Macedonia - building integrity in defence. An analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and eGovernment (Difi) has prepared this assessment of institutional risk factors relating to corruption in the defence sector in Macedonia. The report was prepared within the framework of the NATO Building Integrity (BI) Programme.

The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

Ingelin Killengreen
Director General

Abbreviations and acronyms

BG	The Basic Group
CHU	The Central Harmonisation Unit
DCAF	The Geneva Centre for the Democratic Control of Armed Forces
DUI	The Democratic Union for Integration
ESPP	The Electronic System for Public Procurement
HRM	Human resources management
IPT	Integrated Project Team
LCI	The Law on Classified Information
LFAPI	The Law on Free Access to Public Information
MISA	The Ministry of Information Society and Administration
MoF	The Ministry of Finance
MPs	Members of Parliament
NCO	Non-commissioned officer
NPM	The national preventive mechanism
ORR	Operational Requirement Report
PIFC	PIFC Public Internal Financial Control
PPB	The Public Procurement Bureau
PPL	The Public Procurement Law
PRO	The Public Revenue Office
SAC	The State Appeals Commission
SAO	The State Audit Office
SDSM	The Social Democratic Union of Macedonia
SECI	The Regional Centre for Combating Trans-border Crime
SG	The Steering Group
SIOFA	The Government Secretariat for Implementation of the Orhid Framework Agreement
SP	The State Programme for Prevention and Repression of Corruption
UNCAC	UN Convention against Corruption

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1 Executive summary

To summarise, parliamentary control over defence and the armed forces is limited and "on paper". The Parliament, dominated by the executive, is not able to oversee the defence sector effectively. The problem is rooted in the disproportionate imbalance of power between the executive and the legislature in favour of the former. Parliamentary oversight of the defence sector through the budget is not well ingrained yet in the political practices of the Parliament. In addition, the Parliament has no role on classified information. The Law on Classified Information establishes a specialised Agency, which is only accountable to the Government. Excluding Parliament from overseeing the exchange and use of confidential data is a gap hindering the democratic control of the armed forces and security services.

With regard to parliamentary control of the military and the intelligence services the establishment of the basis for the modernisation of the intelligence services and the progress made in the country's NATO integration process represent achievements, yet major objectives have so far not been attained. Much remains to be done to imbue the intelligence services with acceptable standards of democracy, transparency and accountability. The argument is heard that old mentalities need to be changed. The reform process is faced with many obstacles, not the least of which are shortcomings in the civilian system of government.

The Ombudsman institution has progressively asserted itself as an efficient, professional, neutral and reliable institution for the protection of human rights. It enjoys a good reputation and confidence on the part of civil society, which can also be seen from the steady increase in the number of complaints it is entrusted with. Nevertheless, there is room for improvement: the ombudsman could take a more proactive stance by investigating cases without waiting for the lodging of an individual complaint. In addition, the ombudsman still needs a full mandate to promote and protect human rights in compliance with the Paris Principles, and sufficient budget and human resources should be provided for this.

In the case of external audit, the State Audit Office (SAO) has a good reputation. It is considered to be truly independent and professional. The main systemic shortcoming is that the SAO's independence is not safeguarded by the Constitution.

Fines can be imposed for failing to comply with the legislation on conflicts of interest, yet one of the major shortcomings of the current regime is the lack of effective measures that will prevent and punish even if the overall political will exists for combatting conflicts of interest.

The main insufficiency in the respect of the right to access information is that more than half the requests for access to information do not receive any answer. Administrative silence remains a constant and serious problem.

The institutional framework for public procurement remains ill-suited to effectively addressing corruption. Furthermore, Macedonia still lacks

institutional capacity to conduct viable, competitive procurement processes. There is a lack of individuals who are knowledgeable in procurement good practices at the MoD and elsewhere in the public administration. There has been extensive media coverage of certain asset disposal processes, but no concerns have been raised with regard to arrangements for assets disposal.

In the case of internal financial control it can be said that there is a comprehensive statutory basis in place defining the systems, principles and functioning of internal control, internal audit and financial management. Nevertheless, the understanding of the technical concepts and requirements of Public Internal Financial Control generally appear to be limited within MoD management. In practice, there are no ex-ante controls of commitments, payments and recovery of irregularly paid amounts. What is in place is the Treasury accounting system of ex-post internal control which simply checks that transactions are executed in accordance with the regulations.

The merit system as a principle for human recourses management is a hollow shell. If at all, professional standards play only a secondary role for staff selection. The result is a lack of civil servants who are capable of implementing legislation, conducting administrative procedures in a reliable way or proposing sound policy analysis and reform programmes. Political authorities regularly use discretionary demotion or reassignment to a lower position instead of dismissal.

The issue of anti-corruption reform can be characterised as the strategy for Europeanisation of the country. With the adoption of the State Programme, the country has fulfilled a part of the political criteria required by the EU, but it largely remains at the declarative level only.

The anti-corruption legal framework is relatively good. However, the high number of legislative acts has led to a fragmented legal system which makes implementation and monitoring difficult. Loopholes in the legislation have hampered the fight against corruption. A regulatory framework laying down the ethical principles applicable to public officials other than civil servants is absent. Furthermore, security sector personnel are not governed by civil service rules but by general public service rules in which ethical standards are weakly regulated. In fact, prevention is better organised and perceived as more important than prosecuting and repressing corruption in the country. The weak independence of the judiciary remains a matter of serious concern affecting the fight against corruption.

2 Introduction

The performance of NATO member countries as reliable allies within the organisation depends on a number of factors, including the actual functioning of the overall governance and administrative system. Evaluating these capacities requires scrutinising the main institutional settings and working arrangements that make up the public governance systems of these countries in order to assess the resilience to corruption of governments and public administrations. This report carries out such an analysis of Macedonia.

The point of departure for the analysis is the observation that a holistic approach to security sector reform is increasingly called for.[1] Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Macedonian Ministry of Defence (MoD), not the armed forces. It treats the Ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across national systems of public governance impacting the MoD as any other ministry.

To a large extent the report concentrates on checks and balances in the public sector; *i.e.*, mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing of responsibilities and information so that no one person or institution has absolute control over decisions. Whereas power concentration may be a major, perhaps *the* major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

a. Parliamentary oversight;
b. Anti-corruption policies;
c. Specialised anti-corruption bodies;
d. Arrangements for handling conflicts of interests;
e. Arrangements for transparency/freedom of access to information;
f. Arrangements for external and internal audit, inspection arrangements;
g. Ombudsman institutions;

In addition to examining the checks and balances, this gap analysis focuses on two high risk areas susceptible to corruption/unethical behaviour:

h. Public procurement (or alternatively: disposal of defence assets);
i. Human resources management (HRM).

[1] See for instance OECD (2007) *The OECD DAC Handbook on Security System Reform (SSR) Supporting Security and Justice*.

Both areas are of particular importance in the defence sector. Defence sector institutions are responsible for large and complex *procurements* that may facilitate corruption. In most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the ministry. *Human resources* are central to the quality of performance of defence sector bodies.

The report mainly concentrates on the same areas as those listed in NATO's Building Integrity Programme launched in November 2007, whose key aim is to develop "practical tools to help nations build integrity, transparency and accountability and reduce the risk of corruption in the defence and security sector".

The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption. The report is action-oriented: based on its analysis it proposes a number of recommendations for reform action to be undertaken by the government.

3 Parliamentary oversight over the executive and independent bodies reporting to Parliament

3.1 Direct parliamentary oversight of the executive

Macedonia is a parliamentary democracy. The Parliament (*Sobranie*) appoints the government as a whole and each minister individually. The government is accountable to parliament. Parliament consists of a single chamber of 123 members. The powers of the parliament in respect of defence are defined by the Constitution and the 2001 Defence Law. Strangely enough, the Constitution does not explicitly empower the parliament to control the government. Such control is stated in the Parliamentary Rules of Procedure, the Law on Defence, the Law on Crisis Management and the Law on Parliament.

The Law on Budget and the Rules and Procedure of the Parliament do not mention the defence sector, but article 17 of the Law on Defence describes its powers on defence. The parliament allocates financial resources for defence and adopts the war budget. The same law (article 147) obliges the ministry of defence to inform the government, as well as the Parliament, about the use of financial resources.

By adopting the state budget, parliament does have a role in defining the defence expenditure. It also declares a state of war and emergency by a two-third majority vote. Parliament also oversees the management by the government of national crises (2005 Law on Crisis Management). Finally, the parliament can, on its own motion, amend defence objectives, revise defence expenditures and approve armed forces' missions. The 2001 Law on Defence lists the parliament's powers on defence matters. The 2009 Law on Parliament further strengthened the powers of the legislature. The defence budget is transparent, even if the time given to parliament for examining it is too short. Nevertheless, even if it passes laws and adopts the budget, the parliament plays a limited role in developing defence policy, which lies fundamentally with the executive. Extra budgetary funds are opaque to parliament. This diminishes the controlling role of the legislature and the effectiveness of the audit carried out by the State Audit Authority.

The Ministry of Defence (MoD) provides information to parliament through the government, especially in the case of the parliamentary budget discussion. Beyond the budget discussion the MoD does not provide regular information to parliament on procurement, defence asset disposals or arms' sales. Many in the MoD consider that information is far too confidential to be discussed in parliament. Nevertheless, the parliament relies on information from the government to discuss bills on defence matters. Likewise, parliament receives information from the government in questions or interpellations to the minister of defence, or on the occasion of general debates on defence, which seldom occur.

Only on the occasion of restructuring the armed forces in 2011 (*Lepeza* programme), which also entailed the promotion of ethnic communities, has there been considerable parliamentary debate on defence. Other issues have been discussed in a tentative manner recently in parliament, namely the Macedonian participation in peacekeeping missions abroad and the disposal of the surplus assets of the army. Most questions are usually posed by opposition parties, not the ruling party.

The MoD regularly submits two reports to parliament: a) *The Report on Defence*, a document that is submitted every two years. It is a complex document which includes information on personnel, equipment, finance, logistics and so forth; and b) *The Long-term Defence Development Plan*, a 10-year overall plan.

Information is made available to parliament if parliamentary approval is required to deploy soldiers in peacekeeping missions abroad. Since the 2008 amendments of the Law on Defence, parliamentary approval of peacekeeping missions is required for non-NATO led missions. For NATO-led missions the government may decide on its own the deployment of troops. However, MPs have rarely debated on peacekeeping missions, neither on the risk to soldiers nor on other technical, financial or political questions. The parliamentary disinterest in mission budgets seems to be linked to the fact that other countries cover a large portion of the costs.[2] The absence of parliamentary scrutiny of overseas deployments turns parliament's oversight into a mere rubber-stamping exercise.

The government does not publish arms procurement information. Parliamentary questions on procurement have been posed to the current minister of defence. However, the answers were related to procurements conducted by the previous government which the minister of defence considered inefficient, including the procurement of components for tanks, software and rockets. Current procurements were not mentioned.[3]

Arms procurement is in general not transparent. Parliament has a limited, if any, say on the topic. Parliament does not check the legality of planned procurement either, particularly in relation to international regulations or agreements limiting the production, trade or use of certain kinds of weapons. No mechanisms are in place to prevent selling arms or dual use technologies to countries under UN sanctions. This issue came to public attention in 2003, when it was argued that a local Macedonian company sold civilian machines to Iran that seemingly were subsequently adapted to military use. Officially there are no arms producers in the country.

The MoD has provided some information to parliament on the sale of surplus assets of the army. These primarily are land and buildings designated for building apartments for military personnel (a project called *The Army-my real*

[2] For example, most transportation costs of Macedonians to and from Afghanistan are covered by Norway.
[3] See *Sobranie* Parliamentary Questions, 2010a.

home (*ARM-moj vistinski dom*,), for the establishment of economic zones or for sale to investors.[4] The information available, however, is insufficient to determine any possible malpractices.

Parliament has the usual mechanisms to control the government and the President of the Republic (the latter is the commander-in-chief of the armed forces) – namely debates, questions, motions of interpellation, inquiry commissions, motions of confidence and impeachment of the President. These are regulated by the Rules of Procedure. Since the 2009 Law on Parliament, it also has oversight hearings. An oversight hearing is held to gather information and expert opinions in relation to the implementation of policies, laws and other activities of the government and state bodies.

As mentioned above, only some questions on defence have been introduced. No interpellations, inquiry commissions or oversight hearings have been held on defence in the period 2010–2012. Parliament does not have defence (or on other topics) research services neither internally nor externally. Its research capacity is weak, despite the fact that a parliamentary institute which is not yet operational has been established. The legislature lacks expertise to analyse and assess information and therefore is not capable of producing evidence-based policies on defence or in any other policy field. The members of the Parliamentary Defence Commission lack the capacity and capability to assess whether proposed legislation is compatible with international agreements and EU/NATO legislation. Likewise, the parliament lacks the mechanisms and capacity to follow up the implementation of the conclusions issued from its plenum or commissions (21 in number, one of which is on defence).

The composition of the Parliamentary Defence Commission means it is unable to exert real influence on the executive. The parliament is sharply polarised politically. Ruling parties dominate its membership whilst opposition parties may hardly have any effective say. In consequence, even if the Commission has sufficient legal powers to effectively oversee the defence policy, those powers are rarely used, including for the scrutiny of military procurement. No mechanism has been established to periodically examine issues of major concern to the defence sector. In addition, the Defence Commission lacks appropriate financial and human resources as well as the necessary professionals and experts. It has three support staff in total, two of whom are working as experts and one acting as a Secretary to the Commission.

MPs are reluctant to use the tools and mechanisms at their disposal exhaustively. No individual initiative by a MP is allowed unless it is sanctioned by the party management, which has an overwhelming influence over parliament. No records exist of the parliament sending back draft laws submitted by the Government. Since the political parties are highly centralised institutions, with top-down policy-making structures, the voice of individual MPs is rarely relevant. Party discipline is high, and the MPs vote *en bloc*, dissident voting being a rarity.

[4] See *Sobranie* Parliamentary Questions, 2010.

Ruling parties have often enacted laws by urgent procedure, occasionally in the absence of opposition MPs. The emergency procedure is intended to prevent or mitigate major disturbances in the economy, to respond to urgent security and defence needs, or to react in the case of major natural disasters, epidemics or suchlike extraordinary and urgent needs. The indiscriminating use of emergency procedures has been detrimental to the quality of the implementation of laws.

Since January 2013 various foreign governments and international organisations have provided technical assistance to the Defence Commission. For example, the OSCE and the DCAF have jointly provided advisory support. Experts advising the Commission were on the pay-roll of the donors (DCAF and OSCE). They were recruited on the basis of vacancies advertised publicly in local newspapers. The whole recruitment procedure for expert staff was conducted by the donors, with little involvement of the Commission. This was only consulted on the expertise needed. The sidelining of the Commission is against the law, as the Rules of the Procedure of the Parliament and the Law on Parliament require that experts advising the parliament shall be parliamentary staff on the parliament pay-roll only and be managed by the Secretary General.

The Parliamentary oversight of the defence sector involves not just the Defence Commission, but several other commissions as well, such as the Finance and Budget Commission and the Commission on Economic Issues, which is relevant in matters of arms procurement and trade. However, arms procurement or arms sales have never been discussed at the Economic Commission. Despite its weaknesses, and given the overall weak institutionalisation of the country, the Defence Commission probably remains the sole effective way to follow up and control the executive and the ministry of defence. The Defence Commission, by discussing a broad spectrum of defence matters, gives MPs detailed and substantive insight into the ministry of defence and the armed forces. This allows them to note, but not act upon irregularities.

A representative of the government or of the MoD usually participates in the Defence Commission sessions. Quite often it is a high level participation, including the minister himself or his deputy or state secretary. The Commission may invite other stakeholders, such as scientists, professionals and associations to attend its sessions in order to hear their opinions on issues under consideration. However, this option is rarely used, and no provisions are in place to address any possible conflicts of interest of those invitees. The Commission is also entitled to establish working groups, whose members are chosen from among the members of the Commission, as well as government and non-government specialists. The working groups may then submit reports to the Commission, although in practice this has not taken place. Another mechanism used by parliament is to visit army units, command posts and headquarters both in Macedonia and abroad[5].

[5] The Chairperson of the Defence Commission has visited the forces in Afghanistan on numerous occasions.

The Commission takes a position on each issue on its agenda. Subsequently, it reports the conclusions and relevant explanations to the parliamentary plenum. The report includes all opinions and proposals related to the issue as reviewed during the session. The Commission sessions are recorded and minutes are kept[6] and published on the website of the parliament,[7] which adds transparency and publicity to the work of the Commission. The media and civil society have improved their capacities to report and critically analyse the role of the institutions, including defence-related issues and parliamentary oversight.

The Defence Commission has so far been able to make valuable contributions to building consensus on defence reforms and remains among the most active parliamentary commissions. The Commission meets on a monthly basis with a high participation from its members. However, additional efforts and resources are needed to develop a viable and trustworthy Defence Commission, able to conduct oversight over the military in an adequate manner.

The functioning of the parliament as a whole is seriously disrupted by insufficient consultation between the government and the opposition. The boycott of the parliament by opposition parties and political wrangling jeopardises parliamentary activity. The opposition has frequently boycotted the parliament, most recently in early 2013 due to the events of 24 December 2012. On that day, in the wake of the debates on enacting the annual budget, opposition lawmakers were expelled - together with journalists - from the parliament by the security guards amid clashes between rival lawmakers and supporters inside and outside Parliament.

Parliamentary control over the defence and the armed forces is limited and "on paper". Parliament, dominated by the executive, is not able to oversee the defence sector effectively. The problem is rooted in the disproportionate imbalance of power between the executive and the legislature in favour of the former. Parliamentary oversight of the defence sector through the budget is not well ingrained yet in the political practices of the parliament. In addition, the parliament has no role on classified information. The Law on Classified Information establishes a specialised Agency, which is only accountable to the government. The exclusion of the parliament from overseeing the exchange and use of confidential data is a gap hindering the democratic control of the armed forces and security services.

3.2 Control of the military and intelligence services by Parliament and the executive

The parliament oversees the intelligence services through the Parliamentary Commission on the Security and Counter- intelligence Administration and the

[6] Rules of Procedure, articles 117-131
[7] www.sobranie.mk

Agency for Intelligence. There are three intelligence agencies, namely the Intelligence Agency, the Security and Counterintelligence Administration within the Ministry of Interior, and the Service for Military Security and Intelligence in the Ministry of Defence. The Commission was established in 1995 as part of the reforms that created the intelligence services. Its specific mandate is to monitor whether these agencies respect the law and the rights and freedoms of citizens. The Commission also assesses whether the agencies have sufficient personnel and technical facilities. The Commission has nine members plus eight alternates. The chair of the commission always belongs to an opposition party, which contributes to its independence.

