

Who needs a parliament?

*Fifth Quarterly
Accession Watch Report*

WHO NEEDS A PARLIAMENT?

April 2010

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Fifth Quarterly Accession Watch Report

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WHERE ARE WE IN APRIL 2010?

The Republic of Macedonia fulfilled the benchmarks and in October 2009 obtained a recommendation from the European Commission (hereinafter: EC) to open accession negotiations. After Lisbon Treaty's entry into effect, EU Presidency was assumed by the so called Troika comprised of Spain, Belgium and Hungary, followed by the Troika of Poland, Denmark and Cyprus. The name dispute with Greece remains unsolved and solution thereto is out of reach. The fact that the political climate in EU is conducive for resolving this decade-long dispute and that EU priorities will shift during the next EU Presidency Troika (from July 2011) are not taken into consideration.

By the end of last year, EC and the Government of the Republic of Macedonia defined the indicators against which EU will measure the progress of the country in 2010. These indicators are listed in the document titled *"Review of the Accession Partnership"*, which was submitted to the Government on 5th February 2010. The Government of

the Republic of Macedonia, notably the Secretariat for European Affairs (hereinafter: SEA), is the designated body that works to fulfil the 2008 Accession Partnership and deliver results measurable against previously agreed indicators. Whether that is the case however, is subject of this quarterly report.

1. EUROPEAN PRIORITIES

Last December, unfortunately, despite its proactive approach, the Swedish Presidency failed to secure a date for opening accession negotiations for Macedonia or at least some kind of an intermediary solution (for example, to start the screening process, similar to the Slovakia case). In order words, the date for opening accession negotiations with Macedonia was simply transferred as an issue to be addressed under the next EU Presidency with the conclusion that “the Council notes that the Commission recommends the opening of accession negotiations with the Republic of Macedonia and will return to the matter during the next Presidency”¹. This specific formulation of the conclusion means that the Council committed itself to return to this matter during the next Presidency.

After assuming EU Presidency, the Prime Minister of Spain, Jose Luis Rodriguez Zapatero addressed the Spanish Parliament and presented the Spanish Presidency priorities², thereby demonstrating that it accepts

the fact it has to deal with the issue of setting the date for opening accession negotiations with Macedonia.

Having in mind the economic crisis’ effects on growth and new jobs in EU Member-States, and in particular in Spain, it is quite understandable why the first priority on the Agenda of EU Presidential Troika is to overcome the current economic crisis by accelerating the implementation of the Renewed Lisbon Strategy³. EU enlargement remains a priority, but whether Spain will succeed in taking the decision (and endure in its intention), thereby setting the date to open accession negotiations, is to be seen in June. The Spanish Minister of Foreign Affairs, Miguel Angel Moratinos’ visit to Skopje is encouraging as on that occasion he said: *“the Spanish Presidency is committed to set the date for opening accession negotiations with your country. We will put all of our energy, resolution, capacities and resources to make that possible”*⁴.

EU priorities remain the same for the present EU Presidency Troika. The Belgian Presidency is just around the corner (starts in July 2010), and Hungary will assume the Presidency in January 2011. Hungary’s foreign policy⁵ has set three important priorities, those being: 1) competitive Hungary in the European Union; 2) successful Hungarians in the region; and 3) responsible Hungary in the world – UN, NATO and EU Common Foreign and Security Policy (hereinafter: CFSP). For the first priority,

¹ Council conclusions on enlargement/stabilisation and association process – General Affairs Council meeting, Brussels, 7 and 8 December; www.se2009.eu/polopoly_fs/1.27005!menu/standard/file/111830.pdf

² Special address of the Prime Minister to the Spanish Parliament Congress and Senate, explaining the EU Council’s Conclusions and setting the priorities of the Spanish Presidency for the first half of 2010 <http://www.eu2010.es/comun/descargas/noti->

[cias/Conferencia_Zapatero_161209.pdf](http://www.eu2010.es/comun/descargas/noticias/Conferencia_Zapatero_161209.pdf)

³ Guidelines for the Spanish EU Presidency activities in 2010, adopted by the Council of Ministers on 23rd January 2009; <http://www.la-moncloa.es>

⁴ Prime Time News, Kanal 5, 20 April 2010.

⁵ http://www.mfa.gov.hu/NR/rdonlyres/3E8FA370-15B3-4919-AC14-41A02CB-54BA3/0/080319_kulkapcs_strat_en.pdf

Hungary – *inter alia* – anticipates a draft energy policy addressing the development and financing of interconnected network infrastructure. Obviously, the second priority closely follows the first, as it anticipates the coordination of regional and infrastructural developmental plans, development of transportation connections around the borders and cooperation in the field of environment and energy.

The priorities of the next EU Presidency Troika are being defined, but from the foreign policy priorities of Poland, Denmark and Cyprus one can conclude that the Western Balkan, and thereby Macedonia, will not be amongst the high EU priorities. Enlargement will probably remain in focus, but EU will have other issues to deal with in this respect, such as Croatia's full-fledged membership, start of accession negotiations with Iceland, candidate status for Albania, Serbia and Montenegro, etc.

Poland's foreign policy⁶ includes three priorities: 1) the Eastern Partnership, which was successfully imposed as an EU priority⁷, 2) democracy support; and 3) new strategy on Poland's External Aid (to include activities that promote democracy in Eastern European Countries) pursuant to the guidelines provided by the Organization for Economic Cooperation and Development (OECD).

More than obvious is that Poland, when presiding with the EU, will invest all of its efforts in the Eastern Partnership (as is the case now). Don't forget that the merger of the two Directorates General, on Enlargement and on New Neighbourhood Policy, was a Polish initiative,

thereby bringing these countries closer to EU. We duly warned our MPs on the consequences for Macedonia from the merger of the two DGs. As part of the Joint Parliamentary Committee EU-Macedonia, our MPs could have lobbied the European Parliament – that had to approve the merger – to vote against the merger. Unfortunately, the lack of response on the part of our Parliament is yet another indicator that the European Agenda is not a priority for Macedonia.

Denmark's foreign policy has never closely dealt with the Western Balkans, quite understandably, knowing its geographical position. On the other hand, EU interests can be expected to shift with the Cypriot Presidency. Notably, priorities of Cypriot foreign policy⁸ include international cooperation, peace, stability and sustainable development. For Cyprus, the Eastern Mediterranean Region is more important than the Western Balkans and it sees itself as the communication bridge between EU and these countries.

2.CAN'T SEE THE FOREST FROM THE TREES

In this period, the date to open accession negotiations for Macedonia is not only a problem of our country, but also an open issue affecting the entire EU, as it hinders the results of its enlargement policy. How long will this last? We must be aware of the fact that things change, and priorities change with them. EU priorities are never focused on a specific country, but on an entire policy or region.

Namely, if by December 2009, the enlargement policy implied the Western Balkans and Turkey, now it includes Iceland as well, whereas

⁶ <http://www.msz.gov.pl/Foreign,Policy,2155.html?PHPSESSID=be959e4488b805b8f2e6d51c6d3ad99c>

⁷ Upon Poland's initiative, on the EU Council meeting from 20 March 2009, the Eastern Partnership (covering Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) was incorporated into EU's official foreign policy.

⁸ http://www.mfa.gov.cy/mfa/mfa2006.nsf/policy06_en/policy06_en?OpenDocument

the countries from the New Neighbourhood Policy are becoming subject of EU Enlargement at large. The mere fact that the New Neighbourhood Policy was “upgraded” into “Eastern Partnership” indicates the change of quality of relations with these countries. Among these countries is Ukraine, which is not merely a large state, but a strategically important partner to the EU in terms of the European Energy Policy and in facilitating enhanced relations with Russia. Moreover, the new neighbourhood countries already have lobbyists in the Eastern European countries that became EU Member-States in 2004, and 2007 (Poland, Czech Republic, Romania, Hungary, Lithuania, Latvia, and even Estonia).

Consequently, from July 2011, the EU will have a much broader region to be concerned with, and Macedonia can easily be forgotten or left behind to wait for the other Western Balkan countries, notably Serbia. By expanding the scope of enlargement, results will not be difficult to produce. Croatia will undoubtedly become a Member State, Iceland will start negotiations, Serbia, Albania and Montenegro will obtain the status of candidate countries (and even start accession negotiations before Macedonia), Turkey is already negotiating with occasional interruptions in the process, and the countries from the new neighbourhood are taken into account in the new draft-strategy 2020.

This shift of priorities will be mirrored in the financial instruments of the EU as well. If IPA is the Instrument for Pre-Accession Assistance, it is only logical to conclude that Iceland will also become the beneficiary of IPA funds during its accession process. On the other hand, the IPA-regulation provides the exhausted list of beneficiary countries, and Iceland is not included. Worth mentioning is the fact that in the

meantime, the EC evaluated its financial instruments, including IPA, and by the end of this year the EC is expected to propose improvements thereof (which in the case of IPA would probably mean a shift towards sectoral programming). Whether that would imply changes to the regulation to include Iceland on the list of IPA beneficiaries is yet to be seen. What is unlikely however, is that the total value of IPA (approximately 11.5 billion EUR for the period 2007-2013) will be increased, and since Macedonia has proved to be a country with exceptionally low level of absorption capacity (unlike Serbia), it could mean that the assistance programmed for reforms will be reduced.

Under the current financial perspective (2007-2013), the new neighbourhood countries are addressed under a separate financial instrument (similar to IPA) called European Neighbourhood Policy Instrument (hereinafter: ENPI). It is highly probable that under the next financial perspective (2013-2020), these two instruments to merger - like the two Directorates General - thereby putting Macedonia in the company of more countries that have already demonstrated greater absorption capacity of EU assistance.

Subsequently, Macedonia has no choice but to start EU accession negotiations NOW, and cannot afford to postpone the process to infinity any longer. The statements given by Government representative claiming that reforms will be implemented regardless of whether negotiations start are unrealistic, not merely in political terms, but also in financial terms (unless the Government believes that reforms can be implemented without money).

3. INDICATORS FOR EVALUATING PROGRESS

Part of regular dialogue between the Republic of Macedonia and the EC following the annual Progress Report is reviewing the Accession Partnership and agreeing on what the EC will monitor in the next progress report. In our previous Accession Watch Reports we reiterated the fact that the Accession Partnership priorities for Macedonia are not just the 8+1 benchmarks (key priorities), but include other 182 short-term and mid-term priorities that need to be fulfilled as well. To escape ambiguities, and thereby prevent any “political” interpretation of the priorities⁹, the EC developed indicators against which it will measure the progress achieved by the cut-off date for the next Progress Report and submitted them to the Government. Such an exercise takes approximately two to three months and represents a dialogue in its true meaning, as the Government can influence the final list of indicators. Once agreed however, the EC expects the country to deliver.

The need for developing such a document is twofold. First, it is beneficial for the authorities of the country because they are informed in advance what to focus their attention on in the reform process. Second, it helps the EC justify its decision to recommend accession negotiations before the citizens of the EU having in mind that a date was not obtained from the Council of the EU last December.

This is a working document of both the EC and the Government of the Republic of Macedonia, although titled *“Review of the Accession*

Partnership” (hereinafter: Review 2010). The final version was submitted to the Government on 5th February 2010. Considering the importance of this document, one would expect the Government to consider it in details, to identify the areas that need to be targeted throughout the year and to task the SEA with the coordination and delivery of the indicators defined. The assumption is that SEA was already actively involved in the development of the document and this item on the agenda of the Government would not have taken more than 15 minutes.

Furthermore, this document should have been distributed to all line ministries, as administrative bodies of the executive government to better coordinate the delivery of the indicators specified. And finally, since Macedonia is a democratic country with power separation, this document should have been forwarded to the Parliament of the Republic of Macedonia and discussed within the Committee on European Issues, the Joint Parliamentary Committee EU-Macedonia and the National Council for European Integration, as a significant part of the Review 2010 should be delivered by the Parliament itself.

Unfortunately, this did not happen. Moreover, the Government hid the document, SEA “forbid unsupervised communication” of its employees with the EC Delegation and with other stakeholders, while the Parliament adopted laws completely opposite to the indicators specified in the Review 2010 (for example, the Anti-Discrimination Law). Even when the former Deputy Prime Minister of the Government, Ivica Bocevski, revealed the Review 2010 on a press conference, the Parliament did not receive it (the document that precisely states that sexual orientation should be included in the Anti-Discrimination Law is dated 5th February, whereas the Anti-discrimination Law was adopted on 8th April without taking into account the relevant indicator).

⁹ In 2008, certain think-tank organizations in Macedonia after the publication of the Progress Report for the Republic of Macedonia publicly stated that EC lacks precise methodology on drafting progress reports and that progress monitoring is an issue of personal interpretation on behalf of report authors.

As is the case when playing “hide and seek”, many speculations began to circulate, starting from the supposedly aggravated relations between the Deputy Prime Minister Naumovski and Ambassador Fouere to the story that Macedonia received new benchmarks from the EC. Be as it may, the document is still not publicly available and therefore we decided to attach it in this quarterly report in Annex 1 hoping to facilitate the reform process and making the indicators more transparent thus demystifying the contents of this very much talked about Review of only a dozen pages.

When analysing the indicators in the document against the actual developments in Macedonia in the last two-three months, one gets the impression that the Cabinet of the Prime Minister is decorated with a big scoreboard (similar to the one in Annex 1) and that the first thing the Prime Minister does when he comes to work every day is to asking himself “What am I going to mess up today?” How else can one explain the boycott of the members of Parliament from VMRO-DPMNE of the Committee on Interethnic Relations and the National Council for European Integration, the opening of the Constitution now, the appointment of Trajko Slaveski’s daughter as the new Director of the National Agency for European Educational Programmes and Mobility, the employment of the Deputy Prime Minister Naumovski as a professor at the Law Faculty, the prohibition to discuss the findings of the State Audit Office’s reports in the Parliament, the announcements for transforming the temporary employments into full-time employments, the clashes in Suto Orizari, the developments in the Trade Union, the absence of debate on the “Skopje 2014” project, the statements that ELEM will be constructing windmills, the writing-off of interests and servicing tax debts of public enterprises (including a private company where the Government is the dominant owner) etc.

4. INFORMATION IS POWER, BUT ONLY IF UNAVAILABLE!

For the purpose of the present Accession Watch Report, we requested information from a number of ministries, public enterprises and other state administrative bodies. As was the case on previous occasions, our civil servants referred us to the institute freedom of information, with very few exceptions. This time we decided to follow through and even appeal the decisions we believed to be in violation of the Law on Free Access to Public Information. Annex 2 of this report provides an overview of the answers received (and not received), as well as those appealed. One of the appeals reached the Administrative Court, thus this could be treated as a small contribution of the Macedonian Centre for European Training (MCET) and the Foundation Open Society Institute – Macedonia (FOSIM) to the fulfilment of at least one indicator from the Review 2010. The next episode of our soap opera will be subject of analysis in the upcoming quarterly reports.

The general conclusion is that it is almost impossible to obtain information from our state administrative bodies by regular channels, but the good news is that the FOI instrument works, at least partially. This indicates that: a) the Government and the state administration are utterly non-transparent; b) the civil services are still not service-oriented although they are paid by the taxpayers; and c) in Macedonia the law is not applied, or – at least – laws are interpreted differently. This inevitably opens the dilemma whether the Government (and some ministries) ignore you on purpose and thereby violate the law, or they have something to hide? One way or another, the outcome is devastating for the democratic processes of the country.

FOI applications were submitted to the following state administrative bodies: the Government of the Republic of Macedonia, SEA, General Secretariat of the Government, Legislative Secretariat of the Government, all line ministries, Employment Agency of the Republic of Macedonia (hereinafter: EARM), Civil Servants Agency (hereinafter: CSA), National Agency for European Education Programmes and Mobility (hereinafter: National Agency), Public Revenue Office (PRO) and to the public enterprises: Water and Sewage Systems Skopje, Public Transport Enterprise (PTE) Skopje, Airports Skopje, Communal Hygiene Skopje, Public Enterprise for Management of Residential and Business Property (PEMRBP), Macedonian Postal Services, Macedonian Forests, Macedonia Road, Macedonian Radio-television (MRTV), and Macedonian Railways – Infrastructure. The analysis of (not)disclosed information leads us to five conclusions, as explained below.

1. Some information holders disclose information promptly, in our case those were the Ministry of Foreign Affairs, Ministry of Defence, Ministry of Transport and Communications, Ministry of Economy, Ministry of Health, Ministry of Education and Science, Ministry of Culture, Ministry of Labour and Social Policy, Ministry of Agriculture, Forestry and Water Economy, Ministry of Information Society and Ministry of Local Self-Government, as well as CSA, Water and Sewage Systems, Airports Skopje, Macedonian Postal Services, Macedonian Forests and Macedonian Railways – Infrastructure. The information obtained, along with the FOI applications submitted can be found in Annex 2 of this report.

2. Some information holders are silent and ignore your request, in our case those were the Government, General Secretariat, SEA, Ministry of Justice, Ministry of Environment, Ministry of Finance, EARM and the public enterprises Macedonia Road and MRTV. If we look closer at the

list of information holders that are persistently silent and ignore your request, we can notice that the most powerful institutions (in terms of authority and budget) and the pillars of enforcement of governmental policies are the ones that do not disclose the requested information that we are entitled by the law. Appeals have been submitted against all these state bodies. The decisions taken on appeals will be analysed in the next Quarterly Accession Watch Report.

3. Some information holders deny access to information, and are quite resilient in that, considering the fact that they also adopt decisions by which they reject access to information. In our case those were the Ministry of Interior (MOI), SEA, PRO and PEMRBP, which is also indicative. MOI's explanation for rejecting the FOI application¹⁰ was state secret. PRO and PEMRBP first rejected the FOI applications¹¹ by means of letters that call upon tax secrets while after the appeal lodged they refused to disclose the information again, only this time they means of an adopted decision. Incomprehensible is how the number of employments in the state administration are considered to be a state secret, and even more worrying is that a public enterprise financed by the Budget of the Republic of Macedonia dares to raise above the law and refuses to disclose information, but is not embarrassed to be placed on a list of enterprises whose interests will be written off and whose tax debts will be serviced. As a reminder, only last year the same enterprise bought government bonds, and is now being relieved from interest for a publicly undisclosed amount of tax debts.

¹⁰ How many people are temporary employed at the Ministry through temporary employment agencies in the period January 2009 – January 2010?

¹¹ Overview of total debts incurred by public enterprises in the Republic of Macedonia to be serviced under the Law on Debt Servicing for Public Enterprises and Companies Established by the Republic of Macedonia, the Municipalities or the City of Skopje.

4. *Some information holders interpret the law differently.*

Different public enterprises responded differently to the same question. While PEMRBP and PRO believe public debts to be tax secrets, other public enterprises, with the exception of PTE and MRTV, submitted their detailed tax returns.

5. *Some information holders try to outsmart you by submitting information that doesn't tell you anything,* which in our case were SEA, Legislative Secretariat, PTE and the National Agency. While PTE attempted to “sell” a well-known trick by submitting a letter where it explained that the requested information will be available on their website, the Legislative Secretariat in the response to our FOI application¹² informed us of its competences, and that opinions on laws are submitted by the proposing party and forwarded to the Government. On the follow-up FOI application submitted, the Legislative Secretariat informed us that it cannot disclose the requested information as the document in question was subject to harmonization with the information holder. Of course, these FOI applications were appealed and will be analysed as part of the next Accession Watch Report.

An interesting case is the SEA to whom we addressed 4 FOI applications. SEA requested clarification for the first question¹³ (which minutes, which meetings and dates thereof). After submitting the “precise” application, three sets of minutes in three different copies were received, from which it was obvious that the information was specially developed for us, contrary to legal provisions. We requested

insight in the archive by submitting a new application, but were informed that the requested information was already disclosed thereby denying insight.

On the question “How many people are employed in SEA through temporary employment agencies in the period January 2009 – January 2010?”, we received the following answer: “386 people/months were engaged at SEA through temporary employment agencies”. This number doesn't mean anything! If 386 is the number of people employed, then where are these people working since SEA doesn't have the office space to accommodate so many people. If 386 refers to monthly contracts, then, again, it is not clear how many people were recruited (it could be 386 people engaged for one month or 30 people engaged throughout the year, or 60 people engaged with 6-months contracts, or 120 people... etc.). Whatever the answer, the information obtained tells you nothing.

As a response to our next application¹⁴, SEA submitted a decision for denying access to public information with the explanation that “*the requested document is in the observation and harmonization procedure and its disclosure would cause misinterpretation of its contents*”. This case is appealed in front of the Administrative Court. The outcome thereof will be analysed as part of the next Accession Watch Report, at least we hope so.

The next case of FOI request addressed to SEA is the peak of institutional stupidity in Macedonia. Namely, having appealed the response to the question “*How many employments were made in compliance with NPAA 2009-2011 in the period January 2009-February 2010?*”, the SEA instead of submitting the requested information, sent

¹² Opinion of the Government of the Republic of Macedonia on the draft-law on prevention and protection from discrimination and the draft-law on citizens' associations and foundations.

¹³ Copies of Minutes from the meetings held by the EU Integration Committee in the period September 2009 – January 2010.

¹⁴ Monitoring matrix for NPAA implementation, including the 1965 activities.

us a hard copy of NPAA neatly packed and informed us that *“the data on implemented employments under each chapter in the period January 2009 – February 2010 is contained in this document”*. Such behaviour on the part of SEA is nothing more than ridiculous, premeditated and humiliating for any citizen of the Republic of Macedonia, let alone for serious organizations that professionally monitor the European integration process.

A mixture of all the different cases is the National Agency that was addressed with five FOI applications. Three applications were promptly answered, one is ignored, and one application¹⁵ was answered as follows: *“we do not disclose internal rules”*. Shamefully, this answer was provided by the institution that has been accused of mismanagement of European funds on the grounds of conflict of interest. Believe it or not, the Rulebook and the list of external associates that performed the evaluation of project-proposals are unavailable for the public!

5.DATE OR ELECTIONS?

The present quarterly report attempts to demonstrate that the Government, upon obtaining the EC Recommendation last October, is doing everything NOT to obtain the date for opening accession negotiations, most notably in the last few months by acting contrary to the indicators set in the Review 2010. To do that painlessly, the Government, first, completely devalued the Parliament, then controlled access to information and restricted communication with the EU.

¹⁵ Rulebook of Operation of the National Agency, Rulebook on Implementation of Youth in Action Programme and Rulebook on Implementation of Life-Long Learning Programme.

Discussions on the findings of SAO reports were also prohibited, interest was written off and tax debts of public enterprises and private companies where the Government is the dominant owner were serviced without disclosing the amount concerned. In the meantime, unwarranted issues are opened (such as the Constitution), interethnic relations are degenerated (notably with the “Skopje 2014” project that was banned for discussion) and fear is spread by means of interventions such as the one carried out in Suto Orizari, without the cooperation with the local government. Numerous other ventures are undertaken without being communicated to the public, for example, identification cards for high school graduates are issued in the schools, and at the same time university tuitions are reduced, which is nothing else than buying votes for the next (Early) Parliamentary Elections.

The only consolation in the current state of affairs is the fact that the Government has not openly stated that the European Agenda is impossible due to Greece’s ill-judgement. Nevertheless, this will likely happen in the aftermath of EU’s June Summit, when Macedonia will again remain empty-handed (no date for opening accession negotiations). Then, VMRO-DPMNE will ask for another mandate from the citizens, but this time the message will be clear that Macedonia’s European Agenda will be postponed for better times, when Greece will become sensible. If the motto during the Second World War was “Better Grave, Than Salve”, one can easily imagine the motto for the next Early Parliamentary Elections - “Better Name than Shame”.

And what is the opposition doing? Nothing in particular... It is complaining, canvassing the villages throughout the country, organizes (poor) press conference on issues that are too complicated for common citizens to understand, takes over political party members from each

other and literally avoids discussions on the name dispute - everything but uniting under the Euro-Atlantic framework to disclose the hypocritical and defeating policy of VMRO-DPMNE's Government. If the debate in the Parliament (for example on the findings of SAO's reports) was silenced, what prevents the opposition to organize the debate outside the Parliament? It is more than obvious that the opposition is also more concerned with the possible results on the next Early Parliamentary Elections than in securing a date for starting accession negotiations.

All political actors in the country are aware that last year's success will not be repeated, and unless the systematic destruction of what has already been achieved in the areas covered with indicators in EC's Review 2010 is discontinued, Macedonia will not obtain a date for starting accession negotiations this year and will very likely spoil the progress made in the political criteria. The Government succeeded in that once, back in 2008, when the EC decisively stated that the recommendation was not granted due to the unfulfilled political criteria. As a reminder, Macedonia had fulfilled the political criteria in 2005, on the grounds of which the candidate status was granted.

The Copenhagen political criterion implies stable institutions that guarantee democracy, rule of law and protection of fundamental human and minority rights. In the few months we managed to demonstrate that the Parliament is completely dysfunctional, one-party and nothing is adopted outside the policy framework of VMRO-DPMNE. Evidence in support of this claim is the fact that access to information is controlled and the absence of rule of law, or at least a selective rule of law, while the adoption of the Law on Prevention and Protection from Discrimination, in its current form, demonstrated that Macedonia wants to join the EU,

but under VMRO-DPMNE terms and conditions and without respect for the rights of minorities and marginalized groups. The project "Skopje 2014" is the mirror image of such behaviour and has become the tripping stone not only between Macedonians and Albanians, but also between Macedonians and Macedonians and Macedonians and all other ethnic communities in the country.

6.METHODOLOGY

As present report's objective is to address the activities taken by the political actors in Macedonia and to demonstrate that EU is not a priority of the Government, subject of analysis are the current developments in the country's European integration process, but also monitoring the progress in delivering the set indicators, in particular those related to the political criteria. The baseline for analysis of the accession watch report are the documents developed by the Government, the European Union and the media coverage of EU-related issues in Macedonia. Government's main documents subject to analysis are the following: *"Review of the Accession Partnership"*, from 5th February 2010 (hereinafter: Review 2010), *"National Programme on Adoption of EC Acquis – Revision 2010"*, from December 2009 (hereinafter: NPAA 2010); *European Commission's 2008 and 2009 Progress Report for the Republic of Macedonia* (hereinafter: 2008 and 2009 Progress Report); *the Decision of the Council on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Macedonia*, Brussels, February 2008 (hereinafter: Accession Partnership) and other strategic documents of essential importance in the sectors monitored.

