARIO III

CREATIVE SOCIETIES

Assumptions	Arguments	Recommendations
<p>1) EC recommends opening of accession negotiations in its 2009 Progress Report in October</p> <p>2) Greece does not openly veto Macedonia, but the Council of the EU does not grant a date for starting accession negotiations, but merely welcomes Macedonia's progress in the European integration process.</p> <p>3) Name dispute is the reason behind the "silent" veto.</p>	<p>1) Macedonia fulfilled the set benchmarks and demonstrated ability to start negotiations</p> <p>2) Lisbon Treaty does not change the decision-making process on EU enlargement policy (consensus)</p> <p>3) Greece feels threatened by Macedonia and does not trust the good will of the Government to quickly resolve the dispute, defending its position with the persistency with which the Government of Macedonia insists on the double formula and referendum</p> <p>4) Council of the EU demonstrates solidarity for its fellow Member-States and allows Macedonia to be "silently" vetoed.</p>	<p>1) Government must not indulge in satanization of Greece, the opposition and critically-minded experts and NGOs and make Macedonia the "victim" of the new European conspiracy.</p> <p>2) As soon as possible, the Government consolidates the political actors in the Republic of Macedonia and creates a non-partisan national strategy for lobbying Member-States and for continuing the European reforms.</p> <p>3) Government continues with negotiations (name dispute) and demonstrates willingness to solve the problem, while at the same time seeks assistance from EC. EC together with UN develop measurable indicators (benchmarks) for UN to assess the progress achieved in the negotiations with Greece.</p> <p>4) Government asks EC to initiate the (pre)screening process, as was the case with Slovakia.</p> <p>5) Government learns from the experience of Spain and the United Kingdom, whose membership was vetoed by France.</p> <p>6) Government continues to lobby intensively, in particular the Presidential Troyka (Spain, Belgium, Hungary) and other Member-States in light of deblocking the process and uses all means that can contribute (NGOs, chambers, artists, media, etc.)</p> <p>7) Ruling majority must not allow early elections in Macedonia.</p>

SCENARIO IV

SHARED RESPONSIBILITY		
Assumptions	Arguments	Recommendations
<p>1) EC recommends opening of accession negotiations in its 2009 Progress Report in October</p> <p>2) Council of the EU conditions opening negotiations with a set of measures:</p> <p>A) Negotiations will start after Macedonia and Greece resolve the name dispute,</p> <p>B) In the meantime, EC will perform the screening process</p> <p>C) EC, together with the UN, develop benchmarks for assessing negotiations' progress</p> <p>D) Macedonia withdraws the lawsuit from the International Court of Justice in the Hague</p>	<p>1) Macedonia fulfilled the set benchmarks and demonstrated ability to start negotiations</p> <p>2) Lisbon Treaty does not change the decision-making process on EU enlargement policy (consensus)</p> <p>2a) Greece feels threatened by Macedonia and does not trust the good will of the Government due to the persistency to organize a referendum</p> <p>2d) At the moment, the International Court of Justice in the Hague is leading the procedure on the alleged infringement of the Interim Accord with Greece's "veto" for Macedonia's membership in NATO on the Bucharest Summit. The prospects of a new "veto" on opening the accession negotiations within the Council of the EU would imply pressure on the court and would prejudice its decision in favour of Greece. Such a decision would ignore the possible ruling of the court and imply disrespect for international norms and principles. Therefore, the Council of the EU must request Macedonia to withdraw the lawsuit before attaching any conditions.</p>	<p>1) As soon as possible, the Government consolidates the political actors in the Republic of Macedonia and creates a non-partisan national strategy for solving the name dispute by fulfilling the benchmarks set forth</p> <p>2) Government renounces the referendum, while the opposition is constructive and supports it in this intention</p> <p>3) Macedonia withdraws the lawsuit against Greece from the International Court of Justice in the Hague</p> <p>4) Government analyzes MS interests in the 35 chapters and benefits from bilateral assistance, in particular from the new MS which assist with their own negotiation experience</p> <p>5) Government demonstrates European mindset and implements positive campaign on EU membership benefits, promotes the negotiation teams, their expertise and credibility for citizens to develop trust.</p> <p>6) Government includes the civil society in the negotiations working groups.</p> <p>7) Government uses cross-border cooperation projects to strengthen people to people contacts from the both side of the border with Greece.</p> <p>8) Government continues to lobby intensively, in particular the Presidential Troyka (Spain, Belgium, Hungary) and other MS in light of deblocking the process and uses all means that can contribute (NGOs, chambers, artists, media, etc.), and finances the organization of conference in the MS.</p>