Intelligence services are accountable to the parliament. The accountability arrangements are clearly stated in the laws on intelligence agencies and on the police. The existing accountability arrangements were set up when these agencies were established. No significant changes to the accountability arrangements have been introduced since. The Commission reports at least once a year to the parliamentary plenum. The directors of the Intelligence Agency and the Security and Counterintelligence Administration within the ministry of interior are required to provide the Commission with all the information and data within the sphere of competence of the Commission. The conclusions in the Commission's report are communicated to the President of the Republic and to the government by the parliament.

The powers of the parliament on intelligence are defined by the Constitution, the laws on police and intelligence agencies and the Procedural Rules of the Parliament. The parliament adopts the highest legal acts, including laws, strategy documents, resolutions and declarations in the area of intelligence, as well as other legal instruments. It has the capacity to amend the strategic objectives of the intelligence sector without the consent of the government. This means that parliament can effectively reformulate, introduce new objectives, delete objectives, vary intelligence expenditures and revise intelligence missions.

The parliament, however, does not have a clearly defined legal authority over the Service for Security and Intelligence of the ministry of defence, but in practice the Commission on Defence and Security performs oversight functions over the Service. Even if the parliament has a role in the control of intelligence services, it does not have a political authority comparable to that of many Western countries. Very often it lacks information or appropriate financial and human resources or professionals and experts. There are various additional instruments that parliament uses to deal with intelligence matters. It may request the heads of intelligence agencies to provide their opinions on various intelligence issues. The parliament also relies on its permanent and temporary working bodies in the field, including the Commission on Control of the Security and Counter-intelligence Administration and of the Intelligence Agency. The parliament may set up commissions of inquiry on any domain or on any matter of public interest, including that of intelligence. Moreover, it makes use of questions, hearings and interpellations on intelligence matters. However, the Commission has no advisors, no independent budget, and just one

member of staff to deal with its administrative needs, and the heads of intelligence services rarely attend the Commission's meetings.

The transparency of the intelligence sector is relatively new for Macedonia and there is still a lack of doctrinal intelligence documents to provide a solid basis for transparency in intelligence policy and planning. The problem often has nothing to do with the inaccessibility of strategic documents, but rather with their non-existence. International codes or conventions to which Macedonia subscribes stipulate general transparency in defence, security and intelligence sectors. The intensified involvement of intelligence officials in cross-border and regional exchange of information, including in bodies such as the SECI Regional Centre[8], is having positive effects on transparency in the functioning of the intelligence services.

The Intelligence Agency and the Security and Counter-intelligence Administration within the ministry of interior are obliged to provide information to the parliament. This information is confidential, subject to access restricted to the members of the Commission. The Commission discusses classified information in closed sessions. Commission members must undergo a vetting process to obtain a state secret–level security clearance. This process makes the Commission members dependent on the approval of non-parliamentary authorities under the control of the executive. It is the Directorate for Classified Information, a government department, that ultimately decides whether or not to issue a security clearance.

Generally, parliamentarians are unfamiliar with intelligence-related issues[9]. The parliament's Commission for the intelligence services has not used its powers consistently to set up a strong parliamentary control of intelligence planning and procedures. There are no procedures clearly defining how the Commission's decisions and recommendations should take effect. Its performance has been mostly poor because of the reluctant attitude of MPs to criticise the intelligence agencies, usually headed by political party cronies. In consequence, parliament has not performed impressively in overseeing the intelligence agencies. Legal bases are in place, but no real control has been exercised. Two key elements appear to be lacking among the members of parliament: expertise and political will.[10]

The role of the executive, i.e. the President and the government, in controlling the intelligence services is defined by the Constitution and the sectorial laws[11]. The President of the Republic appoints the Director of the Intelligence Agency. The President, at the same time, presides over the Security Council of the

[8] The Regional Centre for Combating Trans-border Crime (SECI) has been in existence since the signing of the Cooperation Agreement in 1999. Since then the number of joint investigations co-ordinated through SECI Centre and the number of exchanged information has been on the rise continuously. www.secicenter.org.

[9] See Bogdanovski, Andreja (2012), *Intelligence Government in Macedonia*, Geneva/Skopje: Anaytica/DCAF.

[10] *Ibid.*

[11] The competences of the Intelligence Agency are defined in the Law on the Intelligence Agency. The Law on Police is the statutory basis of the Security and Counter-intelligence Administration. The Law on Defence defines the existence and role of the Ministry of Defence's Security and Intelligence Service.

Republic, which plays an advisory role in the formulation and implementation of intelligence policies. The Presidency has no expert staff on intelligence.

The Prime Minister (PM) issues intelligence policy documents that are submitted to the parliament for approval, after endorsement by the Council of Ministers. The PM does not have exclusive powers in the intelligence area, but they lie with the Council of Ministers. He/she may propose the dismissal of the Director of Security and Counter-intelligence Administration of the Ministry of Interior. The PM has no staff of experts on intelligence issues. In practice, advice is provided by the Security Adviser to the Prime Minister. It is also the output of inter-ministerial cooperation by the inter-ministerial working bodies. These working bodies are set up on a permanent or temporary basis. The working bodies cooperate with ministries and other administrative bodies. The permanent working bodies of the government are the government commissions and special commissions. The government's permanent inter-ministerial working body (commission) in the area of intelligence is the Foreign Affairs, Defence and Security working body. Membership is restricted to ministers and, where appropriate, high-ranking officials.

The minister of defence countersigns all intelligence documents issued by the Chief of Service for Military Security and Intelligence of the MoD that are to be submitted to the parliament, prior to validation by the Council of Ministers. Moreover, the minister of defence issues defence intelligence instructions to the entire defence establishment. He has a permanent pool of staff experts and advisers working solely under his authority on intelligence issues.

The highest advisory authority in security matters is the Security Council of the Republic. The Security Council is composed of the President of the Republic, the President of the Assembly, the Prime Minister, ministers heading state administration bodies in the fields of security, defence and foreign affairs, and also three members appointed by the President. The Council deals with security and defence matters and makes policy proposals to the parliament and the government. The latter reviews and adopts its strategic priorities on an annual basis and integrates its strategic priorities in the fiscal strategy and the budget.

According to the Budget Law, the intelligence agencies shall develop a three-year strategic plan reflecting the strategic objectives of the Government in the field of intelligence. The strategy shall be supported by agency programmes and budget. The Minister of Defence and the Minister of the Interior issue intelligence guidance. There is no specific procedure in place for the subordinate authority to comment on the guidance provided by the higher authorities.

The principle of accountability of the intelligence services to the executive is well-established within a legal framework that includes the Constitution, laws, national security concepts and intelligence doctrines. The country has succeeded in establishing legal structures that subordinate the intelligence sector to the executive organs. However, there is an unclear division of responsibility between the government, the President, the Minister of Defence and the Minister of the Interior in relation to the intelligence services. All

intelligence services are accountable to the executive bodies of the Government. The accountability arrangements are clearly stated in the laws on intelligence agencies, the police and the defence sector. The existing accountability arrangements have not undergone major modifications since their establishment.

The Intelligence Agency is accountable to the President of the Republic, the government, and the ministry of finance. The President holds the highest authority over the Intelligence Agency, including the right to appoint and dismiss its Director at will. The Agency is headed by a Director, who is appointed and dismissed by the President. The Director is answerable to the President and to the government. The Director decides the Agency's organisation and work with the prior agreement of the government, which is empowered to provide overall executive direction. The Intelligence Agency reports directly to the President first. It can then share its intelligence product with other government bodies. This procedure was instituted to balance the powers among the various arms of the executive so that no single ministry would have total control of intelligence. Nevertheless, in some areas the government shapes the work programme of the Agency directly. These include personnel-related authorisations, as well as the approval of the Agency's methods and means and the government has control over the agency's budget.

The Security and Counterintelligence Administration of the ministry of the interior is accountable to the government, the ministry of the interior and the ministry of finance. The administration is headed by a director, appointed for a four-year term and discharged by the government. The director is answerable to the minister of the interior and to the government. The government, as such, is the overall provider of the executive direction to the Security ad Counterintelligence Administration.

The Service for Military Security and Intelligence of the MoD is accountable to the government and the minister of defence. The minister of defence appoints its director, who is answerable to both the minister and the President. The service staff are appointed and discharged by the minister of defence. The MoD provides executive direction to the Service.

The public has often questioned weaknesses in the system, especially its badly organised information flow and the poor quality of the information. Instead of refining the intelligence collected by diversifying its sources, the division of labour among three different agencies, each operating under a different authority, has led to a polarisation of the agencies, bureaucratic turfs of war and poor cooperation among them.[12] Judicial investigations of abuses by the intelligence services frequently prove fruitless. The judiciary and prosecutorial services generally show inability to chase law enforcement officials crossing the line[13] or disinterest in doing so. No major international donor has lent

[12] Bogdanovski, Andreja (2012), *Intelligence Government in Macedonia*, Geneva/Skopje: Anaytica/DCAF.
[13] See Yusufi, I. (2013), *Control and Oversight Conducted by Independent State Institutions over the Security Sector in Macedonia*, Belgrade: BCSP.

support to the intelligence sector reform. Intelligence reform is an area where support from the international community is lacking. Implementing intelligence reforms has not been easy for Macedonia.

Despite the achievements in establishing the basis for the modernisation of the intelligence services and the progress made in the country's NATO integration process, major objectives have not been attained yet. Much remains to be done to align the intelligence services with acceptable standards of democracy, transparency and accountability. The argument is heard that old mentalities need to be changed. The reform process is faced with many obstacles, not the least of which are shortcomings in the civilian system of government.

3.3 Ombudsman institution

The 1991 Constitution introduced the Ombudsman, an institution which was eventually created by the 1997 Law on the Ombudsman. The international community played a reduced role in the introduction of the ombudsman, but has had a stronger impact on furthering the role of the ombudsman through financial assistance programmes. Foreign technical advisers, political foundations, international civil society organisations, the academia and others have been very active. Intensive international cooperation has allowed the transfer of western experiences to the functioning of the ombudsman. The Venice Commission of the Council of Europe has assisted in the strengthening of the ombudsman institution through opinions on laws on the ombudsman. In all these opinions, the Commission recommended giving greater responsibilities and independence to the ombudsman institution.

The current Law on the Ombudsman was enacted in 2003 and amended in 2009 subsequent to the XI Amendment of the Constitution in 2001. Previously the ombudsman was regulated by the 1997 Law. The ombudsman is elected by the Parliament. The 2001 amendments to the Constitution introduced the double majority rule for electing the ombudsman and his deputies. The parliament elects the ombudsman not only with a majority of votes cast by the total number of the members of parliament, but also a majority of votes cast by members of parliament belonging to non–majority communities ('double majority' or Badinter principle[14]).

The ombudsman is elected for an eight-year term renewable only for another eight-year term. Candidates shall be law graduates of good reputation and with

[14] The basic goal of this principle is to protect the national minorities from being outvoted in the parliament. The Badinter Principle, proposed by the former French Minister of Justice and Senator, Robert Badinter, who presided over the Arbitration Commission of the Conference on Yugoslavia in 1991, was designed to redistribute parliamentary power between the Macedonian majority and its minority groups. In practice, in Macedonia there is a veto mechanism for the Albanian community (from which the great majority of minority representatives come from) to protect constitutional provisions and legislation that they deem of 'national' importance to themselves.

more than nine years' experience in legal affairs who have been active in the protection of citizens' rights. Affiliation to political parties is banned. The number of deputies to the ombudsman is determined by the parliament following a proposal of the ombudsman. Currently, there are ten deputies. Regional offices were set up in November 2004. The parliament may dismiss the ombudsman with a double majority vote on the basis of legally established criteria (Badinter principle).[15] The legislation provides a stable mandate for the ombudsman, which adds independence to the office. The ombudsman is also protected from arbitrary removal or censure.

The ombudsman's staff are civil servants, the status of whom is regulated by the Law on Administrative Servants and managed by the Agency for Administration (formerly the Agency for Civil Servants), an agency managing the employment of the civil servants. Staff recruitment is required to be conducted through meritocratic and transparent processes, on the basis of professionalism and competency and the application of the principle of equitable representation of minority communities. The selection procedure allows for recruiting good staff, but it does not respect the principle of equal access. The selection committee presents a list of the three highest scored candidates for the head of the institution to choose from. The highest scored candidate is not guaranteed the post. In addition, there is heavy politicisation in civil service recruitment. In the majority of cases, the selected persons are party affiliates.

The ombudsman operates with the minimum funding that allows it to have its own staff and resources and to be independent of the Government. Its current staff is 68-strong, of whom 48 have university education. An EU-funded twinning project with Spain provided support to the ombudsman, including a component for the continuous training of staff members since this is not provided by the national government from its own resources. The ombudsman funding depends on the ministry of finance, a fact which hampers its independence. The ombudsman has adequate premises suited to the smooth conduct of its activities and is housed in a building in the very centre of the capital, Skopje, and also has regional offices.

The salary of the ombudsman and his/her deputies is determined according to the provisions on salaries of appointed and elected persons, which is substantially higher than the national average. Civil servants at the ombudsman institution are bound by the civil service salary grades that are considered low (€350 per month in average). The low salaries lead to detrimental staff turnover.

The ombudsman's main responsibility is the protection of human rights. Any matters concerning the protection of human rights must be reported in order to promote the harmonisation of national legislation with international human rights instruments, and to combat all forms of discrimination, in particular ethnic discrimination. The 2006 amendment to the Law on Defence as well as the 2010 Law on Army Service provided for equal access for men and women

[15] *Ibid.*

to Army service. It falls also within the non-discrimination responsibilities of the ombudsman to make sure this principle is respected. The 2001 Constitutional amendments, originating from the Ohrid Framework Agreement of August 2000, gave the ombudsman a marked anti-discrimination purpose. In 2009 the ombudsman was also given responsibility for the protection of children and disabled persons. It also became the national preventive mechanism (NPM) against torture. There has been a steady increase in the number of complaints to the ombudsman in recent years, which shows better public awareness of human rights. Many complaints have to be rejected on the grounds that they fall outside the ombudsman's jurisdiction. Institutions are increasingly more compliant with the recommendations given.[16]

The role of the ombudsman in the reform of the public administration as a whole, and in defending citizens' rights, is increasingly understood. It has become the focal point in the defence of human rights. However, the weaknesses of the ombudsman institution make it not fully compliant with the 1993 Paris Principles of the UN on the protection of human rights. In consequence, it is accredited with a B grade by the international coordinating committee of national institutions for the promotion and protection of human rights.

The ombudsman's authority includes the whole public service, including the defence sector. There is no special ombudsman dealing specifically with the defence sector. Article 27 of the Ombudsman Law enables the ombudsman to access data regardless of the level of confidentiality, but the ombudsman's staff are required to undergo a vetting process in order to obtain security clearance and certificates. This process makes the ombudsman dependent on approval by an authority under the control of the executive. The Directorate for Classified Information, a government department, ultimately determines whether or not to issue a security clearance to the ombudsman. Some 20-30 complaints are submitted annually to the ombudsman by defence employees. The content of the complaints mainly concern the violation of labour rights.

The ombudsman is an independent state institution appointed by and accountable to the parliament, submitting regular annual reports. These reports are tabled in plenary parliamentary sessions and are subsequently discussed by the appropriate parliamentary committees. They are are widely appreciated, in particular by parliament, as an accurate description and evaluation of the treatment of human rights and citizens' rights. The general appreciation of the ombudsman's performance indicates improved co-operation of public administrations with the ombudsman and the increasing acceptance of its recommendations on improving public services.

The ombudsman has begun to develop an approach to case handling that departs significantly from the 'investigation and report' mode of operation

[16] Since January 2006, all Ministries have to report on a three-monthly basis to the General Secretariat of the Government on the implementation of recommendations or requests made by the ombudsman.

which characterised the office in earlier years when it was established. The ombudsman has increasingly focused on the possibility of conciliation, and on helping to achieve an outcome satisfactory to the complainant concerned as quickly and informally as possible. However, its formal mandate is limited to investigating and reporting.

The Ombudsman has progressively asserted itself as an efficient, professional, neutral and reliable institution for the protection of human rights. It enjoys a good reputation and confidence on the part of civil society, which can also be seen from the steady increase in the number of complaints it is entrusted with. Nevertheless, there is room for improvement: the ombudsman could take a more proactive stance by investigating cases without waiting for an individual complaint to be made. In addition, the ombudsman still needs a full mandate to promote and protect human rights in compliance with the Paris Principles and should be provided with the sufficient budget and human resources to do so.

3.4 External audit

The external audit function was introduced with the adoption of the State Audit Law of 2010 which provides for institutional independence of the State Audit Office (SAO), both organisationally and financially. SAO has the capacity of a legal entity and is independent in its operations.[17] The SAO, however, has no constitutional anchor. External audit, and for that matter the SAO as a term and function are not mentioned in the Constitution, which is a deficiency.

The SAO is governed by a Director, also called the Chief State Auditor and a Deputy, elected and dismissed by the Parliament. Their tenure is 9 years non-renewable, which provides for adequate safeguarding of the independence of the SAO's members from political interference or from being affected by government's changeovers. The mandates of the Chief State Auditor and the Deputy were reinforced with the adoption of the 2010 law. Article 11 of that law stipulates that both the Chief State Auditor and her/his deputy cannot be the object of reprisal or imprisoned for their publicly stated recommendations and opinions connected with the findings of the audits. Likewise, state auditors shall not be punished for opinions on the performance of public authorities.[18]

The SAO Law stipulates that its budget be established in accordance with the fiscal strategy and represents an integral part of the budget of the Republic. SAO has increased its financial independence as its budget is approved by the parliament, rather than by the ministry of finance. However, currently the funds provided to SAO, are insufficient for its independence and effectiveness. The SAO has necessary and adequate premises, suited to the smooth conduct of its activities, but its IT equipment and furniture need upgrading.

[17] Article 3 of the SAO Law.
[18] Article 28 of the SAO Law.

The SAO submits its annual audit programme to the parliament in December of the current year for the following year[19] for information purposes only. In practice, this leads to the prospective auditees fabricating data to embellish the results of the upcoming audit.