This quarterly report covers the period from January to March 2010. Apart from the analysis of key documents and desk research, the

instrument on free access to public information was also used. The complete record of FOI applications is attached in Annex 2 to this report. The original letters obtained from relevant institutions can be found at the Foundation Open Society Institute – Macedonia and can be accessed, should there be such interest.

14 media outlets will also be monitored, those being: seven daily newspapers (*Utrinski vesnik, Dnevnik, Vest, Vecer, Vreme, Nova Makedonija and Spic*) and prime-time news programmes on seven TV stations with national and satellite coverage, such as: *A1, Kanal 5, Sitel, Telma, MTV 1, Alfa and Alsat*¹⁶.

¹⁶ Media Monitoring is a partnership project implemented with the NGO Info-Center from Skopje.



ANALYSIS

The present Quarterly Accession Watch Report analyzes the areas related to the political criteria and the sectors where Macedonia is expected to invest greater efforts to demonstrate progress to deliver the indicators specified in the Review 2010. For that purpose we address the state of affairs in the Parliament, the legislative processes applied when the Anti-Discrimination Law and the Law on Associations and Foundations were adopted, the Constitutional amendments aimed to depoliticise the judiciary, the recent events in the field of fight against corruption, problems pertaining to freedom of information, the enforcement of the new Law on Civil Servants, state aid and the latest developments at the National Agency for European Educational Programmes and Mobility.

Each of these areas considers the problems also from the perspective of the Review 2010, whose integral version is given in Annex 1 of this report.

1. MACEDONIAN PARLIAMENTARY TRAGEDY

While the pages of the EC's new Progress Report on the Republic of Macedonia for 2010 are being written, the political dialogue hit a dead-end. The political dialogue benchmark was positively assessed in the Progress Report 2009, and it read: *"promote a constructive and inclusive dialogue, in particular in areas which require consensus between all political parties, in the framework of the democratic institutions"*. Last year's positive assessment for this key priority does not mean that Macedonia has once and for all resolved this problem and that it will no longer be subject of monitoring in the future period. On the contrary, political dialogue is, and always will, be subject of comments of the European Commission, even after Macedonia's accession in the European Union.

Let's see what the EC will consider when assessing the political dialogue in Macedonia, so as to be able to see in detail the progress achieved in this field. Notably, this year, the EC requests: 1) *the adoption and implementation of the amendments to the Rulebook of the Parliament of the Republic of Macedonia*; 2) *full implementation of the Law on the Parliament of the Republic of Macedonia, the fulfilment of vacancies in administrative services of the Parliament and taking steps towards the establishment and start of operation of the Parliamentary Institute, and 3) unhindered operation of the National Council for European Integration, supported by the relevant institutions and enhancement of the capacities of the employees within NCEI Support Sector*¹⁷.

1.1 Everything is more important than the Rulebook

The agreement reached by the political parties concerning the Parliament's Rulebook, concluded in the period when the Parliament Law was passed in August 2009, has obviously become oblivion. The agreed deadline for its adoption - three months after the enactment of the Parliament Law - expired last November. It seems that the amended Rulebook is no longer discussed due to the constant inflow of other "pressing" issues, with the exception of the opposition that continuously reiterates the need for the respective amendments. As a reminder, the amendments to the Rulebook were not only a request by the opposition, but also a recommendation of the Venice Commission, as the current Rulebook provides only limited participation of the opposition in the operation of the Parliament.

Even before the agreement of the political parties, the Government promised a Rulebook of the Parliament adopted with consensus. In the Government's document *"Report on the Implementation of Key Priorities from the Accession Partnership"*, from September 2008, one of the measures anticipated to improve the political dialogue was the advancement of consultations at the Parliament for the adoption of a new Rulebook. The Government, at the time, said: *"the Election and Appointments Commission will meet to discuss the draft-rulebook, and since two rulebooks are currently in procedure, they first need to produce a single cleaned-up and harmonized text. In addition, a list of disputable items therein will be compiled and forwarded to all political parties for harmonization - deadline: March 2008; Indicator: the rulebook adopted with consensus"*.

¹⁷ Review of the Accession Partnership, 5 February 2010.

If EC was satisfied last year with the last moment “consensual” adoption of a bunch of laws, this year that will not suffice and therefore in addition to the adoption of the Rulebook, EC will also require its implementation. The cut-off date for the Progress Report is October, and unless the Rulebook is adopted in the nearest future, Macedonia will not be able to demonstrate implementation.

1.2 Parliament Marked by Boycott!

Recently we are witnessing the Parliament becoming an institution that is boycotted from various reasons instead of being the cradle of democracy. Unfortunately, that is of little concern for the Speaker of the Parliament, and no measures are undertaken to restore the image of the Parliament as to demonstrate that the Parliament is not merely an extended hand of the Government. Who is boycotting the Parliament is subject to analysis further in this report.

1.2.1 Boycott of DPA's MPs

The boycott of the Members of Parliament from the Democratic Party of Albanians continues. In August 2009, they left the Parliament and turned a deaf ear to the several appeals of the Speaker to return to the Parliament. The opposition requested the five seats to be taken from DPA, in compliance with the Constitution, and on the grounds of their unjustified absence from Parliament for more than 6 months. DPA responded by confirming that it will stay out of Parliament even at the loss of their mandates. While the opposition SDSM requested the five terms of office, Mr. Veljanovski frivolously recorded the absence of the

respective MPs as justified, although DPA publicly stated that its MPs did not provided justification for their absence. The Parliament crisis continues to intensity, while the Parliament Speaker has no intention to initiate a procedure for retrieving their terms of office, which is not only a right, but obligation as well. How long will this grotesque go on is yet to be seen, especially since it has become obvious that Speaker Veljanovski has neither the authority nor the desire (nor the order from his party leader) to resolve this abnormal situation.

1.2.2 Boycott of the Committee on Inter-Ethnic Relations

The situation at the Committee on Inter-Ethnic Relations is not better. Within the 18 months of its establishment, the Committee held only 8 sessions, three of which concluded with the adoption of some conclusions. The topics essential to interethnic dialogue were never on the agenda of the Committee, although we duly reported in all of our quarterly Accession Watch reports¹⁸ from last year. And finally, when some controversial subjects made the agenda of the Committee, such as mandatory learning of Macedonian language for Albanian first-graders, or “Skopje 2014” project, including the fact whether a mosque should be constructed on the square or not, another problem surfaced to block the Committee's discussions - the quorum. While the Chair of the Committee on Inter-Ethnic Relations, Dhevat Ademi, made desperate attempts to secure the quorum, we witnessed the fourth cancellation of Committee's session, mainly due to the boycott of the MPs from the ruling VMRO-DPMNE and the smaller coalition partners from ethnic communities.

¹⁸ The four Quarterly Accession Watch Reports can be downloaded from the following websites: www.mcet.org.mk and www.fosim.org.mk.

As a reminder, one of the measures to achieve the benchmark on political dialogue, anticipated in the Government's Action Plan was the attainment of consensus at Parliament on issues related to the implementation of the Framework Agreement. This was also the idea behind the establishment of the Committee and hence the Government anticipated *„the Committee on Inter-Ethnic Relations will operate on a basis of defined Rulebook and contribute to the legislative solutions stemming from the Framework Agreement – deadline: March 2008; Indicator – continuous operation of the Committee“*¹⁹.

Unfortunately, the international community also witnessed the developments taking place within the Committee, whose operation was criticized in the EC's last Progress Report. The international community did not remain indifferent and reiterated that the advancement of interethnic relations in the spirit of the Ohrid Agreement lied in the heart of the Committee's work. And while announcements were made on de-blocking the Committee's work (although only *Nova Demokratija* came forward with draft-proposals as regards the Committee's quorum), and changes were requested to the quorum required, to the composition and manner of appointment of Committee members – obviously in light of enormous pressures – the Committee managed to secure the necessary quorum. That however, did not mean that the "hot topics" from the previous agendas were to be discussed – due to procedural reasons. These topics will have to wait for better times.

1.2.3 Boycotting „Skopje 2014“

The controversial project continues to wander in the Parliament halls, back and forth from the Committee on Interethnic Relations to the Cabinet of the Parliament Speaker Veljanovski. The debate, however, has taken to the streets, in the discussions of common people participating in TV debates. Although SDMS and Nova Demokratija requested „Skopje 2014“ project to be discussed in the Parliament, it is now obvious that the Parliament Speaker, Trajko Veljanovski, is still waiting for green light from the Prime Minister's Cabinet. According to procedures, allegedly, a parliament session on this topic cannot be scheduled without the Speaker's approval. In the meantime, the city is turned upside down by the construction works. Must we wait for the project to be implemented before the Parliament schedules a public debate on its agenda?! “

1.2.4 Boycott of the Parliamentary coordination

With the rejection of the amendment proposed by the opposition concerning the draft Audit Law that cancelled Parliament's competence to consider audit reports and annual balance sheet of the Budget of the Republic of Macedonia, the burden became too heavy to bear and the opposition party SDMS decided to boycott the regular coordination meetings with the Parliament's President and the other coordinators of political groups. The lack of will to compromise demonstrated by the parliamentary majority, and the deficiency of democratic dialogue made *Nova Demokratija* to follow suit.

This is just an announcement of even deeper parliamentary crisis, as the regular coordination of the parliamentary groups was one of the

¹⁹ Report on the Implementation of Key Priorities from the Accession Partnership, September 2008.

measures anticipated in the Government's Action Plan for implementing EC benchmarks. Last year's fulfilment of this benchmark does not mean that now we can stand and watch the parliament majority treat the opposition merely as décor, as the Parliament is not and must not be just an extended hand of the Government.

1.3 Parliamentary control of EU Integration Process

According to the power-sharing principle, the Parliament as the legislative body and the representative of the citizens checks-and-balances the work of the Government, as the executive branch of power, and corrects its actions in all areas, including the European integration process. The public polls show that most of the citizens support the country's EU accession. Following this logic, the Parliament, as the representative of the citizens, should put this priority and citizens' interest high on its agenda and promote the European integration process. Whatever definition used, the Parliament should hold the Government accountable for failing to achieve citizens' priorities. Unfortunately, our analysis determines something completely different.

1.3.1 2010 NPAA - „We Achieve“!

According to 2010 Revised NPAA, the Government will develop, and the Parliament enact, a total of 103 laws. The agendas of the 2010 plenary sessions show that by the end of the 102-nd²⁰ session which overlaps with the cut-off date of our Accession Watch Report, Macedonian MPs were to be presented with 39 “European-flagged”

legislative texts (first and second readings), 3 of which were ratifications of international legal instruments.

Interestingly enough, this number coincides with the number of “European” laws endorsed by the Government last January, when the Deputy Prime Minister for European Affairs demonstrated the „achievement“ of the 24/7-working Government. What happens with the European-flagged laws when they enter the Parliamentary procedure however, is analysed further in the text.

1.3.2 Committee on European Issues to the Government's liking

According to its competences²¹, the Committee on European Issues (Committee) should be one of the key Parliamentary structures involved in the European integration process, including the adoption of the *acquis*. This Committee is also one of the core forms of Parliamentary control over the Government in the European integration process. Nevertheless, for some years now, the Committee applies a selective approach when considering NPAA anticipated legislative texts, although

²⁰ Last session scheduled for 13.04.2010.

²¹ Committee's competences include the approximation of draft-laws pertaining to EC *acquis*; monitoring and encouraging adoption of EC *acquis*; proposing measures to advance approximation procedures; providing opinions and proposals for the activities of Parliamentary working bodies in this field; performing tasks stemming from the Agreements signed by the Republic of Macedonia and the EU; monitoring activities of the Government and state administrative bodies aimed at EU accession and implementation of programmes and other acts of EU institutions in Macedonia, including the financial aid programmes; submitting regular information to the Parliament on all issues relevant to European integration; initiating activities on public information dissemination related to the European integration process; cooperation with relevant committees from other countries and considering other issues pertaining to European integration and providing opinions and recommendations.

the criteria thereof remain unknown, along with the reasons behind such a practice. For example, according to the Parliament's 2009 Annual Report, only 30 from a total of 57 European laws adopted in 2009 were discussed by the Committee, compared to 2008 when, according to the same information source, from a total of 19 European laws adopted, only 5 were discussed by the Committee.

According to parliamentary statistics from relevant annual reports, within the period 2006-2009, the Parliament adopted a total of 199 European-flagged laws, while the Committee discussed only 94, or only half of them. This year, until the end of 31.03.2009, the Committee held 5 meetings to consider 29 legislative texts (including 3 ratifications of international legal acts) from a total of 43 European-flagged laws on the agenda of the Parliament of the Republic of Macedonia. Equally interesting is the fact that within the same timeframe, and according to the same information source, the Committee did not submit a single amendment, which raises doubts about the quality of the Committee's deliberations. Also, from 2006 to date, the Committee has not made a single proposal, let alone question an issue.

In the same manner, silent and with no interest whatsoever, the Committee acted with the document²² which recently was brought to the public attention by the former Deputy Prime Minister for European Affairs, Ivica Bocevski. The MPs, both members of the Committee and those from the opposition, did not seem surprised, nor interested and concerned to put the document for discussion in their relevant agendas²³. This is as good as it gets in regard to the Committee's work and the way it controls the European integration process! This is as

good as the MPs elected by the citizens to get Macedonia into the EU as soon as possible can/will perform!

1.3.3 Why is NCEI being destroyed?

According to the 2009 Annual Report of the Parliament, as of June, the National Council for European Integration (hereinafter: NCEI) has a total of nine employees. NCEI's Administrative Support Department is fully equipped with five employees, while the Department for Monitoring European Integration has three employees. Three additional recruitments are needed to fully equip NCEI's Administrative Support Department.

The (in)appropriate educational background and qualifications of the employees were discussed in detail in our Second NCEI Monitoring Report²⁴, where we expressed our concerns regarding the lack of experience of the employees in NCEI. The newly recruited employees were expected to address NCEI needs in an efficient, competent and expert manner, having in mind its competences and objectives. As a reminder, the Department on Monitoring European Integration is to perform analyses so that NCEI-members can make faster and easier decisions, with consensus, on issues deliberated at Council meetings.

Unfortunately, the 2009 Annual Report of the Parliament only confirmed our doubts as part of the report describes NCEI's work as follows: *"NCEI's Administrative Support Department regularly publishes announcements and reports on the activities, meetings and sessions held by the National Council for European Integration, as well as on organized public hearings on the Parliament's website. In addition, it regularly*

²² Review of the Accession Partnership, 5 February 2010.

²³ The document in question was not reconsidered by the NCEI as well.

²⁴ For more information, see the Report available at http://www.mcet.org.mk/documents/cat_view/44-reports

uploads important EU news and developments related to EU policies and the acquis“. Not a single word of any analyses! Up to date, NCEI employees have not developed a single analysis that would provide NCEI members food for thought and discussion. The single European agenda task they work on is developing their own matrix to monitor the European-flagged laws entering the Parliamentary procedure.

The 2009 Annual Report of the Parliament acknowledges the fact that these employees lack the expertise and qualifications necessary to perform their tasks and duties and indicates the need for training: *„Having in mind NCEI’s competences and objectives, as well tasks and responsibilities of the Administrative Support Department within the NCEI, relevant employees need comprehensive and continuous EU training in the light of their professional upgrade that would be reflected in their higher quality performance of regular tasks and duties*“. However, the report fails to answer why these people were recruited to job positions in the first place with the qualifications they hold.

1.3.4 Parliamentary Institute – Virtual Reality?!

In addition to the analyses of NCEI’s Administrative Support Department, the Parliament also lacks analyses performed by the so called Parliamentary Institute. According to the Law on Parliament, and in light of enhancing its legislative, control, analytical and research capacity, a separate parliamentary organizational unit – Parliamentary Institute – should be established, and its work was to be regulated by a separate act anticipated for adoption within a period of three months from the date the Law on Parliament went into effect.

8 months after the effectuated law, the Parliament Institute, which

was envisaged to operate as a research centre providing MPs with independent research and analysis so that they can perform their office better, is still dead letter on paper (in the Law on Parliament and in the Rulebook on Parliament’s Organizational Set-Up).

As a reminder, this year the EC will want to see: *„steps undertaken to establish Parliamentary Institute and for it to become operational”*²⁵. Time is not our ally, knowing how long it would take to recruit the necessary staff, in hope that this time the staff will be properly qualified for the intended jobs. If the Government forwarded the Review of the Accession Partnership to the Parliament on time, and if the Parliamentary Committees had discussed the document and adopted relevant conclusions, would it have made a difference? Unfortunately, we will never know the answer to this question.

1.4 Conclusions and Recommendations

Parliamentary democracy is not working, or - to put it mildly - is working poorly. While some are reluctant to open discussions on relevant topics that affect the citizens, others block the work of the institutions, prevent dialogue and suffocate debates, instead of acting in the interest of their constituency. The leaders of the ruling VMRO-DPMNE and of the biggest opposition party SDSM sat together on the same table after a long period triggered only by the initiative for constitutional changes, only indicates that the attitude of our political leaders towards dialogue and discussions of particular societal importance essential for any democracy is oblivious. Motions of censure, one after another, did not result with a single official in the Macedonian democracy losing his/

²⁵ Review of the Accession Partnership, 5 February 2010, p. 1.

her office. Parliamentary departments on analyses and research remain weak; hence the Parliament still lacks serious capacities to monitor the European integration process. Macedonian parliament democracy, in terms of legislative control over the executive power, seems to be nothing more than a farce.

In a situation when the political dialogue is deadlocked and the Parliament is not performing (nor does it wish to perform) its check-and-balance function, Brussels is writing the pages of the new Progress Report for the Republic of Macedonia. If Macedonia wants to demonstrate, at least, modest results in the area of political dialogue, the following recommendations need to be implemented:

- immediately adopt the new Parliamentary Rulebook, but this time with a consensus;
- initiate the operation of the Parliamentary Institute and to equip it with qualified staff, subject to proper testing as part of the recruitment process;
- the Committee on Inter-Ethnic Relations needs to set a meeting and develop its position on the accumulated issues, in particular on the education;
- Project „Skopje 2014“ must be put on the Parliament’s agenda;
- National Council for European Integration must operate smoothly, supported by relevant institutions, primarily by the Secretariat for European Affairs, and the capacities of employees at NCEI’s Administrative Support Department must be enhanced;
- Deputy Prime Minister, Vasko Naumovski, must attend NCEI meetings in compliance with the previously assumed obligation.

2.CONSTITUTIONAL AMENDMENTS - REALITY OR ILLUSION; COINCIDENTAL OR PURPOSEFUL

The proposal of the ruling VMRO-DPMNE to amend the Constitution in the part related to the Judicial Council was received differently by the public. Some saw it as daily politics, others, as a destabilising attempt to open a can of worms, rather reform. Following the second leaders’ meeting, that took place 9th April without an agreement, the impression created was that the idea to exclude the Minister of Justice from the Judicial Council and to increase the number of Council members appointed by the judges themselves might not see the light of day. Equally confusing was the issue of the timetable, should the Government stick to its idea to amend the Constitution. Interestingly, neither the Prime Minister nor the Minister of Justice announced the constitutional amendments; instead it was the Minister of Foreign Affairs.

Will the Prime Minister withdraw his idea to amend the Constitution, for which he claims to be an old commitment of VMRO-DPMNE from the period the last amendments were made back in 2005 remains to be seen. Unofficially though, he admitted that the amendments will correct „*the impression of the international community that the judiciary is exposed to pressures from political and other power centres*“²⁶, thereby sending a clear message that the proposed Constitutional amendments as regards the composition of the Judicial Council should not be understood as an acknowledgement of the fact that the current state of the judiciary is unsustainable, but rather as facing head-on the need to depreciate the

²⁶ “Politicians to Eliminate Politics from Judiciary”. *Dnevnik*

currently excessive interference of the executive over the judiciary. What is unclear though is why VMRO-DPMNE is revisiting an old commitment now, after 4 years of ruling (from the 2005 amendments) if the ruling party believed it to be a better solution back in 2005.

More interesting, but even more unclear (at least for the time being) is why VMRO-DPMNE opened the issue of constitutional amendments at this very time. Is this motion coincidental or purposeful? The Prime Minister, as a man who does not leave matters to coincidence, tries to persuade us that the proposal is not coincidental and did not materialize from thin air.

2.1 Comfortably Deaf

Nevertheless, we welcome and support such Constitutional amendments, but we also would like to note that the proposal lacks appropriate analysis to indicate how and whether the proposed amendments will result with the desired outcomes. Opening the Constitution without prior analysis is really quite odd. Bearing in mind the fact that the process is in its initial phase however, and if we truly want to improve not only the impression, but the reality as well, and thereby develop an independent and trustworthy judiciary, the proposed amendments must be accompanied with a detailed impact assessment of all possible influences of the executive over the judiciary as to propose relevant measures for their elimination. Otherwise, we might be changing the Constitution but the judiciary will remain dependent.

Worth mentioning is the fact that in this reporting period the MPs adopted the new draft Law on the Academy for Training Judges and Public Prosecutors - first reading. According to the draft-text, the

Minister of Justice remains a member of the Academy's Executive Board, which on the other hand establishes the entrance and final exam commissions at the Academy. Without prejudice on whether this solution should be kept, cancelled or modified, and having in mind that it is a matter of legislative solution in development; at the time when Constitutional amendments are brought onto the agenda, we believe that, together with similar issues, they should be subject to analysis. Despite its announcements, the Government failed to implement the idea on judiciary's budget as a share of GDP, as a measure to reduce the influence of the executive power over the judiciary by decreasing the budgetary dependency of the latter.

One thing is sure – the dice is rolled. While it is still uncertain whether any changes will be made to the Constitution and what will they entice, and while the public is occupied with discussions on the different amendments, which – quite expectedly – created the domino effect, in the background of the political scene, completely different film is being produced - „Comfortably Deaf“.

2.2 The Forgotten Academy - Part Two

Scandalous and controversial appointments and dismissals in the judiciary seem to have become the national light-motif. While the public awaits the outcome of the procedure to declare one of the most experienced judges in Skopje incompetent and negligent, the Judicial Council continues to recruit judges at basic courts who are not included on the list of candidates from Academy. Thus, from the second generation of candidates certified in January 2010, only one candidate was recruited although he was at the bottom of the ranking

list, while the best-ranking candidate from the first generation has still not been recruited. In the course of the last selection, that took place 25th March, 6 basic court judges were appointed, one of which was an Academy-graduate. Considering the legal obligation stipulating that 50% of appointed judges must be selected from Academy-graduates on the one side, and the actual trend on the other, it is logical to raise the question when is the country going to recruit the 50% quota from the Academy. It seems as we are again waiting for a “public reprimand” from international community, and in the meantime preferring other candidates for judges and public prosecutors on the detriment of the Academy-graduates.

The EC is expecting: *“the Judicial Council and the Council of Public Prosecutors to develop a system on sustainable strategic human resource planning and the Judicial Council and the Council of Public Prosecutors to enhance the transparency in their operation and to secure a track record on implementing the merit-based recruitment system for judges and public prosecutors, in order to attain judicial reform objectives²⁷”*. “From the above, it is unlikely for Macedonia to obtain good comments in the field of judiciary in 2010 Progress Report.

2.3 Pressure over the Constitutional Court Continues

The pressures over the Constitutional judges continue with the same intensity in this reporting period. To be more precise, not only did the pressures increase in quantity, but they gained in quality as well. Following the steps of the Prime Minister, the Parliament Speaker met a

group of citizens protesting against the decision of the Constitutional Court to temporarily hold the application of four contested provisions from the Lustration Law. The parliamentary majority followed suit and attempted, through the Parliament, to instruct the Constitutional Court how to proceed with the Lustration Law. The Constitutional Court was subjected to hearings, whereas the constitutional judges were publicly scorned, labelled and devalued in a manner which suggested that it was the most legitimate and permissible pressure. For those who flanked, or who failed to learn their lessons on political system or who have even forgotten, we would like to reiterate that such attacks on the Constitutional Court must finally cease. And for those who have short memories, these pressures were marked as non-permissible in last year’s Progress Report. With the current behaviour we might as well write the same criticism all over again in the new report.

2.4 Judicial Council Report

The Judicial Council published its 2009 Annual Report and forwarded it to the Parliament of the Republic of Macedonia. Interestingly enough, when the 696 positions for judges were already anticipated²⁸, the Judicial Council’s report recommends more analyses on human resources in the judiciary: *“analysis to set the criteria on the number of employees at courts in compliance with the Law on Courts, as well as needs assessment and criteria for determining the number of judges (more or less) that would reflect the actual state of affairs in the judiciary in regard to the scope of work of the courts and the involvement*

²⁷ Revision to the Accession Partnership, 5 February 2010, p. 3

²⁸ In 2009, according to the Judicial Council’s report a total of 661 judges were recruited. On 31st December 2009, the units of the judiciary had 2288 employees (without the judges and Council members).

of the judges”²⁹. The Judicial Council also addressed the problem of insufficient number of legal experts and court advisors, as well as the overwhelming number of cases in most of the basic courts, and the poor working conditions in several courts. In that context, the Judicial Council confirmed the findings presented in our previous Quarterly Accession Watch Report where we warned that the 115 recruitments of legal experts and administrative staff in the judiciary, as anticipated under NPAA, did not materialize in 2009³⁰.

As regards the judiciary’s financial independence, the report points out that the 2009 annual budget for the judiciary amounted to 1,840,207,000 MKD³¹, an amount smaller than in the 2008 budget³², although the Government throughout 2009 resiliently claimed the opposite³³. The report stresses that this situation negatively affected the normal operation of the courts, hampered regular obligations, and the total debt by the end of 2009 amounted to 63,079,025 MKD which is a serious burden for the 2010 budget. The highest debt was noted

under Account 42 “goods and services” amounting up to 55,632,469.00 MKD, followed by Account 46 “subsidies and transfers” in the amount of 157,200.00 MKD and Account 48 “capital investments” amounting to 7,289,356.00 MKD. Amusingly, the report states that *“by the end of 2009, an amount of 25,639,291.00 MKD from the approved judiciary budget remained unspent and relevant payment orders were submitted to several treasury offices”*. In addition, the Judicial Council reports that: *“a request was submitted to the Ministry of Finance for re-allocation of the amount 21.800.000 MKD from Account 40 “salaries and contributions” to Account 42 “goods and services”, in compliance with the conclusion taken by the Judicial Budgetary Council, but the Ministry did not approve”*. As a result, the Judicial Council reports that *“if the requested re-allocation of funds was approved, the projected unsettled liabilities under Account 42 would have been approximately 22,300,000.00 MKD, while Accounts 46 and 48 would have been balanced”*.

