

# Norwegian support to institution building in Bosnia and Herzegovina, Macedonia and Serbia

Annex, Difi report 2009:6

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## Preface

This document is an annex to Difi report 2009:6 "Promoting Good Governance in the Western Balkans – Norwegian Support to Institution Building in Bosnia and Herzegovina, Macedonia, and Serbia". In this report we provide general analyses and recommendations for Norwegian support to institution building in the Western Balkans. In this appendix, we present proposals for detailed project ideas. The proposals show how our general recommendations can be specified and made the object of practical project cooperation. The project ideas have constantly been referred to the Ministry of Foreign Affairs and some have already been acted upon. The proposals are largely based on interviews with public officials and representatives of international organizations in Bosnia and Herzegovina, Macedonia and Serbia in the period February - April 2009. The description of the project ideas and the rationale for them reflects the situation in politics and public administration as it was during the mentioned period. However, the reform environment in Western Balkan is highly volatile. Thus, gradually our relatively detailed description of particular aspects of public administration reform will diverge from the constantly evolving decision-making context. We have therefore decided not to include the specific project ideas in the main report, but to present them in a separate appendix.

Oslo, 27 August 2009



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Director

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## Summary

### Chapter 1 Bosnia and Herzegovina

In this chapter the Difi project team recommends that 9 project ideas be considered carefully for Norwegian support, that particular attention is given to project proposals written in bold, and that the Norwegian MFA/an institution (institutions) commissioned by the Norwegian MFA follows up these proposals with the intention of defining more precisely the content of projects that may be funded as of 2010.

#### The rule of law:

- **The staff of the High Judicial and Prosecutorial Council (HJPC) has suggested (i) a regional project targeted at Judicial and Prosecutorial Councils across the region, (ii) the continuation of ongoing Norwegian support for BiH HJPC.**
- The Office of the Human Rights Ombudsman has suggested a project regarding (i) exchange of experiences with/learning from Ombudsman institutions in neighbouring countries, including capacity building for ombudsman staff, and (ii) preparation of a comparative study of how ombudsman institutions in a selection of European countries deal with human rights issues, and on the basis of this analysis develop BiH guidelines/(draft)regulations
- The Ministry of Human Rights and Refugees has suggested a project with two main elements, (i) expert assistance/consultancy services to the ministry regarding i.a. the development of an action plan for identifying and following up compensation claims by refugees/internally displaced persons, (ii) financial assistance for procurement and installation of necessary ICT hardware and software for a register of refugees/internally displaced persons who may be entitled to economic compensation
- **The Ministry of Justice has suggested a project with two components (i) preparation of a revised Administrative Procedures Act that is harmonized across BiH, and covers state and entity levels, and (ii) development of a training program for civil servants who will be charged with implementing the amended act.**

#### Security sector reform

- **The Ministry of Defence has suggested a project with two main components, (i) the preparation of a Strategic Defence Review, and (ii) the building up of expertise/capacity in the fields of staff planning – recruitment and demobilization - and human resource management.**
- **The Ministry of Security has suggested a project regarding the establishment of two new agencies foreseen in the police reform laws: the Directorate for Coordination of BiH Police Bodies, and the Agency for Forensic Examinations and Expertise.**

#### Public administration reform

- **The PAR Coordinator has suggested that Norway join the PAR fund.**
- The Civil Service Agency has suggested a project regarding (i) development of new training schemes on prioritized topics, and (ii) development of strategies for e-learning/distant learning

### Regulatory framework for market economy

- The Competition Council has suggested a project aimed at capacity building in the areas of state aid, and energy and strengthening of administrative functions of the Council.

## Chapter 2 Macedonia

In this chapter the Difi project team recommends that 10 project proposals be considered carefully for Norwegian support, that particular attention is given to proposals written in bold, and that the Norwegian MFA/an institution (institutions) commissioned by the Norwegian MFA follows up these proposals with the intention of defining more precisely the content of projects that may be funded as of 2010.

### The rule of law

- **The Judicial Council has suggested a project with two main components; it will review and further develop (i) methods for monitoring the work of courts and judges, *i.a.* through the improvement of criteria for defining efficiency and professionalism in the court system, (ii) procedures for the selection and the dismissal of judges, *i.a.* through an assessment of the current Macedonian arrangements in the light of European standards and practices**
- The ombudsman has suggested a project with two main elements, (i) capacity building with regard to the establishment of a special department of children`s right headed by the deputy ombudsman; *i.a.* by studying the experience of the Norwegian Ombudsman for Children, and (ii) strengthening the Ombudsman`s international experience as a means of further development of staff competence; *i.a.* enabling the Ombudsman to achieve full membership in the European Network of Ombudsmen for Children.
- The Directorate for Personal Data Protection has suggested a project on capacity building for directorate staff linked to cooperation with the Norwegian Data Inspection. Project activities should address *i.a.* data protection and use of smart card/chips (health card, passport, bank card etc.); video surveillance in schools, hospitals workplaces, etc., and personal data protection on the internet.

### Public administration reform

- **The Secretariat for Legislation has suggested a project proposal with two main components,**
  - **the preparation of a comparative study of EU/EEA member states, mapping *i.a.* (a) Constitutional amendments that were implemented in these states in consequence of their joining EU/EEA, (b) the organization of efforts in these countries to transpose/implement EU/EEA legislation, and (c) the organization of the national law-making processes of the states studied, especially changes that were necessitated by EU/EEA accession. The study will be used as a basis for proposing institutional and legal/constitutional changes that will be likely results of Macedonia achieving EU membership, and**
  - **strengthening the capacity of the Secretariat staff through *i.a.* the development and implementation of a 1-3 year HR development plan. A key approach might be cooperation and exchange of experience with**

**counterpart organizations of countries in the region and EU member states.**

- **The State Administrative Inspectorate in the Ministry of Justice has suggested a project proposal with two main components, regarding (i) the preparation of the framework law on inspections, regulating *i.e.* cross-cutting issues concerning personnel policies, organizational patterns, decision-making procedures of inspection services, and (ii) the implementation of the law, *i.e.* adaption of specific legal frameworks, *lex specialis*, to the new framework law, the introduction of cooperative arrangements among inspection wherever feasible, and preparation of training activities. Expert assistance is needed, *inter alia*, to help make an analysis of strengths and weaknesses of individual inspectorates/inspectors` work, based on an assessment of key European standards, such as impartiality, transparency and predictability.**
- **The Ministry of Finance (MoF) has suggested two projects to improve its systems of decision-making. The first one pertains to the MoF`s general systems for internal communication and flow of information. The second project regards capacity building in the area of regulatory impact analysis.**
- **The Ministry of Justice has suggested a proposal with two components, (i) preparation of a framework law on public servants specifying the main principles – based on European standards – for personnel management in public institutions that are currently subject to special laws, *lex specialis*, and (ii) adaption of relevant special laws to the principles set out in the planned law on public servants, and development of a program to assist the affected institutions to implement the new provisions.**