The SAO Law does not give any particular enforcement powers to the SAO. It can only detect irregularities and inform the competent authorities about the irregularities detected. The SAO has no executive and regulatory authority and cannot apply sanctions. Fraud and corruption uncovered by the SAO are to be reported to the competent authorities immediately.

The SAO has 94 employees, including 79 auditors, most of whom have higher education. The SAO has employees that are civil servants and employees that do not have status of civil servants. Employees performing specialised work in the field of audit, planning, finances, accounting, IT and other work within the competences of the State Audit Office must have the status of civil servants. The employees of the State Audit Office who perform auxiliary work do not have the status of civil servants. The civil service recruitment procedures apply, but there is heavy politicisation of the recruitment process of civil servants. In the majority of cases, the selected persons are party affiliates.

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

The salary of the General State Auditor and his/her deputy is determined by the provisions for salaries of appointed and elected persons, which are substantially higher than the national average. The salaries of authorised state auditors and state auditors are determined by the General State Auditor within the limits of the budget of the State Audit Office, and are also considered high by local standards. The SAO's auditors are bound by the civil service salary grades that are considered low or lower than average (€350 per month on average). The salaries offered to both the members and the staff are considered low taking into account the important role played by SAO. Low salaries lead to detrimental staff turnover.

The SAO has authority to audit all public funds and resources, including the MoD and he armed forces[20]. The Law on the SAO does not mention the defence sector institutions, but they are treated as part of whole system of state governance, under the responsibility of SAO for external audit. There are no special regulations on the audit reports of the MoD or the armed forces. The general publicity rule applies to the MoD and the armed forces. For classified matters, the SAO prepares a special audit report in line with the law on

[19] Article 23 of the SAO Law.
[20] Article 22 of the SAO Law.

classified information. The SAO performs external audit of all budgetary users. The State Audit Office's jurisdiction covers regularity and performance audit. [21] The competence of the SAO has been extended to the audit of EU funds and political parties. The vulnerability to corruption is a key criterion for the inclusion in the annual audit programme.

The most recent audit (regularity) of the defence sector was conducted in 2012, with earlier audits in 2011, 2008, 2006, 2004, and 2001. There are no external audits of the MoD and the armed forces yet. A regularity audit of the MoD was conducted in 2009, in which the SAO identified an incomplete calculation and collection of revenues from the leasing of MoD properties. This also applied to the revenues from the sale and lease of apartments of the former Yugoslav Army, which the Ministry acquired after the country became an independent state. Records are not complete and updated to reveal the number of apartments available to the Ministry; there is no inventory of the apartments or contracts signed by the beneficiaries, and the rent is not collected. This situation has resulted in fewer revenues for the Treasury. The SAO has made specific recommendations for rectifying the irregularities, as well as a general recommendation to the responsible persons in the MoD and other institutions that may contribute to improving the situation.

The SAO enjoys a good reputation. It is considered to be independent since it uncovers "unlawful money spending" by state institutions. The SAO website shows a high level of transparency. Moreover, it has published all audits without embellishment for their public use. Good evidence of the positive perception among the public is the number of visitors to its website. The General State Auditor shall publish the final audit reports and the comments by the auditees on the website of the SAO.[22] All audit reports are submitted directly to the parliament. MPs discuss and reach conclusions based on the SAO reports.

The primary users of the SAO audits are the parliament, the government and other public sector institutions. SAO's duty is to communicate timely information to the users. The communication with parliament is regarded as particularly important. The SAO mission, as defined in its development strategy, is to provide objective and timely information to state bodies and the public on the audit findings. In addition, the SAO aims at providing support to the parliament in fulfilling its control responsibilities through the identification and presentation of irregularities, cases of illegal operations, and suspected cases of corruption and abuse of office. The continuous cooperation between the SAO and parliament is carried out as prescribed by the State Audit Law. The SAO submits its annual work programme to the parliament for information. The SAO submits an annual report for review and the parliament adopts conclusions thereon, and the SAO submits final audit reports to the Parliament[23]. However, as yet, no formal mechanism for parliamentary follow-

[21] Article 18 of the SAO Law.
[22] Article 31 of the SAO Law.
[23] Article 33 of the SAO Law.

up of SAO reports has been established. The SAO in 2010 introduced a policy to follow up on previous audit findings, but SAO reports are rarely followed up by MPs.

In line with the SAO Law, the Auditor General submits audit reports to the government on entities which it supervises. The government has established a separate body – the Audit Committee – as a permanent expert body responsible for reviewing audit reports and for proposing measures and activities for the implementation of recommendations given by SAO's auditors in audit reports. The Rules of Procedure of the Government stipulate that the Audit Committee shall submit written reports to the government with opinions and suggestions for measures to be undertaken, and the General Secretary of the Government shall inform the SAO of the government's conclusions regarding the measures undertaken by the auditees.

The Audit Committee is composed of a president and six members, all of whom are appointed by the government. The president is the minister of finance, two members are ministers, three are managerial civil servants (one each from the General Secretariat of the Government, the Office of the Prime Minister, and the Ministry of Finance) and one member is from academia. The Chief State Auditor, who has elaborated the final report and is the legal representative of the SAO, also attends the sessions of the Committee. The Committee is to submit written reports to the government, containing opinions and proposals on the measures taken based on the findings in the audit reports, while the Secretary-General of the Government is to notify the SAO concerning the government's conclusions.

The implementation of the budget is controlled by the SAO, which publishes the annual audit statements of the central budget. It controls the financial management and performance of government and public bodies, including the MoD. The SAO has access to classified data, since the budget of the MoD falls in this category. As mentioned, the state auditors have to undergo the security certification procedure, as set out in the Law on Classified Data, in order to access these data. The auditors prepare a separate report on the classified data. It is handled through procedures applying to classified data whereby the public has limited or no access to it.

The SAO conducts audit and financial control on public institutions, including in the defence sector, following the provisions of the SAO Law. The website of SAO contains the annual audit reports on the central budget as well as periodical audit reports on the budget of public institutions, following the annual audit plan of the SAO. The MoD is subject to SAO financial control, and the reports can be accessed in the archive of the SAO website, dating back to 2001. The latest SAO report on the MoD stated that funds from rents were collected and reported with delays because of the lack of a consolidated database of capital assets owned by the Ministry, and necessary measures to correct it were recommended. The MoD considers that progress has been made in the implementation of the SAO's recommendations.

The SAO has a good reputation. It is considered to be truly independent and professional. The SAO website shows a high level of transparency. The main systemic shortcoming is that the SAO's independence is not safeguarded by the constitution.

3.5 Prevention of conflicts of interest

The concept of conflicts of interest is new in the country and often it is wrongly interpreted as a conflict of views between two or more people or institutions due to differences in their interests. The concept that the conflicts of interest do not arise between different people, but within interests belonging to one and the same person is not well-established in the social fabric. This lack of understanding can also be found in how legislation and practice have labelled the conflicts of interest. Rather than putting emphasis on "conflicts", the emphasis is put on "interests" ('Conflict of Interests' rather than 'Conflicts of Interest'). In the national legislation 'interests' is given in the plural rather than conflicts. In a small-sized country, helping family members to find employment or win a public tender is perceived as social obligation, particularly in the rural municipalities where the notion of conflicts of interest is absent.

The matter is regulated by the 2007 Law on Prevention of Conflict of Interests and the 2002 Law on Corruption Prevention. The 2007 Law on Prevention of Conflict of Interests, which was meant to complete and clarify the 2002 law, was defective and lacked clarity and quality. Therefore, amendments and additions to the Law on Prevention of Conflict of Interests were made in 2009 and 2012. The main amendments related to the scope of the law: extending the authority of the State Commission, the competent body in the field of conflicts of interest, when choosing to declare conflicts of interest; augmenting the severity of fines and measures to be applied; providing for positive stimulus for public officials when avoiding conflicts of interest situations; regulating the procedures to be undertaken in conflicts of interest situations and regulating the protection of public officials before the competent body or courts; and ensuring standard forms through which public officials report the cases of conflicts of interest.

The assessments in the EU progress reports indicated actions to the government. The notes and suggestions of the EU had influence in inducing the government to take forward the plans for adoption and implementation of rules on conflicts of interest. Policy-making and the preparation of legislation on conflicts of interest are under the responsibility of the ministry of justice. However, the ministry of justice lacks appropriate human resources in key sectors, and its capacity to coordinate the monitoring of the conflicts of interest policies at the technical level has been insufficient.

The 2007 Law on Prevention of Conflict of Interests initially covered only "elected or appointed officials" i.e. parliamentarians and appointed political positions. It did not apply to professional civil servants. The 2009 amendments enlarged its scope to include all civil servants and the staff of the state administration. It is, perhaps, unnecessary and disproportional to subject each

and every civil servant to the obligation to produce statements of interests or asset declarations.

Two articles in the Law on Civil Servants and the Code of Ethics deal with the subject matter. Article 68, paragraph 1 of the Law specifies under no. 10 "receiving gifts or other benefits" as a disciplinary offence; and paragraph 2 of article 18 sets out the civil servant's general obligation to do his/her job impartially. The Code of Ethics for Civil Servants was amended in 2007 to include an obligation for civil servants to report all illegal acts carried out by other civil servants in the performance of their duties (whistleblowing). However, the Law on Civil Servants and the Code of Ethics do not yet comprehensively regulate the conflicts of interest rules that apply specifically to civil servants.

The competent authority for the implementation of the legislation on conflicts of interest is the State Commission for Prevention of Corruption. The State Commission was established by the parliament in November 2002 as a consultative and preventive body and possesses functional autonomy and independence. The State Commission has seven members appointed by the parliament for a five-year non renewable term from among distinguished experts in law or economics who fit the profile for the office. The Parliament selects the members of the State Commission with majority vote. No two-thirds or special majority in parliament for appointing and dismissing them is required. The parliament has no role in selecting the head of the State Commission. The State Commission itself elects its president with a one-year mandate from its membership. The State Commission members have the status of appointed persons, not that of civil servants.

The Secretariat of the State Commission is understaffed and underfinanced. Only one employee deals with asset declarations and only two employees check statements of interests. With the current number of staff it is impossible for the State Commission to fulfil its responsibilities. A thorough, systematic and comprehensive data analysis is unfeasible. Still, in comparison with its early years, the State Commission is today more solidly established. The State Commission is also facing financial difficulties. The budget is not sufficient to fulfil its basic tasks. With the 2012 amendments, the obligation "to check the statement of interests" has been added to the obligations of the Commission.

Public officials are obliged to submit two declarations, namely a "Declaration of Assets" and a "Statement of Interests".

Asset declaration: Submitting a declaration of assets is mandatory for public officials. Asset declaration is regulated by the Law on Prevention of Corruption. Those obliged to declare assets are elected or appointed officials, civil servants, responsible persons in public enterprises, and officials in municipal administrations. These officials, at the latest within 30 days of their date of election or appointment, have to fill in a property or asset declaration form. The public official also has an obligation to fill in an asset declaration

form within 30 days of completion of the mandate or dismissal from that function.[24] In July 2008 the minister of justice adopted the Rulebook on the Manner of Handling the Asset Declarations of Officials. Public officials have to submit asset declarations when taking up duty, when their assets change, and when their employment terminates. Public officials have to report on the property of a member of his/her family. The assets of the family members are included in the declaration of the public official concerned.

The content and form of the asset declaration (*Anketen List* or Questionnaire), is prescribed by the State Commission. The information to be provided includes immovable estate, movable assets, stocks and shares, claims and debts, bank deposits, as well as any other personal income or assets or those of family members. It is also mandatory to provide information on how the declared assets were acquired as well as a notarial statement forsaking bank privacy protection of accounts in domestic and foreign banks.

Statement of Interests: Public officials are obliged to submit a statement of interests to the State Commission within 30 days of taking office, an obligation introduced by the 2009 amendments to the Law on Prevention of Conflicts of Interest. Public officials include: the President of the Republic, parliamentarians, mayors, ambassadors, and persons elected or appointed by the parliament and the government, the state administration authorities and other state authorities, the judicial authorities, the public enterprises, institutions and other authorities of the central government and the local authorities. Civil servants and other employees in the state administration employed through agencies for temporary employment are also obliged to submit a statement of interest. When being in a conflict of interest situation in the course of performing public duties, an official is obliged to inform the State Commission within 30 days of the occurrence of the change.[25]

Neither the Law on Prevention of Conflict of Interests nor other laws define the notion of public official precisely. The definitions provided in the UN Convention against Corruption (UNCAC), ratified by Macedonia, are useful: (i) any person holding a legislative, executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service. According to UNCAC, the notion of public officials is much wider than that encompassed in the Law on Prevention of Conflict of Interests and includes all public officials.

The statements of interests have to include the interests of family members and relatives or as designated by the Law, "persons in close affiliation". The content and form of the statement of interests is prescribed by the State Commission. Public officials shall disclose information on whether they or their family members perform other public duties; whether they are owners, founders, co-owners, members of the assembly, supervision board, governing board or

[24] Article 33, Law on Prevention of Corruption.
[25] Article 20-c, Law on Prevention of Conflict of Interests.

management or official representatives of a commercial company; and whether they are members of an NGO or foundation.

A designated official in each state institution serves as the single authorised person handling the asset declarations of the whole staff. That official signs a statement on the confidentiality and protection of the personal data contained in the asset declarations and keeps special records of asset declarations in both written and electronic forms. The designated official submits biannual reports to the State Commission indicating those who fulfilled and those who did not fulfil their duty to submit an asset declaration. Asset declarations of officials whose employment has terminated are kept for five years. Elected and appointed officials fill in the pre-defined forms of statement of interests and submit them to the State Commission. Other officials, including professional civil servants, submit their forms to the authorities employing them.

The State Commission, together with the Public Revenue Office (PRO), verify the declarations of assets. The State Commission introduced a procedure for the systematic verification of asset declarations, in cooperation with the Ministry of the Interior, the Cadastral Agency, the Central Register, the Central Securities Depository and the PRO. The 2012 amendments to the Law on the Prevention of Conflict of Interests bestowed authority to the State Commission to check the statements of interest. Secondary legislation by the State Commission has been adopted setting out a procedure for checking the content of such declarations and defining the manner of verification of interests.

The State Commission is the main implementing body of the Law on Conflict of Interest. It has the powers to determine whether a conflict of interest involving a public official exists. Procedures shall follow the principles of legality, objectivity, non-selectiveness and impartiality. It can act ex officio, upon request of the official, and on the basis of allegations from another person, even if filed anonymously. It determines the existence or non-existence of a conflict of interest within 30 days after the entities have submitted their information, or after the allegations have been verified.

If the State Commission concludes that a conflict of interest exists, it notifies the interested official and sets a 15-day deadline for him to remove the conflict of interest. If the official ignores the State Commission’s decision, it can impose a measure – a public warning – which shall be notified to the official. The public warning is published in the media. If the official still fails to remove the conflict of interest and to inform the State Commission within 15 days after she/he received the decision, then the State Commission can impose no other measure. There were two other measures envisaged by the Law on Prevention of Conflicts of Interest, including initiating a disciplinary procedure before the competent authority and undertaking an initiative for dismissal of the official from the position. However, these two measures were repealed by the Constitutional Court in July 2010. Therefore, a public warning is the only measure that the State Commission can adopt if an official ignores its decision.

It is difficult to monitor statements of interests because databases on public officials are incomplete. The State Commission has access to information on

elections or appointments published in the Official Gazette. However, not all appointments are published in the Official Gazette and generally those published are incomplete. Most of the cases which have been acted upon by the State Commission are reports about accumulation of offices i.e. exercising of two or several functions simultaneously. This phenomenon is most frequent in municipalities with municipal councils' members exercising director functions in public enterprises and in institutions on central or local level simultaneously.

Asset declarations are submitted to the employing organisations, the State Commission, and to the PRO, which is the competent body in charge of detecting possible criminal offences with regard to unreported income or assets and for unpaid taxes. If there is ground for criminal prosecution, the information is forwarded to the prosecutors and other competent bodies. The databases of the State Commission and the PRO were interconnected in 2008. This allows the swift exchange of information and the compilation of more accurate records of asset declarations. Data is available to the Ministry of the Interior, the Cadastral Agency, the Central Register, the Central Securities Depository and the PRO. The Office for Prevention of Money Laundering and Financing of Terrorism has also direct access to the asset declarations database of the State Commission. The data obtained through procedures on conflicts of interest are also available to courts, inspection authorities, and other state authorities, such as the State Audit Office.

Information from asset declaration is public, apart from personal data protection requirements, and has been published on the website of the State Commission[26] since July 2007. The statements of interests are confidential. However, the State Commission publishes the outcome of the investigations and decisions in the cases where conflicts of interest have been proven. The State Commission is obliged to inform the public about the cases of conflicts of interest it has acted upon.

Non-compliance with the obligation of asset declaration or giving incomplete or incorrect information on the assets possessed allows the State Commission to initiate misdemeanour procedures before the relevant courts and to initiate procedures for investigation of assets and the property situation through the PRO. If the PRO finds a disproportionate increase of wealth, the PRO can in addition to taxing the undeclared assets,[27] forward the issue to the Public Prosecutor's Office for the initiation of a criminal procedure for illicit enrichment. The challenge is in how the courts deal with with the requests of the State Commission for misdemeanour procedures for those officials who have not submitted declarations of assets or who have submitted incomplete information. The pace of the courts is slow, and in the cases where they have decided that the official is guilty, the fines have been very lenient, thus diminishing the deterrent effect of the Law on Prevention of Conflict of

[26] Article 35, Law on Prevention of Corruption.

[27] Following checks carried out in 2011, the State Commission submitted 48 requests to PRO to initiate property examination procedures. As a result, 10 elected and appointed officials were charged a 70% tax rate on their undeclared income.

Interests. There are also shortcomings in relation to the PRO property database, which is not comprehensive enough.

There is a lack of systematic verification of asset declarations. The procedure lacks effectiveness, since asset declarations are only retained but not really checked by the bodies in which the officials work. This hampers the effectiveness of the reporting obligation in deterring corruptive practices in the public administration.

The MoD and the armed forces are under the general regulations on declaration of assets and interests. The Law on Service in the Army regulates the issue of conflicts of interest in brief and may impose disciplinary sanctions in cases of conflicts of interest[28]. Therefore, civilian and military personnel of the MoD and the army are obliged to submit declarations of assets and statements of interests. A designated official in the MoD serves as the single authorised person handling the asset declarations of public officials in the ministry and the armed forces.