Instead of reducing debts, the state – by irrational spending – contributes to the increase of the debts of the courts and of the country in general. As a reminder, this year the EC will want to see *“improved budget planning and allocation of funds to the judiciary as to secure a sustainable budgetary framework”*³⁴.

Apart from the surveys indicating citizens’ mistrust in the judiciary, the high number of complaints submitting by citizens and institutions on illegal dealings of judges and courts in the Republic of Macedonia also reflect the actual situation as regards the judiciary. The media also covered the statistics contained in this section of the report: *“on day to day basis the Council receives 4 submissions complaining on judges’ performance, or a total of 1,467 in the course of 2009. Most of the*

²⁹ In its reports, the Macedonian Centre for European Training continuously indicated the need of such analyses (see, for example, the First Quarterly Accession Watch Report for 2009).

³⁰ According to the report, from the 109 submitted applications for NPAA related employments, the Ministry of Finance approved 99, and 10 are pending decision.

³¹ Two accounts: Account 20 – court administration (Judicial Council of the Republic of Macedonia, Supreme Court, Administrative Court, Appeal Courts and Basic Courts with primary and extended competence) and Account 30 – Academy for Training of Judges and Public Prosecutors. The structure of the funds per category is the following: salaries and contributions 1,529,005,000 (83,09%); goods and services 235,202,000 (12,78%); subsidies and transfers 15,000,000 (0,82%) and capital expenditure 61,000,000 (3,31%).

³² 2009 Annual Report of the Judicial Council of the Republic of Macedonia, p. 17-18

³³ For example, see Information on the Realisation of Key Priorities from the Accession Partnership for the Period November 2008 – May 2009, p. 14.

³⁴ Review of the Accession Partnership, 5 February 2010, p. 3.

*complaints refer to prolongation of proceedings, failure to execute court decisions, and undue process. Because of these reasons, a judge was dismissed every month*³⁵.

Brussels and the Council of Europe³⁶ continue to criticize the judiciary, and the public surveys proved that the judges work under pressure. Most distressing however, is the fact that the Government does not seem concerned and believes the assessment to be exaggerated and based on erroneous perceptions and impressions.

2.5 Conclusions and Recommendations

Time will show whether the initiative to amend the Constitution is an honest intention or merely an attempt to de-focus the public attention from the actual developments in the judiciary. From what can be seen so far, we doubt that the objective is to achieve an independent judiciary, as the Government did not come up with the required analysis and the proposed-measures that would deem Constitutional amendments as necessary to improve the judiciary's independence. Judges are still appointed without the involvement of the Academy for Training Judges and Public Prosecutors, and the open pursuit against certain judges is obvious. The judiciary remains underfunded and is fully financially dependent from the government.

This year, the EC will want to see the newly established court institutions fully operational, with allocation of appropriate funds to increase their efficiency. The indicators set thereof are the following:

1) „track record in the implementation of activities of the Administrative Court and enforcement of legal mechanisms on the right to appeals in administrative disputes and 2) full execution of court decisions and improved cooperation with the Attorney General³⁷“. For the time being, it seems that the Government is doing everything but what Brussels expects to be done in the field of the judiciary. Therefore we propose the following recommendations:

- undertake serious analyses prior to amending the Constitution;
- Judicial Council and the Council of Public Prosecutors should appoint judges and public prosecutors who graduated at the Academy for Training Judges and Public Prosecutors;
- secure sufficient budget funds for the judiciary and provide a sustainable budgetary framework;
- Stop all pressures exerted over “politically incorrect” judges.

³⁵ A1 TV current affairs programme from 3rd April 2010.

³⁶ See, for example, Report of the Parliamentary Assembly at the Council of Europe, which in February discussed the issue of corruption in the Member States.

37 Review of the Accession Partnership, 5 February 2010, p. 3

3.LAW ON ASSOCIATIONS AND FOUNDATIONS

In the Republic of Macedonia, the first Law on Citizens' Associations and Foundations was adopted in 1998. Based on this legislative framework, several thousands of non-governmental organizations were registered and civil society was democratized. Some legal provisions, for example the provision stipulating that associations and foundations can enjoy tax and customs exemptions, were never implemented. The reasons for initiating the process of law amending were and the general assessment that the 1998 law did not address contemporary norms and standards and other shortcomings.

Thus, in December 2005, a working group within the Ministry of Justice was established. The working group, among others, included two representatives from civil society organizations. Throughout the law-drafting process, the working group and the Government received extensive advice and analysis from relevant international organizations. Work was organized in a manner to produce a contemporary law that would not only be in line with current developments, international standards and practice, but also introduce novelties such as the institute "status of public benefit organizations".

Such an approach was to liberalise the right to association, enhance organizations' financial sustainability and advance communication and cooperation between the Government and the civil sector, and therefore, it became the main objective of the Strategy for Cooperation of the Government of Republic of Macedonia with the Civil Society Sector" (2007-2011).

3.1 Between Intention and Reality

Unfortunately, despite the dynamic working group, the political will to adopt the necessary amendments and improve the legal framework was constantly felt. According to NPAA 2006, the law was to be adopted in the fourth quarter of 2006, while NPAA 2007 prolonged the deadline for 15th February 2008 (for the governmental procedure) and 31st March 2008 (for the parliamentary procedure), but the revised NPAA delayed it for 30th May 2008 (Government) and 30th June 2008 (Parliament). As this obligation was not realized in 2008 either, NPAA 2009-2014 brought about new deadlines, those being: 30th September (Government) and 30th November 2009 (Parliament). The deadline was breached yet again.

It must be noted that the main reason for the delays was the fact that the Government did not consider the versions of the law developed by the working group. The working group did not receive any comments on the novelties proposed and the communication between the Government and the working group was inappropriate. The 2007 amendments to the law³⁸ were submitted and adopted without even being discussed by the working group, not to mention a public debate. Ultimately, the working version that was adopted by the Government and that went into the parliamentary procedure was significantly different from working versions discussed by the working group and represented a step backward from the previous versions of the law. The adopted version was not publicly consulted before it went into the parliamentary procedure.

³⁸ Provisions regulating registration of associations, participation of employees in civil organizations' management and enhancing the Ombudsman's role in this area.

This act undermined the working group's efforts although it held more than 20 meetings and the working group members participated in several study visits to familiarise themselves with international experience and despite the fact that the working versions were debated on more than 20 round table discussions and expert debates, and were a regular item on the agendas of 5 NGO Fairs from 2005 onwards. This is the first problem in the adoption of this law. Instead of achieving significant dialogue with civil society – as noted in the 2009 Progress Report – the Government demonstrated that even when it organizes consultation sessions with civil society, it really has no true intentions to include civil society organisations (CSOs) and take into consideration their opinions and suggestions. The fact that stakeholders are completely ignored is even more concerning, and consequently the proposed solutions are opposite to those advocated for by CSOs. Such an attitude is dangerous, especially as it is a matter of a law that regulates the operation of CSOs, and as such they must be consulted, and their experience and opinions taken into account as stakeholders. Subsequently, the Government demonstrated that it had no intention to establish systematic mechanisms to involve CSOs in policy-making, legislation drafting and strategy development, despite the public commitments made.

3.2 What is (not) new in the law?

What did the Government really change? Without going into detail elaboration of the draft-law³⁹, we will only emphasize the key shortcomings from the version adopted by the Government and submitted to the Parliament.

³⁹ Extensive comments obtained from several non-governmental organizations for the draft-law are available at www.sobranie.mk

3.2.1 Creating Public Opinion, but not Policy-making

The participation of CSOs in policy-making, legislation drafting and strategic document development was completely erased as a principle and replaced with a vague provision on participation in creating public opinion! This indirectly points out the Government's unwillingness to take into consideration civil society organizations' opinion, not to mention to use their knowledge and skills developed in the sector for over a decade. In cases of limited resources in all societal spheres, such an ignorant attitude is unacceptable.

3.2.2 Consultations vs. Dialogue

The Government must understand that establishing dialogue is the key European value, as well as obligation, which - *inter alia* - implies fostering dialogue (and not only consulting) with civil society on all reform issues. Council of Europe's recommendation stresses that non-governmental organizations should be consulted in the drafting of primary and secondary legislation relevant for the area they operate in. Thus, policy and law-making must include permanent dialogue with civil sector and this should have been incorporated in the adopted law.

The conclusions from the second meeting of the Joint EU-Macedonian Civil Society Committee call upon the Government to undertake regular and transparent cooperation with CSOs and insist on enabling timely public access to draft-legislation⁴⁰. In addition, the Government was requested to include CSOs in relevant working groups drafting legislation and to involve them in future negotiations with the EU.

⁴⁰ Minutes from the second meeting, 25th February 2010, Skopje. Joint Civil Society Committee of the EU and Republic of Macedonia, p. 2.

One of the indicators in the Review of the Accession Partnership from 5th February, under the section on Public Administration Reform requires: *“to improve the implementation of Government’s strategy and action plan on cooperation with the non-governmental sector; and to improve consultation mechanisms of the Government and local self-government units with the civil sector”*. This law will certainly not prove that future cooperation between the authorities and civil society has improved.

3.2.3 Illusionary Financial Support

The Government, yet again, failed to anticipate financial benefits for CSOs. One of the key objectives to amend the law was to improve the sustainability of CSOs by introducing fiscal benefits and enhancing their income generation abilities. The provisions from the 1998 Law remained only “on paper” and they are still inapplicable. Despite CSOs’ efforts to synchronize the amendments of the Law on Associations and Foundations with the tax regulations, this did not happen. It seems that the authorities will continue to avoid provisions to secure systematic sustainability of civil society. Under terms when the Government’s only financial support for CSOs is assessed as biased, non-transparent and politicalized⁴¹, such a shortcoming is unacceptable.

To overcome this problem, the Government must immediately implement the recommendations of the European Parliament that *“emphasized the important role of civil society organizations in the country’s on-going transformation, not merely in reform processes and fight against corruption, but what is equally important, in the inter-ethnic relations and human rights monitoring; and emphasized that such*

*activities should be adequately supported by the Pre-Accession Assistance Instrument (IPA), both in Skopje and throughout the country”*⁴².

It is difficult to understand why the Government insists on such a high level of transparency of CSOs that it has provided for mandatory reporting to the Government. Having in mind that the objective of this legislation is freedom of association and that the authorities can financially control only the organizations they financially support, these provisions seem too restrictive and demoted in comparison to the previous law. The Council of Europe recommends *“non-governmental organization financially supported by the state or local authorities can be obliged to submit annual reports to their providers of funds.”*

3.2.4 Etatisation of Civil Society

The key novelty that was to be introduced with the law – introduction of public benefit organizations – became the most criticized section of the law. Apart from the inappropriate and partial regulation, the essential change made by the Government concerns the decision-making body. Instead of an independent body, or at least the Sector for Cooperation with NGOs within the Government’s General Secretariat, the Government will decide to whom to award the status of public benefit organization. The decision-making process however, is completely non-transparent and gives the Government unwarranted powers, as it has majority members in the Commission on Public Benefit Organizations. The risk for CSOs’ interests to be unprotected and not promoted is real. By imposing a list of obligations and anticipating almost no benefits,

⁴¹ 2008 Progress Report, Opinion of the State Audit Office on expenditure for citizens’ associations and foundations.

⁴² European Parliament’s Resolution on the 2009 Progress Report for the Republic of Macedonia from 10 February 2010, p. 6.

the Government will, *de facto*, paralyze the implementation of this section from the law and slowly but surely, create an “etatistic” civil society.

Subsequently, the Government demonstrated that *“exclusively high attention and commitment to cooperation with civil sector... and its high appreciation for non-governmental organizations’ contribution to policy-making and law enforcement and in general to the attainment of societal interest and policy in different areas and activities”*⁴³ is just another declaration. In reality, the Government believes that CSOs can create only public opinion (but not policy), that they should be consulted pro-forma (but their opinion should not be taken into consideration), and that certain organizations can be awarded public benefit status (but not financial funds).

3.3 Conclusions and Recommendations

Due to these, and many other shortcomings (inconsistencies, ambiguities and illogical aspects) of the draft-law, a total of 103 amendments were submitted to the Parliament, which is rarely seen. More than one third of amendments were submitted by the ruling majority, which is an indication of the low level of expertise of the Ministry of Justice. Making essential changes to draft-laws in the nick of time is offensive, both for the parliament and for CSOs as the stakeholders. If the Government has substantial remarks, it should withdraw the draft-law for further harmonization in the working group. Unfortunately, this was not the case with the present law. From the amendments

submitted, 50 were accepted, 20 rejected and 33 withdrawn⁴⁴. Despite the improvements made to the legal text however, between the two parliamentary phases⁴⁵, the key remarks were not accepted.

Therefore, if the Government of the Republic of Macedonia truly wishes to develop civil society, it should implement the following recommendations:

- the Government must urgently amend the taxation legislation and anticipate fiscal benefits, especially for public benefit organizations and enhance civil society’s income generation abilities. This will inevitably have budget implications – something that was not anticipated under the adopted law;
- the Government must involve CSOs in relevant working groups drafting legislation, and in the EU accession negotiations and hence implement one of the key objectives from its Strategy;
- the Government must improve the climate of mutual trust and recognize the legitimacy of and contribution of CSOs as a key element in social consensus building and participatory democracy. Therefore, it must immediately start to amend the Law on Association and Foundations to eliminate key shortcomings elaborated during the parliamentary procedure;
- finally, the importance of enhancing state’s administrative capacity for effective implementation of new legislation must be reiterated as well.

⁴³ Statement made by the Minister of Justice, Session No. 100 of the Parliament of the Republic of Macedonia, 12th April 2010, transcript.

⁴⁴ Due to the fact that they were in essence repeated.

⁴⁵ After the first reading, the law was adopted by the Government on 3rd March 2010. The law was adopted by the Parliament on 12th April 2010, where the opposition abstained from voting.

CHRONOLOGY OF EVENTS

- December 2005** the working group was established;
- December 2007** amendments to the law were adopted by the Parliament. The working group was not acquainted nor consulted on the proposed and adopted amendments;
- January 2010** the draft-law was adopted by the Government. The adopted version was to a large extent different from the working versions discussed in the working group and on public debates.
- January 2010** civil society organizations submitted comments and proposed amendments to improve the legal text.
- February 2010** the draft-law was discussed at the meeting of the Committee on Legislative Issues, the National Council for European Integration and the Committee on Political System and Inter-Ethnic Relations.
- March 2010** the law was adopted by the Parliament in the first stage. A total of 102 amendments were submitted to the draft-law
- March 2010** the draft-law was discussed at the meeting of the Committee on Legislative Issues and the Committee on Political System and Inter-Ethnic Relations.
- April 2010** the draft-law was adopted by the Parliament, the opposition abstained from voting.

4. ODYSSEY 2010 - LAW ON PREVENTION AND PROTECTION FROM DISCRIMINATION

Instead of successful fulfilment of one of the Accession Partnership's short-term priorities⁴⁶, the adoption of the Law on Prevention and Protection from Discrimination was an example of inappropriate functioning of democratic institutions in the Republic of Macedonia. The Government and the Parliament failed to use this process and address one of the problems indicated in the 2009 Progress Report⁴⁷, and they seem to have opened "old wounds" as regards the Parliament's democratic capacity and the functionality of power sharing. The Parliament of the Republic of Macedonia, yet again, demonstrated lack of capacity to counterbalance the Government and failed to improve the draft-law by means of amendments, despite the series of remarks and comments submitted both by national and international organizations, including the appeal of the Members of the European Parliament.

Although respect for democratic principles and human rights are fundamental values of the Constitution of the Republic of Macedonia, where Article 9 guarantees the equality of citizens, discrimination is still widespread. Ombudsman's last report indicates that due to lack of

⁴⁶ Accession Partnership, p. 6: "to set up effective mechanisms to identify, pursue and penalize all forms of discrimination by the State and non-State bodies against individuals or groups". This priority was to be fulfilled by 2008 or 2009 the latest.

⁴⁷ "Little progress has been made in the area of anti-discrimination policy. Mechanisms to identify pursue and criminalise all forms of discrimination by State and non-State bodies against individuals and groups do not yet exist. A framework law on anti-discrimination remains to be adopted. Discrimination based on sex, ethnic origin, disability and sexual orientation persists... ", 2009 Progress Report, p. 19.

an anti-discrimination law, discrimination is difficult to determine, and therefore citizens refrain from initiating procedures⁴⁸. The 2009 Progress Report indicated that: *“neither the Constitution nor the existing legislation identifies sexual orientation as a basis of discrimination. Lesbians, gay, bisexuals and transgender (LGTB) people are not protected against direct or indirect discrimination and are stigmatised, particularly in rural areas”*.

4.1 Delayed and Flawed

Despite the indisputable existence of discrimination, Macedonian authorities made the adoption of the Law on Prevention and Protection from Discrimination a never-ending story. Initially anticipated under NPAA 2007, every new NPAA prolonged the deadline for its adoption. Hence, NPAA 2008-2014 anticipated 1st September 2008 as the deadline for its endorsement by the Government and 1st October 2008 as the deadline for adoption by the Parliament. Since the law was not adopted, NPAA 2009 anticipated new deadlines, those being: 30th April and 30th June 2009, respectively, and finally NPAA 2010 anticipated the adoption of the Anti-discrimination Law as a priority and stated that it should be in compliance with the comments provided by ODIHR and the Venice Commission⁴⁹.

Unfortunately, the adopted law did not incorporate these remarks and therefore, upon the reaction of the *“expert and academic public, as well as all relevant non-governmental organizations that participated in the drafting process”*⁵⁰, SDSM submitted a new draft-law last March, which was expressly rejected by the ruling coalition.

⁴⁸ Annual Report of the Ombudsman for 2009, p. 30.

⁴⁹ 2010 Revision to NPAA, p/ 18.

⁵⁰ Rationale attached to the draft-law submitted by SDSM, p. 1.

4.2 Are there lessons to learn?

What were the main mistakes made and what can we learn from them so that we do not repeat them when making laws?

First, it seems that the Government did not use the years-long drafting process to seriously develop an anti-discrimination policy. Not only is the adopted law full with loopholes⁵¹, but it failed to incorporate other compensatory measures, such as the establishment of the National Institute on Human Rights in compliance with the Paris Criteria, or Human Rights Fund etc. The governmental procedure was exceptionally non-transparent, which is unacceptable for a law that governs this matter and is contrary to international standards applied to the adoption of anti-discrimination legislation.

Second, the Parliament was utterly irresponsible in its legislative procedure and failed to improve the legal text by means of amendments, although Members of the European Parliament, in their open letter, pointed out that the draft-law is not in compliance with EC *acquis* and inevitably will have to be changed further on in the process. The Parliament however, failed to use the parliamentary procedure to bring Macedonia closer to the EU, and ignored the open letter of the Members of the European Parliament and the European Parliament’s Resolution for the 2009 Progress Report from 10th February 2010 as well as the Recommendation from the Council of Ministers of the Council of Europe from 31st March 2010. This evidence supports the fact that the Parliament is not operating independently, thus de facto opened

⁵¹ For more details see Comments on the law provided by the Foundation Open Society Institute – Macedonia, the Helsinki Human Rights Committee of the Republic of Macedonia, ILGA-Europe, the Venice Commission at the Council of Europe and ODIHR, available at www.sobranie.mk

the discussion of power-sharing in Macedonian democracy. Distressing is the fact that the Parliament does not respect its own conclusions. Therefore, although the Joint EU-Macedonian Parliamentary Committee concluded that it is necessary for the Parliament and the Government to develop an anti-discrimination strategy in compliance with EU standards⁵², by means of public debate, the enacted law is still not aligned.

4.3 Who is afraid of sexual orientation?

Finally, since the greatest criticism of the last version of the law concerned the exclusion of sexual orientation as basis of discrimination; further on we present several facts that make this oversight even more absurd. First, the last recommendation of the Ministerial Council of the Council of Europe CM/Rec(2010)5, explicitly requires the Member States – including Macedonia – to establish special mechanisms for the protection from discrimination of people with different sexual orientation as a particularly vulnerable category. In addition, with the entry into force of the Lisbon Treaty, the European Charter on Fundamental Rights became EU's hard law and Article 21 thereof explicitly lists sexual orientation as basis for protection from discrimination. The same spirit is conveyed in the European Parliament's Resolution that requires „*Macedonian authorities to develop an anti-discrimination strategy (by guaranteeing equality of citizens, irrespective of their ethnic background, gender, age, religion, sexual orientation or disability) and to*

adopt all necessary laws for that purpose”⁵³. Therefore, the persistence of the parliamentary majority to exclude sexual orientation from the law's text is inconceivable.

The Parliament's "firm" position in this case is difficult to understand since the same parliamentary composition already determined sexual orientation as basis for protection from discrimination in several other legislative acts, for example, a patient cannot be discriminated against on the grounds of "sexual orientation"⁵⁴; police officers when supervising state borders cannot be discriminated against on the basis of their "sexual determination"⁵⁵, and employers cannot put their employees in an inequitable position because of their „sexual direction”⁵⁶.

4.4. Conclusions and Recommendations

The Parliament adopted the Law on Prevention and Protection from Discrimination despite the disapproval of civil society organizations, the opposition, the well-intended advice of the Members of the European Parliament and the recommendations of the Council of Ministers of the Council of Europe. The Government did nothing to correct the

⁵² Recommendations of the Joint EU-Macedonian Parliamentary Committee, dated 18th February 2010, p. 6.

⁵³ European Parliament's Resolution on the 2009 Progress Report for the Republic of Macedonia, p. 5, dated 10th February 2010.

⁵⁴ Law on Protection of Patients, Article 5, Paragraph 2, Official Gazette of the Republic of Macedonia No. 82/2008, 12/2009.

⁵⁵ April 2009, Law on State Border Supervision, Article 9a, Official Gazette of the Republic of Macedonia No. 71/2006, 66/2007, 52/2009.

⁵⁶ Law on Labour Relations, Article 6, Official Gazette of the Republic of Macedonia, p. 62/2005.

law, even after receiving the letter addressed by the EU Commissioner on Enlargement, Stefan Fule. Moreover, it shifted the guilt to the Parliament and accused the Member of Parliament Silvana Boneva of failing to forward the letter to her fellow MPs. The Government however, forgot that the Review of the Accession Partnership from 5th February (long before Fule's letter) defined the following under the short-term priorities: "to set up mechanisms to identify, enforce *and sanction all forms of discrimination by State and non-State bodies against individuals and groups*"⁵⁷ and defined the indicators to measure the progress achieved in this area, those being: "to adopt the anti-discrimination law in line with the EC acquis and start its implementation" and „to establish and put into operation mechanisms to monitor, identify, enforce and sanction discrimination based on race or ethnic background, religion or creed, age or sexual orientation"⁵⁸.

To mitigate the damage already caused, the following recommendations should be implemented:

- The Parliament must immediately propose and adopt amendments to the Law on Prevention and Protection from Discrimination in light of improving the text thereof, by means of consulting all remarks submitted, including the sexual orientation as a basis for protection from discrimination;
- The Parliament should work on developing mechanisms that would not only provide participation of all stakeholders in the legislative process, but also create a political culture where MPs will be able – in compliance with the constitutionally-inferred status of the Parliament – to act as a body that checks and balances the executive

and vote according to their individual persuasion rather than their political party orders;

- Develop the 2010 programme and use it to prepare the system for implementing the Law on Prevention and Protection from Discrimination and allocate relevant budgetary funds thereof;
- Establish Human Rights Fund that, inter alia, will support the anti-discrimination strategy and the civil society organisations working in the field of human rights protection and promotion.

CHRONOLOGY OF EVENTS

- | | |
|-----------------------|---|
| February 2008 | as a short-term priority, the Accession Partnership defined the establishment of efficient mechanism for protection from all forms of discrimination; |
| March 2008 | The Government established a working group to draft the Law on Prevention and Protection from Discrimination; |
| May 2008 | Roadmap on visa liberalization foresees the adoption of a framework anti-discrimination law; |
| September 2008 | draft-law adopted by the Government significantly differs from the working versions of the law debated with the civil society; |
| December 2008 | Venice Commission and the Council of Europe criticised the draft-law and the manner in which it was drafted. It appealed to the authorities to also |

⁵⁷ Review of the Accession Partnership, 5 February 2010, p. 6.

⁵⁸ *Ibid*

include administrative measures to guarantee its implementation;

April 2009 ODIHR criticized the draft-law, a debate was held at the Parliament; the law was returned for further elaboration;

October 2009 EC's Progress Report reminded us again that the law must be enacted;

January 2010 the draft-law is adopted by the Government and entered the second stage in Parliament. For the first time, sexual orientation is excluded as basis for discrimination. The comments from the Venice Commission and ODIHR were not taken into consideration in their entirety.

February 2010 the draft-law was criticized by the national and international organizations and by the EU;

February 2010 recommendation from the Joint EU – Macedonian Parliamentary Committee to include the sexual orientation in the law;

March 2010 SDSM submitted another draft-law, which – to a large extent – is based on the 2005-draft of the law, but was rejected by the ruling majority.

March 2010 Open letter from the Members of the European Parliament urging the Macedonian Parliament to take into account the comments to the draft-law and to amend and improve the legal text, including the inclusion of sexual orientation as basis for protection from discrimination;

March 2010 Council of Ministers of the Council of Europe adopted Recommendation CM/Rec(2010)5 indicating the need to implement special measures on protection from discrimination based on sexual orientation;

April 2010 the “criticized” Law on Prevention and Protection from Discrimination was adopted in the absence of the opposition.

5. HOW TO MOVE FROM „PLANNING” TO „ACHIEVING”

The issue of preventing conflict of interests is an important element in the fight against corruption, and as such it is one of the pivotal issues that continue to be in the focus of attention of the European Union. In the last few years, EC's Progress Reports note progress in this area, but the time has come for Macedonia, after long years of planning (laws, amendments, strategy, action plan, measures, activities, etc.), to deliver tangible results in this area.