Regulatory frameworks for market economy

- The Commissioner for Protection of Competition (CPC) has suggested a project proposal with two main elements, (i) preparation of a comparative study to address issues of inter-institutional cooperation in the area of competition and adjacent areas (*e.g.* energy and telecommunications, and (ii) capacity building for CPC staff and support for administrative functions (purchase of literature, participation in workshops, translation of professional literature on EU regulations).
- The Public Procurement Bureau has suggested a project with two components (i) an analysis of public procurement processes in order to develop a methodology for detecting corrupt practices in the various stages of these processes, and (ii) capacity building for PPB staff and support for administrative functions (*e.g.* purchase of literature, participation in workshops).
- The State Appeals Commission for public procurement (SAC) has suggested a project regarding (i) capacity building for SAC members and public officials working with public procurement across the public administration, mostly training, (ii) support for administrative functions, *i.a.* establishment of a website, procurement and installation of a document management system, and (iii) technical assistance, *i.a.* regarding development of strategic documents, and a media strategy.

## Chapter 3 Serbia

In this chapter the Difi project team recommends that 8 project proposals be considered carefully for Norwegian support, that particular attention is given to proposals written in bold, and that the Norwegian MFA/ an institution (institutions) commissioned by the NMFA follows up these proposals with the intention of defining more precisely the content of projects that may be funded as of 2010.

### The rule of law:

- **the national Ombudsman has suggested a project regarding the establishment of a comprehensive IT system which will (i) facilitate communication and information-sharing with other state supervisory bodies, including the Internal Affairs Division of the Ministry of the Interior, (ii) allow citizens to access the ombudsmen via at least 12 public libraries , (iii) facilitate statistical and other analyses of the ombudsman's casework, and (iv) make it possible to include an on-line complaints section on the ombudsman's website.**
- **the Commissioner for Freedom of Information and Protection of Personal Data has suggested a project with two components, (i) a comparative analysis of organizational patterns and working methods of bodies for data protection in Western Europe/new EU member states outlining implications for Serbia, and (ii) the establishment of a public register data base.**

### Security sector reform:

- **The Ministry of the Interior has suggested a project idea with the overall objective to promote the professionalism and capabilities of the Section for Internal Control of Police. Two topics may be suggested for further discussions with the MoI (and Office of the State Ombudsman) regarding possible Norwegian support: (i) acquainting the ministry with arrangements for control and measurement of police performance in Western countries, and (ii) exploring the possibilities of entrusting the ombudsman with greater responsibilities for investigating issues relating to the police services.**
- Moreover, the Ministry of the Interior with the assistance of the OSCE Mission to Serbia has proposed a project to strengthen key elements in the MoI system of human resources management (HRM). The Difi project team strongly recommends that a key objective of this and a possible future HR project be the establishment of essential administrative and legal regularity based on European standards and necessary alignment with recently amended Serbian civil service legislation.<sup>1</sup>

### Public administration reform:

- The Ministry of Public Administration and Local Self Government and the Human Resources Management Service have submitted a project proposal with a view to developing a strategy for civil service training.<sup>2</sup>

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<sup>1</sup> This project is already being followed up.

<sup>2</sup> This project is already being followed up.

Regulatory frameworks for market economy:

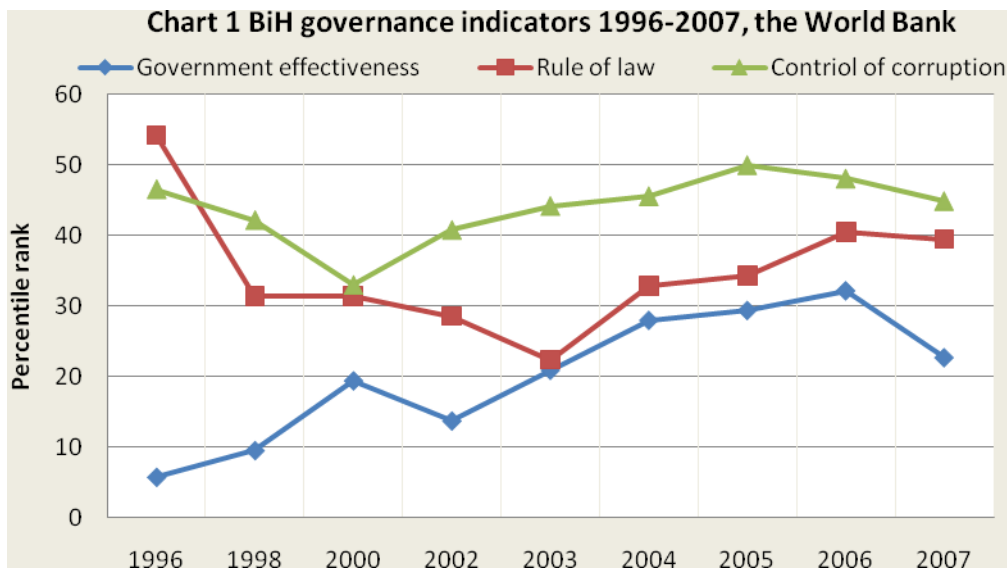
- **The Ministry of Trade and Services has proposed a project with two main components: (i) review of the institutional structure in the area of market surveillance, with emphasis on improved coordination – analysis of the current situation, and a proposal for a reformed market surveillance structure, (ii) a review of revised/new methods/inspection procedures in the area of product safety – especially of internal control and their potential applicability in Serbia.**
- The Public Procurement Office has suggested a project to support capacity development in the Public Procurement Office. The projects will include *i.a.* the development of (i) a scheme for benchmarking and monitoring public procurement in Serbia, (ii) a methodology for assessing the capacity of purchasing entities across the Serbian public administration, and (iii) a training strategy and curriculum for certification of civil servants.
- The Energy Agency of the Republic of Serbia has suggested a project proposal with the objective to strengthen the capacity of the agency so that it is capable of developing and implementing regulatory policies and strategies and overseeing necessary reform in the energy sector. The project proposal include four main components related to, (i) upgrading the agency IT system (ii) exchange of expertise with the Norwegian Water Resources and Energy Directorate (NVE), (iii) capacity building of agency staff, and (iv) as of the beginning of 2011, technical assistance related to (a) the implementation of existing regulations, (b) the introduction of new regulatory concepts, and (c) the implementation of expected new competencies



# 1 Bosnia and Herzegovina (BiH)

## 1.1 BiH developments and challenges

In the 2003 – 2005 period, most governance indicators included in the chart below showed progress. However, since 2006 progress has stalled and indicators of government effectiveness actually dropped sharply.