Officials who were owners or managers of commercial companies before taking up duty are obliged to entrust the management to another person or to a separate body while performing their public duties. Persons to whom management of the company is entrusted are not supposed to be the family members.[29] Officials cannot hold property titles in private companies if these holdings might hamper their impartiality or the public interest. Exceptions to this rule are the management of the official's own property, scientific or research work, and artistic or cultural activity. According to the Law on Prevention of Conflict of Interests[30], "the management of personal property, such as a house of residence of the official, holiday house, land and similar property and management of village property" are not considered as the "performance of private activities" incompatible with the public duties.

The Law on Civil Servants[31] stipulates that a civil servant is obliged to perform his duties professionally and impartially. The Civil Servants Code of Ethics specifies that the civil servant shall ensure that his personal financial interests do not conflict with his position and status as a civil servant. The term financial interest not only denotes the personal gains of the civil servant, but also the gains of his family, relatives, friends, or natural and legal persons with whom he has conducted business. In addition, the civil servant may not cooperate with persons or organisations that have had business interests with the administrative body in which he is employed.

The media and civil society reports often refer to the wealth of public officials. There have been reports pointing out a dramatic augmentation in the wealth of certain public figures following their assumption of public office or of officials holding several public offices.

[28] Article 131.
[29] Article 9, of the Law on Prevention of Conflict of Interests.
[30] Article 8.
[31] Article 18.

The Constitution prescribes the incompatibility of high officials' duties with other public and private offices and occupations. It includes MPs, the President of the Republic, the Prime Minister and government members, judges and public prosecutors. Specific laws such as the law on the Ombudsman or the Law on Local Self-governments establish incompatibilities for mayors and the ombudsman respectively. The MoD and the armed forces come under the general rules regarding external concurrent employment. A public official with the MoD cannot conduct any other function, duty or activity. Military personnel cannot take up additional work for the defence industry during military service.

When circumstances appear indicating the existence of conflict of interests, the official is obliged to request to be exempted immediately from discharging the duty in which the conflict of interest appeared, a decision which is taken by his superiors.[32] Concealing the existence of a conflicting private interest by an official constitutes a violation of duty and is grounds for sanctions.[33] These general rules regarding withdrawal and abstention in decision-making apply also to officials at the MD and the armed forces.

The receipt of gifts is regulated by the Law on Prevention of Conflict of Interests, but the article on this issue included in the Law on the Prevention of Corruption is still in force. The provisions of the Law on Use and Disposal of the Assets of State Administrative Bodies also apply to the issue of receiving gifts and benefits. The Law on Prevention of Conflict of Interests prohibits an official, including those at the MoD and the armed forces, from receiving any gifts while performing public duties, with the exception specified by the Law on Usage and Management of Assets Used and Managed by Government Bodies.[34] The exception is gifts such as books, souvenirs or similar objects whose value does not exceed €100. An official who has been offered a gift or any other benefit related to the discharge of official duty is obliged to reject such an offer, to determine the identity of the offering party, and if it is a gift that cannot be returned, the person is obliged without delay to report it to the competent authority (i.e. the State Commission), to indicate the witnesses and other evidence, and within 48 hours at the latest, to submit a written report to the State Commission.[35] If the public official wishes to keep the gift, he can do so after the end of his mandate by refunding the excess over €100 of the estimated value of gift. The Law on Civil Servants[36] and the Code of Ethics sanction the receipt of gifts or other benefits and define it as disciplinary violation.

There is a legal loophole in relation to the meaning of gift. The harmonisation of legislation is necessary due to the different definitions of what constitutes a gift. Despite the fact that the issue of gifts is legally regulated in three existing laws (the Law on Prevention of Corruption, the Law on Prevention of Conflict

[32] Article 12 of the Law on Prevention of Conflict of Interests.
[33] Article 14 of the Law on Prevention of Conflict of Interests.
[34] Article 15 of the Law on Prevention of Conflict of Interests.
[35] Article 16 of the Law on Prevention of Conflict of Interests.
[36] Article 68.

of Interests and the Law on Use and Disposal of State Owned Assets), there are certain difficulties and a lack of clarity. A gift is defined as money, objects, rights and services which are given to the official without compensation and which put the official in a subordinate or dependent position vis-à-vis the party offering the gift. The legal definitions are not fully consistent, which results in confusion as to what actually constitutes a gift, what is the permitted value of a gift that an official may receive, how should the official dispose of the received gift, etc. There is no record on gifts received by officials.

There is a three-year cooling off period. A public official, within a time period of three years after the termination of public duties or after the termination of the employment is prohibited from taking up employment in a company which he supervised or contracted whilst in office. For three years the official shall not acquire in any way shares or parts in the legal entity which he supervised while on duty. If an officer within three years of the termination of office does acquire shares or parts by way of inheritance, then he shall report this to the State Commission. An officer, within a time period of three years after the termination of public duties, or after the termination of the employment shall not represent natural persons or legal entities.[37]

The State Programme for Prevention and Reduction of Conflict of Interest was adopted by the State Commission, along with a corresponding Action Plan for 2011–2015. The State Programme on Conflicts of Interest identifies a number of problems related to conflict of interest and groups them in nine risk areas, specifying the activities for each of those areas to overcome the identified problems. It also establishes indicators for monitoring the implementation of each activity. The risk areas are as follows: 1. Accumulation of functions and obtaining benefits; 2. Influence for financial or other benefits; 3. Discretionary powers; 4. Official action in matters involving private interest; 5. Gifts; 6. Nepotism in employment, public procurement, conclusion of contracts, issuing of different kinds of licences, etc.; 7. Misuse of public assets/resources for private (personal, political party and other) interests; 8. Post-employment; 9. Use and abuse of information not available to the public.

Although fines can be imposed for failing to comply with the legislation on conflicts of interest, one of the major shortcomings of the current regime is the lack of effective measures that will prevent and punish the conflict-of-interest, even if overall political will exists for combatting conflicts of interest.

3.6 Transparency, free access to information and confidentiality

The Constitution[38] states that "it is guaranteed freedom of access to information". The Law on Free Access to Public Information (LFAPI) was enacted in January 2006 and entered into force in September 2006. It develops

[37] Article 17 of the Law on Prevention of Conflict of Interests.

[38] Article 16.

the Constitution's provision with regards to freedom of access to information. The adoption of the LFAPI was the result of international pressure to align the national legislation with widely accepted international standards and the requirements of the European Commission. The Open Society Institute provided assistance to draft the LFAPI. Before the adoption of the LFAPI, the Law on General Administrative Procedure, enacted in 2005, regulated access to information. The Law on Civil Servants stated that civil servants are obliged to provide information upon request of citizens.[39]

The 2006 LFAPI displays serious loopholes. It channels access to information through the administrative procedure regulated by the Law on General Administrative Procedure, which is inappropriate for an expedient access to information. The established deadlines discourage applicants from seeking information. The number of institutions obliged to provide information is incomplete and too short. The LFAPI does not state the manner of publishing the information and no sanctions are foreseen if this obligation is not met. The members of the Commission, the authority in the field of access to information, were to be appointed upon proposal of the government, a fact detrimental to the Commission's independence.

The LFAPI was amended in 2008 and 2010. The 2008 amendments eliminated some of the loopholes. By taking on board the majority of complaints from civil society organisations and donors, the 2010 amendments established a more solid legislative basis to the right to access to information. The Ministry of Justice is the authority responsible for policy-making and legislative proposals on freedom of access to information. The Ministry of Justice has also to provide administrative, expert and technical support to the Commission on Free Access to Public Information. However, the Ministry of Justice lacks appropriate human resources in key sectors and its capacity to coordinate the monitoring of freedom of access to information policies has been insufficient.

The Commission for the Protection of the Right to Free Access to Public Information is responsible for the implementation of the provisions of the Law. The Commission was established in 2006 and has five members. The Commission reports annually to the parliament. According to the Law, the Commission is independent. The Commission's president and members are elected by the parliament for a five-year, renewable, tenure. No qualified majority is required for the appointment or dismissal of the Commission's members. The Commission prepares a report on the implementation of the law based on the information gathered from the reports of the holders of information, and presents the report to the parliament no later than the 31 March of the current year for the previous year. The report is revised and adopted by the Parliament and then published through the means of public information, including on the Commission's website.

The Commission reviews complaints on denial of access to information, but has no competence to impose sanctions. The Commission can submit a request for initiating misdemeanour procedures before the Court. So far it has never

[39] Article 21 of the Law on Civil Servants.

submitted such a request due to the tolerance it has shown towards the institutions. The decisions of the Commission can be appealed before the Administrative Court. However, often by cunningly using the term "information" instead of "decision" to describe the act of refusing access to information, authorities can avoid being faced with a lawsuit in the Administrative Court, and consequently the applicant is bereft of legal protection of his right to access information. The administrative court only performs judicial review of administrative decisions, not of administrative information.

The Commission's expert staff members are led by the Secretary General, who is appointed and dismissed by the Commission. The Secretary General and the employees of the Secretariat have the status of civil servants. The procedures with regard to recruitment of civil servants are in principle open and transparent. However, there is heavy politicisation of recruitment. In the majority of cases, the selected persons are party affiliates. The Commission is understaffed. In its 2011 annual report, the Commission highlighted the need for more staff members with an appropriate educational background. Although there are altogether 37 posts in the Commission, by 2011 only 14 were filled due to budget cuts. The small budget allocated to the Commission has affected its overall performance and efficiency, especially regarding activities promoting the right to freely access information. The budget of the Commission was drastically reduced in 2010 and it has remained very low in subsequent years.

Every information-holder institution should appoint one or more officials to act as mediators in implementing the right to access to information. The information-holder shall inform the public on the appointment of the official mediator. The official mediator directly contacts the applicant and provides him with the requested information; the official mediator registers the requests for information, archives them and issues them to the applicant. Several information-holders can together appoint one or more official persons to mediate in the process of implementation of the right to free access to information. The information-holders shall regularly update the list of information they own and publish it in a way accessible by the public.

Applicants do not have to give reasons for their requests, but the applicant must make clear that the request is for access to information.[40] However, in practice, many information-holders have asked the applicants to provide the reasons for requesting information, which is against the law. The law does not provide sanctions for information-holders that ask for reasons to access to information.

The information-holder shall answer the request immediately, or within 30 days, or 40 days is the case of complex requests. These deadlines are only almost never respected, but administrative silence is the usual reaction of the authorities. The LFAPI does not provide for any urgent procedure, so this differs from the administrative procedure regulated by the Law on General Administrative Procedure.

[40] Article 16 of the Law on Free Access to Public Information.

Viewing the documents containing the requested information is free of charge.[41] The applicant pays the material costs of the information only if the information provided is voluminous. However, many institutions charge fees, in the form of administrative taxes, for releasing public information. The costs can become prohibitive when the case is taken to second instance or appeal procedures (the Commission) or to the court. The law sanctions information-holders that charge fees or taxes for access to information.

The exceptions to access to information include: 1) information classified as confidential; 2) personal data; 3) archived information that is classified as confidential; 4) information classified as confidential for taxation purposes; 5) information on ongoing criminal or misdemeanour investigations; 6) when information may harm the country's monetary and fiscal policies; 7) information still in draft format; 8) when information is important for public health and environmental protection; and 9) when information harms the rights to industrial or intellectual property.[42] Although the first exception includes also information that may relate to the country's defence policies, the exceptions do not directly refer to the situations that may relate to the defence of the country or the role of the armed forces. The LFAPI also provides for the possibility of partial access to information if there are items that fall into the category of exceptions. So far, this possibility has not been used by information-holders.

The LFAPI was criticised because of the discretion of certain public institutions in deciding the degree of classified information. For this reason, the 2010 amendments obliged information-holders to carry out a "damage test" or "public interest test" before rejecting a request for information. This "damage test" is meant to assess the negative impact on the public interest of releasing information. If the release of information is likely to damage the public interest more than if it is kept secret, the information has to be kept secret. If the public interest is better served by releasing the information, the information-holders have to unveil the information. The Commission for the protection of the right to access information of public interest has tried to define the public interest and give some general ideas about the importance of the damage test. However, there is still no practice in place when it comes to how this mechanism should work. There is only one case so far in which this test has been applied and the decision has been not to disclose the information. Nevertheless, the obligation to carry out the test imposes on the information-holders some diligence before they can deny information. The "damage test" is based on the principle, accepted in the Macedonian legislation today, that access to information should be the rule, not the exception.

The Law on Classified Information (LCI), adopted in 2004 and amended in 2007, 2010 and 2012, regulates classified information. Prior to the adoption of the LCI this area was regulated in a fragmented way by various pieces of legislation. However, different laws make reference to the classification of

[41] Article 10 of the Law on Free Access to Public Information.
[42] Article 6 of the Law on Free Access to Public Information.

information: Defence matters are regulated in the Law on Service in the Army[43] and the Law on Defence[44]. The Criminal Code does not describe offences related to the violation of classified information per se, but associates various wrongdoings with unveiling secret information. These include espionage and revealing state secrets.

"Classified information", according to the LCI, is any information requiring protection against unauthorised access or use, which has been so designated by a security classification. "Information of interest for the Republic of Macedonia" is any information or material produced by a public body related to the security and defence of the state, its territorial integrity and sovereignty, constitutional order, public interest, freedoms and human and citizen's rights. In line with the LCI, any person requiring access to classified information and having to work with classified information must have a security clearance commensurate with the classification level of the information or above. The "Security Clearance Certificate" is a document confirming the eligibility of the legal entity or the natural person to have access to and use classified information issued by the Directorate for Security of Classified Information, the regulatory body in the field of classified information. Security clearance certificates may be issued for handling of national, NATO or EU classified information.

The Directorate for Security of Classified Information, established in 2004, is the central institution for the implementation of the LCI and securing classified data. With the amendments of LCI in 2007, the Directorate expanded its scope to conduct inspections on the implementation of the LCI, as well as to launch misdemeanour procedures when rules are breached. The Directorate's inspectors conduct inspections on their own initiative or on signals of possible wrongdoing when handling classified information. The special Commission for misdemeanours, formed by the Directorate's Director, has taken action on a big case related to defence on disclosure of foreign classified information. Apart from this case, the Directorate's inspectors so far have acted on small number of cases when it comes to improper handling of confidential data among the defence sector institutions. Staff in the Directorate have been trained to protect the security of classified information in line with NATO standards.

Unlike the Commission for Protection of the Right to Free Access to Public Information, which is established by the parliament, the Directorate for Security of Classified Data is a government agency. The members of the Commission have a high level security clearance, which allows them to access "state secret" classified data.

The Law on Classified Information allows wide discretion for public officials to classify information. There is a tendency to over-classify information. The vast majority of state institutions can declare some information as "very confidential". Defence institutions may sharply reject information requests from the public because the Law on Classified Information is ambiguous and

[43] Article 19.
[44] Article 139.

sometimes very vague. The experience has shown that defence institutions are keeping alive the past culture of secrecy. The MoD does not apply the "damage test" to requests for information. There is no established way to assess whether declassifying a given military document benefits or hampers the public interest.

During the period from 2006–2010 the MoD received 62 requests for public information. The MoD faces challenges in relation to responding on time. The MoD delivers annual reports on the implementation of the Law on Free Access to Information to the Commission. In 2010, research was conducted on the practice of the MoD in providing access to information. Only a third of the requests of information had received a response. No disciplinary procedures have been initiated against MoD personnel or the armed forces for lack of compliance with the law on access to information.

The MoD is one of the least transparent institutions. Very limited data can be found on its website. It has no specialised department on freedom of access to information, but several persons are tasked with this duty besides their regular job portfolio, which generates confusion. The MoD publishes information on its website[45] about the activities of the ministry and the Army as well as information on other organisational units that function under the jurisdiction of the MoD, such as the Military Academy, the Centre for Pilot Training, the Regional Centre for Public Affairs, the Learning Centre and the Transition Centre. The website also provides information on defence legislation and on the army's participation in international peacekeeping missions and exercises. On the website, there are MoD electronic editions of publications.

Nevertheless, the MoD continues to function as a closed institution. Its website does not provide access to all relevant laws, implementing legislation, and the manuals and guidelines of the ministry. It mainly provides access to the speeches and press releases of the Minister, which is completely insufficient. The MoD has not published any information list or the form used for accessing the information on its website. In one concrete case, the MoD provided a list of information after the applicant complained to the Commission. The MoD rejected a request to provide access to information on an agreement that it signed for the lease of one of its swimming pools by arguing the classified nature of the document. A complaint was filed with the Commission against this decision. The Commission upheld the complaint by arguing that the MoD has not provided information on why the information is classified and that the MoD has not acted in accordance with the LFAPI. Following the decision of the Commission, the MoD provided the document requested.

Citizens are not yet familiar with the right to freely access information. The results of a survey by Open Society showed that 63% of the respondents answered that they were unfamiliar with the law. The MoD has appointed personnel who are partly responsible for access to information issues, but it has not yet established a dedicated department for free access to information. A shortcoming that has been pointed out several times both by the Commission as

[45] www.morm.gov.mk.

well as by civil society is the high turnover of the staff tasked with free access to information matters. The turnover negatively affects the know-how of the personnel. No information is disclosed in the budget on the percentage or amount of the defence and security budget dedicated to spending on secret items and intelligence services.

The main weakness in respect of the right to access information is that more than half the requests for access to information do not receive any answer. Administrative silence remains constant and is a serious problem.

4 Policies under the responsibility of the executive

4.1 Public procurement

Public procurement is governed by the 2007 Public Procurement Law (PPL). It regulates public procurement in the entire public administration, including the defence sector. The Law regulates the procedure and legal protection in awarding public contracts, the competences of the Public Procurement Bureau (PPB) and of the State Appeals Commission (SAC), as well as for concessions and public private partnerships.

Several amendments have been introduced to the 2007 Law. The SAC became independent, acting within the parliament instead of the government (2007). The PPB was awarded legal entity status (2008). A common procurement vocabulary and a unified glossary for public tenders above certain thresholds became obligatory for all State institutions and all public companies (2009). A deadline was introduced within which contracting authorities were obliged to decide on a contractor selection or the procedure annulment (2010). The SAC was enabled to annul a procedure, even if the entity lodging the appeal had not submitted a request on procedure annulment, in cases where contracting authorities failed to submit documents to the SAC within the law-stipulated deadline. The PPL was again amended in 2012 to introduce the mandatory publication of contract notice for contracts below €5,000, technical dialogue for contracts above €130,000 and a 6-month suspension to re-launch annulled tenders. A negative reference list (or black list) of economic operators who are to be excluded from participation in future tenders for 1 to 5 years was introduced. Amendments to the Criminal Code were also introduced in 2010 on the criminal liability of legal persons for abuse of public procurement procedures.