What has been done so far? In 2007, the European Commission welcomed the adoption of the Law on Conflict of Interests, because it „sets out measures and activities for establishing, preventing and sanctioning cases of conflict of interests”, and because it allocated the responsibility for dealing with cases of conflict of interests to the State Commission on Prevention of Corruption (hereinafter: SCPC)⁵⁹. In 2008, the programme and the action plan on conflict of interests

⁵⁹ European Commission, *Progress Report 2007*, p.11, p.50: http://www.delmkd.ec.europa.eu/en/whatsnew/2007/20%20fyrMacedonia_progress_reports_en.pdf

were adopted and in that time SCPC initiated 47 cases, of which 38 were completed by the cut-off date for the 2008 Progress Report, and in only 11 cases conflict of interest was determined⁶⁰. One year later, the European Commission stated that „SCPC began to implement the action plan on conflict of interests“, but reiterated that „several cases on conflict of interests were initiated in the reporting period“, where „in 11 (again 11!?) of them conflict of interest was found“. The 2009 Report stated that the adoption of the amendments to the Law on Prevention of Conflict of Interests „introduce a new definition of the scope of the law, expressly including civil servants; strengthen the powers of the SCPC for control and prevention of conflict of interest; introduce the obligation of the officials to submit a conflict of interest declaration and provide for misdemeanour sanctions for non-observance of the law“.⁶¹

5.1 What do we need to achieve?

In compliance with the Review of the Accession Partnership from 5th February, the European Commission expects Macedonia to demonstrate actual results. Empty promises will no longer be passing and the indicators against which Macedonia's progress will be monitored are quite precise.

Notably, the European Commission expects to see „effective implementation of the Law on Conflict of Interests, in compliance with

the 2009 amendments thereto and establish sustainable track record in regard to investigation and elimination of conflict of interests“.⁶² In addition, Macedonia needs to demonstrate „results in regard to investigation and prosecution pursuant to relevant provisions from the Criminal Code, including illegal proceeds and confiscation“⁶³.

In the last four years, officials declared their assets, family relations, the courts had time to take rulings in high profile cases, and the capacities of specialized law enforcement agencies were continuously strengthened. What the European Commission expects to see this year is „full regulatory and actual autonomy in acting upon orders for communication interception and use of communication interception equipment; further implementation of the action plan on establishing the National Intelligence Database, as envisaged in NPAA“, but also „results in regard to investigation of declared property, adoption of court rulings and their enforcement in high level corruption cases“⁶⁴. In this field, joint training of public prosecutors and judges on how to use investigative measures and evidence in cases of corruption and organized crime are expected to be organized.

According to the Review of the Accession Partnership from February 2010, in the field of public spending, the European Commission expects to see the recommendations of the State Audit Office (hereinafter: SAO) and the SCPC, in particular in the areas of public expenditure implemented, which means full transparency of public spending and state advertising and sanctioning cases where irregularities have been detected as to discourage future malpractices.

⁶⁰ European Commission, *Progress Report 2008*, p.14, p.58: http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/the_former_yugoslav_republic_of_macedonia_progress_report_en.pdf

⁶¹ European Commission, *Progress Report 2009*, p.14-15: http://ec.europa.eu/enlargement/pdf/key_documents/2009/mk_rapport_2009_en.pdf

⁶² Review of the Accession Partnership, 5 February 2010, pg. 4.

⁶³ *Ibid*

⁶⁴ *Ibid*

In the last two months however, it seems that the Government did exactly the opposite – it prohibited the discussion of SAO's findings in Parliament, it reprogrammed the debts of public enterprises in a manner as though the debt was a „state secret“, it continues with advertising with no transparency whatsoever, while the people who abuse their office according to strong evidence go by unsanctioned (as was the case with Bosko Nelkoski, the former Director of the National Agency for European Educational Programmes and Mobility).

5.2 SCPC is on the move

According to SCPC's annual report for 2009 *„in contemporary legal systems, the conflict of interests is defined as the doormat for corruption, as it is a fact that any corruption case, as a rule, implies conflict of interest, but not all cases of conflict of interests imply corruption“*⁶⁵. This somewhat ambivalent definition reflects perfectly the position and attitude of SCPS toward some issues and problems stemming from the enforcement of the Law on Conflict of Interests and the National Programme on Prevention and Reduction of Conflict of Interests (accompanied with an Action Plan)⁶⁶.

On the one side, the realisation of general obligations⁶⁷ and activities stipulated in the Law and envisaged in the Action Plan is

notably consistent (almost impeccable). For example, in its 2009 Annual Report, SCPC claims that the National Programme on Prevention and Reduction of Conflict of Interests has been realized with a high 63% only in the first year of its implementation⁶⁸. Having in mind the type and nature of the measures and activities anticipated in the Programme and Action Plan, no major grounds exist to contest this claim. To illustrate the type and nature of the implemented obligations however, we put forward the following examples:

- Adoption of amendments to the Law on Conflict of Interests

The adoption of these amendments was anticipated as a measure in several sections of the Action Plan, i.e., the amendments to the Law were identified as a necessity in regard to the implementation of the National Programme on Prevention and Reduction of Conflict of Interests in several high-risk areas – accumulation of functions and personal benefits; influence for the purpose of gaining financial and other proceeds; gifts; and nepotism in employment, public procurement, contracting, license issuing, etc. All in all, by the beginning of September 2009, the Parliament adopted the anticipated amendments to the Law on Conflict of Interest, which were fully reflected in the tasks defined in the Action Plan and this was appropriately assessed in the 2009 Progress Report. The adherent implementation of legal measures (those adopted with the amendments and those inherent from the old Law) is a different story altogether...

- Delivering training on prevention of conflict of interests

This activity is also anticipated in the Action Plan as a measure to overcome the weaknesses in several areas. According to the 2009 Annual Report, SCPC delivered training for „approximately 80 employees“ (the

⁶⁵ State Commission on Prevention of Corruption, *Annual Report of the State Commission on Prevention of Corruption for the Year 2009*, p. 41: http://www.dksk.org.mk/images/stories/pdf/dokumenti/godisen_izvestaj_2009.pdf

⁶⁶ State Commission on Prevention of Corruption, *National Programme on Prevention and Reduction of Corruption, accompanied with an Action Plan*: http://www.dksk.org.mk/images/stories/pdf/drzavna_programa_sudir_na_interesi.pdf

⁶⁷ In the sense of obligations not related to proceedings in particular cases that would concern specific persons.

⁶⁸ SCPC, *Annual Report...*, p.42

mere formulation is odd, especially within an annual report whose main purpose is to operate with accurate and precise figures) responsible for collecting Conflict of Interest Declarations at central and local public administration bodies; four training sessions (according to appellate districts) for 120 judges and public prosecutors and 5 training sessions delivered in cooperation with the Civil Servants Agency and targeting central and local level civil servants.

- Submission of Conflict of Interest Declaration

The submission of Conflict of Interest Declarations⁶⁹ by responsible officials according to the law is one of the pivotal novelties introduced by the amended Law on Conflict of Interests. The declaration template contains information on the type of public authorities and duties of the submitters; information on his/her personal interests expressed by means of additional engagement in other bodies or institutions, ownership share or participation in management structures of companies, as well as membership in citizens' associations and foundations (related to eventual financial benefit from such membership or engagement); and identical information (as in the case of personal interests of the submitter) on the interests of his/her next of kin, where "next of kin" is defined as marital or out-of-wedlock partner, first-line family relatives, and family relatives up to fourth remove (in simpler words – up to second cousins), foster parents and foster children, in-laws up to second remove, as well as every natural or legal person with whom the submitter holds a private interest. Submission of such Conflict of Interest Declarations is a useful measure that enables „in-depth screening“ of personal interests in the broadest definition of the

category “public officials” and hence accurate detection of all potential situations of conflict of interests of the submitters.

Although the deadline for the submission of the declarations was 7th March 2010, so far SCPC has not informed whether all public officials fulfilled this obligation. The last information related to the fulfilment of this obligation was contained in the Communication issued by SCPC dated 23rd February 2010 (and published on its website), according to which, by the given deadline, 1060 officials in total had submitted Conflict of Interest Declarations. Again, the figure does not say much to the common citizens. Information on the total number of officials obliged under the law to submit such declarations is still lacking, and no new information has been published to clarify the number of possible cases of incompliance after the expiration of the legally stipulated deadline. Considering the recent state of affairs within the SCPC, its ineffectiveness in updating information on such an important legal obligation does not come as a surprise...

5.3 Greyish Rather Than Pinkish

Despite the incontestable progress made in terms of implementing the general measures included in the National Programme on Prevention and Reduction of Conflict of Interests (and the Action Plan) and the Law on Conflict of Interests, information on the adherent application of anticipated legal measures in specific cases of alleged conflict of interests remain vague and contradictory. In its 2009 Annual Report, SCPC stated that it initiated 63 conflict of interest cases in the course of 2009, 50 of which were completed that same year. In addition, in 2009 SCPC continued the proceedings opened in 2008, which makes 77

⁶⁹ Template of the conflict of interest declaration is available at the following website: <http://www.dksk.org.mk/images/stories/pdf/izjava%20za%20interesi.pdf>

the total number of cases in 2009. 14 of the 50 cases finalised in 2009 were cases taken over from 2008, while the remaining 36 were initiated and completed in 2009.

According to the quoted SCPC report, 20 of the 50 cases determined conflict of interests⁷⁰, those being the following:

1. central government public officials, who at the same time were appointed members of Executive Boards of public enterprises established by the City of Skopje (the information in the Annual Report related to this cases does not include the actual number of officials concerned, although such information cannot be kept as confidential, especially bearing in mind the transparency insisted upon not only by the European Commission, but the Macedonian public as well);
2. the Director of the public enterprise „Macedonian Forests“, who at the same time was Chairman of a governmental commission;
3. member of the Commission on Bonds and Securities, who at the same time was a member of a Supervisory Board of a joint-stock company;
4. member of the Municipal Council in Suto Orizari, who was also appointed Head-master of a primary school in the same municipality;
5. member of a Municipal Council in an unnamed municipality, who at the same time was a member of the Executive Board of a (unnamed) public enterprise established by the same municipality;
6. member of the Council of Public Prosecutors, who at the same time was a professor at the Law Faculty in Stip (which very much resembles the case of the Deputy Prime Minister of the Government responsible for European Integration, Vasko Naumovski);
7. member of the Municipal Council in Gostivar, who at the same time was the Head-master of the secondary school of economics „Gostivar“ established by the same municipality;
8. case of nepotism of the Director of the Health Care Centre in Skopje;
9. conflict of interests and abuse of discretionary powers by the Mayor of the Municipality of Gostivar in the procedure for selecting the Head-master of the secondary school of economics „Gostivar“;
10. Municipal Council member in an unnamed municipality, who was appointed Director of some cultural institution established by the same municipality;
11. Chairman of the Municipal Council in Staro Nagoricani, who at the same time is employed in the municipal administration of the municipality;
12. Municipal Council member in an unnamed municipality, who at the same time was Chairman of the Supervisory Board of a public enterprise;
13. The cooperation of the public science institution „*Institute for Old Slavic Culture*“ from Prilep with a company employing a family member;
14. Secretary General of the Government of the Republic of Macedonia, whose son is a Minister in the same government;

⁷⁰ SCPC, Annual Report ..., p.42-45

15. civil servant from the Ministry of Justice, regional office Valandovo, who at the same time was a member of the Executive Boards of two public institutions - *Social Work Centre* and *Cultural Centre*;
16. Member of Parliament of the Republic of Macedonia, who accumulated functions (without naming the second function performed by the anonymous MP);
17. Assistant Minister at an unidentified Ministry, who had accumulated functions (the type or number of other functions performed by this hyper-productive Assistant Minister are not listed in this case either);
18. accumulation of functions by an unidentified public official (in this case no information is provided on the number and type of „secondary“ duties performed, nor the „primary“ office held by the person concerned);
19. accumulation of functions by a state advisor (in this case no information is available on which accumulated functions, but at least the rank of the civil servant who so diligently performs his/her many duties is revealed);
20. Municipal Council member of an unidentified municipality, who at the same time was a member of the Executive Board of a public enterprise established by the same municipality.

According to the information provided in the Annual Report concerning the cases listed above, the determined conflict of interests were resolved pursuant to the legally stipulated procedure.

Several inconsistencies can be noticed in the analysis of SCPS' Annual Report for 2009 in the section addressing conflict of interests.

Firstly, the unequal level of details in the information provided is quite obvious. While some cases enclose all the information and enable the average citizen to draw a conclusion on the specific case, in others the information is extremely vague or too general.

Secondly, the information on the remaining 30 cases⁷¹ handled in the course of 2009 without determining conflict of interests are almost identical with those where conflict of interests was found, in particular the accumulation of functions cases. Since we do not have all the necessary information that SCPC had at its disposal when deciding on the respective cases, we cannot speculate whether the actual situation in some of the cases where SCPC did not determine conflict of interests is contrary to the decision made. Such treatment of potential conflict of interest cases by SCPC however, raises serious doubts in the application of double standards to different cases.

Thirdly, there is a significant discrepancy between the figures on initiated and completed conflict of interest cases in SCPS' Annual Report for 2009 and EC's Progress Reports for 2008 and 2009. This could be due to two possible reasons. In an optimistic scenario, such a difference in the figures results from the different cut-off dates for SCPC's report and the EC's Progress Reports, and in a pessimistic scenario, the difference is due to incorrect data provided in one of the listed reports.

⁷¹ SCPC, Annual Report..., p.45-48

5.4 Eyes Wide Shut

Two particular cases of potential conflict of interests were not listed among the cases initiated by SCPS, but are listed in the report. These cases provoked public interest for a long time. The first one concerns (now the former) President of SCPC, Mirjana Dimovska, who the public believed was a person with serious accumulation of functions. Even if that information was not 100% true, or even an issue of „permissible“ form of accumulation of functions, it would seem logical for the SCPC to initiate a procedure (without Dimovska’s direct participation, of course) to investigate such allegations. Initiating such a procedure stems from the responsibilities and competences of SCPC stipulated in the Law on Conflict of Interests, not to mention the basic logic for acting in a functional legal state.

The second case concerns the now infamous National Agency for European Educational Programmes and Mobility (hereinafter: National Agency), whose high management was involved in giving grants to non-governmental organizations with which they were closely related through their founders, members, or managerial structures. Without going into details of the case which is addressed in Part 8 of this report, we would like to emphasize that pursuant to the current Law on Conflict of Interests (which was identical in contents at the time of this case was disclosed), personal interests of public officials include membership in citizens’ associations and foundations, as well the membership of their close relations in citizens’ associations and foundations. Despite the common knowledge of the existence of such conflict between professional and personal interests with some (now) former high managerial staff of the National Agency, SCPC did not take any action. Although legally obliged and authorized to deal with

such cases, as stipulated by the Law on Conflict of Interests, SCPC remained passive, and the case was finally resolved (at least in regard to the established conflict of interests, without going into details as concerns the potential criminal and misdemeanour responsibility) by intervention from higher level authorities, namely the Government of the Republic of Macedonia, but only because of the enormous public pressure.

5.5 Conclusions and Recommendations

All shortcomings noted in regard to the enforcement of the Law on Conflict of Interests stem primarily from the way SCPC operates. According to the applicable legislation in the relevant field (and positively assessed by the EC), SCPC holds the exclusive authority to enforce most of the provisions from the respective law, and thereby is most responsible for its consistent application. Problems pertaining to the operation of the SCPC were clearly indicated in the 2009 Progress Report, where it was criticized for its passive attitude as regards the implementation of the anti-corruption policy (in general), as well as its limitations when playing „supporting roles“ of SCPC members.

Therefore, improved enforcement of the Law on Conflict of Interests should be sought primarily in enhanced operation of SCPC, by strengthening its capacities to fully implement all legally stipulated duties and competences, and securing its full independence. In the wake of this year’s EC Progress Report, we propose the following:

- Analyze in detail the operation of SCPC for the entire period in order to identify all weaknesses and propose specific measure to overcome them. Current staff changes made to SCPC management

could trigger such improvements, and secure the necessary positive atmosphere for implementing necessary reforms.

- SCPC must, as soon as possible, take a decision in the case of the Deputy Prime Minister responsible for European Integration, Vasko Naumovski, concerning his employment at the Law Faculty at the University „Ss. Cyril and Methodius“ in order to demonstrate to the public that it has moved from words to deeds.
- SCPC must revise its 2009 Report and provide more information for the cases where information is scarce or successfully sugar-coated, and
- SCPC must provide public information on the case „Tutunski Kombinat – Prilep“, for which it initiated a procedure in the past. This case has been brought to the public attention again with the Government's (and Parliament's) decision to write-off company's debts. SCPC must explain why the respective private company is treated as public.

6. EXCELLENT CIVIL SERVANTS, UNSATISFIED CITIZENS

Public administration is the “bottleneck” of Macedonian society. For a long time now, the authorities are making efforts to create a small, efficient, effective and modern administration that would justify its existence by means of providing good services to the citizens, as – ultimately – citizens are their employers. Macedonia however, still has an enormous and inefficient administration, full with political

party soldiers accountable to their political leaders, instead of the citizens. In addition, the Government spends a great deal of energy on designing ways to demonstrate reforms without having to deprive itself from using public administration as an employment agency for its loyal political party members.

The EC and the Government specified the way public administration reform will be monitored in this area on 5th February 2010, and set the indicators against which progress will be measured in 2010. Not surprisingly, this year the EC will require: *“full compliance with the provisions and the spirit of the Law on Civil Servants to secure recruitment, performance assessment and career advancement based on transparent and merit-based criteria, including the period prior and after the selection and full implementation of the most recent amendments to the law and alignment of other special laws with the Law on Civil Servants”*⁷². As regards reform implementation, the EC expects *“the Committee on Public Administration Reform to efficiently lead the reform process by coordinating all relevant institutions at all levels and to develop monitoring and evaluation instruments in compliance with the conclusions of the committee and to implement the Strategy on Public Administration Reform”*⁷³. Considering the fact that the reform mostly depends on human resources, the EC insists on *“implementation of the recommendations provided by the State Audit Office concerning human resource management and internal organization, with a special emphasis on temporary recruitment, recruitment of members of ethnic communities, internal audit and control systems”*⁷⁴. And what does the Government do?

⁷² Revision to the Accession Partnership, 5 February 2010, p. 4-5.

⁷³ Ibid

⁷⁴ Ibid

6.1 How do we make it look like downsizing?

The Civil Servants Agency (hereinafter: CSA), in compliance with its legal competences, keeps the Register of Civil Servants, which is the single electronic database on civil servants. In March 2010, CSA published its “Annual Report on the Register of Civil Servants for 2009”, which reflects the situation as regards civil service up to 31.12.2009. According to the data published, the total number of civil servants in the Republic of Macedonia by the end of 2009 was 11,130. This figure includes civil servants employed in the executive government, independent state authorities and their expert services, as well as in local government.

Compared to 2008, the number of civil servants in 2009 is significantly reduced due to the introduction of the category of *tax officers* from the Public Revenue Office⁷⁵, *cadastre officers* from the State Geodetic Institute⁷⁶ (Real Estate Cadastre Agency), as well as the category “*court administrators*” pertaining to the people employed in the courts in the Republic of Macedonia⁷⁷. By losing their status of civil servants these persons ceased to be an obligation of the CSA thus, the CSA will not collect and process data on these employees and they will not be registered in Civil Servant Register.

The following table summarizes the data on the number of civil servants in the years 2008 and 2009. The data is obtained from the Register for the respective years.

| | 2008 | 2009 |
|---|---------------|---------------|
| Executive government | 8,289 | 7,826 |
| Independent state authorities and their expert services | 396 | 741 |
| Court administration | 2,037 | * |
| Local government | 2,481 | 2563 |
| TOTAL: | 13,203 | 11,130 |

* *Note: For 2009, the technical staff in the courts who still have the status of civil servants are listed under the category “independent state authorities and their expert services”.*

The report was prepared according to determined rules⁷⁸, but it does not give the number of civil servants recruited in the course of 2009 or the number of civil servants employed in the Public Revenue Office, State Geodetic Institute and court administrations, who lost their status of civil servants. The recent amendments to the Law on Civil Servants from March 2010⁷⁹ reduce the scope of civil service, meaning that as of 12th March 2010, the employees in the Real Estate Cadastre Agency are exempted from the scope of civil service. The response of the Parliament’s opposition was fierce as they did not support such changes.

⁷⁵ Amendments to the Law on Public Revenue Office, “Official Gazette of the Republic of Macedonia” no. 6/05, 81/05 and 81/08.

⁷⁶ Law on Real Estate Cadastre, “Official Gazette of the Republic of Macedonia” no. 40/08.

⁷⁷ Law on Court Service, “Official Gazette of the Republic of Macedonia” no. 98/2008.

⁷⁸ Rulebook on the contents of the Annual Report on the Register of Civil Servants (“Official Gazette of the Republic of Macedonia” No. 1/2007) and Rulebook on the template and contents of registration forms for civil servants (“Official Gazette of the Republic of Macedonia” No. 8/2008).

⁷⁹ Official Gazette of the Republic of Macedonia, No. 35/2010.

6.2 Law on Public Servants – an Example of (Non) Inclusive Policy

11th February 2010, the Government submitted the draft-law on public servants to the Parliament. The rationale for the adoption of such a law was based on the recommendations from the GRECO Report⁸⁰, i.e., the second round of evaluation for the Republic of Macedonia adopted on the 25th plenary session (Strasbourg, 10-12 October 2005). Notably, Recommendation VIII refers to *“the establishment of a legal framework based on modern public administration principles for a large number of public servants that would be, to the extent possible, appropriate to the regulations governing civil servants”*. The rationale emphasizes that *“this law stems from the National Program on the Adoption of the Acquis”*.

In this context, it should be noted that this law is anticipated in NPAA however, the question to be raised is “why is it mentioned in Chapter 23 – Cooperation in the Field of Judiciary and Fundamental Rights, and not in the Political Criteria?” Namely, if the Law on Civil Servants (whose scope is smaller than of the Law on Public Servants) is part of the political criteria, why is this law (with a larger scope) part of the cooperation in the field of the judiciary and fundamental rights, especially knowing that NPAA lists the Strategy on Public Administration Reform under the political criteria!?

Nevertheless, the draft-law has already passed the first reading in the Parliament and is now in its second reading stage. In the first phase the law was supported by the MPs from the ruling coalition and criticised by the opposition, trade unions and civil society organizations. The

remarks and criticism pertained mainly to the following:

- The draft-law suspends the primary Labour Law as well as Article 32 from the Constitution of the Republic of Macedonia, where it is stipulated that *“labour rights shall be governed by law and by collective bargaining agreements”*, while the draft-law does not provide for a collective agreement, although it governs the labour rights of more than 100,000 employees.
- The law is being adopted without consultations with the trade unions, although it penetrates the area of labour rights and relations, which is contrary to the declared constitutional principle on economic and social dialogue. Apart from the trade unions, the employers were not consulted either.
- The provisions on “redeployment of public servants from one institution to another” are imprecise, while the recruitment instruments, in particular the “internal open calls” and the possibility for redeploying employees to different posts are inconclusive, without any restrictions in terms of time and geographical location and based on the discretionary right of the employer.
- No law can regulate the right of employees to association and organization into trade unions, as that right is guaranteed by the Constitution. This draft-law however, stipulates that *“for the purpose of exercising their economic and social rights, public servants shall have the right to establish trade unions pursuant to the law”*.
- Disciplinary measures imposed on public servants by the managers of the institutions and only by means of a previously submitted written report from the supervisor is direct violation of presumption of innocence.

⁸⁰ Group of States Against Corruption within the Council of Europe.

- Public servants' salaries are dramatically reduced (up to 70%), in the period when a procedure is initiated against them, but deadlines for the duration of the procedures are not set.
- Data in the Register of Civil Servants acquire the status of classified data, which directly makes the number and qualifications of public servants non-transparent.
- The procedure and the consequences of performance assessments, including the number of assessments of public servants are inappropriate, difficult to apply and motivated by the need for political party cleansing within public administration.

The public debate organized by the National Council for European Integration within the Parliament was the only opportunity for civil society organizations and trade unions to express their opinions. At the event, the trade union expressed its dissatisfaction with its exclusion from the law-making process, although the European principles imply its involvement as a social partner. This is particularly important in the context of the Review of the Accession Partnership from 5th February 2010, where the Government is expected to: *"to improve the implementation of the Government's Strategy and Action Plan for cooperation with the non-governmental sector; to improve the consultation mechanisms of the Government and local self-government units with the civil sector"*.

Union representatives requested the draft-law to be withdrawn from the Parliamentary procedure immediately and to enable a period of at least two months for improvements of the text⁸¹. This request was based on the allegation that the solutions offered in the law were

full of inconsistencies and could not be corrected by amendments. The Secretary of the Administration Employees' Union, Pece Grujovski, pointed out that: *"the Government and the Union in Slovenia were preparing the Law on Public Servants for whole 4 years prior to its adoption. The fact that no public service employee knows anything about the law, i.e., they have no information on the law and what it means for their current posts"*. The Alliance of Trade Unions in Macedonia threatened to contest the law in front of the Constitutional Law, if adopted.

Experts, in the same token, commented that although the Government's idea for adopting such law is good and in line with the public administration reform, significant loopholes remain and therefore a completely new design of the law is required. This opinion was shared by the experts involved in the drafting process, whose suggestions were discarded by the governmental teams.⁸²

6.3 NPAA – Excuse for New Employments?

According to CSA data⁸³, in the course of 2009 a total of 298 consents for new recruitment of 1,609 civil servants were issued, 171 of which concerned employment of 329 servants in local government. Moreover, CSA issued 87 consents on contractual redeployments (without an open call) for a total of 592 civil servants. Six of the open calls announced concerned the employment of 701 servants – members of ethnic communities and 525 civil servants pursuant to NPAA, meaning that

⁸¹ "Dnevnik", 6 March 2010.