The most recent assessments of the public administration by SIGMA and the EU Commission are summarized in table 1 below. SIGMA notes that there has been some progress regarding public administration reform. The PAR co-ordination office has been strengthened and the Public Administration Reform Strategy is being implemented. However, administrative structures remain cumbersome and fragmented. The civil service is in need of professionalization, and transparent and merit based arrangements for recruitment and career development. SIGMA further notes that there is still a need to limit political interference and the role played by ethnic identity and party membership in public administration. According to SIGMA, transparency of public activities is hampered by political pressure on public institutions, and there is lack of political will to implement actions to combat corruption.

According to the EU Commission's 2008 progress report, EU-related reforms have stagnated. There is no consensus on reform priorities, and state-level institutions have only to a limited extent been made more functional and efficient. Consolidation of the judicial system continued to make progress, even if the environment for reforms in this sector is not favorable. It is generally agreed that the country's predicament is caused by the current politico-administrative structure with a total of 14 governments on three levels - state, entity and canton

Table 1 IB Needs BiH– EU Assessments 2008<sup>3</sup>

		IB topics			
		Legal framework	Processes	Institutions	Personnel
Horizontal systems					
(1)	Policy-making and coordination	<ul style="list-style-type: none"> <li>There are some discrepancies between the Entities in the efficiency of adoption and implementation of legislation.</li> </ul>	<ul style="list-style-type: none"> <li>Fragmented policy-making between the State and the Entities remains the main obstacle to efficient work by the State Government.</li> <li>Lack of resources, lack of coordination, ethnic tensions, and internal conflicts continue to delay reform.</li> </ul>	<ul style="list-style-type: none"> <li>Limited progress on making state-level government structures more functional and efficient.</li> </ul>	
(2)	Public administration	<ul style="list-style-type: none"> <li>Harmonisation of the three Civil Service Laws, and the three draft laws on administrative procedure are still pending</li> <li>The Ombudsman Act from 2006 was still not implemented in 2008.</li> </ul>	<ul style="list-style-type: none"> <li>Some progress in the area of public administration reform, but the country is still in an early phase of PAR.</li> </ul>	<ul style="list-style-type: none"> <li>The Public Administration Reform Office has made significant progress in terms of staffing.</li> <li>The accommodation of State-level institutions remains a problem.</li> <li>The Coordination Board for Economic Development and European Integration, designed to integrate State and Entity agendas, does not play an effective role.</li> </ul>	<ul style="list-style-type: none"> <li>The civil service is in need of professionalization, transparent and efficient recruitment procedures and modern career development.</li> </ul>

<sup>3</sup> The information in the table is extracted from, The European Commission: Bosnia and Herzegovina 2008 Progress Report, SIGMA: Public Service and the Administrative Framework (2008), SIGMA: Policy Making and Coordination 2008, and SIGMA: Public Procurement 2008.

(3) Judicial system	<ul style="list-style-type: none"> <li>Progress in the area of harmonization of State and Entity criminal legislation has been limited. Problems persist, especially with prosecution of war crimes and organized crime.</li> </ul>	<ul style="list-style-type: none"> <li>Political interference in the judicial system remains a cause for concern.</li> <li>A clear and concrete national strategy dealing with war crimes issues has still to be adopted.</li> </ul>	<ul style="list-style-type: none"> <li>The lack of a Supreme Court hampers efforts to harmonize application of legislation across the four jurisdictions.</li> <li>Having 14 Ministries of Justice each preparing judicial budgets has been detrimental to judicial independence and the overall implementation of judicial reform.</li> <li>Material conditions, <i>e.g.</i> suitable premises, remain an obstacle to the judicial reform.</li> </ul>	
(4) Anti-corruption policy	<ul style="list-style-type: none"> <li>BiH has not signed the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption.</li> <li>BiH still needs to harmonize its legislation with the Council of Europe Civil Law Convention on Corruption.</li> <li>The amendments to the Act on financing of political parties are still not adopted.</li> <li>No legal measure in place to ensure confidentiality and protection of civil servants reporting corruption.</li> </ul>	<ul style="list-style-type: none"> <li>Very little progress has been made to improve tools to fight corruption. Corruption is widespread and remains a serious problem, especially within Government.</li> <li>No progress has been made towards ensuring proper implementation of the 2006 National Anti-Corruption Strategy.</li> <li>Some of the decisions of BiH's Central Election Commission have not been properly implemented.</li> </ul>		

(5) Human rights and protection of minorities	<ul style="list-style-type: none"> <li>Implementation needs to improve.</li> <li>No progress has been made on reforming the BiH constitution, and minorities therefore continue to be excluded from the House of Peoples and the tripartite Presidency.</li> </ul>	<ul style="list-style-type: none"> <li>Introduction and implementation of human rights conventions and legal provisions to prevent discrimination and to protect the rights of <i>i.a.</i> women, children, disabled and socially vulnerable persons, have been poor overall.</li> <li>No improvements made in the area of labour and trade unions.</li> </ul>		
(6) Public procurement	<ul style="list-style-type: none"> <li>There has been no major progress in terms of legislative alignment.</li> </ul>	<ul style="list-style-type: none"> <li>Proper implementation of public procurement procedures across the country is not yet ensured.</li> </ul>		
Vertical systems				
(7) Free movement of goods	<ul style="list-style-type: none"> <li>Limited progress has been made on technical regulations transposing the new and old approach directives into national legislation.</li> <li>Necessary to further approximate the legal framework to the Community legislation on free movement of goods and to efficiently implement and enforce it.</li> </ul>	<ul style="list-style-type: none"> <li>Further development of the market surveillance system based on horizontal legislation and appropriate product-specific legislation is needed.</li> <li>Overall preparations in the fields of standardization, accreditation, conformity assessment, metrology, market -surveillance and consumer protection remain at an early stage.</li> </ul>	<ul style="list-style-type: none"> <li>There is lack of proper conformity assessment infrastructure (testing and calibration laboratories, certification and inspection bodies).</li> <li>Further strengthening of institutional and administrative capacity and increasing cooperation between the relevant institutions is necessary.</li> </ul>	