Six implementing legislative measures were issued, including a Code of Conduct for public procurement. The National Programme for the Prevention of Corruption 2011–2015 outlined safeguards in the area of public procurement. The use of the e-auction for published contract notices was increased from 70% to 100%. The e-procurement system was extended to include concessions and contract notices and the negative reference list. The current PPL generally reflects European and international requirements. However, it is yet to be aligned with the EU's directive on procurement in the field of defence and security.

Public procurement has become increasingly important in Macedonia given the fact that public purchases account for 12% of GDP and tend to show a steady increase from year to year due to both the number and value of the procurements. State institutions spend more than MKD 45 billion, or approximately EUR 750 million per year in purchasing goods and services by means of public procurement procedures, accounting for as much as 35% of the total budget of the country.

Articles 6-11 of the PPL are devoted to exceptions, i.e. areas where the PPL is not applied. They explicitly refer to exceptions to procurement procedures in the field of defence and in other fields. The defence sector in general is not exempted from the general procurement procedures – only specific defence procurements are exempted. Defence institutions are bound by the procedures set out in the PPL and secondary legislation. The contracting authority in the field of defence (i.e. MoD) shall apply the provisions of the PPL.

The PPL provides for 15 types of services or areas that are exempted from the general procurement legislation. According to Articles 6-11 of PPL, the provisions of the law do not apply to:

1. contracts administerd by the MoD which can lead to disclosure of information which is contrary to the essential security interest of the country;
2. contracts administered by the MoD when they would endanger essential security interests of the country, connected with the manufacture or trade in weapons, ammunition and military materials and systems;
3. contracts classified as a "State secret" by a competent authority in accordance with the regulations on classified information;
4. the execution of a contract which has to be accompanied by special security measures and procedures in accordance with regulations.

Moreover, the Law does not apply when awarding public procurement contracts of services that:

5. include the purchase or lease of land, buildings or other immovable property and rights arising thereon, except in the case of awarding contracts for procurement of financial services related to the purchase or lease contracts;
6. refer to purchase, development, production or co-production of programme materials by radio or TV broadcasters, or for broadcasting time of TV and radio programmes;
7. refer to arbitration and mediation services;
8. are financial services related to the issue, trading or transfer of securities or other financial instruments, and especially the transactions of the contracting authorities for acquiring funds or capital and the services of the Central Bank;
9. refer to employment contracts, and
10. refer to research and development services, except in the case where the results are used exclusively for carrying out the functions and competences of the contracting authorities, provided that the service is fully paid by the contracting authority.

In addition, the Law does not apply to:

11. contracts whereby the funds have been provided by international organisations (donors and lenders) or by third countries, provided that special terms and conditions for awarding public procurement contracts are prescribed by them;
12. contracts awarded for the needs of the army when taking part in military exercises and training or in humanitarian or peacekeeping operations and collective defence operations outside the territory of the country, in accordance with a ratified international agreement;
13. contracts of goods or works awarded on the basis of an international agreement concluded between the Republic of Macedonia and one or more countries; and which are intended for i.a. services intended for joint implementation or

exploitation of projects by the signatory states, provided that the international agreement envisages an appropriate contract award procedure;
14. awarding public procurement contracts of services to another contracting authority or legal entity established by one or more contracting authorities, if they have an exclusive right published in an official gazette to provide such services; and
15. procurement whose total monthly amount does not exceed EUR 500 in Denar counter-value without value added tax.[46]

These exceptions introduce differentiated procurement legislation in the field of defence that partly departs from the general standards of openness and transparency that are required in public procurement by the PPL. Defence procurement shall be competitive and based on general PPL rules for all non-emergency purchases. For general Government procurement, the PPL requires competitive bids. However, the PPL provisions allow for derogations and exceptions from competitive requirements when the goods or services sought require secrecy, necessitate special security measures, or concern the State's essential security interests.

The partial departure of defence procurement legislation from the general standards of openness and transparency confers a wide margin of discretion to the MoD as a contracting authority. These exceptions and discretionary procurement provide for an environment of secrecy and diminished transparency, which lends itself to becoming a fertile ground for protectionism, corruption and inefficient use of public resources.

The wrongful interpretation of articles 6-11 of the PPL that provide for substantial exceptions is so widespread that even non-sensitive procurement in the field of defence is often wrongly excluded from public procurement rules. Articles 6-11 of the PPL establish that national public institutions may derogate from the rules and principles of the PPL and adopt extraordinary measures in the field of trade of munitions and other defence material if these measures are necessary for the protection of essential security and defence interests. These provisions have often been interpreted wrongly by the MoD as establishing an en bloc, automatic exclusion of defence procurement from the rules and principles of the PPL. If the MoD chooses to derogate from the PPL rules in the field of defence procurement, it can only do so legally on an ad-hoc basis and by invoking Articles 6-11 of the PPL. In other words, the MoD cannot exempt defence procurement from the field of application of PPL in general terms. Furthermore, when invoking the articles providing for exceptions, the MoD needs to demonstrate that the conditions of application of the provisions providing for exceptions have been met, and to inform or to seek approval of the Government.

It is almost impossible to determine the percentage of public procurements from a single-source in defence matters. No information on this is publicly disclosed. However, classified procurements are open only to companies that meet certain conditions such as holding a licence on trade with arms and military equipment

[46] Articles 6-11 of the PPL.

issued by the Ministry of Economy and a security certificate providing access to classified information. This may represent a strong bias towards purchasing all military equipment from single-source. Beyond those certificates no other standards such as compliance programmes and business ethical conduct programmes are required from companies. The general procurement process does not require the main contractors to ensure that subsidiaries and subcontractors adopt anticorruption programmes, which increases the vulnerability to corruption.

The ESPP (Electronic System for Public Procurement) is the only tool allowing for open access to information on public procurement in the defence sector. The ESPP website[47] is managed by the PPB. It contains a 2-year archive of the procurement calls and contracts concluded by each institution. Anyone can see what type and how many types of calls and contracts have been concluded, and they are categorised according to the amount of the contract: below EUR 5,000, below EUR 20,000, and above EUR 20,000. There are no available statistics on the types of procurement calls, their amount, their duration or the number of bidders taking part. The MoD does not provide such information, so it is difficult for the public to form a clear idea about public procurement in the defence sector. A quick look at the ESPP archives suggests that the most frequent type of procurement is a small procurement up to EUR 5,000 for the MoD, although it has the highest number of procurements up to EUR 20,000. No information is available about classified procurements, which are treated as confidential data and not available for public scrutiny.

The PPL of 2004 provided for the establishment of the Public Procurement Bureau (PPB) within the ministry of finance, with responsibility inter alia for monitoring the implementation of this Law, for developing standard tender documentation, and for issuing operational tools for the use by contracting authorities. The PPB, as an administrative unit within the ministry of finance, has the capacity of a legal entity. It is financed from the state budget and from its own revenues. It is managed by a director. Upon a proposal of the minister of finance, the government appoints and dismisses the director for a period of four years. The director of the Bureau is required to have university education in law or economy and at least 5 years of working experience. The director may be dismissed before the expiry of his mandate if he violates the law or his performance is unsatisfactory.

The PPB has sufficient capacity to manage the public procurement policy. The PPB has made substantial efforts to increase the transparency of public contracting, including a website[48] which gives access to public procurement legislation, announcements of public procurement tenders, procedures and registers and findings of the second-instance SAC, a daily update of the register of public procurement and seminars on public procurement rules. The PPB cooperates actively with the Commission for Protection of Competition, the State Commission for the Fight against Corruption, and the State Audit Office. Civil society organisations, active in monitoring the public procurement system,

[47] www.e-nabavki.gov.mk.
[48] *Ibid.*

have suggested expanding the responsibilities of the PPB in order to use its potential for better performance of its law-stipulated operations, namely monitoring public procurement procedures, making recommendations to contracting authorities aimed at removing irregularities identified and the submission of requests for initiating misdemeanour procedures. They have suggested that the competences of the PPB[49] should include performance control over public procurement implementation.

It has also been suggested that the PPB lacks an effective monitoring mechanism for overseeing the use of procurement negotiation procedures. The PPB is not involved in the supervision of legal proceedings in public procurement procedures; it has no authority to supervise the public procurement process, i.e., to issue binding opinions for contracting authorities. It is not authorised to issue measures concerning the discontinuation of procedures until identified shortcomings therein are eliminated, including the decision-taking on the most favourable bid.

The PPL requires that each public authority has a person or department charged with ensuring that public procurement processes are carried out in the manner prescribed by the PPL. The MoD and the armed forces have their own units responsible for procurement. In the MoD there is a Unit for Procurements under the Logistics Department which reports to the State Secretary of the Ministry. Under the General Staff of the Army, there is a Unit for Procurements under Section G4 of the General Staff of the Army that provides assistance and necessary expertise to the MoD's Logistics Department.

The MoD's Logistics Department (Unit for Management and Procurements) is in charge of public procurement. Purchases are conducted in accordance with the annual procurement plan, which is prepared at the beginning of the year. Procurements up to value of EURO 3,000 are also carried out by ARM units. The personnel employed in the Logistics Department are trained to perform activities in the area of public procurement, in accordance with the PPL, and hold certificates for public procurement awarded by the PPB. The Logistics Department, in its capacity of defence procurement, is guided by the Steering Group and the Basic Group, which are the MoD's advisory bodies responsible for tracking the activities that derive from the Strategic Defence Review.

The head of the Logistics Department of the MoD decides on acquisition, procurement and selection of the best bidder; provides expertise in evaluation of gathered data as well as development of necessary documents during the procurement process; nominates tendering committee members in the procurement process; undertakes measures for ensuring quality of equipment purchased and services obtained; undertakes measures for improving the defence procurement system; and establishes more detailed guidelines and instructions on the use of the provisions of the MoD's Rulebook on Procurement (Acquisition Rule of 2006). The Logistics Department, as the unit responsible for defence procurement, provides expertise and ideas for the

[49] Referred to in article 14 of Public Procurement Law.

permanent improvement of the procurement system. The Logistics Department is responsible for the continuous updating of the Rulebook on Procurement, both with regard to world trends and the domestic economic situation.

The Procurement Unit at the MoD's Logistics Department has about 20 staff. Councillors for procurement of various professional profiles work in the unit and each is responsible for procurement within the scope of his sector. All employees in the procurement unit have completed compliance training programmes on public procurement, organised and conducted by the PPB, and also some of them participated in 2013 in a one-day training programme on "reventing corruption and conflict of interests", organised by the Department of Human Resources at the MoD and the State Commission for Prevention of Corruption. A training centre for public procurement has been established by the PPB. The Centre provides numerous training courses for contracting authorities, including for the MoD, on an annual basis, in line with the Manual for Training issued by the PPB.[50] Conflict of interest, ethics and anti-corruption in procurement procedures became a separate training module of the annual training programme of the PPB.

Defence procurement, locally called "defence acquisition", is defined by the "Acquisition Rule" adopted in 2006 by the MoD, according to which defence authorities acquire the equipment necessary to fulfil their missions. The "Acquisition Rule" or the Rulebook, as it is known in the MoD, provides a general model that is used for the implementation of procurement and acquisition of equipment. It defines measures, activities and procedures that the MoD units plan and implement in the procurement of defence equipment. In developing the Rulebook, the MoD reviewed all available and relevant material from many NATO member states. The weakness is that the Rulebook does not refer to "services" procured for defence, it only refers to the supply of defence equipment, i.e. "goods". The Rulebook is applied to situations in which the procurement is carried out under the exceptions to the PPL. All other defence procurements are conducted under the general rules of the PPL. The Rulebook defines the process of procurement of equipment intended for military use only, such as weapons and ammunition (classified). Those that are not explicitly military items, such as food and other general services (not classified) are contracted based on the general procurement rules as defined by the PPL.

Defence procurement needs are determined after defining the missions and threats. The procurement needs are annually revised within the Strategic Defence Review, which includes several areas such as the implementation of the work plan, combat readiness and so forth.

According to the PPL and procedures regulated in the MoD's Rulebook for procurement, the Minister of Defence develops and approves the annual procurement plan by the end of January. The plan has to use the Common Procurement Vocabulary adopted by the ministry of finance, to determine the time for the initiation of the procedure, the estimated value of the contract and

[50] Manual for Training, 2012.

the type of procedure to award the contract. Simultaneously the Minister of Defence shall inform the government about the plan for procurements falling outside the PPL the MoD intends to carry out during the year. No publicity is provided on defence purchases, although they are supposed to be open to public scrutiny. Only the contract and procurement notices, as well as calls for proposals (of unclassified procurements), are made public in the central electronic portal managed by the Public Procurement Bureau.

Tenders in the MoD require a prior needs analysis, which is carried out by the Operational Requirement Report (ORR), before launching the Terms of Reference. The ORR is submitted for approval to the Chairman of the General Staff of the Armed Forces and to the MoD State Secretary. Subsequent to these approvals it is forwarded for review to the MoD's Steering and Basic Groups that are in charge of giving guidance to procurement processes. Once the ORR has been approved, the Basic Group (BG) reviews all possible ways of meeting the needs. The BG prepares a report to the Steering Group (SG) and to the Defence Minister, in which it proposes the establishment of a multidisciplinary Integrated Project Team (IPT) with a defined composition, task and deadlines. The IPT is tasked with exploring equipment solutions, evaluating solutions offered in relation to technical and functional specifications, and defining adjustments to ensure a correct, efficient and safe operation of the equipment. The procurement process formally starts with the decision to establish the IPT. The IPT's main criteria for its recommendations are quality, costs and time needed for carrying out the procurement.

The IPT prepares a report proposing a Procurement Decision and delivers it to the BG. The report outlines the criteria (methodology) that have been used in defining the final functional system requirements and reviews options for overcoming possible deficiencies. It explains the inadequacy of the rejected bids and the evaluation of the allocation of funds to be planned long-term within the PPBE system of the MoD. The BG, after receiving and approving the IPT report, forwards it to the SG with a proposal to make a Procurement Decision that represents the basis for IPT work in future phases of the procurement process. This Procurement Decision lays the ground for the Terms of Reference. The establishment of a tender committee is an obligation spelled out by the PPL. This rule shall be respected by the contracting authorities, including by the MoD. The tender committee is appointed by the Minister of Defence, upon advice of the Logistics Department. The committee is composed of seven members and their alternates. Committee members are selected depending on the object of the contract, with a basic criterion being their expertise and competence.

Bidders are given at least 15 days for submission of their applications, a deadline which is extended for more complex procurement procedures, and in principle this provides sufficient time to prepare their proposals.

The provisions of the Law on Prevention of Conflict of Interest apply to the contract award procedures. In the contract award procedure the President, Deputy President, members and deputy members of the tender committee, sign a statement on the non-existence of conflict of interests. That statement

becomes part of the procurement dossier. The contractor will not hire persons involved in the tender evaluation, or in charge of monitoring the implementation of the contract. Otherwise, the public procurement contract shall be null and void.

The tender committee evaluates the proposals, ranks the applicants and prepares a proposal on the selection of the most favourable bid. Dissenting members of the tender committee can state their opinion in writing, prepared as a comment included in the dossier.[51] The Minister of Defence makes a final decision for selection of the best scored bidder, according to the proposal of the tender committee. The Minister does not need to consult with the government. The evaluation report is published on the MoD website or in the centralised electronic system. If the Minister departs from the proposal of the tender committee, he can only give reasons based on the illegality of the proposal.

The MoD shall use competitive tender procedures. Except in cases where negotiation procedures with single or more suppliers are permitted, purchasing authorities may not split a public procurement contract into multiple separate contracts with lower value, or use methods for calculation of the estimated value of the contracts in order to obtain a lower value than the real estimated value of the contract so as to avoid certain procedures determined by PPL.

In single-source procurements or outside existing procedures, the Minister of Defence has to give reasons for the selection of a particular type of procurement procedure. While the public procurement is in process the personnel involved in the procurement process shall act in line with the Code of Conduct, which includes provisions on integrity. The Minister of Defence may delegate decision-making authority for procurements with a value below EURO 3000.

Offset procurement is possible. The Rulebook for Procurement of the MoD foresees linking contracts with foreign suppliers to measures benefiting the domestic industry. However, no information is available on whether offsets have been used as a condition for the participation of foreign contractors in specific procurement processes, or as an award criterion in the procurement processes run by the MoD. There are no special and separate oversight mechanisms in place throughout the life of the contract nor offset programmes to ensure transparency, value for money, and fair delivery in order to avoid long-term corruption. Only the general rules of project management and transparency apply in the execution of the contracts.

The MoD is responsible for setting the technical requirements for procurement. It prepares its budgets and procurement proposals in cooperation with the military and other executive bodies, and it negotiates with domestic and foreign firms and handles tender processes.

Defence procurement contracts are generally prepared either by competitive bidding or single-source procurement. Competitive bidding is the general rule

[51] Article 141 of the Public Procurement Law.

for defence acquisitions. However, defence procurement is often conducted via single-source (also referred to as sole source non-competitive) procurement. No information is available on what percentage is by competition and what by single-source. Single-source acquisition often takes place when the donor funding is conditional on acquisition from the aid providing country. National preferences and established business relationships have promoted the reaching of agreements with preferred suppliers, a situation which is prone to corruption.

The MoD does market research by screening producers in order to find out whether they will be able to deliver equipment meeting the functional specifications and guarantee the equipment's effectiveness and suitability to the local defence system. The Rulebook foresees that expert task-forces, usually composed of both military and civilian experts, evaluate bids for quality and value. Technical expertise plays an important role in drawing up specifications and evaluating the bids.

Even if parliament has questioned the minister or the government on defence procurement, it has no role in examining and approving contracts, although according to international standards parliament should have a role in selecting the equipment as regards major capital acquisitions.

The PPB keeps a debarment list of suppliers who have performed badly in previous contracts. No contract can be awarded to a supplier which is included in the debarment list. Debarment of suppliers applies to general procurement rules, but not to defence procurements were no debarment regulation exists.

The records of each procurement including contract notices, terms of reference, evaluation reports and decisions of contract award are kept in both paper and electronic form. For each stage of the procurement procedure, there are detailed written records in paper form, which are readily available for use and review. They are both filed with the contracting authority (for instance in the MoD) and electronically in the central electronic system managed by the PPB. Operators who have participated in tender procedures, as well as other stakeholders, can examine the files and reports on procurement procedures in which they were involved.