⁸² "Utrinski Vesnik", 6.03 2010 <http://www.utrinski.com.mk/?ItemID=FDC35E6984409449B482B05688EB5A82>

⁸³ CSA (2 March 2010), 2010 Operation Report, www.ads.gov.mk

only 33% of the total number of new employments or only 45% of the NPAA anticipated employments⁸⁴. According to the Deputy Prime Minister for European Affairs, Vasko Naumovski, by the end of 31st August 2009, approximately 65% of the NPAA anticipated employments were realised⁸⁵, and 76% were due to capacity building for fulfilling benchmarks. According to these data, it remains unclear how many civil servants were employed pursuant to NPAA and how many were non-related to NPAA, considering the fact that at the beginning of 2009 the Government adopted the decision for “temporary prohibition of new employments in the state administration and in the public sector (except for NPAA and Framework Agreement related employments)”⁸⁶.

Another issue to be raised is the manner in which employments are being planned under NPAA. Notably, how is it possible for civil servants to be employed by August 2009 for benchmarks that need to be fulfilled by October 2009, especially bearing in mind the fact that the Government claimed that 95% of benchmarks were already implemented in November 2008 when our country did not obtain the recommendation for opening the accession negotiations. What are these new employees working on now when the benchmarks are fulfilled?

An interesting fact is that CSA processed a total of 63,772 job applications in 2009, which is an average of 43 applications per job position. CSA complained that it could not obtain exact data on selected candidates since some administration bodies did not forward their recruitment decisions to the CSA, as stipulated by the law.

⁸⁴ SEA (April 2009), Dynamics of Employment Pursuant to NPAA 2009 – 2011 - 1168 employments were planned for 2009.

⁸⁵ Report of the Parliament Committee on European Affairs, 3 September 2009, available at www.sobranie.mk

⁸⁶ <http://www.vlada.mk/?q=node/2749>

Therefore, it is impossible to analyze precisely the new employments in the civil service, which – on the other hand – is one of the indicators for monitoring the selection and recruitment process in the civil service⁸⁷.

In the first quarter of 2010, a total of 48 open calls were announced for 266 vacancies, 28 of which were recruitments of 108 civil servants in local authorities, 18 open calls were for 78 recruitments as anticipated by NPAA and 2 open calls were for recruiting 80 civil servants pursuant to the K2 Account for employment of members of minority communities.

6.4 Million Dollar Question!

Since temporary employments in the state administration were indicated as a negative phenomenon in the last progress reports, we made an attempt to obtain information on the number of people temporarily employed in the state administration bodies, by using the freedom of information (FOI) instrument (See Annex 2). FOI application was also addressed to the Employment Agency of the Republic of Macedonia (EARM), as Article 12 from the Law on Temporary Employment Agencies⁸⁸ provides for a “*copy of all contracts signed for clients of temporary employment agencies should be forwarded to the Labour Inspectorate and the Employment Agency of the Republic of Macedonia*”. The ignorant attitude of EARM could be due to two reasons: 1) EARM does not have the data, in which case it does not perform its duties properly, or 2) EARM has the data, but does not want to disclose them

⁸⁷ CSA (2 March 2010), 2010 Operation Report, www.ads.gov.mk

⁸⁸ Official Gazette of the Republic of Macedonia, No. 49/2006.

despite the obligation stipulated by the Law on Free Access to Public Information, in which case there is a problem with rule of law. Both options are bad news for the Macedonian citizens.

Apart from EARM, answers to our FOI applications were not obtained from the Government of the Republic of Macedonia, the Ministry of Interior, the Ministry of Justice, the Ministry of Environment, and the Ministry of Finance, against which relevant FOI appeals have already been lodged. The answers received on the FOI application concerning the number of temporary employment contracts from other institutions look like this:

| | | |
|--------------|--|-----------------------|
| 1. | Ministry of Health | 28 employees |
| 2. | Ministry of Culture | 19 employees |
| 3. | Ministry of Labour and Social Policy | 27 employees |
| 4. | Ministry of Economy | 8 employees |
| 5. | Ministry of Education | 33 vработeni |
| 6. | Ministry of Transport and Communications | 76 employees |
| 7. | Ministry of Defence | 251 employees |
| 8. | Secretariat for European Affairs | 386 employees |
| 9. | Ministry of Foreign Affairs | 14 employees |
| 10. | Ministry of Local Self-Government | 2 employees |
| 11. | Ministry of Information Society | 92 employees |
| 12. | Ministry of Agriculture | 207 employees |
| Total | | 1143 employees |

To what extent these figures correspond to the actual situation is a different matter altogether. The Secretariat for European Affairs, for example, submitted a figure of “386 employees/months”. What that means is open for deliberation, but one thing is certain – the SEA does not have office space to accommodate so many employees. We are not sure whether this answer successfully covers the actual number of temporary employees at SEA, but we are sure that SEA is successfully overriding the freedom of information institute, which was positively assessed in previous Progress Reports.

Due to the lack of accurate data on the number of civil and public servants, a proposal for establishing a Parliamentary Inquiry Committee to determine the exact number of civil and public servants in Macedonia, both part-time and full-time, was initiated in the Parliament on 12th February 2010. The rationale of the proposal states that *“speculation and doubt would be avoided and the reality would be confirmed that in the last three years the state and public administration was rapidly increased, politicised and that it recruits without criteria, disrespecting the announced open calls, which results in the state and public administration losing its credibility in the eyes of the citizens of the Republic of Macedonia”*⁸⁹. This draft-decision was to be put on the agenda of the next session (93rd), but it has not been discussed as an agenda item yet, although the Parliament’s 99th session was scheduled for 20th March 2010. Whether this item will find its way on the Parliament’s agenda remains to be seen, but the fact remains that non-transparent institutions (in this case EARM) cost the citizens a great deal especially since both EARM and the Parliament receive

⁸⁹ Group of MPs (February 2010), Draft-Decision on the establishment of a Parliamentary Inquiry Committee to determine the exact number of employees at the state and public administration in the Republic of Macedonia, both part-time and full-time employed, www.sobranie.mk

salaries from the taxpayers. Instead of making data available to all interested parties, funds are spent of the Commission on the Protection of Free Access to Public Information, Members of Parliament spend their time ineffectively, and the Parliament demonstrates utterly non-democratic behaviour.

6.5 Erase and Rewind

With the amendments to the Law on Civil Servants from September 2009, the employees at the Real Estate Cadastre Agency acquired the status of civil servants. As a reminder, the adoption of the law with consensus was explicitly required by the EC as a precondition for obtaining the recommendation on opening the accession negotiations. Only 4 months later however - in January 2010 - the Government presented Parliament with a new draft-law that exempted the employees at the Real Estate Cadastre Agency from the scope of the civil service.

The need for amending the law⁹⁰ was explained with the facts that: 1) in September 2009, *“a mistake was made while discussing the amendments thereto”* - but of course, not by the Government, but by the Parliament; and 2) the transformation of the State Geodetic Institute into an Agency was positively assessed by World Bank representatives. The opposition strongly objected and did not support the proposed amendments, thus spoiling the consensus previously reached for which we obtained EC's recommendation, as the law pertains to priorities set in two of the benchmarks (public administration and political dialogue). The opposition reiterated that any country aspiring for EU

membership fosters political dialogue and does not make lapses that would disturb the trust between the political parties⁹¹.

Worth noting is that all of the secondary legislation is already adopted and published on CSA's website, but the Legislative Parliamentary Committee has not determined a clean text of the law yet.

6.6 Human Resource Network - Without Human Resources

In March 2009, the human resource network of the state administration bodies was established and is coordinated by the CSA. The aim of the Network is to develop standards on human resource development and management, to increase the efficiency, effectiveness and quality of civil servants' performance. It is comprised of representatives from HRM sectors/departments from all state administrative bodies, while its operation is secured by the Coordination Working Group (CWG), comprised of 10 members (4 standing members and 6 rotating members - according to their alphabetical order every six months).

29th January 2010, CSA published the *“Report on the realization of measures and activities of the Action Plan for overcoming weaknesses in the operation of HRM sectors/departments at state administrative bodies 2009-2012”*. According to the report, matters related to human resource management at relevant sectors/departments, in terms of full equipping with qualified human resources, including the type and number of functions they will perform is being realised gradually and

⁹⁰ Draft amendments to the Law on Civil Servants, submitted to Parliament 18th January 2010, No. 07-218/1, www.sobranie.gov.mk

⁹¹ Slavica Grkovska Loskova (SDSM), transcript from the Parliament's session held on 11th February 2010.

fully supported by the Government. CSA will coordinate the overall effort in light of achieving standardization of jobs.

The report gives an overview of the realisation rate of activities planned in the Action Plan, as well as the problems encountered. According to the report, Measure 1 (*establishing electronic database on contact persons from HRM departments at state administration bodies*) – has been fully realised and the electronic database is posted on CSA's website⁹². Measure 2 (*establishing effective system of values and standards by establishing HRM sectors/departments at state administration bodies*) – was initiated in 2009, and the exact stage of development of each sector/department has been identified. In 2010, the Network's CWF will start the development and distribution of a sample-template on HRM organizational set-up for state administration bodies currently in the 1 (first) and 2 (second) stage. Measure 3 (*identification of functions to be performed by sectors/departments and their full and appropriate operation*) should result in standardized operation of the sectors/departments, while the draft-version of job descriptions has already been developed and will be adopted by the members of the Network's CWG, and distributed to all network members for comments. In 2010, the Network's CWG will promote the identified job descriptions on an annual conference.

The implementation of the remaining 4 measures was not initiated in the course of 2009.

The report concluded that the main problem faced by the Network's CWG as regards the implementation of the Action Plan is the inconsistent status of relevant sectors. Namely, although the act on the internal organization of state administration bodies anticipates HRM sectors/

departments, they are inappropriately staffed. If this situation does not improve, meaning that if the vacancies at relevant HRM sectors/departments are not recruited (by means of new employments or re-deployment of civil servants), the timetable set equipping the sectors, both in terms of quantity and quality, will not be met. As a reminder, the EC's Review of the Accession Partnership from 5th February 2010 clearly states "*human resource departments should be fully equipped and trained*"⁹³.

6.7 Excellent Civil Servants

Civil servants' performance assessment is a procedure set in the key strategic documents of the Republic of Macedonia. "*Blueprint on Implementing the Recommendations Contained in the EC Progress Report 2008*" was adopted by the Government in November 2008 and anticipates adherent implementation of the Law on Civil Servants, including performance assessment of civil servants.

In compliance with the law, the bodies referred to in Article 3, Paragraph 2 of the Law are obliged to assess the performance of civil servants in the last year by the end of the first quarter in the current year (31st March) and submit the reports thereof to CSA within a month (30th April). No data on the assessed performance of civil servants for the year 2009 was available by the cut-off date for this Accession Watch Report (March 2010).

Nevertheless, CSA's 2009 Annual Report provides a summary overview of civil servants' assessment for the year 2008, which could provide a general idea about the process itself. According to CSA data, by 1st

⁹² <http://www.ads.gov.mk/?ItemID=049E6122BC00B04CAFFA554EF637373C>

⁹³ From the key priority "Public Administration Reform", Indicator 1.4, p. 5.

July 2009, 112 reports were submitted to CSA (50 reports from central administration bodies and 62 from local administrations and the City of Skopje), or 77.7% of the total number of administration bodies obliged to do so. According to the reports submitted by central administration bodies a total of 5,455 servants (88.9%) were assessed, while 683 civil servants (11.1%) were not assessed. Most of the civil servants assessed (3,724 or 68,3%) were evaluated as *“excellent”*, 1,619 (29.7%) were assessed with *“satisfactory performance”*, 99 (1.8%) were assessed with *“partially satisfactory performance”*, while only 13 civil servants (0.2%) were assessed with *“unsatisfactory performance”*.

From the total of 85 municipalities, annual reports were submitted by 62, or 72.9%. The municipalities that submitted performance reports employ a total of 1,950 civil servants, and 1,750 (89.8%) were assessed, while the remaining 198 (10.2 %) were not included in the performance assessment. As was the case with central level civil servants, the vast majority of local level civil servants were assessed with *“excellent performance”* (1,056 civil servants or 60,2%), 669 (38.1%) civil servants were assessed as *“Satisfactory”* and only 20 (1.1%) civil servants were assessed as *“partially satisfactory”*.

Judging by the capacity of our civil servants assessed in 2008, most of them are *“excellent”*. An insignificant number of civil servants (approximately 1%) demonstrated *“unsatisfactory performance”*. Obviously something is not right with these data. These results indicate that either the assessment process was not implemented in an appropriate manner, which means that the reforms are not implemented, or the citizens cannot recognize the *“excellence”* demonstrated by their civil servants, in which case citizens need to be educated.

6.8 Conclusions and Recommendations

Instead of implementing the public administration reform, the Government designs ways to demonstrate *“downsizing”*, without having to do so. The manner in which the Law on Civil Servants was adopted – without consultations and dialogue with stakeholders – is yet another piece of evidence in support of the statement that Macedonia must urgently reform its state administration. The number of temporary employments remains a mystery, although the EARM is obliged to collect such data. NPAA is used as an instrument for recruiting political party members without clear criteria on the need and qualifications of the new staff required. HRM departments are still understaffed, while the Government is questioning the reason for their existence with so many *“excellent”* civil servants. Therefore, the following recommendations need to be implemented:

- undertake an analysis per chapters to identify the deliverables that Macedonia needs to perform in each chapter. This analysis should be in line with the preparations for the accession negotiations, and serve as the basis for the development of position papers of the country. Only then will we know what kind of human resources is required in the state administration.
- equip the HRM departments/sectors.
- improve the coordination of activities on training and education of staff in light of adherent implementation of key documents in this area (the national system on training coordination and in-service training of civil servants in the Republic of Macedonia, Strategy on Civil Servants Training in the Republic of Macedonia 2009-2011)

- increase CSA's budget for 2010, which was cut by 20% in comparison to 2009 budget.
- EARM must disclose the accurate number of temporary employments in the state and public administration.
- secure conditions for involving all stakeholders, in particular the trade unions, in the process of drafting the Law on Public Servants.
- The Government must create conditions for adherent implementation of CSA's key priorities for 2010 as identified in its 2010 operational programme.
- re-examine the manner in which civil servants' performance is assessed.

7. MARKET ECONOMY WITH CENTRAL PLANNING PUBLIC EXPENDITURE

Market inconsistency and irregularities lead to imbalanced markets that require state intervention. Depending on the desired outcome, the state can intervene by undertaking regulatory or other measures, including state aid measures, to achieve a specific common interest objective and encourage economic development in general.

To avoid misuse of state interventions, the EU constantly reiterates the need to increase the quality of public spending by capacity building of the public sector in terms of improved medium-term planning and better budget execution. Hence, it does not come as a surprise that

in its Review of the Accession Partnership from 5th February 2010, the EC requires the Government to: 1) *secure proper follow-up of audit reports published by the State Audit Office (hereinafter: SAO), but also* 2) *develop a framework (plan) on medium-term expenditure*⁹⁴, under the short-term priority on appropriate follow-up of recommendations issued by supervisory bodies, notably in terms of political parties financing and public spending. The reason why the EC monitors political parties' financing and public spending together is reflected in the indicator that states: *"to follow up recommendations issued by SAO and the State Commission on Prevention of Corruption (hereinafter: SCPC), notably in the field of political parties' financing and public spending-related issues and to enable full transparency of public expenditure, in particular transparency of state advertising and sanctioning the irregularities detected"*⁹⁵.

That the ruling coalition is hardly concerned with EU requirements can be seen from the adoption of the law that "bans" any kind of discussion related to the findings of SAO's reports in the Parliament. By that, the Government again, and three years in a row, sends a message to Brussels that it is not a bit concerned with the EU requirements, but that will certainly not prevent the Government – for the millionth time – to go public with the statement that the European agenda of our country is its highest priority. The state of affairs in the field of state aid is subject of analysis in this part of the report.

⁹⁴ Review of the Accession Partnership, 5 February 2010, p. 7

⁹⁵ *Ibid*

7.1 What is state aid?

State aid is any form of financial assistance approved or awarded by central, regional or local government to private companies or state-owned enterprises aimed to resolve certain problems or achieve goals of common interest. State aid however, should be differentiated from public financing. State aid is public financing, but not all financing from state funds is considered state aid⁹⁶. State aid does not imply only direct financial transfers from the central budget, but includes measures that reduce companies' financial burdens (grants, tax credits/exemptions, loan guarantees, favourable interest rates, capital transfers, but also sales and purchase of land under favourable terms and conditions, preferential public procurements, free-of-charge advertising by public broadcasting operator⁹⁷, etc.).

State aid measures can be divided into three groups: horizontal, vertical or sectoral and regional aid. Horizontal aid aims to resolve certain problems faced by all enterprises, irrespective of their location and sector they belong to (aid for small and medium-sized enterprises, for training, employment, research, development and innovation, environmental protection, services of public interest, aid aimed to save and re-structure enterprises facing difficulties in their operator, etc.). Vertical or sectoral aid is intended for enterprises in a particular sector, while regional aid is intended for faster growth of underdeveloped regions.

Essentially, state aid measures have negative effect on competition and thus awarding state aid in the European Union is generally prohibited. Experience has proved that state aid measures are often open to abuse and used to keep companies operating with losses, thereby shifting the burden of structural changes to the successful companies. On the other hand, in certain circumstances, state aid is considered necessary or stimulates growth and development. Indisputable is the positive effect that state aid creates in light of reducing geographical differences in economic development of different regions, or the impact of such measures on SME development and successful performance, on environmental protection or addressing the issue of unemployment. Undeniable is the effect of state aid on the development of particular industries (telecommunications, information technology, etc.), which nowadays are mainstream due to state aid directed towards research, development and innovation. Finally, indisputable is the need for state aid measures for overcoming specific problems that disturb the economy (as was the case with the current financial and economic crisis).

Adequate use of state funds for achieving goals of common interest is therefore essential. Appropriate control is necessary to mitigate the negative effect of state aid on trade and competition and to limit the abuse of state aid measures. Within the European Union, the European Commission is in charge of *ex-ante* and *ex-post* control of state aid measures, whereas in the Republic of Macedonia this role is performed by the Commission on Protection of Competition (hereinafter: CPC).

⁹⁶ Criteria for determining state aid are: state fund transfers, economic advantage achieved due to the assistance awarded to the beneficiary in comparison to other market operators, selective approach, in terms of companies and sectors that will benefit from the assistance and the effect of state aid measures on competition.

⁹⁷ Irrespective of the Review of the Accession Partnership was made on 5th February, the Government continues with state advertising.

7.2 State Aid in Macedonia

In the Republic of Macedonia, the issue of state aid regulation has been in the focus of attention for the last several years, i.e., after the Interim Agreement between the Republic of Macedonia and the European Communities⁹⁸ entered into effect. The knowledge in this field is relatively modest, while its use in the past was scarce. Since Macedonia is a candidate-country, adherent application of competition and state aid legislation, as well as regulations on proper use of state aid measures is of double significance. Firstly, economic operators have to learn how to apply market level playing rules enforced on the European market, and secondly, the state has to learn how to successfully use state aid policy instruments and measures in light of supporting the competitiveness of national economy.

The total sum of state aid approved in the period 2001-2008 pursuant to decisions adopted by the CPC amounts to 64 million EUR. It was disbursed as follows:

| | |
|------|------------------|
| 2001 | 0.2 million EUR |
| 2002 | 2.1 million EUR |
| 2003 | 3.04 million EUR |
| 2004 | 7.5 million EUR |

| | |
|------|---------------------------------|
| 2005 | 6.7 million EUR |
| 2006 | 27.9 million EUR |
| 2007 | 15 million EUR |
| 2008 | 3.8 million EUR ⁹⁹ . |

In the last 7 years, most state aid funds were used for horizontal objectives, primarily addressing unemployment by means of providing assistance for employment and training measures, followed by assistance for promoting culture, for SMEs and for environmental protection.

When comparing 2006 and 2007 data with the Gross Domestic Product (GDP) for the relevant years, it can be noted that in 2006 state aid amounted to 0.55% of GDP, while in 2007 to 0.26%¹⁰⁰. Compared to EU average of 0.59% for 2006, 0.53% for 2007 and 2.2% for 2008¹⁰¹, it is obvious that state aid in Macedonia is way below the average of EU Member-States and in the last 3-4 years it is constantly decreasing¹⁰². No funds have been allocated for research and development, which on the long run negatively affects economic development and the competitiveness of Macedonian products on the European and global

⁹⁹ 2008 data is incomplete and based on decisions made to approve aid posted on CPC's website, www.kzk.gov.mk, as well as from CPC's 2008 report. (updated 24 April 2010).

¹⁰⁰ Commission on Protection of Competition, 2008 Annual Report, Skopje, March 2009, p. 33-39. For more details, visit www.kzk.gov.mk

¹⁰¹ Data on total amount of state aid in the Republic of Macedonia is not available as the 2009 Annual Report of CPC is not published on the website yet, although the last update was 24th April 2010.

¹⁰² Total state aid by Member State as a percentage of GDP, all measures (including financial crisis aid for 2008, available at http://ec.europa.eu/competition/state_aid/studies_reports/expenditure.html

⁹⁸ The Stabilization and Association Agreement between the Republic of Macedonia and the European Communities and their Member States was signed 9th April 2001. SAA entered into force upon its ratification, 1st April 2004. The trade-related provisions however entered into force 1st June 2001 with the separate Interim Agreement signed between the Republic of Macedonia and the European Communities which can be downloaded from: [http://www.sep.gov.mk/content/Dokumenti/MK/Vremena_spogodba_za_trgovija_i_trgovski_prasanja_megju_Republika_Makedonija_i_Evropskite_zaednici\(1\).PDF](http://www.sep.gov.mk/content/Dokumenti/MK/Vremena_spogodba_za_trgovija_i_trgovski_prasanja_megju_Republika_Makedonija_i_Evropskite_zaednici(1).PDF)

market. The general conclusion is that state aid is small, limited to several objectives and has no developmental features, while the effects of aid awarded are difficult to evaluate.

To see the use and effect of state aid as an economic policy instrument, the present report analyzes the writing-off of the interest and re-programming the debt of public enterprises, which – by definition – falls under the category of horizontal aid for achieving public interest¹⁰³.

7.2.1 The case of public enterprises 104

In February 2010, upon the proposal from a group of MPs, the Parliament adopted a law for settling the debt of public enterprises and companies established by the State, including the municipalities and the City of Skopje. The law was adopted in the fast-track procedure, thereby avoiding the obligation to submit RIA (Regulatory Impact Assessment)¹⁰⁵, and missing the opportunity to initiate a broader debate

¹⁰³In EC competition law, services of general economic interest are defined as economic activities defined by the state authorities as activities of special importance for the citizens which would not have been delivered without the intervention (or would have been offered under different, less favourable terms and conditions).

¹⁰⁴Public enterprises and companies established by the Republic of Macedonia, the municipalities or the City of Skopje (Article 1 of the Law on Amending the Law on Public Enterprises, „Official Gazette of the Republic of Macedonia“ No. 49, 14.04.2006), hereinafter public enterprises or PE. According to the information available, there are 83 enterprises and branch offices in Macedonia that provide public services in the following areas: energy, railway, public transportation, road maintenance, airway traffic, telecommunications and postal services, broadcasting, oil and gas pipelines, management of forests, water, pastures and other natural resources, property management, utilities, veterinary services, sport and other activities (Article 2 of the Law on Public Enterprises, „Official Gazette of the Republic of Macedonia“ No. 38/96.)

¹⁰⁵ From 1st January 2009, Regulatory Impact Assessment is enforced, covering several

on alternative solutions to this major problem. The Parliament quickly decided to write-off an unknown amount of interest accumulated for unsettled taxes (VAT, profit tax and personal income tax) and re-programme an unknown amount of tax debts incurred throughout a period of thirteen years with a grace period of three years. Needless to say that such terms and conditions would never be given to the most zealous client of Macedonian banks, while other economic operators can only dream about them in the form of a fifth set of anti-crisis measures of the Government. Equally important is the treatment of other public enterprises that settled their tax liabilities regularly, continuously and diligently, and are now in a disadvantaged position, or even worse - punished for operating in compliance with the law.

The law was condemned by the public¹⁰⁶, and soon contested in front of the Constitutional Court by the Liberal and Democratic Party. The rationale behind this initiative was the fact that the respective law distorts free market and entrepreneurship as fundamental constitutional values in the Republic of Macedonia; that it protects market monopoly and undermines the economic and financial system of the country¹⁰⁷. The list of controversies related to this law does not end here unfortunately. Let's start from the beginning and consider the motives behind the proposal of the law¹⁰⁸.

aspects thereof (costs, effects, etc.), including comparison and selecting an option from several alternatives, i.e., a solution that is not only feasible, but also understandable and acceptable for the stakeholders.

¹⁰⁶Printed and broadcasting media coverage dated 01.02.2010 (the day when the law was enacted) in support of this statement.

¹⁰⁷Full text of the initiative raised by LDP is available at: <http://www.ldap.org.mk/PresoviSooptstenija.asp?rb=54>

¹⁰⁸Rationale attached to the draft-law on servicing debts of public enterprises and companies established by the Republic of Macedonia, the municipalities or the City of Skopje, available at: www.sobranie.mk

The main reason for the adoption of the law was the poor financial situation of the public enterprises (PE)¹⁰⁹. According to the proposer, public enterprises' insolvency was due to increased tax rate from 5% to 18%¹¹⁰ for utility services in conditions when the collection rate was low accounting for 40% to 60%¹¹¹. The law was to secure the collection of matured tax debts and increase voluntary compliance. Notably, only the companies that will obtain a relevant decision issued by the Public Revenue Office (hereinafter: PRO), will be eligible for reprogramming their tax debt and writing-off their interest debt provided they service their current and outstanding tax regularly¹¹².

The rationale behind the law and the discussions that took place in the Parliamentary Committees raise several issues: 1. Why isn't the problem addressed with a solution that would increase collection rates?; 2. Is the low collection rate the only reason why such enormous debts were incurred or are there any other reasons?; 3. Why have non-utility public enterprises accumulated debts when they have no problems in terms of collection?; 4. Why does the law include enterprises performing commercial activities rather than activities of public interest?; 5. If this is a measure for increasing tax compliance, then why isn't it applied

to the private sector as well?; and 6. Does the law provide the most appropriate form of state aid, in compliance with the competition and state aid principles in the Republic of Macedonia? This report considers all of these issues in more detail further on.