<p>(8) Free movement of persons, services and the right of establishment</p>	<ul style="list-style-type: none"> <li>• Movement of persons within the country remains constrained by fragmented internal labour legislation and social security systems.</li> <li>• The rules on operators from EU-Member States who provide cross-border services and those who are permanently established in the country are not transparent.</li> <li>• No progress has been made with regard to adoption of the State-level legislation on leasing and obligations.</li> <li>• The Entity securities markets still lack a coherent legislative and regulatory framework.</li> <li>• Legislation governing postal services remains inconsistent between the state and Entities.</li> </ul>	<ul style="list-style-type: none"> <li>• BiH is lagging behind in the field of movement of persons.</li> <li>• BiH remains one of the most difficult and costly places in the region for setting up a business.</li> </ul>	<ul style="list-style-type: none"> <li>• The Insurance Ombudsman has been appointed, but the legal framework for his activities has not yet been finalized.</li> <li>• The role of the State Insurance Agency remains limited, with licensing and supervision remaining responsibilities of the Entity agencies.</li> </ul>	
<p>(9) Free movement of capital</p>	<ul style="list-style-type: none"> <li>• Further legislative initiatives are needed with regard to movement of capital.</li> <li>• There is a need to ensure that legislation concerning foreign currency operations is harmonized across the country in line with EU legislation.</li> </ul>			

(10) Competition	<ul style="list-style-type: none"> <li>No action has been taken to bring the Competition Act closer to the <i>acquis</i>.</li> </ul>	<ul style="list-style-type: none"> <li>Overall, BiH's preparations in the area of anti-trust are moderately advanced.</li> <li>No progress has been made as regards State-aid.</li> </ul>		
(11) Intellectual property		<ul style="list-style-type: none"> <li>Little progress has been made with regard to intellectual, industrial and commercial property rights (IPR).</li> <li>It is necessary to develop a comprehensive IPR strategy</li> <li>No progress has been made in relation to administrative procedures and copyrights and related rights.</li> <li>No significant development has taken place concerning industrial property rights.</li> <li>IPR enforcement remains weak.</li> </ul>	<ul style="list-style-type: none"> <li>It is necessary to strengthen the capacity of the Institute and law enforcement agencies.</li> </ul>	
(12) Social protection and public health	<ul style="list-style-type: none"> <li>Labour legislation has not yet been harmonized across the country.</li> <li>Little action has been taken to comply with EU provisions on health and safety at work.</li> <li>The revised European Social Charter has been ratified, but apart from this, little has been achieved in terms of social dialogue</li> </ul>	<ul style="list-style-type: none"> <li>There has been no significant progress as regards social protection.</li> <li>As regards equal opportunities, no serious measures have been undertaken to address the problems related to women's access to the labour market.</li> <li>Limited progress has been made on social inclusion and anti-discrimination.</li> </ul>	<ul style="list-style-type: none"> <li>Extreme fragmentation of the relevant institutional and legislative frameworks undermines progress</li> <li>The fact that there are no powers at State level in the field of employment and social policies or public health, remains an obstacle to the development of a countrywide strategy for employment .</li> </ul>	

(13) Education		<ul style="list-style-type: none"> <li>• Harmonization of legislation at Entity and Canton level was not completed by the end of April 2008, as provided for by the Higher Education Act, and equal implementation throughout the country is not being ensured.</li> <li>• The system of "two schools under one roof" remains a serious problem.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of state-level agencies responsible for standards and assessment, quality assurance, curriculum development and accreditation in education needs to be completed.</li> </ul>	
(14) Agriculture and fisheries			<ul style="list-style-type: none"> <li>• Efforts are needed to strengthen the administrative capacities in the fields of food safety, <i>i.a.</i> in the Veterinary Directorate.</li> </ul>	
(15) Environment		<ul style="list-style-type: none"> <li>• Coordination between local and central levels is insufficient.</li> <li>• Judicial enforcement of environment legislation needs to be strengthened.</li> </ul>	<ul style="list-style-type: none"> <li>• The Environmental Protection Agency lacks capacities.</li> </ul>	
(16) Transport policy			<ul style="list-style-type: none"> <li>• The administrative capacities of the Ministry for Infrastructure need to be reinforced.</li> <li>• Division of responsibilities between the Ministry and the Civil Aviation Directorate needs to be clarified.</li> </ul>	

(17) Energy	<ul style="list-style-type: none"> <li>Amendments to the energy law, concerning electricity distribution grid codes and electricity market rules have not yet been adopted.</li> </ul>	<ul style="list-style-type: none"> <li>The separation between distribution and supply of electricity has still to be implemented, and the related deadlines of the Energy Treaty have not been respected.</li> </ul>	<ul style="list-style-type: none"> <li>An appropriate regulatory authority has still to be established in the area of energy efficiency and renewable energy.</li> </ul>	
(18) Information society and the media		<ul style="list-style-type: none"> <li>The enforcement of judicial decisions need to be strengthened</li> </ul>	<ul style="list-style-type: none"> <li>The administrative capacities of the Ministry of Information Society and the media need to be strengthened.</li> <li>The Telecommunication Agency does not have sufficient expertise to regulate an open telecommunications market. Its independence needs to be strengthened.</li> <li>The transparency and accountability of the Broadcasting Agency need to be strengthened.</li> </ul>	
(19) Financial control		<ul style="list-style-type: none"> <li>A working group has been established to draft a Public Internal Financial Control (PIFC) policy paper. No tangible results made so far.</li> </ul>	<ul style="list-style-type: none"> <li>Further work relating to the status of the Supreme Audit Institutions and of the quality of external audit is needed.</li> </ul>	
(20) Visa, border control, asylum and migration	<ul style="list-style-type: none"> <li>There are procedural weaknesses in the law on asylum. In particular there is no appeal to an independent judicial body.</li> </ul>		<ul style="list-style-type: none"> <li>Technical capacities of agencies involved in the issuing of visas need to be strengthened.</li> <li>The capacities of the Asylum Office and the Asylum Commission remain weak.</li> </ul>	



(21) Money laundering		<ul style="list-style-type: none"> <li>• Criminal investigations of money laundering cases have very little success.</li> </ul>	<ul style="list-style-type: none"> <li>• Police and prosecution service lack capacities and expertise to investigate suspicious transactions.</li> </ul>	
(22) Police	<ul style="list-style-type: none"> <li>• Legislation on the reform of the security service has not been adopted.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a lack of coordination in core areas such as corruption, organized crime, and war crimes.</li> <li>• Concerns remain over the level of transparency in police work and potential undue political influence.</li> </ul>		
(23) Protection of personal data	<ul style="list-style-type: none"> <li>• Existing data protection rules have not been implemented.</li> </ul>		<ul style="list-style-type: none"> <li>• Structural problems in the police forces persist. Considerable differences in the capacities of departments and services as well as a lack of coherent approach to human resources and financial management within the Ministry of Interior.</li> <li>• The internal control department has not been sufficiently effective owing to limited support within the police, staff shortages and a lack of resources.</li> </ul>	

## 1.2 Potential areas for Norwegian support to BiH - an overview

Together with BiH officials the Difi project team has developed 9 project ideas which are summarized in table 2 below.