The quality control of the procured equipment starts immediately after the contract signature. The receipt of the procured material is carried out in accordance with the terms outlined in the procurement agreement. In accordance with the MoD Rulebook on procurement, it is mandatory to control the quality and check the quantity. The quality control is conducted by the MoD Quality Control Section. The control is performed at the producer's premises or user's premises, depending on the agreement terms. The Quality Control Section has professional staff to examine the quality of items and services procured.

Payment is in instalments and dependent on the delivery and use of the equipment procured. Bank guarantees are secured by the winning bidder, which will be activated if the requirements are unmet. Upon delivery of the

equipment, a "provisional acceptance" is issued. The "final acceptance" is subject to the successful use of the equipment delivered.

If goods or services do not meet the specified requirements, the supplier is asked to rectify this. If the supplier fails to do so, the MoD does not accept the supplies. If no solution is found, it can lead to the cancelling of the contract and the imposition of the sanctions foreseen in the PPL (i.e. debarment). If the acceptance of goods depends on laboratory analyses and they do not meet the requirements, a new lab test is possible at an independent laboratory, whose results are final.

The remedy system has two levels of review. One is by the tender committee of the contracting entity (for example, the MoD). The other is by the State Appeals Commission (SAC). The SAC was established in 2009. The SAC is operational and provides a channel for allegations of corruption or mismanagement in public procurement. The SAC is competent to resolve appeals on contract award procedures. The SAC decides on the legality of actions and omissions, as well as the decisions of individual acts adopted in procurement procedures.

The SAC, as a state authority created by the PPL, has legal personality and an independent status. Its members (president and four members) are appointed by Parliament through open competition for a five-year term with possible reappointment. SAC members carry out their office full time. Its operations and decision making are regulated by its Rules of Procedure. The SAC submits an annual report to the parliament by the end of March for the previous year. The staff are civil servants with 12 positions filled and 33 vacant. The SAC remains understaffed and under-budgeted. As of 2009 a new, SAC website has provided information on the public procurement review system and the work of the SAC.[52]

The SAC shall adopt a decision within a 15-day deadline of the lodging of the appeal. If the SAC fails to adopt a decision within that time period, the appellant may, within five working days, notify the State Administrative Inspectorate. The inspector will conduct an assessment of the SAC within five days to determine whether the procedure has been conducted in accordance with law. The inspector will, within three working days, notify the appellant of the results. The inspector can file a motion to initiate a misdemeanour procedure against the President and the members of the SAC. The fact that the administrative inspection can sanction the members of the SAC raises questions about its independence. Moreover, it is also unusual that an administrative body supervises a parliamentary one.

In fact, the perception of economic operators is that SAC decisions mainly focus on procedural aspects and are biased in favour of the contracting authorities. Along with this, the enforcement of decisions of the SAC is not satisfactory, which diminishes the effectiveness of the remedy system. The remedies remain the weakest part of the procurement system. The PPL was

[52] http://www.dkzjn.gov.mk.

amended to ensure a timely enforcement of appeals. The responsibilities of the SAC were expanded in 2011–2012 to include appeals on concessions and PPP. The appeal rights of debarred economic operators are not safeguarded in the PPL. Full alignment with the amended EU Directive on Remedies has yet to be achieved. There have been cases where the Administrative Court has overruled the decisions of the SAC. Court statistics on public procurement related cases are partially available, but the methodology used in their collection is not comprehensive.

There is no specific integrity procedure in high value procurements, but if the value is higher than EUR 500,000, the announcement has to be published more widely and internationally. The State Audit Office reports that about a quarter of the irregularities concerning public procurement affect procurements without public call, with a significant number of irregularities occurring at the evaluation stage. There have been numerous cases of failed public procurement procedures, some of which have ended in court, but few criminal prosecutions for abuse of public procurement are recorded. The MoD has been taken to court twice for breaching public procurement procedures. The MoD was implicated in serious corruption scandals in 2001 over the purchase of spare parts for the artillery and the supply of army food.

In 7 out of 45 cases, the State Commission for Prevention of Corruption recommended the Public Prosecutor's Office to bring criminal charges. The enforcement of the criminal code in public procurement resulted in one conviction in the first half of 2012. The public procurement system has been heavily criticised over the last two decades as one of the sources of widespread corruption in the whole public sector, including in defence. Negotiated procedures are used extensively without any true analysis of the scope, justification, transparency and competitiveness.[53]

The PPL incentivises contracting authorities to manoeuvre in the preparation of technical specifications and tender documents with a view to favouring certain bidders, to alter deadlines and many other violations, especially if there are insufficient and imprecise provisions on prevention of conflicts of interest. In light of this, the Open Society Institute & Centre for Civil Communications called in 2011 for amendments to the Public Procurement Law that would remedy the above concerns. The EU 2012 Progress Report[54] noted that corruption in public procurement is a serious problem.

The institutional framework remains ill-suited to effectively addressing corruption in public procurement. Furthermore, Macedonia still lacks institutional capacity to conduct viable, competitive procurement

[53] See Centre for Civil Communication (CCC), 31 January 2014: *Results of Public Procurement Monitoring in Macedonia*, available at http://www.ccc.org.mk/index.php?lang=en. CCC points out that, because of incompetence on the part of the committees that are in charge of the procurements, tender specifications are often prepared by a company which later appears as a bidder although this is prohibited by law. This opens the possibility for a company to include in the specifications features that only that company can provide, or that will make its offer the most competitive. CCC also refers to serious collusive practices among fake bidders.

[54] http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf.

processes. There is a lack of individuals who are knowledgeable in procurement good practices at the MoD and elsewhere in the public administration.

4.2 Asset surplus disposal

The legal framework for asset disposal is the 2005 Law on Use and Management of Assets of Public Bodies. The law regulates the manner of asset disposal by public institutions, including by the MoD. Another related law is the 2010 Law on Assessment. According to the Law on use of state assets, the immovable and movable assets which public bodies have permanently ceased to use can be disposed of. The MoD has two plans that relate to asset disposal: namely the Plan for Divestment of Non-Core Assets up to 2020, and the Equipment Divestiture Program Strategy. Although they are public documents, the plans are not published on the website of the Ministry of Defence, or on other websites. There are references to the documents in the printed media.

The MoD has also executed specific projects on asset disposal, including a project titled "Old military barracks for new development" launched in 2010, under which it disposed of 8 military barracks and parts of 4 other barracks. This is the second project undertaken for the disposal of immovable assets. The first project started at the beginning of the reforms in connection with joining NATO, but it was considered controversial and doubts appeared about abuses. The project was stopped. According to certain estimates, in the 1990s the MoD possessed 611 non-essential buildings and plots of land worth about 53 million euros. Later on only 37 observation towers, 12 barracks, two car parks, 16 plots of land and 20 warehouse complexes were found. The "new plan for divesting of non-core assets by 2020" foresees disposing of 40 watchtowers, 15 business premises, 13 warehouses, two army houses, three restaurants and two farms. These assets are initially assigned to municipalities, which can put them on sale later.

The General Staff of the Armed Forces conducts a review of the assets, both movable and immovable, and submits its disposal proposals to the MoD. The MoD's Commission for Management of Immovable and Movable Assets manages the asset disposal. The tenure of the Commission, which is composed of a president, two members and their deputies appointed by the Minister of Defence, is four years. There is no obligation to establish a separate committee for asset disposal for each asset disposal procedure. There is no mechanism in place preventing individuals who are in conflict of interest situations, or lacking expertise, from participating in the work of the Commission. The Commission maintains records and minutes of the public auctions conducted. The minutes contain information on bidders and their offers. Data from minutes are supposed to be public.

The Law requires that independent assessors be engaged to assess the value of the relevant assets. Independent assessors are certified in accordance with the Law on Assessment, which requires that the assessor is registered in the relevant official registry of authorised assessors. They can be both physical persons and legal entities. They have to obtain a licence on assessment by the

Chamber of Assessors, which conducts specialised exams for accreditation as a certified assessor.

The disposal of assets is made either through public auction or direct agreement. Public auction is the rule for disposal in the case of immovable assets. Direct agreement is the exception, although it can be used for defence and security purposes and other reasons stated by the law. In the case of movable assets, public auction is used only when the value of the asset to be disposed of is above EUR 500. If the value is below EUR 500, the direct agreement procedure is used. The government decides on the disposal of immovable assets on the basis of the MoD's proposal.

The MoD can propose the disposal of immovable assets to the government only if other public bodies do not need the immovable asset concerned. The proposal of the MoD for disposal of immovable assets contains their value, which is assessed in accordance with the Law on Assessment. The government or the Minister of Defence, when deciding on the disposal of immovable and movable assets respectively, are bound by the recommendation of the Commission. The MoD has no separate reporting and accounting system for proceeds from disposal of assets. Revenues from asset disposals go first to the Treasury. The reallocation of the proceeds back to the MoD is decided by the Government.

The State Audit Office has so far not questioned the ways in which the MoD has disposed of military or other assets. It has only criticised it for the lack of a consolidated database of capital assets which are still owned by the ministry. In 2005, auditors found that in recent years the MoD offered property for rent at prices as low as 0.01 Deutsche Mark per square meter of office space. Leasing contracts were opaquely concluded. The following year the Ministry terminated fifty such leases, and in 2007 began an inventory of the property.

There has been extensive media coverage of certain asset disposal processes, but no concerns have been raised with regards to arrangements for assets disposal.

4.3 Internal financial control

Public Internal Financial Control (PIFC) provides for internal control, internal audit and financial management in the public service. The European Commission played a major role in the introduction of PIFC. PIFC consists of rules and procedures providing a reasonable assurance that budget funds are legally, properly, cost-effectively and efficiently used. The basic legal framework is the 2009 Law on Public Internal Financial Control. It regulates the components of the internal control system, namely financial management and control, the internal audit and its harmonisation, as well as the standards, methodology, relations and responsibilities in public internal financial control. Several rulebooks have been adopted to implement the PIFC Law. Moreover, a Decree on the procedure to prevent irregularities, manner of cooperation, form, content, terms and manner of reporting irregularities was adopted. Finally, the ministry of finance developed a Handbook of Financial Management and Control.

An EU-funded Twinning project, managed by the Dutch Ministry of Finance, was implemented in Macedonia's PIFC system. The aim of this project was to develop sound financial and management control systems and complete the PIFC legal framework, strengthen the administrative capacity of internal audit units in the public sector at central level and strengthen the administrative capacity of the Central Harmonisation Unit (CHU) in the Ministry of Finance.

The Law on PIFC stipulates that PIFC should be established in all public sector entities, including in defence institutions. The Law on PIFC establishes two different control subjects, namely a) Financial Management and Control and b) Internal Audit. Financial Management and Control is aimed at establishing whether a public entity is performing its financial activities in a proper, ethical, economical, effective and efficient manner and at ensuring conformity of the operations with the laws, other regulations, established policies, plans and the procedures. Each public institution is required to have a unit for financial affairs, and a unit for internal audit.

The Law on PIFC was made compatible with the regulations on the internal organisation of the state administration by adopting the Decree on amending the Decree on principles of internal organisation of the public administration. This enabled the government to establish a department or unit for financial affairs, whose head is directly accountable to the highest civil servant and manager of the institution.

In addition to the Law on PIFC, the system of PIFC is complemented by other laws, including the Law on Internal Audit in the Public Sector (2004), the Law on Budgets (2005), the Law on Accounting for the Budget and Budget Users (2002) and the annual Budget Execution Law, which together provide the overall framework for PIFC system. The Law on PIFC provides for an appropriate division of responsibilities for the approval of payments. It provides for ex-ante financial control. According to the Law, ex-ante financial control means that a financial commitment shall not be made and no funds shall be disbursed without prior approval by an official hierarchically independent of the official generating the credit and the payment coordinator.

The Ministry of Finance is in charge of the establishment, coordination, implementation and maintenance of the PIFC system and the CHU acts on its behalf. The CHU is in the PIFC Department of the Ministry of Finance. The Department focuses on monitoring the implementation of the PIFC Law and giving recommendations for improving the financial management and internal audit system. The PIFC Department is well-regarded by all public institutions, which consider it as a competent and capable partner for the implementation of the public internal financial control concept. Relevant networks have improved considerably. At the Ministry of Finance there are committees for financial management and control as well as for audit, and these are consultative bodies on issues related to financial management and control and internal audit,[55] but they are not fully operational yet.

[55] Articles 44-45 of the Public Internal Financial Control Law.

A system of ex-ante control of commitments and payments exists at the MoD. The ex-ante control system is managed by the Department of Financial Affairs, which is in charge of financial management and control at the MoD, including ex ante and ex post controls. The Department is answerable to the State Secretary of the Ministry. The main element of the internal financial control system is the Treasury, in place since 2000. This has proven to be an effective tool for ensuring that expenditure in the MoD is managed in line with the budget and that spending is controlled. However, just simple financial control has not ensured value for money in spending. The MoD, rather than ex-ante control, operates a system of ex-post financial control checking financial transactions (commitments, expenditures or revenues), after the transaction is fully completed. At the MoD, the system of ex-ante control of payments is defined by the Manuals on Financial Processes relating to the work of finance units and on accounting, issued by the MoD.

The internal audit function at the MoD is exercised by its Internal Audit Department. The PIFC Law establishes the function of internal audit in all ministries. The Internal Audit Department is organisationally and functionally independent and directly and solely responsible to the Minister of Defence. The functional independence of the Internal Audit Department is ensured through its organisational independence from other parts of the Ministry. The Department consists of two units: Financial Audit Unit and System Audit Unit, including the State Counsellor for Internal Audit.

The Internal Audit Department shall inform directly the Minister of Defence on all audit issues, in particular on regularity, effectiveness and efficiency of the budget execution; the regularity and effectiveness of internal financial control, including asset management and the consistency of the accounting reports on the execution of the budget. The Internal Audit Department provides feedback on internal rules and regulations on matters relating to internal financial control, internal audit and risk management. The head of Internal Audit Department and internal auditors at the MoD cannot be fired or reassigned to another job for reporting on specific situations or for providing unpleasant recommendations. Prior to any disciplinary action, reassignment or dismissal of the head of Internal Audit Department and internal auditors, the Minister of Defence shall consult with the Minister of Finance by providing documented evidence of misbehaviour. Reassignment or dismissal of the head of the Internal Audit Department and internal auditors can be done once the consent of the Minister of Finance is obtained. He may or may not approve the proposed changes. This contributes to the functional autonomy of the internal auditors who enjoy the right to freely access the places where an audit is being conducted.

The internal audit follows a three-year strategic plan, an annual plan, and an individual plan for each internal audit. The internal audit strategic and annual plans are adopted by the head of Internal Audit Department prior to approval by the Minister of Defence on the basis of the risk assessment done. The head of the Internal Audit Department for each individual audit adopts a plan and programme describing more specifically the audit procedures. No later than December 15 shall he submit the strategic plan for the next three years and the

annual audit plan for the following year to the CHU on PIFC at the ministry of finance and to the Minister of Defence. The annual audit plan may be amended if significant changes occur in the estimated risk or in the planned resources. The head of the Internal Audit Department shall inform the CHU on PIFC at the ministry of finance on the amendments to the annual plan.

Internal audit at the MoD focuses mainly on ensuring that transactions follow the appropriate rules and regulations. In principle, the internal audit shall include financial audit, compliance audit (regularity), audit on the internal control systems, performance audit (execution) and IT audit, as required by the Law on PIFC. However, no IT audit is carried out in practice, despite the fact that IT systems at the MoD are highly vulnerable. Internal auditors perform mainly compliance (regularity) audits and system-based audits, while the complex audits on the management control system (operational audit), are limited. Keeping in mind that internal audit is a recent innovation in the public sector, the capabilities of the internal auditors are still insufficient. The acceptance of internal audit by the MoD management is limited and the recognition of its role and objectives are not yet fully understood. Because of this, auditors are not fully utilised. The management at the MoD often sees the audit as "providing assurance" and does not fully perceive the benefits that internal auditors can bring by providing advice for improvement of the operations and increasing the effectiveness of the work processes of the organisation.

The Internal Audit Department of the Ministry of Finance operates with internal auditors that possess the necessary education and skills in the field of internal audit. However, the Department is too small to achieve real audit strength. The number of trained internal auditors is insufficient. The internal audit profession is young and still in the phase of development at the MoD. The ministry of finance organises numerous trainings for internal auditors, including those at the MoD. The latest changes to PIFC Law of December 2013 makes training and qualification exams for internal auditors in the public sector mandatory.

The Minister of Defence is the sole person responsible for financial management and control within the MoD. He/she is in charge of ex-ante and ex-post financial controls. There is no system to delegate responsibility to other higher officials, such as the deputy minister or the state secretary. The Minister of Defence is the "manager" of the whole ministry of defence. He takes all decisions in the ministry and personally signs all payment orders. This situation is inconsistent with the idea of PIFC which requires the delegation of responsibilities[56]. According to the Law, the Minister of Defence may delegate (generally or specifically) to one or more senior managers who are directly subordinate to him. However, decisions that are likely to have an important political or financial impact require prior approval by the Minister who consequently continues to take all decisions, including those on financial management and control.

[56] Article 8 of the Public Internal Financial Control Law.

Overall, it can be said that there is a comprehensive statutory basis in place defining the systems, principles and functioning of internal control, internal audit and financial management. Nevertheless, the understanding of the technical concepts and requirements of PIFC generally appear to be limited within the MoD management. In practice, there are no ex-ante controls of commitments, payments and recovery of unduly paid amounts. What is in place is the Treasury accounting system of ex-post internal control that is simply concerned with the execution of transactions in accordance with the regulations.

4.4 General administrative inspectorates

Administrative inspectorates form part of ministries and other state bodies, including in the MoD. They inspect the application of the laws and other regulations. Inspection reports suggest measures for removing irregularities and weaknesses. The institution concerned is obliged to act in accordance with the report and to notify the inspector about the measures undertaken. If the violations of regulations constitute a criminal offence or misdemeanour, the inspector shall submit a request for initiating the relevant legal procedure. General rules on the procedures for carrying out inspections are defined by the Law on Inspection Supervision, a law with horizontal effect applicable to the whole public administration.[57] Occasionally an inspection may be conducted in cooperation with other inspection services,[58] in particular with the State Administrative Inspectorate of the ministry of justice, which is the state body monitoring the implementation of the Law on General Administrative Procedure and other laws that contain provisions with regards to administrative procedures.