7.2.2 No alternative solutions

The payment collection problem for service and/or good provided is an old and common problem for companies both in the public and in the private sector. In that context, it is useful to look into the good practices of other enterprises that managed to find sustainable solutions thereto. A typical example is EVN Macedonia. By designing a long-term strategy and programme, EVN Macedonia, in a relatively short period, managed to increase its collection rate to 94% in 2009 compared to the average collection rate of 60% before that¹¹³. That way, the enterprises would be presented with a permanent solution and in the future they would not find themselves in same or similar predicament. Resolving the problem by adopting such a law only shifts the burden from the enterprises to the citizens.

Another question raised is the following - if the reason for the accumulated debts is the increased VAT rate, then why debt accumulation continued after 2008, when the VAT rate for utility services (waste management) was reduced from a general to preferential rate?. It is only logical to expect tax rates' reduction to indirectly result in a decrease of utility services' fees, and thereby improved voluntary compliance of the users thereof. Obviously, nothing like that happened, and the debts of the utilities continued to accumulate.

¹⁰⁹ The law was debated on the meetings held by the Legislative Committee, Committee on Local Self-Government and Committee on Budget and Financing at the Parliament of the Republic of Macedonia.

¹¹⁰ The preferential tax rate for utility services (waste collection and management) was terminated with the amendments to the VAT Law from 1st April 2003, „Official Gazette of the Republic of Macedonia“ No. 21/2003, only to be replaced with a lower preferential rate of 5% in 2008, „Official Gazette of the Republic of Macedonia“ No. 103/2008.

¹¹¹ Rationale of the draft-law on servicing debts of public enterprises and companies established by the Republic of Macedonia, the municipalities or the City of Skopje and the Report of the Legislative Committee from 2.02.2010.

¹¹² Article 11 from the respective law.

¹¹³ Information available at <http://www.utrinski.com.mk/?ItemID=CFCAC2B8C04B604CAB5095B38D195763>

It is not clear whether, and to what extent, analysis were made and alternative solutions sought to resolve the problem or the single solution looked at was the adoption of such a law. The fact that debts continued to accumulate even after the VAT rate was reduced, points out that the source of tax debts is not the tax rate, but something else. Therefore, a legitimate dilemma is whether this state aid will save the lazy public enterprises from bankruptcy, financially consolidate them and make them solvent, cost-effective, economical and efficient enterprises that can offer quality services at low prices to the citizens or will they need state aid again in the nearest future. Only time holds the answer to this question.

7.2.3 What is the reason behind public enterprises' insolvency?

The adopted law pertains to all public enterprises established by the central or local government, including enterprises performing various activities of public interest (utilities, public transportation, housing, etc.), but also enterprises that perform commercial activities and are predominantly owned by the state. This raises doubts on the justification for the use of state aid. If insolvency problems of utility enterprises originate from their low collection rate, what is the source of financial difficulties faced by the enterprises performing commercial activities, such as the tobacco industry "Tutunski Kombinat TPK Prilep"? Especially surprising is the fact that last year "TKP" was fully "purged" of accumulated debts with the first set of "anti-crisis" measures of the Government, when the company's debts were transformed into state equity for the purpose of privatizing the company. Less than 12 months

after that however, the public learned that the company increased its debt toward the state in the amount of 1.5 billion MKD¹¹⁴.

The fact that public enterprises are used as a powerful instrument for employment of "loyal" political party members is a public secret, as well as the fact that represent a plentiful source of donations for election campaigns. Very likely, the main reason behind these enterprises' financial mishap is the constant feeding of the hunger of political party. This can be supported with the statements given by former mayors of Skopje, high political party officials and the expert public¹¹⁵.

Detailed analysis of the financial reports of the debtors is required to identify the reason for their insolvency – is it due to unpaid bills or maybe other inconsistencies in the operation of these enterprises want to „disguised“ with this law. The case of PE "Macedonian Forests" proves the latter. The enterprise has no collection problems, but has incurred an unsettled tax debt in the incredible amount of 40 million EUR¹¹⁶. Similar is the case of the Public Enterprise for Management of Residential and Business Property (hereinafter: PEMRBP) whose debt is not disclosed, but was known to have invested millions of Euros in purchasing government bonds and depositing money in banks for interest, or even MRTV (public broadcaster) that managed to secure an efficient bill collection system, but it continuously enjoys state subsidies and is currently subject of different investigations concerning

¹¹⁴ Report from the meeting of the Committee on Budget and Financing no. 19-350 from 2.02.2010.

¹¹⁵ „Capital“, issue no. 537 from 11 February 2010, p. 24-30 and statements given for the show „Index“ aired on A1 TV on 1.02.2010.

¹¹⁶ According to the application on tax-based debt reprogram, submitted by PE Macedonian Forests to the PRO.

criminal acts and embezzlements. On top of that, the EC will expect the: *“provision of stable and sustainable financing for the public broadcaster and the Broadcasting Council”, including: 1) amendments to the Broadcasting Law and adoption of relevant secondary legislation, 2) MRTV to secure a reliable system on identifying households subject to paying the broadcasting fee and collection of the fee in compliance with the law; implementation of conclusions reached by the Sub-Committee on Innovations, Information Society and Social Policy in regard to the possibility of initiating bankruptcy procedure of the public broadcaster and 3) MRTV should respond to the warnings of the Broadcasting Council in regard to the breach of basic programme principles and commitments; avoid politicization of MRTV and its potential use for political goals*¹¹⁷.

7.2.4 Double standards

The law was mostly criticised because it protects the monopoly of certain enterprises, thus encouraging unfair competition and promoting unequal treatment of market players. This primarily refers to public enterprises that voluntarily comply, but also to private companies that have government contracts thereby performing activities of public interest. One should not forget other economic operators, in particular trustees of public enterprises that also encounter difficulties in terms of getting paid.

On the other side, the fact that this law provides state aid to public enterprises that perform activities of public interest is undermined. In this case, the state aid granted is the amount of interest written-off by the state for the period until the full debt is repaid, which really

is interest-free long-term crediting. The total sum of state aid in such a form was not determined before the adoption of the contested law, hence the question whether the amount will ever be determined and disclosed prior to the implementation of the law. In addition, it is unclear which form of horizontal aid is used in this case.

CPC's explanation is that the law does not distort market competition and it can only be considered from the viewpoint of state aid awarded. State aid however, is reported only when the enterprise concerned has annual revenue exceeding 50 million EUR, and knowing that none of the listed enterprises has such annual revenue, the CPC claims that there is no room for intervention¹¹⁸. According to CPC, it is a matter of aid awarded for public services. If this is the case, then the fact that certain enterprises that do not perform public services are included on the list raises doubts as regards the compliance of this law with EC legislation on state aid.

According to the rationale for adopting the law, the state aid seems to be awarded to save and restructure the enterprises facing difficulties in their operation, which is additionally confusing. Namely, the basic condition for approving such state aid would imply developed plans and programmes for addressing the problems and reorganization measures. Thus, the only conclusion that can be derived is that this law will provide operational aid to public enterprises, which according to the rules and regulations of the World Trade Organization, EU, and Macedonian legislation is strictly prohibited.

¹¹⁷ Revision to the Accession Partnership, 5 February 2010. p. 7

¹¹⁸ Available at <http://www.vesti.alfa.mk/default.aspx?mId=37&eventId=18276>

7.3 Public enterprises with tax secrets

In the attempt to obtain precise information on the amount of total tax and interest debt due, as well as the names of the enterprises that would benefit from the law, we submitted FOI applications to the Public Revenue Office and the Ministry of Finance, and to the 10 largest state-owned public enterprises¹¹⁹ on 16th February 2010. By the legally stipulated deadline of 30 days, answers were provided by 6 public enterprises and the PRO. PE Water and Sewage Systems and PE Macedonian Postal Services answered that they had no debts, while PE Communal Hygiene – Skopje due to the scope of information requested asked for a prolonged deadline of up to 40 days and then met the deadline. PE Macedonian Forest responded by sending its tax return, while the PEMRBP informed us that the information requested was not public and therefore not subject to public disclosure. The completely different interpretation of the Law on Free Access to Public Information of two different public enterprises is quite surprising. A more creative answer was obtained by the Public Transportation Enterprise (PTE), which by means of a letter kindly informed us that the requested information will be available on its new website. The respective website (www.jsp.com.mk) is operational, but the requested information is still not available. PRO believes that requested information is not subject of free access to information, but tax secret. The Ministry of Finance, MRTV, Macedonian Railways, and Macedonian Roads did not even bother to answer. Public Enterprise on Airport Services (PEAS) submitted an answer after the stipulated deadline due to “justified reasons”, according to them.

¹¹⁹FOI applications were addressed to Communal Hygiene – Skopje, Macedonian Roads – Skopje, Water and Sewage Company – Skopje, Macedonian Postal Services – Skopje, PEAS, PEMRCP, MRTV, PTE, Macedonian Forests and Macedonian Railways.

Almost three months after the law’s adoption and due to lack of transparency of public enterprises and governmental institutions, the Macedonian public does not know the names of enterprises that will benefit from the law, nor the amount of total debt that will be re-programmed and the amount of interest written-off. The only information known comes from the Parliamentary debates when the amount of approximately 50 million EUR accumulated debt was speculated with, which considering the debt information available is highly unlikely. Namely, according to the information received through FOI, the debt of only three PE (Macedonian Forests, Macedonian Railways – Infrastructure and Communal Hygiene¹²⁰, amounts to 77 million EUR. One should not forget that it is a matter of state aid financed with taxpayer money and that public funds are limited and should be used in a cost-effective, transparent manner and pursuant to defined priorities. Public enterprises should apply good governance principles and be accountable, transparent and open. Good governance is the main instrument for fighting crime and corruption in the public sector, therefore, in the Review of the Accession Partnership from 5th February 2010, the EC insists on transparency. The secrecy surrounding most public enterprises only stirs up speculations regarding their malpractices, abuse of public funds and other criminal acts and takes Macedonia further away from the EU.

¹²⁰ See Annex 2

7.4 The epilogue – barrel with no bottom!

The law for reprogramming the tax debts of public enterprises and companies established by the Republic of Macedonia, the municipalities or the City of Skopje is a irrational and unsustainable solution that has not been thought through well which will create more problems than it will solve.

It is not clear which public enterprises will be covered, the amount and structure of their debts, nor their overall financial situation. What is clear however, it that the single “positive” outcome of the law will be to avoid bankruptcy of these public enterprises – which, by law, is not permissible anyway – enabling them to continue delivering public services. In the short run, the survival of these entities is sustainable, but the price will be paid by the taxpayers who will need to pay higher bills for low quality services.

In the long run, the constant coverage of inefficient, ineffective and irrational operation of public enterprises with state funds’ infusion will become unsustainable. Whether these privileged enterprises will manage to consolidate and regularly service their liabilities in future, not only towards the state, but also towards other trustees, along with securing investment in their own development is difficult to imagine. EU integration into the single market, inter alia, implies liberalization of national economy, including public services. Even if public enterprises manage to survive in Macedonian business terms, more than certain they will not survive the European environment, which again will be to the detriment of Macedonian citizens.

The government, yet again, missed the opportunity to undertake essential public sector reforms that would gradually take us closer to

the EU. The aid provider did not condition the aid with any reforms implying internal reorganization, restructuring, and downsizing by getting rid of non-core activities, and establishing public-private partnerships. The economic imperative on continuous investment in innovations, research and development, in new, environmental and smart technologies and human resource development, which can make investment and technology worth-while, is completely missing.

7.5 Conclusions and Recommendations

In times of globalization, the European economy based its survival strategy on human resource development, as well as innovation and environmental protection. Macedonia has no other choice but to follow the European experience and mainstream its limited resources to achieve its strategic goals. In that context, the single purpose of public funds used as state aid must be to enhance national market’s competitiveness and prepare for EU accession. Irrational spending leads to bankruptcy, especially bearing in mind the growing budget deficit and public debt, whose actual figures are unknown to the public in times of severe economic crisis. Therefore, the implementation of the following recommendations is essential:

- make a detailed analysis of the overall financial debt of public enterprises to properly identify the reason for insolvency;
- SCPC must investigate the public enterprises to determine whether the reason for their insolvency is their abuse by the authorities, and if so, SCPC must hold the management teams accountable for their irrational spending;

- the institutions (Parliament, Ministry of Finance, Public Revenue Office) must publish the list of enterprises that will benefit from this aid, along with the specification of their debts and interests;
- state-owned enterprises that perform commercial activities, and not activities of public interest (for example the Tutunski Kombinat Prilep) must not be eligible for the aid anticipated by this law;
- public enterprises that perform activities of public interest that will be approved by PRO for re-programming their tax debt must be obliged to submit restructuring programmes that will be made public;
- municipal enterprises must develop special programmes and/or proposals for achieving higher collection rates and voluntary compliance by considering best practices from Macedonia and the EU;
- public enterprises must draft relevant development strategies and action plans and to commit to their implementation and make them available to the public;
- institutions (state aid providers) must approve public funds in the form of state aid pursuant to the laws targeting small and medium-sized enterprises, regulating competition, regional development, investments and research and development;
- in the future, state aid must support structural reforms to enhance and prepare Macedonian economy for EU membership, and not be used as a social measure.

8. EDUCATION IS STRENGTH, BUT CONNECTIONS ARE POWER!

In the past few months, the operation of the National Agency for European Educational Programmes and Mobility (hereinafter: National Agency) was in the focus of public attention due to the scandalous allocation of European funds, the internal audit performed, the dismissal of the Executive Board and the resignation of the Director, the appointment of the new suspicious Executive Board etc. The institution that was to uphold European values amongst the youth in Macedonia became the nest of political party staff, budget spending and disputable management of European funds.

What is the National Agency? Why is it established and whose money does it spend? Who are the beneficiaries of the first seven grants awarded from the “Youth in Action” Programme? Why is the Law on the Establishment of the National Agency contested in front of the Constitutional Court? Why, after whole four years of financial support and capacity building of the National Agency, it still fails to obtain accreditation from the EU? These are the questions that the present report attempts to answer.

8.1 What is the National Agency?

The 2003 Thessaloniki Agenda undoubtedly ascertained that the place of the Western Balkans is within the European Union. To put words into action, the European Commission secured additional instruments to facilitate the Stabilization and Association Process (hereinafter: SAP). Notably, several new initiatives and financial opportunities were

designed, CEFTA was expanded, the European Charter on Small and Medium-Sized Enterprises started to be implemented, the famous visa liberalization process was promised and, finally, the 2003 Thessaloniki Agenda enabled access to TAIEX and twinning instruments¹²¹ and opened the so called Community Programmes for the Western Balkans.

In compliance with the decision of the European Summit in Thessaloniki from 3rd December 2003¹²², the Western Balkans started to prepare for the Community Programmes of their choice. The Republic of Macedonia expressed interest to participate, inter alia, in “Life-Long Learning” and “Youth in Action” Programmes. Aware of the fact that the Republic of Macedonia does not have sufficient funds, the European Commission provided financial assistance (first through CARDS, and now through IPA) to establish the National Agency, which, once accredited from Brussels, will be able to implement these programmes.

The National Agency was mentioned for the first time in the Government’s 2006 National Programme for the Adoption of the Acquis (hereinafter: NPAA)¹²³, where it stated that *“in light of Macedonia’s active participation in the Community Programmes in the field of education, the establishment of a National Agency for Community’s Education and Training Programmes is anticipated. 50% of the funds for the National Agency will be secured from the central budget and 50% from CARDS¹²⁴”*.

The Government only partially fulfilled this obligation; it established the National Agency on the 20th September 2007¹²⁵, but failed to secure relevant funds in the 2007 central budget. Established to manage two programmes – “Life Long Learning” and “Youth in Action”, 31 month after its establishment the National Agency is still not accredited, i.e., it still has not fulfilled the conditions required for decentralized management of EU funds.

8.2 Accreditation Underway – Four Years in a Row

A great variety of statements have been given by the official staff and written in official documents concerning the accreditation of the National Agency. In the 2008 budget, accreditation was ambitiously announced: *“in the course of 2008, the Agency will complete the accreditation process, which will require the completion of all training necessary for the employees... By means of prompt accreditation of the National Agency, the Republic of Macedonia will be the first country in the region , which from 1st January 2009, will benefit from the funds available under these two programmes on equal footing with all EU Member State.”*¹²⁶. Two years after, the National Agency did not only fail to obtain the accreditation, but managed to generate a dozen scandals, for which we gave duly warning in our Third Quarterly Accession Watch Report¹²⁷. Responding to the question why it has not been accredited

¹²¹ TAIEX – Technical Assistance Information Exchange is a technical assistance instrument used in the process of harmonization with the EC acquis, which enables the countries aspiring for EU membership to use the EU expertise in a given area, while TWINNING is an institutional building instrument that “twins” institutions from EU Member States and the beneficiary country.

¹²² EC COM (2003)748 final of 03/12/2003, http://europa.eu.int/com/external_relations/see/docs/com03_748_en.pdf

¹²³ From March 2006, pg. 329.

¹²⁴ CARDS - Community Assistance for Reconstruction, Development and Stabilization.

¹²⁵ Law on the Establishment of the National Agency for European Educational Programmes and Mobility, „Official Gazette of the Republic of Macedonia“ no. 113/07 from 20 September 2007.

¹²⁶ The 2008 Budget of the Republic of Macedonia (pg. 21)

¹²⁷ Third Quarterly Accession Watch Report “MK@EU: Lisbon – Skopje – Athens”, October 2009, pg. 60.

yet, the National Agency, on 8th June 2009, vaguely explained that *“the accreditation process of the National Agency in Macedonia (and in Croatia) is proceeding according to the operational programme of the National Agency covering a period of 18 months”*¹²⁸. Hopefully, the National Agency understands the meaning of the given statement, as the 2009 and 2010 budgets do not mention the accreditation at all and it is difficult to derive any conclusion as regards late accreditation despite the “achieving” Government.

The former Director of the National Agency, Bosko Nelkoski, said that the accreditation process was initiated in 2009 and that *“the last Roadmap submitted by the European Commission to the Agency indicates the fact that the National Agency is very close to accreditation, which is expected to happen in the 4th quarter of 2010”*¹²⁹. The Government however, in its 2010 NPAA, anticipated a short-term priority for: *“preparation and adoption of the operational programme for full participation in 2011, that would include two sub-programmes, namely “Life Long Learning” and “Youth in Action”...*¹³⁰ which indicates the unlikely outcome that the Government will deliver what it has been promising for the last four years. The Government is not at least troubled with the fact that such behaviour damages the reputation of the Republic of Macedonia; first, by preventing the beneficiaries (primary and secondary schools, kindergartens, universities, civil society organizations, employers, chambers of commerce, youth, etc.) to fully participate and benefit from EU Programmes, and second, by presenting the Republic of Macedonia as an utterly unprepared candidate for EU

membership in the eyes of the Member States. The only thing learned so far by the Government is to “successfully” abuse EU funds which can have far-reaching political consequences on Macedonia’s European agenda.

8.3 Whose money is the National Agency spending?

The National Agency is an independent institution financed by the Budget of the Republic of Macedonia and EU assistance. It is difficult to identify the allocations from the Budget of the Republic of Macedonia, but the European funds are transparent. Notably, the National Agency is the beneficiary of IPA I Component funds for the years 2007, 2008, 2009 and 2010. Apart from capacity building, two other pilot-projects are implemented to test the capacity of the National Agency as regards programme management prior to its full participation therein. Additional funds have been secured from IPA 2008, 2009 and 2010. It should be noted that according to IPA regulations, the funds intended for I Component are spent in compliance with the rule n+1 (n = programming year), which means that IPA 2007 and 2008 must be either put into use or in procedure, while IPA 2009 and 2010 should be used (or put in the procedure) by the end of 2011 and 2012, respectively. To understand better the amounts available for the Republic of Macedonia by the European Union, as well as the purpose of the projects, see the table below.

¹²⁸ Response obtained from Jovan Popovski, Head of Sector on General Education and Program Coordinator for Life Long Learning, 8 June 2009.

¹²⁹ Resignation of the Director of the National Agency, 23 February 2010.

¹³⁰ National Program for Adoption of the EU Acquis (Revision 2010), 29 December 2009

| Year | IPA (programmed) | National budget | Purpose |
|--------------|-------------------|--------------------------------|---|
| 2007 | €0.9 mil. | €0.1 mil. | Preparatory measures – capacity building of the National Agency, information campaign, pilot projects |
| 2008 | €2 mil. | €0.5 mil | Entry ticket and capacity building of relevant administrative bodies |
| 2009 | €2.1 mil | | Entry ticket and capacity building of relevant administrative bodies |
| 2010 | €1.64 mil | | Entry ticket and capacity building of relevant administrative bodies |
| 2010 | €4.84 mil | | Entry ticket for Life Long Learning and Youth in Action and for training on modified regulations, training for the beneficiaries, networking, mobility and partnership international and regional projects. |
| Total | €11.48 mil | € 0.6 mil¹³¹ | Total – €12.08 million |

How much of these funds have been used so far? According to the National Agency, in 2009 it received €161,650 for „Life Long Learning“

Programme, and spent € 157,924.50, whereas last year it received €70,000 for „Youth in Action“ Programme and spent €66,523. For the „successful performance“ in 2009 - as the employees at the National Agency like to say - in 2010 the support will be €1.1 million for „Life Long Learning“ Programme and € 400,000 for „Youth in Action“ Programme. While an open call¹³¹ for proposals was already announced for the „Life Long Learning“ Programme, the „Youth in Action“ Programme has still not been announced, although the National Agency claims that the respective amount of €400,000 will be at their disposal in 2010. The National Agency justifies the late announcement of the open call with „history“: *„Every year, the announcement of the public call is late. Last year (2009) the open call was announced as late as April“*¹³². On the other hand, the Agency for Mobility and EU Programmes of the Republic of Croatia – the agency to which the employees at our National Agency like to be compared to – already announced the 2010 open call for proposals for „Youth in Action“.

The expenditure from the 2009 budget of the National Agency amounted up to 24,657,000 MKD, whereas in the 2010 expenditure side of the central budget an allocation of as much as 86,490,000 MKD, which is 3.5 times more than in 2009¹³³. For 2010, the National Agency anticipates the recruitment of 5 persons¹³⁴ in addition to the existing 16 employees. The salary item of the 2010 budget amounts

¹³¹ Paid advertisement in the daily „Dnevnik“, Saturday issue, 6 March 2010, pg. 10.

¹³² Telephone conversation with Snezana Manceva, Head of Sector for Youth Activities and Coordinator of the „Youth in Action“ Programme within the National Agency.

¹³³ The 2010 Budget of the Republic of Macedonia, Account : 16003, Description: National Agency for European Educational Programmes and Mobility (pg. 104)

¹³⁴ NPAA, Annex, Time Frame of Recruitments under NPAA 2009-2011 (approved for 2009, indicative for 2010-2011) (per Chapter), 27.05.2009

to 11,600,000 MKD, or almost 1 million MKD per month. If five more people are employed by the end of 2010, the total number of employees at the National Agency will be twenty one (21) and each one of them will earn a monthly salary higher than 46,000 MKD (approximately €750) with paid taxes and social contributions¹³⁵.

8.4 Conflict of Interests

The former Director and the current Acting Director, as well as the heads of sectors at the National Agency claim that they make efforts to „create an European institution that would operate according to European principles and rules“¹³⁶ and to “introduce the European dimension and practice in the operation of the educational institutions...”¹³⁷. Their words however, are not matched by their deeds. When the former EU Commissioner for Education, Training and Culture, Jan Figel, awarded the first grants to non-governmental organizations on the event organized in Skopje on 3rd September 2009 on 3rd September 2009, all wheeling and dealing of the Director, the heads of sectors and the members of the Executive Board of the National Agency surfaced. Shortly after the disclosure that „there were suspicious allocation of funds“¹³⁸, „nepotism and selective awarding of European money to

non-governmental organizations“¹³⁹ and that they were disbursed to “... people close to the Director”¹⁴⁰ meaning that „the National Agency awarded funds to a non-governmental organization from Struga, which was previously chaired by the Agency’s Director himself” and to a non-governmental organization from Veles „whose founders were relatives of the Director Nelkoski”¹⁴¹.

According to the Law on the Establishment of the National Agency, the Director, the members of the Executive Board and the employees in the National Agency cannot be programme beneficiaries¹⁴², and if such events happen, they will be fined with an amount equal to the value of 1,000 to 3,000 EUR. Once the grant-awarding scandal was out, additional information on the use of funds from the „Life Long Learning” and „Youth in Action” Programmes surfaced concerned the abuse of funds by the Chairman and the previous members of the Agency’s Execution Board¹⁴³. Confronted with these accusations, the concerned beneficiaries responded by claiming that the funds were not awarded by the National Agency, but by the Directorate General for Education and Culture from Brussels, forgetting that being a member of the Executive Board of the National Agency implies certain advantages (access to information and data not available for other interested parties), which represents a classical case of conflict of interests.

¹³⁵ The 2010 Budget of the Republic of Macedonia, Account: 16003, Description: National Agency for European Educational Programmes and Mobility, Expenditure, Salaries and Reimbursements (pg. 290)

¹³⁶ Resignation of the Director of the National Agency for European Educational Programmes and Mobility, 23 February 2010, www.na.org.mk

¹³⁷ Open public letter, 22.02.2010, www.na.org.mk

¹³⁸ <http://www.strugadenes.com/novosti/koj-ce-upravuva-so-evropskite-sredstva>

¹³⁹ <http://www.globusmagazin.com.mk/default.asp?ItemID=2B3EFD31684CA345B205AD5030A975FB>

¹⁴⁰ <http://www.vest.mk/default.asp?ItemID=B9F05AB295E75B4FB9498ACD770736F5>

¹⁴¹ <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=11310101962&id=9&setIzdanie=21883>

¹⁴² Law on the Establishment of the National Agency for European Educational Programmes and Mobility, Article 21

¹⁴³ <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=11310101962&id=9&setIzdanie=21883>

The heads of sectors of the National Agency published an open letter explaining that: *“the Agency’s Executive Board was changed by the Government of the Republic of Macedonia for being suspected of unethical performance”*¹⁴⁴, but Article 24 of the Law on the Establishment of the National Agency was not applied, according to which Agency employees and the Executive Board members should be fined up to €3,000 if they appear as programme beneficiaries.

Six months after the scandal, the Government changed the Executive Board of the National Agency and appointed new members¹⁴⁵. Immediately after the appointment one of the members was dismissed on the grounds of breaching the provisions of the Law¹⁴⁶. Again, no sanctions were imposed on the Board member.