**Table 2 Potential areas for Norwegian support to Bosnia and Herzegovina.**

	Legal framework	Processes	Institutions	Personnel
Rule of law				
Horizontal systems		<ul style="list-style-type: none"> <li>The State Ombudsman</li> <li>The High Judiciary and Prosecutorial Commission</li> <li>The Ministry of Human Rights and Refugees</li> </ul>		
Vertical systems				
Security sector reform				
Horizontal systems				
Vertical systems		<ul style="list-style-type: none"> <li>The Ministry of Defence - Strategic Defence Review, staff planning</li> <li>The Ministry of Security - Police Reform</li> </ul>		
Public administration reform				
Horizontal systems	<ul style="list-style-type: none"> <li>The Ministry of Justice – law on administrative procedure</li> </ul>	<ul style="list-style-type: none"> <li>The National PAR –Co-ordinator</li> </ul>		<ul style="list-style-type: none"> <li>The National Civil Servant Agency</li> </ul>
Vertical systems				
Regulatory frameworks for market economy				
Horizontal systems				
Vertical systems		<ul style="list-style-type: none"> <li>The Competition Council</li> </ul>		

## 1.3 BiH: the rule of law

### The High Judicial and Prosecutorial Council

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) is established in accordance with the standards set by the Consultative Council of European Judges. It is widely recognized that the Council and its judicial secretariat has played a leading role in implementing reforms in the BiH judicial sector.<sup>4</sup> The 2008 EU Progress Report notes that HJPC substantially guides judicial reform and has contributed to increased professionalism and efficiency in the judicial sector. It should also be noted that the HJPC has functioned as a role model for judiciary councils in the region.

<sup>4</sup> *Country Report BiH*, Bertelsmann Stiftung 2008, and *Publication produced for review by the USAID*, prepared by Suren Y. Avanesyan and Christie S. Warren, Management Systems International. June 2008.

Norway has been a strong supporter of the HJPC and has *i.a.* seconded a judicial advisor to serve as a full member of the Council.<sup>5</sup> There are plans for the Norwegian assistance to continue for another two years, *i.e.* through 2010 albeit at progressively lower levels.

Representatives of HJPC have asked the Difi project team to look into the possibilities of prolonging/renewing the current strategic partnership with Norway. HJPC staff refer to the positive results that have developed from the cooperation so far, and argue that in all likelihood support from other donors will not fully replace Norwegian efforts. They refer to the mutual trust and understanding that has grown up between Norwegian and Bosnian judges and other legal experts, and argue that this benefit should be preserved and further developed. Furthermore, they argue that the Norwegian support has been provided in a fashion that has been conducive to local capacity building.

The HJCP has suggested that support from the Norwegian Government be prolonged for another three-year period, and the budget kept on the same level throughout the project period. HJCP further suggests that the support should be provided in the same manner as previously; *i.e.* by allowing for a combination of (i) direct budget supplements (ii) technical assistance, (iii) support to capacity building in HJPC, its secretariat and the courts, and (iv) support to concrete projects.

HJPC staff also suggests a new project aimed at establishing networks and partnerships between judiciary councils in several Western Balkan states. This is considered especially important as all countries in the region are facing the same types of challenges in the justice sector.

The 2008 EU Progress Report emphasizes that HJPC's contributions to improving the BiH judiciary have been realized in spite of unfavourable odds, and need to be further developed and consolidated to ensure the sustainability of reforms that have been painstakingly implemented. The Difi Project team has noted that other international organizations and experts also argue that HJPC's need for assistance is as great now as in 2006. In our opinion, the fact that the HJPC is still fragile and that there are constant attempts to undermine its authority, highlights the need for the Norwegian and other international assistance to be given with a long-term perspective.

The European Partnership document<sup>6</sup> emphasizes further progress in the judicial system as a short term priority for the BiH government. Over the past years the international community has focused more attention on judicial councils. Thus, in addition to the EU, USAID<sup>7</sup> and SIDA are expected to provide significant support in the years ahead. The Difi Project team does not see the recent array of donors as an argument for reducing and phasing out Norwegian assistance, provided that it will be possible to strengthen donor coordination.

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<sup>5</sup> According to a donor mapping performed by UNDP in 2007, Norwegian support to the HJPC had totalled € 1.2 million up to date, not including secondment salaries.

<sup>6</sup> 2008/211/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with BiH and repealing Decision 2006/55/EC

<sup>7</sup> USAID has launched the five-year *Justice Sector Development Project (JSDP)*, implemented by East-West Management Institute (EWMI), aiming to improve the efficiency and fairness of the judicial system in BiH by building the capacity and sustainability of key local institutions.

The Difi project team believes that Norway has a unique opportunity to continue its successful investment in the justice sector and to make a difference in this particular area across the Western Balkans. This argument is in line with our general recommendation that the NMFA concentrate resources on projects where it is possible to make use of experience and insight gained by previous support.

*The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposals developed by HJC staff with the intention of defining more precisely the content of a regional project and the continuation of ongoing support in BiH.*

### Office of the Human Rights Ombudsmen

The Office of the Human Rights Ombudsmen of BiH (OHRO) is an independent institution of the State of BiH established in consequence of the Dayton Peace Agreement (DPA). The procedures established by the Office of the Ombudsman are modelled on recommendations by the European Commission of Human Rights. The OHRO is an institutional vehicle for general complaints against any aspect of maladministration in the public service.

The previous system of entity ombudsmen was abolished in April 2006, when all human rights prosecutors were merged into one single Ombudsman institution. The institution was renamed and started its operations from headquarters in Banja Luka in January 2007. Field offices are located in Sarajevo, Mostar and Brcko.

However, so far OHRO has neither had resources nor powers to function properly. The process of taking over competences from the entity level institutions has been difficult, and the Ombudsmen representing the three constituent peoples of BiH were only appointed in 2009 after a series of delays. The OHRO office in Sarajevo does not have adequate premises, and the institution's budget is far from sufficient.

The European Partnership document calls on the BiH government to ensure that the State and Entity Ombudsmen be fully integrated and that the state-level offices have the resources necessary to function properly. Further delay of the merger of the three offices may undermine the credibility of the national ombudsman institution.

OHRO has suggested a project proposal regarding

- Exchange of experiences with/learning from ombudsman institutions (OI) in neighbouring countries, including capacity building for ombudsman staff
- Preparation of a comparative study of how OIs in a selection of European countries deal with human rights issues, and on the basis of this analysis develop BiH guidelines/(draft)regulations

*The Difi project team recommends that the project idea suggested by the OHRO – when and if fully developed - be considered carefully for Norwegian support.*

### The Ministry of Human Rights and Refugees

The Dayton Peace Accords and the subsequent peace implementation have established an elaborate system of civil and human rights protection. In Annex VII of the General Framework Agreement for Peace in BiH on Refugees and Displaced Persons, Article IX on

Compensation, it is stated that BiH authorities “shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.”