The MoD has inspectors for defence and their role is defined by the Law on Defence as well as by the Law on Inspection Supervision[59]. Within the MoD there is a chief inspector who also heads the Inspection Department. The inspection monitors the enforcement of defence and other laws of interest to the MoD. Defence inspectors shall have adequate university education and at least 4 years of experience, 2 years of which must be in the public service[60]. They have the status of civil servants and are appointed and dismissed in line with the Law on Civil Servants. Since they possess the status of civil servants, their appointment is of unlimited duration.

The manner of conducting the inspection is determined by the Minister of Defence. The inspection is conducted in accordance with the annual programme adopted by the Minister of Defence, at the latest by 31 December in the year in question, for the following year. The Chief Inspector manages all inspectors in the MoD. The resources allocated to the inspection department are insufficient, which is having a negative impact on the independence of operations. The Inspection Department is independent, but with certain restrictions. It has

[57] Articles 162-166 of the Law on Defence.
[58] Article 163 of the Law on Defence.
[59] Article 162 of the Law on Defence.
[60] Article 164 of the Law on Defence.

requested that a fully independent inspection body with its own bank account be established. If that body is established, the inspector would report to the government and not, as is the case at present, to the Minister of Defence. The Inspector General shall have direct and regular access to top leadership in defence.

"Inspection oversight", as designated in the Law on Defence, can be regular or ad hoc. Regular inspection includes oversight of the implementation of the Law on Defence, and other provisions in the field of defence. Ad hoc inspection covers inspection of the implementation of particular provisions or particular questions in the field of defence and is done based on the assessment of the Inspector General for Defence, following a request made by other stakeholders. Ad hoc inspection is conducted within 8 days of the day of the request being made. In addition, there are ex-post follow up inspections to check compliance with the instructions or recommendations given to overcome the shortcomings identified in the course of a regular or ad hoc inspection[61]. All reports of the Inspection Department and the Chief Inspector are available on the website of the MoD.

The Chief Inspector reports to the Minister of Defence. He can inspect all military operations, administration, finance, human resources and procurement. In 2013, 33 departments were inspected. More than 200 cases are investigated annually. There is no penalty measure. The most widely used measure is the recommendation, with execution deadlines. So far, recommendations have been generally met. If the recommendation is not timely fulfilled, a penalty is possible, which can be a misdemeanour, disciplinary or criminal penalty. The decision of a defence inspector can be appealed before a commission which is formed by the Minister of Defence. The commission is composed of its president, two members and their deputies. The president of the commission is the Inspector General for Defence, and the members are managers in the MoD. The MoD prepares quarterly reports on the inspections conducted, and these are to be published on the website of the Ministry of Defence.[62]

4.5 Human resource management

The matter is regulated by the amended 2000 Law on Civil Servants, the Law on Administration Officials and the Law on Employees in the Public Sector, both enacted in 2014, which are scheduled to enter into force in 2015. Public employees with the status of "civil servants" account for only part of the public administration staff. Others have the status of public servants, subject to the 2010 Law on Public Servants. Others are public employees governed by the General Labour Relations Law. The total number of public employees in the state public administration is estimated to be 120,000-strong. Only a fraction of the total number of public employees – some 20% – are civil servants.

[61] Article 165 of the Law on Defence.
[62] Article 166 of the Law on Defence.

Although there are certain dysfunctions, the legal and normative framework on the status, qualifications and career development of civil servants (i.e. the Law on Civil Servants) is relatively well developed. An independent Administration Agency reporting to the parliament is charged with the implementation of the Law and the preparation of the necessary secondary legislation. The managerial and operational responsibility for overall human resources is under the responsibility of the Ministry of Information Society and Administration (MISA). A Code of Ethics for civil servants was adopted in 2001, amended in 2004, and a new version of the Code was adopted in 2011, providing for disciplinary accountability in case of violation of the Code. The Law on Administrative Inspection establishes that the State Inspectorate for Administration (within the ministry of justice) has to secure compliance with laws and regulations.

The military personnel are regulated by the 2010 Law on Service in the Armed Forces, while the civilian personnel of the MoD are regulated by the Law on Civil Servants, as well as by the Law on Service in the Armed Forces. The Law regulates the status, rights, obligations, responsibilities and authority of the personnel of the Armed Forces. The Law also regulates the system of salaries, allowances and other issues related to human resources management in the Armed Forces. The Law on Civil Servants applies only to the civilian personnel of the MoD. It does not apply to military personnel who are governed by the Law on Service in the Armed Forces that is applicable to the personnel of the MoD and the members of the Armed Forces.

The MISA keeps a Civil Servants Register and a Public Servants Register, which indicate the number of civil and public servants in the public administration, including for civilian personnel at MoD. The armed forces have their own register for military staff members. None of the registers are publicly available. They lack data on the various categories of public employees that are governed by different laws. They also lack data about temporary staff. Neither the Administration Agency nor the ministry of finance have reliable data on temporary staff. Seemingly the number of temporary staff is increasing without any effective control. The most reliable data source is the ministry of finance, but this data contains information on payroll only. The ministry of finance does not have a centralised database for a significant number of public servants who are not civil servants.

There have been serious political attempts both to strengthen and to weaken meritocratic human recourses management (HRM). The legal framework has been in a constant state of flux, with frequent amendments for the last 15 years or so. In recent years the existing fragmentation of the civil service has been aggravated by establishing several parallel subsystems in the public administration. The tendency towards a more fragmented civil service has continued. Evidence is the exclusion of the staff members of the courts, tax authorities, cadastre office and the ministry of foreign affairs from the general civil service system. This has been conducive to parallel civil services and to making management coordination and internal mobility very difficult, if not impossible. Other groups of civil servants are struggling to leave the civil

service in order to increase their chances of getting better salaries outside the system (e.g. personnel of the State Audit Office and others).

The highest positions are considered political and are reserved for appointment by the government. The rest are expert and administrative positions governed by civil and military service laws. The positions of minister, deputy minister, state secretary and counsellor attached to the minister, who are appointed either by the parliament or the government, belong to the political sphere.

All other positions are in theory administrative positions and they are occupied by permanent public employees, but the civil service is very politicised with many posts for new recruits allocated to members of political parties or their relatives, even if open competition is mandatory for all civil service and military employment, and principles such as equal access, equal conditions and equitable representation are guaranteed by law. Excessive discretion in recruitment (the final decision is a discretionary decision to choose among the best 5 scored candidates) makes it a rarity that individuals without political connections are employed through fair and competitive procedures, which in administrative practice do not exist.

The Administration Agency, which manages only the first stage in the recruitment process, has established a system and procedure for the pre-selection of candidates for any given position. Final decisions lie with the recruiting authorities. This leaves room for final recruitment decisions based on criteria other than merit, because the final stage of the recruitment of civil servant recruitment does not guarantee a transparent, merit-based selection since it leaves too large room for discretion.

The recruitment at the MoD of active military and civilian personnel serving in the Army is based either on internal competition among the employees of the MoD and the armed forces or on open, public announcement of vacancies. The recruitment shall also take account of the equitable representation of citizens belonging to all ethnic communities.

Candidates for an army officer post shall meet the following requirements among others: completed military academy training, university diploma and completed professional training. A non-commissioned officer serving in the Army, who has completed higher education, and has completed professional training to become an officer, can also be considered for selection. Admission of candidates for officer appointments is carried out through internal announcements in the MoD and the Army. A recruitment commission, appointed by the minister, prepares a short list and submits it to the minister, who makes the final decision. In consequence, the right to equal access is ignored.

Non-commissioned officers are recruited from among professional soldiers through internal competition. If there are no professional soldiers that fulfil the requirements, the civilian personnel of the Army become eligible for the position of a non-commissioned officer. Should the internal competition fail to

lead to the selection of a candidate, a further public announcement is made, which is open to candidates from outside the Armed Forces.

Professional soldiers and civilian personnel are recruited through a public announcement. The MoD publishes the vacancy on its website, and in at least two newspapers. The ministry forms a selection commission of the civilian personnel. Professional soldiers are contracted for part-time work on a three-year contract. Depending on the results achieved and the needs of the Army, contracts with professional soldiers can be extended several times, but up to a maximum age of 38.[63]

Although the civil service legislation requires competition for promotion, the authorities tend to make reassignments instead of using competition to promote civil servants. The practice of demotion (re-assignment to a lower position) seems to have become too common and has led to an increase of complaints of by the civil servants affected by such demotions. Through these demotions, civil servants are re-assigned to positions of lower salary, rank and responsibility, freeing the higher positions for other civil servants chosen through discretionary reassignments. Within a period of time these become actual promotions. The absence of a system of merit-based vertical promotion to a higher post is possibly discouraging potential candidates from joining the civil service and current civil servants from staying on. This is an important weakness of the civil service framework.

The appointing authorities both in the civil service and military service have discretionary power while making the final appointment decisions. Once the appointment decision has been made, the interested parties can lodge a complaint with the Administration Agency, which acts as the first appeal instance commission on recruitment and promotion issues in the case of civil and public servants. Military personnel can lodge a complaint with the State Administrative Inspectorate, or to the Administrative Court, for review of the appointment decisions.

A professional soldier can be promoted to a higher rank according to the needs of the service, as decided by the battalion commander or by a person with higher military rank.[64] Military Academy cadets and personnel completing officer or non-commissioned officer (NCO) training can advance to a higher rank according to their performance and the time spent in the previous rank. The method of promotion to the higher ranks is determined by the Chief of Staff of the Army.[65]

Active military personnel can be promoted according to the requirements of the Service, based on the performance appraisal since their last promotion.[66] In addition to years of experience, the promotion of officers is also based on additional conditions, namely knowledge of foreign languages, completed

[63] Article 40 of the Law on Service in the Armed Forces.
[64] Article 58 of the Law on Service in the Armed Forces.
[65] Article 59 of the Law on Service in the Armed Forces.
[66] Article 60 of the Law on Service in the Armed Forces.

military courses and other professional training, further education, and having received honours, awards and certificates. The same applies to NCOs. [67]

Career progression at the MoD is also vulnerable to political influences, but to a lesser extent than in the civil administration, due to the professionalism criteria required for assuming responsibilities at the MoD. Nevertheless, political influences do play a role in career progression for both civilian and military personnel of the MoD and the Armed Forces.

Administrative bodies increasingly employ staff on the basis of temporary contracts. This procedure does not fall under the Law on Civil Servants, but is regulated – as an exceptional tool – by the Law on the Agency for Temporary Contracts. After several months, a temporary post is transformed into a civil service position and the temporary contractee becomes a civil servant without undergoing the regular recruitment procedure. This practice is quite common, even in the highest-level administrative bodies and circumvents the Law on Civil Servants.

The Government Secretariat for Implementation of the Orhid Framework Agreement (SIOFA) prepared a programme in cooperation with the Administration Agency and the Ministry of Finance to give effect to the agreement on what concerns equitable representation of all ethnic communities in the public service. The Secretariat is also in charge of its implementation. Very often, civil servants employed under the SIOFA find no office space or, if they are accommodated somewhere, they have very little work. In most cases, they act as home-based civil servants. Most of the recruits have not showed up at their designated institutions, but they are remunerated. The SIOFA mechanism is quite often in contradiction with the merit system, because it provides additional room for partisan-influenced recruitment given the existence of parties representing minorities which have always been a part of coalition governments. The recruitment procedure of minorities is not harmonised with the general recruitment procedures and remains even more vulnerable to undue political influence.

Civil society organisations observing the functioning of the public service have raised concerns with regard to recruitment and promotion arrangements. According to NGOs working on transparency or anti-corruption issues, the public administration is still pretty much in the hands of political parties and politicians (spoils system) and recently the situation has deteriorated even further. International organisations that have closely followed the developments with regard to public administration, especially the EU and OECD (SIGMA) have raised their concerns about the lack of application of merit-based principles in the public service in general, and lack of application of the provisions of the Law on Civil Servants in particular.

Arbitrary dismissal of civil servants and of the personnel of the ministry of cefence is prohibited by the law. When unable to dismiss staff, the political authorities have used the practice of demotion or re-assignment to a lower

[67] Article 64 of the Law on Service in the Armed Forces.

position. A reason for the problems related to protection against discretionary and arbitrary dismissals or demotions is the fact that the Administration Agency, as a second-instance commission for grievances of the civil servants, is an autonomous state body accountable to parliament, while the main political responsibility for the civil service belongs to the government. This legal construction weakens the capacity of the Agency to fully perform its role.

When retiring, military personnel have the right to a severance award of the value of three average salaries.[68] Military personnel affected by restructuring can acquire the right to a pension before reaching the retirement age if they have completed 25 years of service.[69] A Law on the special rights of members of the security forces and members of their families was enacted in 2002. In addition, there is also a Law of 2009 on the special rights of the participants in peacekeeping operations and collective defence operations outside of the territory of the Republic of Macedonia, which also applies to members of their families.

While the civil service salary system provides modest performance incentives, it suffers from problems of discretion and favouritism. Even if performance appraisal is widely applied, the system does not guarantee the fair and equal treatment of civilian personnel. Despite the lack of incentives and proper implementation, the salary system has been able to provide adequate salaries for low and mid-level civil servants in a country where the unemployment rate is over 30 per cent. Under such circumstances, a job in the civil service is very highly appreciated.

The MoD salary system lacks competitiveness and salaries are low and unfair, since the salary is determined by the Minister. The career supplement has had a positive impact on motivation, depending on the fairness of its implementation and the accuracy of the tools used to appraise performance. The ministry of finance keeps a tight control of the use of budgetary appropriations for personnel costs, including control of new recruitment, through its management of the state budget. Military personnel are entitled to a salary and salary allowances under conditions and criteria established by the Law on Service in the Armed Forces. The salary is expressed in points, and is calculated by multiplying the number of points with the value of the point. The MoD pays, admittedly irregularly, the personal income tax of active military personnel.

There is a practice of paying ad hoc allowances to public officials for certain duty-related tasks without transparency and proper justification. As the staff rules are governed by a number of different laws, which are not harmonised, the payroll system within the MoD and the Armed Forces is fragmented, affecting the unity and mobility of the civil and public service. The Law on Service in the Armed Forces does not allow for awarding bonuses or payments for exceptional performance to military personnel, but civil servants at the MoD are paid those bonuses.

[68] Article 169 of the Law on Service in the Armed Forces.
[69] Article 220 of the Law on Service in the Armed Forces.

The MoD and the Armed Forces are covered by the general rules regarding ancillary employment. A public official of the MoD cannot conduct any other function, duty or activity, i.e. cannot have ancillary employment. According to the rules of the Law on Prevention of Conflict of Interests, which are general rules also applicable to the MoD and the armed forces, public officials cannot receive compensations for any ancillary employment.

Within the framework of the code of ethics, there is an obligation for civil servants to report illegal acts, and there have been cases that have led to prosecution. The civil and public servants who have reported the existence of illegal acts cannot be held responsible for reporting the illegal acts.[70] The MoD has established a hotline for reporting bribery and anti-corruption at the ministry and the Armed Forces. The establishment of the hotline is part of a wider project of the MoD, titled "*Report Corruption*" aimed at preventing corruption in the MoD.

The merit system is a hollow shell. Professional standards play only a secondary role for staff selection if at all. The result is the lack of civil servants who are capable of implementing legislation, conducting administrative procedures in a reliable way, or proposing sound policy analysis and reform programmes. Political authorities regularly use discretionary demotion or reassignment to a lower position instead of dismissal.

[70] Article 6, Code of Ethics for civil servants and article 23, Code of Ethics for public servants.

5 Anticorruption policies and anticorruption bodies

5.1 Anticorruption policies and strategies

The major ruling party in the coalition currently in Government, the VMRO-DPMNE, in its election programme for 2011–2015 stated its goal as being an "uncompromising fight against corruption". The junior coalition party, the DUI, emphasised in its founding declaration that the party would be engaged in "combatting corruption and organised crime and the establishment of mechanisms that will impede their spread".[71] The largest opposition party, the SDSM, indicates in its current policy programme that its priority is to "fight against organised crime and corruption" and that it will be engaged in "real war against organised crime and corruption".[72] The main documents defining the programme of the current government (in power since 2011) are the Work Programme of the Government for the period 2011–2015 and the Annual Programme of the Work of the Government (2012). Among the strategic objectives of the former is the "uncompromising fight against corruption and crime and efficient law implementation by undertaking deep reforms in the judiciary and public administration". Similar wording is found in the Annual Programme: "continuation of the fight against crime and corruption and upholding the rule of the law" which also lists a series of projects and activities to combat corruption. The ministry of justice is the policy maker in the field of anti-corruption, but it lacks appropriate human resources in key sectors including anti-corruption, and its capacity to coordinate and monitor anti-corruption policies is insufficient and it remains understaffed.

In total, three rounds of State programmes have been developed – the State Programme for Prevention and Repression of Corruption (SP), the first of which was adopted in 2003 and the latest in 2011 for the period of 2011–2015. The State Programme is a stand-alone strategy with separate chapters on different sectors that form part of the country's national integrity system. The defence area is not specifically mentioned in the document. The preparation of the SP is imposed by the 2002 Law on the Prevention of Corruption,[73] which was the result of international pressure. The SP provides a definition of corruption, but no information or assessment of the causes, levels and trends of corruption in the country. The SP signals overall objectives and identifies eleven priority areas as the most vulnerable to corruption, but it does not give any information about what indicators or risk factors have been evaluated to decide on priorities. The identified eleven priority areas include: the political sector; judiciary; police; customs; local government; the public sector; the private sector; health and social policy; education and sports; media and civil society. The SP emphasises the structural weaknesses in the enforcement of laws and legislation and in high corruption-risk areas, but its analyses are

[71] DUI, 2002.
[72] SDSM, 2009.
[73] Article 49.

borrowed from assessments carried out by other institutions such as the European Union. The SP lacks expert deep analysis of the real dimensions of public perception of corruption.

The SP was mainly developed by the State Commission for the Prevention of Corruption, a parliamentary body. According to the 2002 Law, it has responsibility for adopting and monitoring a national programme for corruption prevention and suppression.[74] Some 250 representatives of various ministries and agencies participated in 22 thematic workshops organised by the State Commission for the purposes of the preparation of the document. The donor community (EU and UNDP) provided technical assistance in drafting the document, although it was the State Commission which took the lead. The preparation of the SP lacked a political dimension. It was led by the State Commission as an institution independent from the government, with experts assigned by ministries and the donor community, but with little political leadership. As a result, government's backing and commitment to the process was missing. Additionally, it lacked public consultation and debate. However, in principle it tended to reflect the political will, as the document was very politically correct and careful in not being critical of the political establishment.