Who are the new members of the Execution Board? No data is available on the website of the National Agency. Compared to the Croatian Agency, one can notice that their relevant website contains information and details on the members and the Chairman of the Executive Board – their curriculum vitae, educational background and competences. For comparison purposes, the Executive Board of the Croatian Agency includes two PhD university professors, a MA. manager of the National Agency and the manager of the Agency for Vocational Education and Training, whereas the members of the Macedonian Executive Board come from the General Secretariat of the Government,

from the non-governmental organizations referred to in the Law and from the Ministry of Education. It does not include representatives from the academia or prominent people from vocational education – sectors directly concerned. It is unclear why the Government continues to avoid the involvement of stakeholders knowledgeable in the relevant matters that can accelerate European integration, and stubbornly appoints Executive Board members from the Union of Young Members of VMRO-DPMNE? Does this mean that Executive Boards serve as an instrument for awarding political party soldiers with more than decent reimbursements, and are used for other political goals, such as supporting the Facebook group whose logo reads “F.k Greece”?¹⁴⁷

8.5 EURAXESS Scandal

The 2008 and 2009 Progress Reports refer to the participation of the country in the programme aimed to increase mobility of researchers and scholars called EURAXESS. The reports state that *“the country is part of the EURAXESS Jobs Portal and the EURAXESS Service Network, and is in the process of setting up its national EURAXESS Portal and Network”*¹⁴⁸ and that *“the Agency for European Educational Programmes and Mobility, designated as the main body responsible for establishing the national EURAXESS Jobs Portal, as well as the EURAXESS Service Network have not been realised within the contractual time frame”*¹⁴⁹. The EURAXESS Network is comprised of 35 European countries and 200 EURAXESS Centres in all

¹⁴⁴ http://na.org.mk/tl_files/docs/yia/OtvorenoPismoDoJavnosta.pdf

¹⁴⁵ Decision on appointing the Chairman and members of the Executive Board of the National Agency for European Educational Programmes and Mobility from 27 January 2010 made by the Government of the Republic of Macedonia, Skopje, Vladimir Pesevski, M.A., handwritten signature.

¹⁴⁶ Decision on dismissal and appointment of a member to the Executive Board of the National Agency for European Educational Programmes and Mobility from 2 February 2010, published in the „Official Gazette“ No. 28 from 26th February 2010.

¹⁴⁷ <http://www.facebook.com/people/Ivan-Cilev/766486117#!/pages/DUSMANI-EDNO-ZAPAMETETE-SME-POSTOELE-I-E-POSTOIME/198564724879>

¹⁴⁸ 2008 Progress Report, Brussels, 5 November 2008, Chapter 25: Science and Research

¹⁴⁹ 2009 Progress Report, 14 October 2009, Chapter 25: Science and Research

major cities throughout Europe, including the Republic of Macedonia¹⁵⁰, but the website that should host details on EURAXESS in Macedonia is still „under construction“. The National Agency has yet another justification for these unrealised, but assumed responsibilities „... the former Project Coordinator ... was fired ... due to a series of abuses ... frauds and lies...“¹⁵¹. In comparison, Croatia became part of this network and acquired the status of full-member as of 29th June 2009¹⁵².

The consequences of the inappropriate work of the National Agency are obvious in this respect as well – neither our researchers and scholars will find information on EU research projects, nor will EU researchers and scholars show any interest in visiting Macedonia to transfer their valuable knowledge. If it is undoubtedly clear that researchers and scholars from Macedonia still cannot benefit from the possibilities offered by the EURAXESS Programme due to the Programme Manager at the National Agency, who was fired on the grounds of frauds and lies, why is Article 24 from the Law on the Establishment of the National Agency not applied in this case and why is the person who committed „frauds and lies“ not sanctioned with the applicable fines?

We would also like to remind the Government that the European Commission expects: *“effective implementation of the Law on Conflict of Interests in compliance with the 2009 amendments thereto and a sustainable track record in eliminating conflict of interests”*¹⁵³. Now it is up

to the Government to demonstrate that the law is applied to everyone and that the party soldiers of VMRO-DPMNE are not a privileged breed.

8.6 Promoters Promote Promotion

The promotion of the Programmes „Life Long Learning“ and „Youth in Action“ is done by external associates. The so-called contact points for the „Youth in Action“ Programme were selected in the course of 2009 and their names were published on the website of the National Agency on 7th July 2009. Their main task is to implement activities to promote „Youth in Action“ Programme but their contracts with the National Agency last 3 months that are still not extended. In the course of the three-month period, the contact points did not receive any training, promotional materials and therefore advised all interested parties to address the National Agency for all inquiries, which is contrary to the mere sense of their existence.

The open call for proposals for the „Life Long Learning“ Programme was announced in the media on 6th March 2010 with a deadline of 6 days for submission of project-proposals, i.e., by 12th March 2010. Such a short deadline for submission of project-proposals raises the question on the objective behind its announcement. Is the National Agency seeking to obtain serious projects or is the objective to obtain, as it has indicated in the open call, *„untimely, incomplete and inappropriate applications that will not be taken into consideration“*?

5th February 2010¹⁵⁴ for the purpose of promoting „Life Long Learning“ Programme, external associates (promoters) were selected.

¹⁵⁰ www.ec.europa.eu/euraxess

¹⁵¹ Open public letter, 22.02.2010, www.na.org.mk

¹⁵² www.euraxess.hr

¹⁵³ One of the indicators for monitoring the key priority “Establishment of a sustainable track record with results achieved in the implementation of relevant anti-corruption legislation and the implementation of the State Anti-Corruption Program” for this year’s Progress Report for the Republic of Macedonia, 5 February 2010, pg. 4.

¹⁵⁴ Decision No. 02-206/1 from 05.02.2010 adopted by the Director of the National Agency for European Educational Programmes and Mobility.

The list with their names was published on the website of the National Agency as late as 24th February 2010, or only 20 days prior to the expiration of the first deadline for submission of project-proposals.

Some promoters of the „Life Long Learning“ Programme indicated the fact that due to the management changes at the National Agency all activities related to signing contracts were delayed. These promoters are to provide basic information on the Programme, organize meetings with interested parties, distribute promotional materials, benefit from at least 4 training sessions per year, report on activities realised and they are entitled to a reimbursement of 100 EUR per month. However, in reality the promoters have still not signed the contracts, have not received promotional materials and have not attended any training. For all information related to the „Life Long Learning“ Programme, the promoters refer interested parties to visit the website of the National Agency or to directly address the National Agency for inquiries. It is interesting to note that the programme promoter, professor Luan Estrefi from Tetovo, has listed his e-mail address as the rector of the South-East European University in Tetovo as a contact point.

As a reminder, the European Commission also expects: *“the implementation of Life Long Learning to continue ...”*¹⁵⁵, which does not imply appointing promoters who do not know what they are promoting.

¹⁵⁵ One of the indicators for monitoring the priority on employment and social policy for this year's Progress Report for the Republic of Macedonia, 5 February 2010, pg. 6.

8.7 (Un)rule of Law

The developments at the National Agency prove that law does not rule in Macedonia. Namely, the Law on the Establishment of the National Agency stipulates that the appointment of the Agency's Director will be made by means of a previously announced open call by the Executive Board within a period of 15 days from the expiration of the open call¹⁵⁶. Thirty seven (37 days)¹⁵⁷ went by since the appointment of the new Executive Board of the National Agency¹⁵⁸, thereby indicating a breach of the legally stipulated deadline of 15 days. The former Director of the National Agency submitted his irrevocable resignation 28 days after the appointment of the new Executive Board. One day after the announcement of the open call for the appointment of the Agency's Director, the Executive Board appointed an Acting Director who comes from the Agency of Youth and Sport, again violating the provisions from Article 18 of the Law, according to which *“... the Executive Board, without announcing an open call, shall appoint an Acting Director from the line of the employees at the National Agency”*.

Six months after the scandal related to the grant-giving process, the Government decided to dismiss the Executive Board of the National Agency and appoint a new one without explaining the reasons for the

¹⁵⁶ Law on the Establishment of the National Agency for European Educational Programmes and Mobility, Article 27, paragraph 3.

¹⁵⁷ Open call No. 01/2010 for the selection of the Director of the National Agency for European Educational Programmes and Mobility, „Dnevnik“, 04.03.2010

¹⁵⁸ Decision on appointing the Chairperson and the members of the Executive Board of the National Agency for European Educational Programmes and Mobility from 27 January 2010 taken by the Government of the Republic of Macedonia, Skopje, Vladimir Pesevski, M.A, handwritten signature.

dismissal thereof. The Minister of Education¹⁵⁹ responded at a later stage by stating that the Ministry of Education will audit the work of the Agency, while the State Commission for Prevention of Corruption¹⁶⁰ announced that it will consider the case and investigation whether any possible conflict of interest might be in place.

The Law on the Establishment of the National Agency is contested in front of the Constitutional Court. Notably, on 16th February 2010, the Constitutional Court of the Republic of Macedonia was presented with an initiative¹⁶¹ for assessing the constitutionality of the provision according to which *“the Executive Board is comprised of a Chairperson and four members, those being as follows: one representative from the Ministry of Education and Science, one from the Ministry of Finance, one from the Macedonian Youth Press and two representatives from the Council of Youth NGOs”*¹⁶². Why are these non-governmental organizations specified in the law will be the subject of the ruling of the Constitutional Court, as well as whether their specification doesn't put other stakeholders (citizens' associations) in an equal position?

8.8 Conclusions and Recommendations

While the EU is making efforts to open as much possibilities as possible for the benefit of our citizens, our „creative“ Directors, Managers, Chairpersons of Executive Boards and their non-governmental organizations create „opportunities“ for channelling European money into their own pockets and into the pockets of their political parties. How else can one explain the fact that despite proven guilty, these people go by unsanctioned? If such scandals are to occur with the preparatory activities and pilot-projects, where the National Agency is to demonstrate its capacity, independence and competence, what can one expect later on, when it will manage much higher amounts? Therefore, put in the current „construction vocabulary“, we raise these questions: 1) Are the foundations on which the National Agency is built solid? And 2) Can the floors and the roof be built on such foundations?

Hence, we propose the following:

- Amend the Law on the Establishment of the National Agency, in particular the provisions concerning the management structure. First, change the number of board members from 5 to 7, those being: one representative from the Ministry of Education and Science and one from the Ministry of Finance, three representatives from youth organizations, and two representatives from the educational sector, one from the field of formal education and one from the field of informal education.
- The Executive Board should be selected on an open call, which will clearly indicate that the organizations whose representatives will

¹⁵⁹ <http://www.vest.mk/default.asp?ItemID=B9F05AB295E75B4FB9498ACD770736F5>

¹⁶⁰ <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=116101022494&id=9&setIzdanie=21886>

¹⁶¹ Initiative for raising a procedure for assessing the constitutionality of the Law on the Establishment of the National Agency for European Educational Programmes and Mobility, submitted by the Foundation Open Society Institute – Macedonia.

¹⁶² Law on the Establishment of the National Agency for European Educational Programmes and Mobility, Chapter III, Management of the National Agency, Section: Management Body, Article 12, Paragraph 3.

be selected members of the Executive Board will not be eligible for grants from the National Agency.

- Immediately enforce Article 24 from the Law on the Establishment of the National Agency thereby demonstrating rule of law in Macedonia and proving that obedient VMRO-DPMNE party soldiers are not special breed.
- Immediately establish the structure for implementing the EURAXESS Programme.
- Appoint expert and experienced staff on managerial positions at the National Agency and as members of the Executive Board.
- Publish annual and audit reports of the National Agency, as well as the basic operational documents (the Statute, annual programmes, legislative acts etc.) on the website of the National Agency to establish better cooperation with the public and the stakeholders, as one of the main principles of the National Agency.



CONCLUSIONS AND RECOMMENDATIONS

Our analysis shows that in the period January-March 2010 instead of getting closer to the EU, the Republic of Macedonia is moving furthering away. The name issue with Greece is not solved and reforms are not implemented. The Minister of Foreign Affairs, Antonio Milosevski, convinces us that the negotiations (or talks, as the governing officials like to put it) are on-going “discretely” and away from the eyes of the public. Unfortunately, there are no signs on any progress that would instil hope that the EU June Summit holds positive outcomes and Macedonia will obtain the date for starting accession negotiations.

Reforms are implemented, but not those required by Brussels. The analysis also shows that in the last two months the Government succeeded in compromising most of what was assessed as achieved in the last EC Progress Report, on the grounds of which Macedonia was granted recommendation to open accession negotiations. Review 2010 was not forwarded to other ministries and state institutions, let alone the Parliament.

The Government is very much closed and utterly non-transparent, while the public is served strictly controlled information. The institute freedom of information is partially functional, and the information obtained in this manner is obsolete (45 days old), when it is too late to undertake measures to correct matters in different areas (for example, Parliament's vote to ban discussions on the findings in SAO reports). Some public enterprises had their interest written off and debts serviced, while no information was given about the amount of money in question and without Regulatory Impact Assessment, which the Government must respect as a legal obligation. This only confirms that the Government applies the strategy "less is more", or the less the public knows the better people accept VMRO-DPMNE's 100 steps.

The Parliament operates as an extended arm of the Government, thus undermining the democratic capacity in the country. The Committee on European Issues and the Joint Parliamentary Committee EU-Republic of Macedonia are invisible and do not play the role they were initially established for. We witness the boycott of the MPs from VMRO-DPMNE of the meetings of the National Council for European Integration and the Committee for Interethnic Relations. The new Rulebook is nowhere to be seen, and the project "Skopje 2014" cannot find its way onto the Parliament's agenda although it will be financed with budget funds. Some questions never get an answer, even when asked by MPs on sessions dedicated to Parliamentary questions.

1. EU NOW!

The more time goes by, the more we hear that aggravated interethnic relations is just a rumour used to scare the citizens, and that *"there will be no Third World War if a solution to the name issue is not reached by June"*¹⁶³, that every EU Summit is publicly projected as the last chance for resolving the name issue to obtain a date to start accession negotiation, but in actual fact there would be new EU Summits. Obviously, this alludes that it wouldn't be that terrible even if a date for opening accession negotiations is not granted on the Summit in June during the Spanish Presidency.

If on 7-8 December 2009, Macedonia was mentioned in the Conclusions of the Swedish Presidency¹⁶⁴, one month later (18 January, 2010), the EU Presidency's website posted a document entitled *"Outcomes of the Swedish Presidency"*¹⁶⁵ where Macedonia is not even mentioned. Notably, under the enlargement section, it mentions the agreement reached between Croatia and Slovenia, that Turkey continues with the accession negotiations in the Environment Chapter, that Montenegro, Albania and Iceland submitted their applications, that Iceland might even start accession negotiations in spring, and that the Interim Trade Agreement between EU and Serbia went into force. Not a word on Macedonia! The fact that the most inclined Presidency for Macedonia,

¹⁶³ Statement given by Ali Ahmeti, who first threatened to leave the coalitional Government if the name dispute was not resolved by June, but later reiterated.

¹⁶⁴ Concil conclusions on the enlargement/stabilization and association – General Affairs Council, Brussels, 7 and 8 December 2009; www.se2009.eu/polopoly_fs/1.27005!menu/standard/file/111830.pdf

¹⁶⁵ http://www.se2009.eu/en/meetings_news/2009/12/16/outcomes_of_the_swedish_eu_presidency

at the end, did not even include the country in its results (and in reality, despite all efforts – there were no results).

During the Swedish Presidency, and now during the Spanish Presidency, the Government showed no initiative to impose itself on the European scene. During the Swedish Presidency, we saw diplomatically active government officials, but instead of targeting EU Member States, they travelled to the states of our diaspora, such as Australia, promising expatriates that they will not forsake the name. If one analyzes the Ministry of Foreign Affairs's Strategic Plan 2009-2011, along with its Action Plan¹⁶⁶, one will notice that EU is modestly represented therein, which is quite odd for a country that has set EU accession as its priority.

During the Spanish Presidency, the Government is rather passive and continues to visit countries outside the EU (for example, China), while it has reduced the budget for visiting European countries. Apart from Minister Milosevski's statements that discrete name negotiations are underway, almost nothing is happening in relations to Greece, while on the domestic scene, the debate between the so-called "patriots" and "traitors" is deepening.

For the sake of comparison, in the last few months Serbia has undertaken actions clearly targeting the Spanish Presidency. At the end of last year, the Vice President of the Government of Republic of Serbia, Bozidar Gelik visited Spain and together with the Spanish Government paid his respects to the Spanish civil war victims originating from the former Yugoslavia. A direct airline Belgrade-Madrid was also promoted recently. In the period 7-9 May, the Serbian Government will organize

a major youth conference with more than 400 participants (including Macedonian youth)¹⁶⁷ to discuss the Western Balkan's role in the EU in terms of young people's future. Youth will be received by the President of the Government, but also visit the Ministry of Education and Sport, and welcomed by the Mayor of Belgrade. Early this year, Boris Tadić offered to act as facilitator in the dispute between Macedonia and Greece in light of finding a faster solution thereof¹⁶⁸, and in March he organized an exhibition of Serbian icons in Madrid. Clearly, Serbia, slowly but surely, is profiling itself as the leader in the region, although only 4 years ago, Serbia was not even close to the EU. And what is Macedonia doing to increase its visibility? Judge for yourself!

2. WHERE THERE'S A WILL, THERE'S A WAY

As of July 2011, EU priorities will shift as the EU faces many internal issues such as the economic crisis, the drafting of the new Lisbon Strategy 2020, and the upcoming consultations concerning the new financial framework 2013-2020 that creates major commotion between the European Commission, the European Parliament (has the right to veto the allocation of funds under the Structural Funds), the Council and the Member-States. In such a predicament, Macedonia and its "unreasonable" (as qualified by most Member-States) problem with Greece seems quite irrelevant.

¹⁶⁶ <http://www.mfa.gov.mk/Upload/ContentManagement/Files/strateskiot%20plan%202009-2011.doc> strateski plan 2009-11

¹⁶⁷ Youth Education Forum is the partner organization from Macedonia in the organization of the event.

¹⁶⁸ <http://www.a1.com.mk/vesti/default.aspx?VestID=118312> Belgrade Ready to Mediate in the Name Dispute.

From this perspective, it is politically naïve to believe that Greece will come to its senses one day if we can only endure long enough, or that other EU Member-States will insist on Macedonia getting the date because the Enlargement Policy would not produce the desirable results. Ultimately, Enlargement Policy results will be there, but in the backyard of Iceland, Croatia, Albania, Montenegro, and even Serbia, while the Eastern Partnership countries will become more and more interesting. Thus, misconceptions of the kind “the EU can wait, but we will not deform ourselves” could have far-reaching consequences, more than the Government would like us to believe.

There is only one month until the Council’s meeting (17-18 June). Macedonia must find a way to impose itself on the European agenda and insist on getting a date. The actions we propose in that regard include the organization of a joint conference in the nearest future for the purpose of: a) sending the message that Macedonia must get a date for opening accession negotiations, as bilateral disputes are not part of the Copenhagen Criteria, and the date must be set on the upcoming Summit in June during the Spanish Presidency; and b) to present the name issue to the broader European public and explain that Macedonian citizens, from one reasons or another, feel that their identity is at stake and insist on getting certain guarantees on the preservation of the Macedonian language as the main feature of our identity, but also as part of European values.

This conference should be a joint initiative of the Joint Parliamentary Committee and should take place in Brussels two weeks prior to the EU Summit. On the Macedonian side, the conference should be attended by Members of Parliament (including all parliamentary groups), renown think-thank organizations from Macedonia, journalists with significant

knowledge from covering the name dispute and renown human rights activists. Apart from Members of the European Parliament, all influential media with Brussels-based outlets and renown think-thank organizations based in Brussels (such as the International Crisis Group, the Institute for European Politics, the European Stability Initiative, etc.) should be invited to the conference, and – of course – think-thank organizations from Greece, and if feasible, Greek MPs.

The topics to be discussed fall into three sections. The purpose of the first topic would be to openly discuss the name dispute, but from a civic perspective of both countries. This topic could be titled “*Comprehending the Incomprehensible*” and would include three key note speakers, those being: one Macedonian journalist (who covers the name dispute and would speak on Macedonian public opinion), one Greek journalist (who would present the opinion of the Greek public) and one representative from an European think-thank organization, an opinion-maker in EU, who would view the dispute from the European point of view.

The purpose of the second topic would be to discuss the consequences of the current standstill in terms of EU Enlargement Policy and could be titled “*After June 2010*”. This topic would also include three keynote speakers, those being as follows: one Macedonian representative from the non-governmental sector (who would speak on nationalism versus Europeization of the Balkans), one representative from the academia (an Albanian-Macedonian who would speak on destabilisation versus European integration) and one representative of a Macedonian think-thank organization dealing with EU issues (who would speak on the Copenhagen Criteria versus the new Athens Criterion).

The purpose of the third topic would be to discuss future steps and consequences of Macedonia's current blockade and could be titled "*Quo Vadis, EU*". As was the case with other topics, this one would also imply three keynote speakers: one Macedonian human rights activist (discussing the Framework Agreement as an European model of interculturalism), MEP Zoran Taler (who would reiterate the idea on developing a Roadmap for the Western Balkan) and a MP from Macedonia (who would speak on the identity as an European value and would request the signing of a Declaration that could guarantee Macedonian language and identity). A parallel could be drawn between the 1992 Lisbon Declaration that served as guarantee that the then forthcoming Maastricht Treaty would become operational as regards the Common Foreign and Security Policy and this (let's call it Brussels Declaration) that would serve as guarantee that the Lisbon Treaty is truly a reform treaty, where enlargement is still seen as the best instrument for achieving peace, stability and prosperity in Europe.

Things must not be left to chance therefore a policy brief should be developed for the conference that would argument the reasons for Macedonia obtaining the date in June. The policy brief should be communicated to all EU and Macedonian media prior to the conference. The Declaration should also be pre-drafted and distributed to all conference participants.

This conference is anticipated as an initiative of the Joint Parliamentary Committee, and the keynote speakers do not include Government representatives because of two reasons; first, because the Governments have other instruments at their disposal to lobby for the date (diplomatic meetings, negotiations, committees, etc.); and second, to demonstrate to the European public that other sectors of the

Macedonian society are concerned about EU accession. Certainly, the Government's presence on the conference is essential, but the initiative and organization thereof must originate from the Parliament.

3. WHAT ELSE CAN BE DONE?

The conclusion of the present analysis is that Macedonia's European integration is seriously hindered and that the basic precondition for Macedonia's progress in the EU is the resolution of the name dispute with Greece. Macedonia must obtain the date to open accession negotiations NOW, not in several years or decades, as there might not be a Third World War after the Summit in June if Macedonia does not obtain a date, but that would seriously destabilize the country, both politically and economically.

In addition to the recommendations laid out after each topic analysed in this Accession Watch Report, Macedonia must take few important actions, those being:

- The Government must deliver the promised Action Plan that addresses the remarks contained in the 2009 EC Progress Report. Considering the fact that the Review 2010 is indeed a short document, the Government should develop a new Action Plan aimed to fulfil the indicators set therein;
- The Government must communicate the Review 2010, along with the Action Plan to all line ministries and other public institutions that are expected to deliver results by October, which is the cut-off date for EC's Progress Report for the Republic of Macedonia. The same

document should also be communicated to the Parliament, while the Committee on European Issues, the Committee on Interethnic Relations and the National Council for European Integration should discuss it on their relevant meetings and adopt conclusions to be considered on the Parliament's plenary session;

- The Ministry of Foreign Affairs must develop a policy study, analyzing the priorities of the foreign policies of all 27 Member-States of the EU, plus Iceland, Croatia and Turkey. This analysis must serve as basis for developing a policy brief for the purpose of identifying which EU Member-State(s) could be "recruited" as country-lobbyists and provide explanation thereof;
- The Parliament must re-examine its position concerning SAO and immediately open a discussion on its audit reports;
- The Government must order its line ministries, secretariats and agencies, and most notably SEA, MOI, Ministry of Finance, Ministry of Justice, Ministry of Environment, the General Secretariat and EARM to provide free access to information pursuant to the principles of open and transparent Government;
- The Government must re-examine its decision to appoint a person without relevant experience as the new Director of the National Agency, in particular as the person in question is the daughter of the former Minister of Finance, Trajko Slaveski;
- The Parliament should organize a conference in Brussels to lobby for a date for opening accession negotiations in June, and in the spirit of good will and honest intentions, the Government should give Athens the monument of Alexandar the Great as a gift;
- The Government must submit Regulatory Impact Assessments

accompanied with corresponding tables to the Parliament, and the Legislative Secretariat should submit the compliance forms as proof that the legal act proposed is in concordance with the Constitution;

- The Government should develop a Rulebook on minimum standards for consultations, which will stipulate the criteria for involving stakeholders, timetable for consultations and provide access to all written remarks and proposals submitted during the consultation process, thereby fulfilling the relevant indicator from the Review 2010;
- The Government must immediately revise the composition of the 33 working groups organized per chapter and include civil society therein, by means of an open call and clearly defined criteria.