The 2008 EU Progress Report notes that the revision of the Strategy of BiH for implementation of the requirements regarding refugees and internally displaced persons can be considered a significant effort on the part of the State and the Entities to finalize the process of return. There are, however, still some 125 000 persons who wish to return to their original place of residence. One of the priorities of the European Partnership Agreement concerns remaining challenges regarding refugee return; *i.a.* the need to achieve significant progress towards their economic and social integration

The Ministry of Human Rights and Refugees (MHRR) will now intensify its efforts with issues regarding refugee return/refugee compensation claims, and plans the establishment of a new unit within the ministry for these matters. MHRR has suggested a project aimed at capacity building for this new unit. The project should provide

- expert assistance/consultancy services to the ministry/personnel in the new unit, regarding *i.a.* the development of an action plan for identifying and following up compensation claims by refugees/internally displaced persons.
- financial assistance for procurement and installation of necessary ICT hardware and software for a register of refugees/internally displaced persons who may be entitled to economic compensation

*The Difi project team recommends that the project proposal suggested by the Ministry of Human Rights and Refugees – when and if fully developed - be carefully considered for Norwegian support.*

#### **The Ministry of Justice: the law on administrative procedure**

The BiH Ministry of Justice (MoJ) is the central coordinating body for the judicial system. MoJ is responsible for implementing key parts of the Public Administration Reform Strategy, especially reforms concerning administrative decision-making, (*i.e.* legally binding decisions made by administrative authorities). According to MoJ legal experts rights of BiH citizens are more frequently affected by administrative decisions (practically all citizens) than court decisions (allegedly 2 of 10 citizens).

The PAR strategy sets out the main principles of public administration reform: transparency, participation, accountability, effectiveness, efficiency and coherency. The strategy recommends that amendments to the Law on Administrative Procedure (LAP) be passed to simplify, and align the BiH public administration with modern European standards of administrative decision-making. The current large number of administrative procedures which may vary across the BiH entities reduces transparency and predictability of administrative decision-making. The BiH LAP is based on the 1925 Austrian administrative code (*Verwaltungsverfahrensgesetz*), which is, or was until very recently, the corresponding body of legislation in all ex-Yugoslav states. The law which in broad terms is unchanged since the 1950s should be subjected to a thorough review.

In the same vein SIGMA recommends that general administrative procedure legislation be reviewed and adapted to democratic requirements, and that special administrative procedures be abrogated and limited to the absolute minimum. General administrative procedures need to be unified for the whole country and local laws abolished.

In response to *i.a.* SIGMA concerns, MoJ has suggested a project with two components

- Preparation of a revised Administrative Procedures Act that is harmonized across BiH, and covers state and entity levels. According to MoJ officials this is an area which is not controversial vis-à-vis the entity governments
- Development of a training program for civil servants who will be charged with implementing the amended law.

At present MoJ does not receive external support for capacity building, nor are there plans for/prospects of support that might overlap with the suggestions above.

*The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follow up the proposal developed by MoJ with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

## **1.4 BiH: security sector reform**

### **Defence planning**

In 2006 the BiH Ministry of Defence took over responsibilities from the entity-level ministries. The army remains divided into ethnically defined units, throwing some doubt on how well the army is likely to function as an integrative institution.

In the past, the international military presence (under EU leadership since 2004) has provided security guarantees. The number of international peacekeepers has been gradually declining and was cut substantially from 6,000 in early 2007 to around 2,500 by March 2007. Their function has been to shore up the peace process and the state. Due to the decline in any apparent security threat to the state, this military presence has become less necessary.

BiH has undertaken major defence reform initiatives in an effort to stabilize the country and make it a credible candidate for both NATO's Partnership for Peace and the European Union Stabilization and Association Agreement Process. These efforts included a drastic downsizing of the armed forces in both entities and the subsequent demobilization of military personnel.

Norway has supported a transitional assistance programmes for discharged soldiers, *i.e.* assistance to facilitate their transition to civilian life with as little economic and social disruption as possible. In the period before 2006 these programmes were implemented by the International Organization for Migration (IOM), in cooperation with FBiH and RS Ministries of Defence. After 2006 the Ministry of Defence and the NATO Trust Fund have been responsible for efforts to discharge redundant personnel from the armed forces and assist them in their transition to civil life. Norway has given substantive support to these schemes.

However, the Ministry of Defence has not built sufficient capacity to cope with demobilization processes in 2009, and 1 – 5 years ahead when again a large number of

personnel will have to leave the armed forces at the age of 35, *i.e.* when they are too old for service and too young for retirement.

The Ministry of Defence, like other state-level ministries and institutions, is far from staffed or equipped to carry out the tasks it is charged with. Due the critical lack of capacity the Ministry has expressed the wish that Norway support

- the preparation of a Strategic Defence Review, and
- the building up of expertise/capacity in the fields of (i) staff planning – recruitment and demobilization, and (ii) human resource management/personnel management

As we have pointed, in section 4.2 of the report, the kind of projects that are proposed here should not be confined to passing on purely military know-how. Projects on public planning – no matter in what area – raise questions that go beyond the remit of individual ministries. They regard *i.a.* rules and practices for policy preparation and coordination across ministries. A Defence Ministry cannot on its own deal with, let alone decide, the kind of issues suggested in the project proposal. The preparation of a Strategic Defence Review must to some extent involve at a minimum the Foreign Ministry, the Ministry of Interior/ Police, the Ministry of Finance, and probably also units for policy planning at the centre of government. As we have emphasized earlier, SSR projects in the region have tended to focus too narrowly on military matters.

*With this caveat we still recommend that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal developed by BiH MoD, with the intention of defining more precisely the content of future projects that may be funded as of 2010. Possible Norwegian support should be planned and implemented in contact with the PAR coordinator and an ongoing UNDP project on strategic planning and policy development*

#### **The Ministry of Security: police reform**

The law enforcement system in Bosnia and Herzegovina is fragmented and inconsistent, and the lack of cooperation among police bodies undermines the fight against organized crime and crime in general. According to assessments by international experts the police are working with an outdated philosophy, without clear modernization strategies, with an old management style, with mostly outdated equipment and too many under-trained police officers. However, in 2005 the BiH Council of Ministers adopted a Political Agreement acknowledging the overall principles set out by the European Commission as the basis for an acceptable police reform:

- all legislative and budgetary competencies for all police matters must be vested at the State level;
- no political interference in operational work;
- functional local police areas must be determined by technical policing criteria where operational command is exercised at the local level.