An Action Plan is annexed to the SP, allocating responsibilities for its implementation. It is accompanied by a matrix laying out the sequencing of reform implementation together with its indicators. The Permanent Secretariat of the State Commission, which provides administrative support, is responsible for the day-to-day implementation and monitoring of the Action Plan. It also follows-up actions with the various contact points designated by ministries. Individual institutions, identified in the SP, shall periodically report on progress to the State Commission, based on an agreed format.

There is no specialised unit within the MoD responsible for anti-corruption policy implementation and oversight. However, the units that come closest to having anti-corruption related functions in the ministry include the Department for Legal and Personnel Affairs, the Internal Audit Unit and Inspectorate. There is also an adviser to the Minister of Defence who is tasked with anti-corruption responsibilities. The SP does not mention the defence sector. The MoD has not developed a separate anti-corruption programme for the defence sector either. The National Security and Defence Concept (2003) and the Strategic Defence Review – Political Framework (2003) considered corruption as one of the challenges and risks to the defence of the country. But the reference to corruption in the National Strategic Defence Doctrine framework is very limited. No thorough and credible examination is provided on corruption in the defence sector. No specific corruption-risk analysis has been carried out within the MoD. Corruption cases that have emerged have not been actioned against by the MoD, but by other organisations such as the police, the prosecutor's office, the judiciary and State Commission for Prevention of Corruption.

[74] Article 49.

The EU has been openly critical of the anti-corruption efforts, citing that resources to ensure effective action against corruption remain insufficient and that corruption remains prevalent in many areas and continues to be a serious problem. The EU has not made any specific reference to defence-related corruption except that it has criticised the track record in processing cases by the judiciary. Media, both domestic and international, have raised and debated the scandal involving the former defence minister and former prime minister, as well as the former Chairman of the General Staff. They were charged with involvement in an arms procurement deal and had allegedly benefited from their conspiracy in 2001.

The issue of anti-corruption reform can be characterised as the strategy for Europeanisation of the country. With the adoption of the State Programme, the country has fulfilled a part of political criteria required by the EU, but it largely remains at the declarative level only.

5.2 Anticorruption bodies

The specialised national body established to prevent corruption is the State Commission for the Prevention of Corruption (or State Commission), established by the 2002 Prevention of Corruption Law as a consultative and preventive body to the Parliament. It has autonomy and independence in the performance of its functions. It monitors the implementation of anti-corruption programmes and measures, offers advice, issues recommendations and undertakes initiatives for the fight against corruption. The members of the State Commission are answerable to the Parliament. The State Commission reports annually to the Parliament.

The international community influenced the establishment of a specialised anti-corruption body. As Macedonia signed and ratified various international conventions on corruption, including the Council of Europe Criminal Law Convention (and its additional protocol), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the United Nations Convention Against Corruption, it was obliged to fulfil requirements laid out in these conventions that recommended the establishment of institutional structures for the prevention of corruption.

The State Commission consists of seven members (experts in law and economics), elected by the Parliament for a single 5-year term with no re-election possibilities. The President of the Commission, who is elected by the Commission members, serves a one-year term. The State Commission is supported by a Secretariat which acts as its expert office. There is an extended perception that the membership of the State Commission is made of political affiliates of the ruling parties. The Secretary General and the employees of the Secretariat have the status of civil servants.

Since April 2011, the State Commission members have become full-time. This has alleviated the systemic deficiency in the functioning of the State Commission. However, the Secretariat serving the State Commission still remains understaffed. Only one employee is charged with dealing with asset

declarations, and only two employees check the declarations for any actual or potential conflicts of interest. With the current staff numbers it is impossible for the State Commission to fulfil its duties. That means the impossibility of a systematic and meaningful check and analysis of the data contained in asset and interest declarations.

The budget is not sufficient to fulfil its basic tasks. The State Commission's budget is part of government's overall budget on anti-corruption activities and is heavily scrutinised by the ministry of finance. The major part of the budget is sufficient for the salaries of the seven Commission members (full-time employees since April 2011) and the 17 employees of the Secretariat. The State Commission's budget does not allow for regular training. IT equipment systems and furniture are in need of an upgrade.

The State Commission members receive monthly remuneration which is on average 250% higher than the average salary in the country. This translates into a monthly salary of approximately €800. The State Commission's Secretariat staff members are bound by civil servant salary grades, which are considered low (€350 per month on average). The salaries paid to both the members and the staff are considered low even by local standards.

The State Commission is a mixture of a decision making, control and integrity agency. It includes overseeing and administrative aspects for combating corruption, but has no prosecutorial powers. The responsibilities of the State Commission are mainly performed through monitoring the implementation of the State programmes, the submission of information to the government and other relevant institutions, and data gathering related to other initiatives against corruption in cooperation with other public bodies.

The Law on Lobbying also confers certain responsibilities on the State Commission. However, whilst the Commission is the competent authority responsible for the implementation of the Law on the Prevention of Conflict of Interests, it is only assigned a supervisory role with regard to the implementation of the Law on Lobbying.

Besides the State Commission, several other bodies are in place that form part of the wider national integrity system. These institutions include, but are not limited to, the Public Revenue Office, Public Prosecutor's Office (including the Basic Public Prosecution Office for Prosecuting Organised Crime and Corruption), the Judiciary, Ministry of the Interior, State Audit Office, and the Agency for Management of Confiscated Capital.

The competent authority to propose new anti-corruption legislation is the Ministry of Justice. The State Commission has no competence, but it pronounces opinions on proposed laws touching on corruption prevention[75]. Members of the State Commission also participate in working groups that draft new laws and amendments to those already existing.

[75] Article 49 of the Law on Prevention of Corruption.

The responsibility to adopt repressive measures on corruption lies with the Prosecutor's Office and the Courts. The authority of the State Commission is limited to identifying corruption-related cases and undertaking preventive measures for the future. The State Commission's role ends after it submits its initiative or reports to relevant competent bodies to conduct a proceeding to dismiss or apply other measures to elected or appointed civil servants. However, overlapping of institutional roles exists particularly between the Ministry of the Interior and the Prosecutor's Office when undertaking investigations against corruption.

The State Commission can undertake investigations on its own initiative. If it detects matters subject to criminal indictment, it has to refer the matter to the court or to the prosecutorial services. The State Commission has the power to summon for examination – in secrecy if necessary – persons suspected of corruption before initialling a sanctioning procedure with the relevant bodies. It can also launch, in co-operation with the Public Revenue Office, a review of the property status of officials should investigations show that there are unreported assets, revenues, or unpaid taxes. It can also propose to courts that they initiate misdemeanour procedures against elected and appointed officials if they fail to file assets declarations at the time of their election or appointment.[76]

Institutions shall submit the data requested by the State Commission within 15 days, if the information is not classified. The State Commission may request data about an official's (or his relatives) property, income or other related matters from an elected or appointed civil servant, official in a public enterprise or other legal entity managing state assets. The State Commission may also directly inquire into the use of funds by State bodies and legal entities managing State assets. Should there be no response to the request for information the State Commission can initiate sanctioning procedures against the responsible officer. In order to facilitate its access to information from other State institutions, and thus enhance the flow of information, the State Commission has signed a Protocol of Cooperation with 17 State institutions, not with the MoD.

The State Commission has on a number of occasions engaged with the MoD. It has prompted criminal proceedings against elected or appointed officials of the MoD. Cooperation between the State Commission and the MoD is fluid. Allegations of corruption in the field of defence have led the defence sector to be heavily identified with the corruption cases in the country. Cooperation between the two institutions has been adequate in the cases they have had to work together on, but the supervision and enforcement of anticorruption laws involving the MoD is problematic. It is hampered by the lack of any coordinated system to follow-up the misdemeanour or the criminal proceedings which were initiated. In addition, there is little flow of information between the two institutions outside the cases they have in common since the MoD so far has not been part of the State Programmes for the Prevention of Corruption. No

[76] Article 36 of the Law on prevention of corruption.

protocol or memorandum has been signed that will enhance inter-institutional co-operation between the two institutions.

In order to establish regular cooperation and consultation with civil society, the State Commission signed in 2010 a Memorandum of mutual support for prevention of corruption and conflict of interests. Committees or sub-committees established for the purpose of coordinating Macedonia's Euro-Atlantic integration have also allowed for greater coordination and cooperation among institutions charged with anti-corruption. For instance, the State Commission, along with other institutions, actively participates in the expert groups within the Committee for Integration of Macedonia to NATO – more specifically in the preparation of the annual cycle of NATO's Membership Action Plan and the Annual National Membership programmes. The relevant institutions also take part in the work of the Sub–Committee for Justice, Security and Human Rights, established under the EU integration process.

Other arrangements for cooperation and coordination among relevant institutions charged with prevention and suppression of corruption include the Government Council for Implementation, established in January 2008, which is charged with executing the Government Action Plan against Corruption. The Council is headed by the Prime Minister. Its membership includes the Deputy Prime Minister for European integration, and the Ministers of Justice, Interior and Finance. The Inter-sector Body for the Coordination of Activities against Corruption which was established in April 2006 is another such body. Headed by the Minister of Justice, it holds quarterly meetings and reports to the above-mentioned Government Council.

Despite the government adopting the Commission's action plan to implement the State Programme for Prevention of Corruption, there has been little actual reform. Due to a lack of political willingness to pursue corruption cases, the State Commission is limited to identifying cases and submitting them to other bodies such as Prosecutor's Office, which in most cases subsequently refuses to undertake criminal investigations by arguing lack of evidence.

The Anti-Corruption Unit of the Ministry of Interior, which is in charge of collecting information and submitting it to the prosecuting authorities, is understaffed and underfinanced. The police lack a proactive approach to combat corruption. They have failed to provide evidence in investigations. The number of both detected and prosecuted high level cases of corruption remains very low. Results achieved in fighting corruption are poor. No criminal charges on bribery have been recently submitted. The Financial Police very seldom deal with cases of corruption, in spite of the fact that many of their interventions refer to embezzlement of public funds, money laundering, tax evasion and abuse of office.

What allows corruption to remain in some places is mainly the lack of implementation of existing legislation, lack of respect for the principle of legality, and the absence of a professional civil service. There is professional weakness in many implementing public sector bodies, mostly induced by a recruitment policy that is politically influenced rather than merit-based.

Recently, no effort has been observed that would point to serious political attempts to upgrade or hamper the State Commission. The lack of political will to follow-up on the initiatives and recommendations of the State Commission is hampering its credibility, especially its suggestions on improving the legal and institutional frameworks tackling the loopholes in the anti-corruption institutional framework. Political party and electoral campaign financing are seen as the most important risk factor affecting the public integrity system and the fight against corruption.

The anti-corruption legal framework is relatively good. However, the high number of legislative acts has led to a fragmented legal system which makes implementation and monitoring difficult. Loopholes in the legislation have hampered the fight against corruption, in particular with regards to the use of special investigative measures and the delivery and enforcement of court decisions. A regulatory framework laying down the ethical principles applicable to public officials other than civil servants is absent. Furthermore, security sector personnel are not governed by civil service rules but by general public service rules in which ethical standards are weakly regulated. In fact, prevention is better organised and perceived as more important than prosecuting and repressing corruption in the country. The weak independence of the judiciary remains a matter of serious concern affecting the fight against corruption.

6 Recommendations

6.1 Recommendations for the MoD and the Armed Forces:

6.1.1 Human resources management (HRM)

- Concerns remain regarding politicisation of the civilian and military service in Macedonia's MoD and the armed forces. Recruitment and other decisions regarding the career of a staff member are often based on political or private motives rather than on merit. Macedonia's MoD and the armed forces need to continue efforts to improve meritocratic HRM. The current Law on Army Service suffers from serious deficiencies. A total reform of the current law should be considered.

- There is no register of the civilian and military staff members working for the MoD and the armed forces. There is a lack of data for different categories of public employees governed by different laws. The MoD and the armed forces should establish a register of their civilian and military staff members.

- There are no special procedures for selection, time in post, and oversight of personnel in sensitive positions, especially officials engaged in procurement, contracting, financial management, and commercial management. Specific rules for recruitment should be designed for sensitive positions in the laws on defence and army service.

- The career progression procedure in the MoD and the armed forces is vulnerable to political influences. Also, the tendency towards an increasingly fragmented civil military service has continued. The laws and bylaws should be amended to unify the posts, ensure mobility among positions and ensure transparency in career progression.

6.1.2 Public procurement

- Macedonia still lacks an institutional capacity to conduct a viable, competitive defence procurement process. The current legal framework governing public procurement establishes a multitude of exceptions to the application of the general legislation on defence procurement. The MoD should develop practices for abiding by the general public procurement rules when implementing defence procurements. Another major weakness in the legal framework affecting the MoD is related to the fact that the ministers are under no legal obligation to obtain prior authorisation from parliament for major procurements. Thus, more consultative frameworks should be established with the parliament on defence procurements.

In addition, the following actions should also be considered:

- Amend MoD's procurement procedure manual – the "Acquisition Rulebook" and ensure that ethics and integrity provisions are included;,
- Provide training to procurement staff;
- Provide adequate procedures to determine what procurements should be considered "operationally essential" or "single source";
- Ensure that adequate arrangements are in place for controlling the quality of procured goods and services;
- Establish procedures and standards that require companies delivering goods and services to the MoD or the armed forces to have anticorruption or business conduct programmes;
- Collect statistics on the types of defence procurement calls, their amount, their duration or the number of bidders taking part, and ensure that they receive publicity. Information should also be provided on the classified procurements where possible;
- Establish monitoring and performance control mechanisms over defence procurement procedures and mechanisms for overseeing the use of negotiation procedures;
- Ensure that there is an effective remedies system for defence procurements.

6.1.3 The conflict of interest regime

Arrangements for handling conflicts of interest policies within the MoD and the armed forces are weak. The policy on reduction of conflicts of interests in the case of politicians and high officials suffers serious weaknesses. The situation is in an urgent need of reform when it comes to the defence sector, where an effective conflict of interest regime should be put in place that will focus on checking asset declarations and conflicts of interest statements.

6.1.4 Freedom of access to information

Although the principle of open and transparent administration is progressively being adopted, Macedonia's defence institutions are still not up to standard. There is a tendency to over-classify data. The MoD is regarded as the least transparent institution in this regard, since only limited data can be found on its website. The MoD continues to function traditionally as a closed institution. The MoD and the armed forces should develop practices for the application of the "damage test" mechanism when rejecting a request for information on the grounds of its being classified information. The MoD website should provide access to all relevant laws, implementing legislation, manuals and guidelines of the Ministry. It also should establish a dedicated department for free access to information.

6.1.5 Corruption risk management and monitoring

- There is lack of arrangements for systematic and continuous management and monitoring of corruption risks. In the MoD, there is a need to set up, or further strengthen a system for monitoring and reducing corruption risks. Specialised professional functions should be established or significantly strengthened within the MoD.

- The defence inspectors fulfilling the role of Inspector General should also have authority regarding corruption risk management such as financial issues, public procurement or asset disposal. Accordingly, amendments to the law on defence should be considered.

- Moreover, the MoD should consider establishing a specialised anti-corruption unit or function.

- In addition, wider reference should be made to corruption in the national strategic doctrinal framework.

6.1.6 Improved integrity framework

The proposals mentioned above should be addressed in a comprehensive effort to improve the integrity framework in the defence area. A first step could be to develop an integrity plan for the MoD, accompanied by an action plan specifying responsibilities, timelines and sequencing of activities.

6.2 General recommendations

6.2.1 Parliamentary oversight and independent bodies reporting to Parliament

- The mechanisms for civilian and democratic control of the defence sector are weak. Further efforts are needed to fully subject them to civilian control by elected representatives both in the executive and in parliament. Among other things parliament's involvement in major public procurements and military asset disposals should be significantly strengthened. The argument is heard that current parliamentary oversight mechanisms are obsolete. The recently launched concept of public oversight hearings on the work of the government is an important step forward and it should be frequently used for defence issues as well.

- Institutions which are instrumental for the parliamentary control of the executive, such as the State Audit Office and the Ombudsman, need strengthening. Parliamentarians should be encouraged to devote more attention to the findings and recommendations of these institutions.

- The State Audit Office should introduce corruption risk as one of the criterion in setting priority audit areas in its annual audit plan and should also introduce improved follow-up mechanisms on its recommendations.

- The Ombudsman needs more resources and greater financial autonomy.

6.2.2 Anti-corruption policies

- The capacity for combatting corruption remain low and the data system for monitoring anti-corruption policies suffers from i.a. deficiencies. Inactivity by the national authorities has led to public frustration since the authorities are failing to respond to the high public expectations that the anti-corruption programmes have established. More resources should be allocated to anti-corruption efforts in order to ensure effective action against corruption.

- There is an impression that there is a lack of political will to follow-up on the initiatives and recommendations of the anti-corruption body. Similarly, there has been a lack of follow-up to suggestions on improving the legal and institutional frameworks to tackle the loopholes in the anti-corruption architecture of Macedonia. More proactive functions rather than reactive behaviour should be exercised by the anti-corruption body. The government should identify the extent and nature of corruption in the public sector to help define practical measures to combat corruption in specific sectors.

- There is a need to provide for a considerably higher level of inclusion of the MoD in the process of development and implementation of the most important anti-corruption strategic documents in the country.

6.2.3 The conflicts of interest regime

The conflict of interest policy and regulations need to be improved. One means would be better targeting and verification of asset and interest disclosure. Another means would be the overall strengthening of the checks and balances systems, especially the judiciary and the commission on conflicts of interest

6.2.4 Freedom of access to information

The promotion of more transparency at every level of government and in the functioning of every public institution should be tirelessly and permanently pursued. Constant checks on the degree of transparency in decision making and working procedures should become customary.

6.2.5 Internal financial control

Internal financial control needs to be strengthened and a culture of managerial accountability developed.

6.2.6 Human resources management

The civil service needs to be depoliticised and professionalised by clearly implementing the merit system and upholding the principle of equal access to civil service positions.

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Abstract:
This report assesses the institutional risks of corruption in the defence area of Macedonia. It uses a holistic approach to security sector reform. Pro-integrity reforms internal to the defence sector are set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Macedonian Ministry of Defence (MoD), not the armed forces. It treats the ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance and impacting on the MoD as on any other ministry.

Key words: Parliamentary control, control of intelligence and security institutions, ombudsman, freedom of access to information, internal and external audit, anti-corruption bodies, anti-corruption policies, human resources management, public procurement, asset disposal, corruption, integrity, good governance, corruption risks.

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