ANNEX 1

REVIEW OF THE
ACCESSION
PARTNERSHIP,
5th FEBRUARY
2010

| No. | Priority | Indicators |
|---------------------------|---|--|
| POLITICAL DIALOGUE | | |
| 1. | Promote a constructive and inclusive dialogue, in particular in areas which require consensus between all political parties in the framework of the democratic institutions | <ul style="list-style-type: none"> 1. Adopt and enforce amendments to the Parliament Rulebook; 2. Full implementation of the Parliament Law, recruitment of staff at parliamentary administrative services and steps to establish and initiate the operation of the Parliamentary Institute; 3. Smooth operation of the National Council for European Integration, supported by relevant institutions and capacity building for employees of the Administrative Support Unit within NCEI. |
| ELECTIONS | | |
| 1. | Ensure that all future elections are conducted in accordance with the Electoral Code | <ul style="list-style-type: none"> 1. Follow up recommendations of OSCE/ODIHR, including revision of the Voter List pursuant to the working group's action plan 2. Adopt and implement the plan on preventing threats for citizens during elections, in compliance with ODIHR recommendations. |
| 2 | Deliver prompt decisions on any election irregularities and impose penalties that will deter further cases | <ul style="list-style-type: none"> 1. Number of investigations completed 2. Number of successfully concluded convictions |

| OHRID FRAMEWORK AGREEMENT | | |
|---------------------------|--|---|
| 1. | Sustain implementation of the Ohrid Framework Agreement with a view, inter alia, to promoting inter-ethnic confidence-building | <ol style="list-style-type: none"> 1. Application of the double-majority principle, including in local self-government units; the role of the Interethnic Relations Committees on local level is paramount. 2. Implement the Strategy on Equitable Representation of Non-majority Communities by securing adequate resources and establishing a sanctioning/ motivating system; improve the representation of Roma and Turkish communities; establish single and reliable database in the public sector for the purpose of effective monitoring of the equitable representation; 3. Implement the Education Strategy including the recommendations made by OSCE's High Commissioner on National Minorities. 4. Further enforce the Law on Use of Languages and further strengthen the capacity of the Secretariat on the Framework Agreement to improve its coordination role |
| 2. | Complete the decentralization process | <ol style="list-style-type: none"> 1. Further implementation of the Decentralisation Strategy and Action Plan and further transfer of competences with appropriate funding. Reform the legal framework on financing municipalities to resolve the problem of lack of funds and inadequate delivery of services on a local level. Improve database on municipal taxes and cooperation and exchange of data between the Cadastre, Central Register, PRO and the municipalities. 2. Strengthening the capacity of the Ministry of Local Self-government as the main body implementing decentralisation. Enhancing the capacity of the Municipal Budget Unit within the Ministry of Finance to support fiscal decentralisation policy and monitor its implementation |

| POLICE | | |
|-----------|---|--|
| 1. | Ensure effective implementation of the Law on Police and Law on Internal Affairs | <p>1. Ensure that every appointment/change/dismissal of Police Stations Commanders is in compliance with the Law on Police, the new Law on Internal Affairs and the secondary legislation thereof.</p> <p>2. Full enforcement of secondary legislation stemming from the Law on Internal Affairs so that all employments will be in compliance with the new provisions; full and accurate implementation of Article 128 of the Law on Internal Affairs to achieve depolitization of the Police.</p> <p>3. Further implementation of equal representation within the Police</p> |
| JUDICIARY | | |
| 1. | Establish a sustained track record on implementation of judiciary and prosecution reforms. Strengthen the independence, efficiency and overall capacity of the judicial system. | <p>1. Judicial Council and the Council of Public Prosecutors need to establish a system for sustainable strategic planning of human resources.</p> <p>2. Judicial Council and the Council of Public Prosecutors need to strengthen their transparency and ensure successful track record of the implementation of the merit-based for recruiting judges and public prosecutors in order to meet the objectives of the judicial reform.</p> <p>3. Improve budgetary planning and funds allocation in the judiciary and securing a sustainable budget framework.</p> |
| 2. | Ensure operationalization of newly established judiciary institutions, allocate relevant funds for their full operation aimed to increase their efficiency | <p>1. Track record of activities of the Administrative Court and implementation of legal mechanisms regarding the right to appeal in administrative disputes</p> <p>2. Full enforcement of court decisions and improving the cooperation with the Public Attorney.</p> |

| FIGHTS AGAINST CORRUPTION AND ORGANIZED CRIME | | |
|---|--|--|
| 1. | Establish a sustained track record on implementation of anti-corruption legislation and implementation of the State Anti-Corruption Program | <ol style="list-style-type: none"> 1. Effective implementation of the Law on Conflict of Interest as amended in 2009 and establishing a sustained track record of verified and eliminated conflicts of interest. 2. Establish a track record of investigations and prosecutions in compliance with the relevant provisions of the Criminal Code, including illegal proceeds and confiscation; 3. Establish track record of verified Property Declarations; Establish a track record of adopted and enforced court decisions in high profile corruption cases; Organize joint training for prosecutors and judges on use of investigative measures and use of evidence in corruption cases and in organized crime cases; Further capacity building of special enforcement bodies; Securing full regulatory and practical autonomy for enforcement of orders for intercepting communications and use of the equipment for interception of communications; Further implementation of the Action Plan for establishing a National intelligence database as anticipated in the NPAA. |
| 2. | Ensure proper follow up of recommendations issued by supervisory bodies, in particular in the field of political party financing and public spending | <ol style="list-style-type: none"> 1. Ensure follow-up of the recommendations of the SAO and the SCPC especially in regards financing political parties/campaigns and issues related to public funds. Securing full transparency of public spending, especially the spending for state advertising. Introducing sanctions to discourage detected irregularities. |

| PUBLIC ADMINISTRATION | | |
|-----------------------|---|--|
| | <p>Ensure that recruitment and career advancement of civil servants is not subject to political interference, further develop a merit-based career system and implement fully the Law on Civil Servants</p> | <ol style="list-style-type: none"> 1. Full implementation of the provisions and spirit of the LCS regarding recruitment, assessment and advancement as to make them objective, transparent and merit-based, in the period before and after the selection and full implementation of the latest amendments to the law. Harmonize other laws with the LCS. 2. The PAR Committee should steer the reform process efficiently by coordinating all relevant institutions on all levels. Develop monitoring and evaluation instruments as laid out in the conclusions of the Committee for implementation of the PAR strategy. 3. Implement the recommendations of SAO regarding human resource management and internal organisation, with special attention paid to temporary employments, non-majority employments, and internal audit and control systems. 4. Appropriate equipping of Human Resource Units. 5. Improved implementation of the Strategy and Action Plan of the Government for Cooperation with civil society. Improve mechanisms for consultation between the Government/municipalities with the civil society sector. |
| HUMAN RIGHTS | | |
| 1. | <p>Fully comply with the European Convention on human Rights, the recommendations made by the Council for the Prevention of Torture. Provide sufficient resources to bring prison conditions up to higher standard.</p> | <ol style="list-style-type: none"> 1. Ensuring appropriate strategic planning and a prison management system; 2. Ensure merit-based system in the selection and appointment of prison staff and management in compliance with the legal provisions; 3. Ensure sufficient resources to bring prison conditions to higher standards; 4. Ensure appropriate balance between short-term and long-term strategic planning; 5. Resolve the issues of overcrowded prisons and health care in prisons. |

| EMPLOYMENT AND SOCIAL POLICY | | |
|------------------------------|--|---|
| 1. | Reduce impediments to job creation by taking additional measures to address youth and long-term unemployment | <ol style="list-style-type: none"> 1. Efficient implementation of active employment measures to reduce unemployment of youth. Increase the number of people included in the active measures compared to 2009 and redesign measures to meet the needs of the labour market 2. Continue the implementation of Life-long Learning 3. Start the implementation of the Plan for vocational education and training that will appropriately reflect the needs of the labour market, thereby creating more employment opportunities. |
| 2. | Ensure administrative capacity to implement social inclusion and social protection policies | <ol style="list-style-type: none"> 1. Develop a National Programme for Social Inclusion Development 2. Further implementation of the Action Plan from the Strategy for Roma Inclusion 2005 -2015 |
| 3. | Develop a social dialogue mechanism and ensure a functional and representative social dialogue | <ol style="list-style-type: none"> 1. Identify representative unions and employer organisations in compliance with the Law on Labour Relations from 15 November 2009. Adopt a new agreement for the Social-Economic Council (SEC) 2. Form a new composition of the Social-Economic Council 3. Implement activities to improve the operational level and the efficiency of SEC and stimulate tripartite social dialogue on local level. |
| 4. | Set up effective mechanisms to identify, pursue and penalize (sanction) all forms of discrimination by State and non-State bodies against individuals or groups. | <ol style="list-style-type: none"> 1. Adopt an Anti-discrimination law in line with the acquis and start its implementation. 2. Establish and make operational mechanisms for monitoring, identifying, enforcing and sanctioning acts of discrimination on the grounds of race and ethnicity, religion and creed, disability, age and sexual orientation |

| PUBLIC SERVICES | | |
|-----------------|---|---|
| 1. | Improve transparency of public procurements | <ol style="list-style-type: none"> 1. Small changes in the law to harmonise it with the acquis (covering public services, concessions, private-public partnerships and legal remedies) 2. Achieve fully operational structures for public procurement to enforce public procurement procedures in line with EU standards. 3. Implement effective legal remedy system in public procurement. 4. Awareness-raising and transparency of public procurement procedures |
| 2. | Increase capacity on public spending by capacity-building for the public sector on medium-term planning and better budget execution | <ol style="list-style-type: none"> 1. Follow-up appropriately the findings of SAO reports. 2. Develop a framework (plan) for mid-term expenditure. |
| 3. | Review the Strategy on Public Internal Financial Control and existing legislation on PIFC and internal, and update the action plan for implementation of medium-term priorities related to the PIFC. Complete the establishment of internal audit units in central State institutions and establish similar units on municipal level by securing proper human resources, training and equipment | <ol style="list-style-type: none"> 1. Ministry of Local Government and Ministry of Finance to upgrade, support and monitor the staffing of Internal Audit Units as well as the functions on the local level. 2. Adopt and implement PIFC strategy in accordance with the Law on Internal Financial Audit. Update and implement Action Plan in compliance with the law. 3. Develop and apply internal audit functions on central and local level to support the management. 4. Secure training and capacity building for the local level. 5. Adopt and implement SAO legislation and secure operational, functional and financial independence of SAO from the executive government |

| SUPERVISORY AND FINANCIAL SERVICES | | |
|------------------------------------|---|--|
| 1. | Reinforce the legislation and the supervisory framework, including enforcement for the financial sector | <ol style="list-style-type: none"> 1. Further alignment with the acquis on financial services and secure its consistent implementation 2. Initiate cooperation with the new European System for Supervising Financial Markets. 3. Strengthen the administrative capacity of CBRM as the supervisor of the banking sector related to further implementation of the advanced banking regulation – Basel 2. 4. Align the status of the securities commission members with the provisions of the Law on Securities 5. Eliminate overlapping of competences between CBRM and Commission on Securities in the part dealing with licensing supervision of securities markets |
| ENERGY | | |
| 1. | Continue to align the legislation on the internal electricity and natural gas markets, energy efficiency and renewable energy sources with the acquis in order to gradually open up the energy market to competition. Fulfil the obligations arising from the Energy Community Treaty as regards the full implementation of the acquis on the internal gas and electricity market and on cross-border exchanges in electricity. | <ol style="list-style-type: none"> 1. Prepare for further opening of the market in accordance with the adopted Action Plan and adopt and implement market rules 2. Adopt an Energy Efficiency Action Plan and start implementation 3. Align legislation with the acquis on supply 4. Amend and implement the Energy Law in full alignment with Energy Community Treaty and in line with the Action Plan 5. Amend and implement the tariff rulebook in order to adhere to the principle of reflecting costs (clarification: Price Methodology in line with Rulebook on means and conditions for regulating electricity prices) 6. Resolve the ownership dispute of the gas pipeline system. |

| INFORMATION SOCIETY AND MEDIA | | |
|-------------------------------|---|--|
| 1. | Reinforce the independence and administrative capacity of the regulatory authorities for electronic communications and media | 1. Ensure an appropriate monitoring system within the Broadcasting Council with the capacity to supervise broadcasted contents, especially by securing appropriate technical equipment, know-how and human resources within the Broadcasting Council. Strengthen capacity of BC to fine media regulations/ law violations by transparent application of the provisions on sanctioning. |
| 2. | Ensure a stable and sustainable source of funding for the public service broadcaster and the Broadcasting Council | 1. Amend the Law on Broadcasting to secure sustainable collection of the broadcasting fee and independence of the public broadcaster and continue with the adoption of relevant applicable legal acts (secondary legislation). 2. Ensure a reliable system for identification of households subject to the broadcasting fee in MRTV and ensure collection of the fee according to the law; follow-up the conclusions of the Subcommittee for innovations, IT society and social policy regarding the possibility for initiating bankruptcy of the public broadcaster. 3. MRTV should align itself with the warnings if the BC regarding the violations of the basic programming principles and commitments; avoid politicisation of MRTV and its potential use for political goals |
| ENVIRONMENT | | |
| 1. | Continue legislative alignment with the acquis, in particular in the field of air quality, waste management and water quality, and improve significantly implementation of legislation and environment monitoring. Strengthen administrative capacities at national and local level and improve coordination between administrative bodies in charge of environment-related issues. | 1. Continue with the development of systems for monitoring the water and air quality 2. Introduced integrated system for waste management on local level 3. Increased budget and staff of competent institutions on central and local level |

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| 2. | Strengthen the Environmental Inspectorate and other enforcement bodies, establish a credible enforcement record and ensure that fines and other sanctions are effectively applied and have a dissuasive effect | 1. Increased budget and staff in the inspectorates on central and local level 2. Statistics for supervision, sanctioning and monitoring |
| 3. | Increase investments in environmental infrastructure pursuant to the Environment Investments Strategy, with special on water collection and treatment, drinking water supply, tackling air pollution and waste management | 1. Develop financial strategies, increase budget allocations and project management skills in the field of environmental infrastructure |
| AGRICULTURE | | |
| 1. | Follow-up on pilot-projects, finalize the registration of agricultural land at the Real Estate Cadastre, as well as completion of functional registers on vineries and farms. | 1. 100% of the land included in the Cadastre, including agricultural land. Establish a fully functional automated IT system |
| 2. | Achieve full compliance with EU standards on collection and processing of agricultural data. | 1. Collect and process all agricultural data in a form that will meet the requirements of preaccession and postaccession reporting. Adopt a new Law on Agricultural and Rural Development, that will include state aid provisions |
| FOOD SAFETY, VETERINARY AND PHYTOSANITARY POLICY | | |
| 1. | Further align the legislation with the acquis and cooperation of institutions competent for food safety and phytosanitary domain. Further strengthen administrative and management capacities of veterinarian, phytosanitary and food safety institutions both on local and national level. Establish a fully operational system to identify and register movement of bovine, sheep and goats, in particular in terms of control of their movements. Start the system for identification of pigs. | 1. Clearly define the obligations and competences of various inspectorates and improve coordination mechanisms. Eliminate overlapping legal acts. Increase the capacity and independence of different inspectorates and laboratories, including the provision of adequate training and equipment |

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| 2. | Further align animal disease and animal health control systems with the EU legislation. Establish an EU compatible control system, notably in the feed of import control, as well as to increase capacity at border inspectorates. | <ol style="list-style-type: none"> 1. Upgrade veterinary and phytosanitary premises for border inspection 2. Introduce border controls as those in the EU 3. Establish EU-compatible system for control of sicknesses and wellbeing of animals |
| 3. | Present a strategy on advanced implementation of HASSP. Develop and operationalize the crisis management plan in the light of food safety. | <ol style="list-style-type: none"> 1. Present a HASSP Implementation strategy, and Crisis Management Plan |
| FREE MOVEMENT OF GOODS | | |
| 1. | Adopt and implement horizontal legislation to complete the necessary infrastructure and ensure a segregation of tasks between the various functions (regulation, standardization, accreditation, metrology, conformity assessment and market surveillance) for conformity assessment procedures. Draft a comprehensive strategy with milestones for implementation of the acquis for the relevant horizontal organizations. | <ol style="list-style-type: none"> 1. Continue with the necessary activities for recognising the certificates for accreditation and standardisation by EU. 2. Continue with automatically recognising the certificates issued by notified bodies in the EU. 3. Continue the activities related to membership in the EU bodies for accreditation, standardisation and metrology. 4. Complete all necessary activities related to the Agreement on Compliance Assessment and recognition of industrial products (ACAA protocol). 5. Adopt a comprehensive strategy with benchmarks for implementation of the acquis for the appropriate horizontal organisations. 6. Secure sufficient resources for implementing the strategy |
| 2. | Start activities to implement the action plan to align with Article 28-30 from the EC Treaty with milestones on internal screening of domestic legislation and administrative practices to introduce clauses on mutual recognition and the necessary further changes. | <ol style="list-style-type: none"> 1. Start the implementation of the Action Plan 2. Institute for Standardisation needs to fulfil the criteria for membership in CEN and CENELEC |

ANNEX 2

ANSWERS
OBTAINED FROM
INSTITUTIONS
ON FREEDOM OF
INFORMATION
APPLICATIONS

| State authority | Information requested and obtained | Appeals |
|----------------------------------|---|--|
| Secretariat for European Affairs | Copies of Minutes from meetings of the Committee on EU Integration held in the period September 2009-January 2010 (submitted on 29 th January 2010). On 2 nd March, SEA requested alleged precision of the FOI application, notably which meetings and dates thereof. On 5 th March they were presented with the completed FOI application. In the meantime, they forwarded us 3 Minutes in three different copies, which clearly show that it was a matter of specifically created information, contrary to legal provisions. We requested insight in their archive, by means of another FOI application, but on 21 st April were informed that as the information requested they deny us the insight thereof. | We are waiting for the attorney's advice to decide whether to appeal the case or not. |
| | Monitoring matrix for NPAA implementation that anticipates 1965 activities (submitted on 29 th January 2010). On 1 st March, SEA submitted a decision on denying access thereto on the grounds that the requested document was under observation and harmonization procedure, and that its disclosure would cause erroneous interpretation of document's contents. | Appeal lodged in front of the Administrative Court |
| | How many employments from NPAA 2009-2011 have been made in the period January 2009 – February 2010 (submitted on 23 rd February 2010). Upon lodged appeal, on 29 th March, instead of the information requested, we were presented with a hard copy of NPAA, which allegedly contains data on employments effectuated under each chapter and in particular for the period January 2009 – February 2010. | On 6 th April, by means of an additional letter we the addressed SEA with the request to submit to disclose information requested, but on 19 th April were informed that “under careful reconsideration of the document submitted (n.a. NPAA), one can see that it contains data employments effectuated under each chapter in 2009”. We are waiting for the attorney's advice. . |
| | How many temporary employments have been made at the Secretariat for European Affairs by means of temporary employment agencies in the period January 2009- January 2010? (submitted on 23 rd February 2010). Information was provided on 19 th March stating that by means of temporary employments a total of 386 people were engaged at SEA. | / |




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| Government of the Republic of Macedonia – General Secretariat | How many EU-relevant meetings were held by the Government in the period January 2009-January 2010, which were the topics discussed and copies from relevant Minutes (submitted on 29 th January 2010). An appeal based on administration's silence was lodged on 5 th March. On 17 th April we were presented incomplete information, i.e., a table indicating that a total of 11 meetings were held, dates thereof, but no indication on topics discussed and no copies from relevant Minutes. | Appeal on administration silence will be expanded to include incomplete information. |
| | Regulatory Impact Assessment (RIA) for the draft-law on prevention and protection from discrimination and the draft-law on citizens' associations and foundations (submitted on 23 rd February 2010). | Appeal was lodged, Commission's decision is pending. |
| | Corresponding EU acquis alignment tables for the draft-law on prevention and protection from discrimination and the draft-law on citizens' associations and foundations (submitted on 23 rd February 2010). | |
| | Minutes from meetings held by the Government of the Republic of Macedonia in period 1 st October 2009 until 1 st April 2010 (submitted on 8 th April 2010). No information disclosed. | The appeal deadline is not expired. |
| Government of the Republic of Macedonia – Legislative Secretariat | Minutes from the meeting of the Government of the Republic of Macedonia on which the draft-law on prevention and protection from discrimination and the draft-law on citizens' associations and foundations were adopted (submitted on 23 rd February 2010). | Appeal was lodged, Commission's decision is pending. |
| | Opinions of the Government of the Republic of Macedonia on the draft-law on prevention and protection from discrimination and the draft-law on citizens' associations and foundations (submitted on 23 rd February 2010). In the answer received on 9 th March 2010, the Secretariat informs us of its competences, as well as of the fact that opinions on legislative acts are provided by the proposing party and forwarded to the Government. On 11 th March 2010, we submitted an additional FOI application addressed to the Legislative Secretariat, for which, in the answer obtained on 25 th March 2010 we were informed that it cannot disclose the information requested, as the document in question is still subject of harmonization with the information holder. | Appeal was lodged, Commission's decision is pending |

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| Government of the Republic of Macedonia | How many temporary employments have been made at the Government of the Republic of Macedonia by means of temporary employment agencies in the period January 2009 – January 2010? (submitted on 23 rd February 2010). No answer. | Appeal was lodged, Commission's decision is pending. |
| Ministry of Foreign Affairs | How many temporary employments have been made at the Ministry of Foreign Affairs by means of temporary employment agencies in the period January 2009 – January 2010? (submitted on 23 rd February 2010). Employments effectuated in the listed period: 14 | |
| Ministry of Interior | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009 – January 2010? (submitted on 23 rd February 2010). On 24 th March we were presented with a decision denying access to public information. | Appeal is lodged, Commission's decision is pending. |
| Ministry of Justice | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009 – January 2010? (submitted on 23 rd February 2010) No answer. | Appeal was lodged, Commission's decision is pending. |
| Ministry of Defence | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 251 | |
| Ministry of Transport and Communications | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employment effectuated in the listed period: 76 | |
| Ministry of Economy | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 8 | |

| | | |
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| Ministry of Health | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 28 | |
| Ministry of Environment and Spatial Planning | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) No answer. | Appeal was lodged, Commission's decision is pending. |
| Ministry of Education and Science | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 33 | |
| Ministry of Culture | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 19 | |
| Ministry of Labour and Social Policy | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 27 | |
| Ministry of Agriculture, Forestry and Water Economy | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 207 | |
| Ministry of Local Self-Government | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 2 | |

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| Ministry of Information Society | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) Employments effectuated in the listed period: 92 | |
| Ministry of Finance | How many temporary employments have been made at the Ministry by means of temporary employment agencies in the period January 2009-January 2010? (submitted on 23 rd February 2010) No answer. | Appeal was lodged, Commission's decision is pending. |
| Total number of employees recruited by means of temporary employment agencies deducted from the answers obtained to FOI applications amounts to 1143. | | |
| Ministry of Finances | How many servants have been employed at state administration bodies pursuant to NPAA 2009-2011, in the period January 2009-January 2010? (submitted on 23 rd February 2010). No answer. | Appeal was lodged, Commission's decision is pending. |
| Civil Servants Agency | How many employments were realized from what was planned under NPAA 2009-2011 in the period January 2009-January 2010? On NPAA anticipated employments, CSA informed us that in the period January 2009 – February 2010 a total of 119 open calls were announced for 525 servants in total. | Appeal was lodged, Commission's decision is pending. |
| Employment Agency | How many temporary employments have been made by means of temporary employment agencies at all state administration bodies or per body? No answer. | Appeal was lodged, Commission's decision is pending. |
| Ministry of Finance | Overview of total debts incurred by all public enterprises in the Republic of Macedonia to be serviced under the Law on Debt Servicing for Public Enterprises and Companies Established by the Republic of Macedonia, Municipalities or the City of Skopje. (Official Gazette no. 18/2010), and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis. No answer. | Appeal was lodged, Commission's decision is pending. |

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| Public Revenue Office | <p>Overview of total debts incurred by all public enterprises in the Republic of Macedonia to be serviced under the Law on Debt Servicing for Public Enterprises and Companies Established by the Republic of Macedonia, Municipalities or the City of Skopje. (Official Gazette no. 18/2010), and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>On 25th February we received a letter that calls upon tax secret, while after the appeal lodged, our FOI application was again rejected, by this time by means of an adopted decision.</p> | Additional appeal was lodged on 16 th April. |
| PE Water Supply and Sewage | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>No debts.</p> | |
| PTE Skopje | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>In a letter, we were informed that all information will be posted on the PE's new website.</p> | Appeal was lodged, Commission's decision is pending. |
| PE Airports Skopje | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>Total debts by 9th April 2010 amounted to 24,725.418.00 MKD.</p> | |
| PE Communal Hygiene Skopje | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>Total debts by 31st December 2009 amounted to 317,629,112.00 MKD.</p> | |

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| Public Enterprise for Management with Residential and Commercial Areas | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>Our FOI application was denied with a decision adopted on 13th April 2010.</p> | Appeal was lodged, Commission's decision is pending. |
| PE Macedonian Postal Services | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>No debts.</p> | |
| PE Macedonia Road | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>No answer.</p> | Appeal was lodged, Commission's decision is pending |
| PE Macedonian Forests | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>The following answer was obtained</p> <p> VAT 1,003,253,568.50 MKD + 702,563,208.00 interest</p> <p> Profit tax 128,449,297.00 MKD + 89,419,424.00 interest</p> <p> Personal income tax 1,287,583,303.00 MKD + 903,702,687.00 interest</p> | |

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| PE MRTV – Skopje | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>No answer.</p> | Appeal was lodged, Commission's decision is pending. |
| PE Macedonian Railways – Infrastructure, Skopje | <p>Overview of total debts incurred by the public enterprise and individual overview of debts based on unsettled VAT, profit tax and personal income tax, as well as overview of interest on tax debts – in total and on individual tax basis.</p> <p>The following answer was obtained:</p> <ul style="list-style-type: none"> – VAT 9.1 million MKD + 0.4 million MKD interest – Profit tax 72.5 million MKD (under an appeal procedure) – Personal income tax for the year 97/98 in the amount of 97.8 million MKD (under a statute of limitation procedure) + 170.8 million MKD interest – Credits – 81 million MKD. – Trustees (goods and services purchased in the country and abroad) 74.7 million MKD. <p>Decision taken by PRO on instalment-based settlement of tax debts (VAT– 7.3 million MKD, while in terms of PIT and PIT interest this decision applied to the entire amount)</p> | |

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| National Agency for European Educational Programmes and Mobility (National Agency) | The composition of the working group for full participation in Youth in Action and Life Long Learning Programmes in 2011. Answer was provided on 15 th March. | |
| | List of external associates to the National Agency pursuant to Article 20 from the Law on the Establishment of the National Agency for European Educational Programmes and Mobility ("Official Gazette of the Republic of Macedonia" no. 113/2007). Answer was provided on 15 th March. | |
| | List of members of Advisory Bodies at the National Agency. Answer was provided on 15 th March. | |
| | Rulebook of Operation of the National Agency, Rulebook on Implementation of Youth in Action Programme and Rulebook on Implementation of Life Long Learning Sub-Programmes. Answer provided on 15 th March indicated that the National Agency does not disclose its internal rules. | |
| | Evaluation of Info-Days organized by the National Agency. Answer was provided on 9 th March. | |
| | How many people are full-time employed at the National Agency? How many people are part-time employed at the National Agency on European Educational Programmes and Mobility? No answer. | Appeal was lodged. |