After several failed attempts at police reform, two police reform acts were finally adopted in April 2008 and entered into force in May 2008. The acts foresee the establishment of seven new agencies at state level. There is no transfer of competences from the entity, cantonal and Brcko level to the new agencies; however, the Law on the Directorate for Coordination of

BiH Police Bodies prescribes that all police bodies in BiH are obliged to cooperate with this Directorate, and upon its request provide assistance to it.

The Ministry of Security has suggested a project regarding the establishment of two new agencies foreseen in the police reform laws:

- Directorate for Coordination of BiH Police Bodies
- Agency for Forensic Examinations and Expertise

According to an informal assessment by the EU Delegation in Sarajevo the new institutions might create a positive momentum for improved cooperation on police matters and may become a platform for streamlining the overall police structure in the coming years. In this context, transitional provisions in the laws determine that future steps will be considered after the constitutional reform; this approach is considered essential to ensure full compliance with the three European Union principles (referred to above) over a longer period of time. In meetings with the Difi project team, representatives of the EU Delegation emphasized that the police reform will need strong support and that the time is now favourable to start assistance.

However, based on previous experience from the long-lasting negotiations on police reform, it is expected that political difficulties will persist during the whole implementation period. The difficult and fragmented internal political situation of the country will require fine-tuning and commitment from the beneficiaries, in order to ensure the sustainability of the projects.

*With these reservations in mind the Difi project team still recommends that Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal developed by the Ministry of Security, with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

## **1.5 BiH: public administration reform**

The Public Administration Reform Coordinator`s Office: PAR fund

Public administration reform is a key priority in the EU integration process. The European Partnership Agreement calls for BiH to:

- further improve the functioning of public administration
- implement the consolidated Action Plans on public administration reform
- improve administrative procedures
- improve policy-making and co-ordination capacities
- strengthen Human Resource Management across all governmental levels, in particular the development and implementation of efficient recruitment procedures and the building of training capacity for civil servants.

The 2008 EU progress report states that there has been some progress in the area of public administration reform. However, the country is still in an early phase of PAR. The progress so far is mainly related to the establishment and performance of the Public Administration Reform Coordinator`s Office (PARCO).

PARCO has developed a PAR strategy with a corresponding action plan that has been adopted by all governments in BiH . The first phase of the action plan covers the overall



development of horizontal administrative capacities such as legislative drafting, administrative procedure, human resource management, public finance, policy-making, institutional communication, and information technologies. The second stage of the action plan focuses on the reorganization and strengthening of particular governmental sectors to enable the public administration in BiH on all levels to adopt and implement the *acquis*.

PARCO has made significant progress in terms of staffing, and the Public Administration Reform Fund (PAR fund) under its administration has become operational.

The PAR fund is financed by the donor community in BiH. The memorandum on the establishment of the Par fund was signed in July 2007 by *i.a.* the prime ministers of BiH, the Federation and RS, the mayor of the Brcko District, the ambassadors of the donor countries – the UK, the Netherlands and Sweden – and the head of the EU Delegation in BiH. When the memorandum was signed, the fund disposed of €4.5 mill Euros earmarked for the implementation of the PAR strategy over a three year period.

The PAR fund can be increased either through participation of additional donors or through the increase of shares held by existing partners. By 2010 PARCO expects some of the donors to reduce their shares, and even to withdraw from the fund. PARCO has asked the Difi project team to look into the possibility that Norway joins the PAR fund.

Conversations we have had with representatives of the three donors, the EU, UK, and Sweden, clearly indicate that PARCO works rather well under adverse conditions.

*The Difi project team recommends that Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal presented by PARCO with the intention of defining more precisely the content of future Norwegian support as of 2010.*

#### **The State Civil Service Agency: support to civil servants training**

The European Partnership document obliges the BiH government to build training capacity for civil servants. The 2008 EU Progress Report notes that significant further efforts are needed to establish an efficient, professional, stable, accountable and transparent civil service.

The Civil Service Agency (CSA) has the mandate to plan and organize horizontal training for all state institutions. On the other hand, state institutions are responsible for developing training activities related to their specific areas of policy. The two entities and the Brcko District have their own civil service agencies charged with the training of civil servants, and are entirely independent in their work.

Coordination between State- and entity Civil Service Agencies has improved, with joint involvement in several large scale training schemes. However, the financial resources allocated for training of civil servants are not sufficient. Training is to a great extent donor-driven, poorly coordinated and not well enough targeted at officials who need it most. There is a clear need to strengthen the capacities of training institutions such as the CSA.

The Agency has proposed a project regarding

- development of new training schemes on prioritized topics
- development of strategies for e-learning/distant learning

*The Difi project team recommends that the project idea suggested by the CSA – when and if fully developed - be considered carefully for Norwegian support.*

## **1.6 BiH: Regulatory framework for market economy**

### **The Council of Competition of BiH**

The Council of Competition was established in 2004 as an independent public body with a mandate to ensure implementation of the Law on Competition, passed in 2001. The Council of Competition has particularly focused on developing competition policy and on institutional capacity building. The number of completed cases has increased steadily since 2006. Raising public awareness on various aspects of competition law is regarded as a key activity.

The Council of Competition has established contacts with relevant authorities in the region, EU countries, as well as multilateral cooperation with appropriate international bodies and organizations, such as OECD and UNCTAD, and has been a member of the International Competition Network (ICN) since 2005. The Competition Council has signed a memorandum of understanding on competition policy and relevant market legislation with its counterparts in Macedonia, Bulgaria and Croatia.

The European Partnership Document calls for the BiH government to strengthen the administrative capacity of the Competition Council. The 2008 EU Progress Report notes that there has been progress in the fields where the Competition Council has been most active, *i.e.* anti-trust control, and abuses of dominant position.

The Competition Council is aware of the need to strengthen its capacities. This year 6 – 7 new employees will be recruited, and Council officials point out that both new and old staff members need training. The council has suggested a project aimed at capacity building in the areas of state aid, and energy and strengthening of administrative functions (*e.g.* purchase of literature, participation in workshops, and meetings with experts from the region). The Competition Council wants to send an employee to Norway to study Norwegian experience with the enforcement of competition policies in the energy sector.

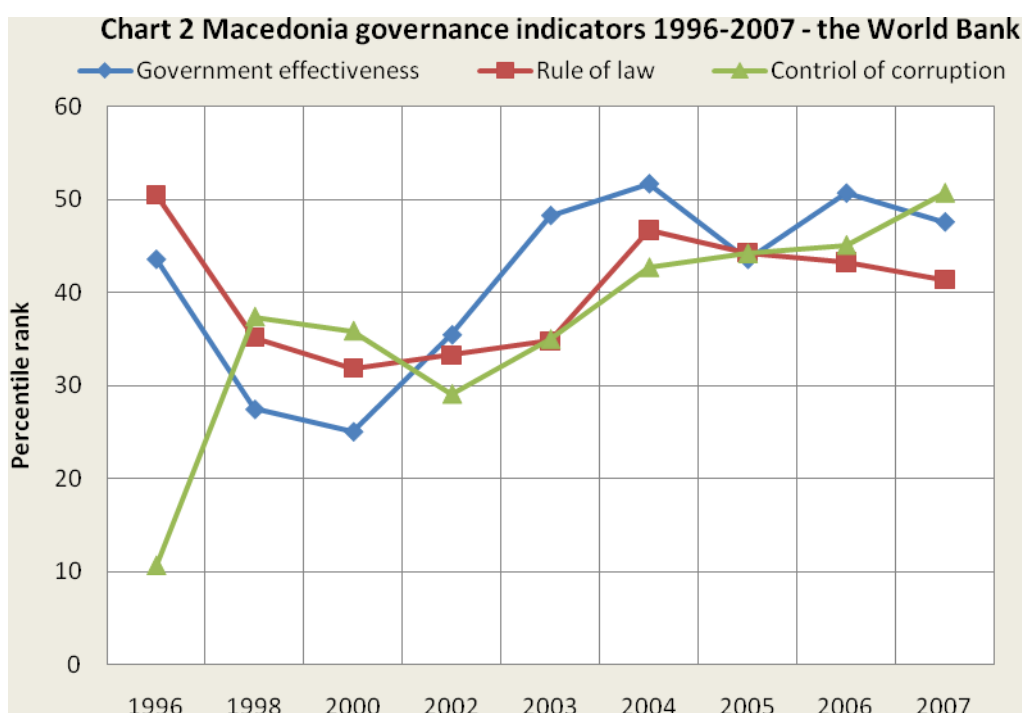
The Council of Competition does not currently receive any foreign assistance, nor are there plans for/prospects of such assistance in the near future.

*The Difi project team recommends that the project proposal suggested by the BiH Competition Council – when and if fully developed - be carefully considered for Norwegian support.*

## 2 Macedonia

### 2.1 Macedonian developments and challenges

Since 2002 there has been progress, although uneven, for all governance indicators included in the chart below. Improvements in government effectiveness and control of corruption are slightly more pronounced than enhancement of the rule of law. However, government effectiveness actually deteriorated during the 2004 – 2006 period. Control of corruption is the only indicator that shows steady progress in the post 2002 period.



The most recent assessments of the Macedonian public administration by SIGMA and the EU Commission are summarized in table 3 below.

The SIGMA assessments from 2006 – 2008 report significant progress in legislation and supporting regulations for policy preparation, co-ordination, and strategic planning. Further, good structures for management and coordination of European integration activities have been set up. SIGMA nevertheless identifies a series of remaining challenges in horizontal management systems. Some weaknesses relate to legal frameworks, *i.a.* regarding the scope of the Law on Civil Servants. A number of areas in the state administration are not aligned with basic principles for civil service. Weaknesses as regard processes are evident in many areas, *i.a.* with regard to following up the requirements to implement regulatory impact assessment (RIA) in the Ministry of Finance. According to SIGMA, professionalism and depoliticization of the civil service remains a concern. The dismissal of a large number of managers at the very beginning of the new government provided some contradictory signs to

the general public society and to the civil service. Ethics in civil service should be strengthened.

According to the EU Commission the country made some progress during the 2006 – 2008 period, but it does not yet meet the political criteria for commencement of accession negotiations.

Table 3 IB Needs Macedonia – EU Assessments 2008<sup>8</sup>

	IB topics			
	Legal framework	Processes	Institutions	Personnel
Horizontal systems				
(1) Policy-development, coordination and planning	<ul style="list-style-type: none"> <li>• Framework needs to be established for effective social dialogue between the government and the organisations representing civil servants</li> <li>• Coordination of the NPAA with the strategic plans of ministries and the work programme of the government needs to be strengthened</li> <li>• The capacity to prepare legislation is variable, which is reflected in its quality.</li> </ul>	<ul style="list-style-type: none"> <li>• There are inadequate structures and insufficient administrative capacity for human resources management, policy development, strategic planning, and internal coordination and planning.</li> </ul>	<ul style="list-style-type: none"> <li>• Human and financial resources to implement the <i>acquis</i> (NPAA) are still inadequate.</li> <li>• A number of key positions in the Secretariat for European Affairs (SEA), the Ministry of Justice and the Ministry of Local- Self Government remain vacant.</li> </ul>	
(2) Public administration and decentralization	<ul style="list-style-type: none"> <li>• Some progress made in reforming public administration, but the country has a long way to go in establishing a public administration which is transparent, professional and free of political interference</li> <li>• Specific statutes need to be revised and aligned with basic principles for the civil service.</li> </ul>	<ul style="list-style-type: none"> <li>• Limited progress in strengthening the role of Civil Servants Agency (CSA).</li> </ul>	<ul style="list-style-type: none"> <li>• Training needed for staff of HRMS and HR units across the public administration.</li> <li>• Understanding of the performance assessment process is still poor, and the capacities in ministries to implement are low.</li> </ul>	

<sup>8</sup> The information in the table is extracted from, The European Commission: The Former Yugoslav Republic of Macedonia 2008 Progress Report, SIGMA: Public Service and Administrative Framework (2008), SIGMA: Policy Making and Coordination (2008), and SIGMA: Public Procurement (2008).

				<ul style="list-style-type: none"> <li>• There is no fully functional network of human resource management units in line ministries.</li> <li>• Existing HRM units deal only with personnel issues and are under-equipped to handle training and performance appraisal issues .</li> <li>• A comprehensive plan for training of civil servants still not in place.</li> </ul>
<p>(3) General administrative law framework and anti-corruption legislation and measures</p>	<ul style="list-style-type: none"> <li>• Corruption remains a serious cause for concern and key weaknesses remain, notably as regards financing of political parties and election campaigns.</li> <li>• The anti-corruption legal framework still needs to be completed and rationalized.</li> <li>• The amendment to the code of ethics for civil servants are so far ineffective.</li> </ul>	<ul style="list-style-type: none"> <li>• More effective implementation of the preventive measures by anti-corruption legal framework , including the law on general administrative procedures and the law on free access to information, would narrow the opportunities for corruption.</li> <li>• The judiciary remains weak, and delivery and enforcement of court decisions are deficient.</li> </ul>	<ul style="list-style-type: none"> <li>• The administrative capacity of the commission for protecting access to public information remains weak.</li> <li>• The State Anti-Corruption Commission (SACC) is not sufficiently fulfilling its leadership role and should be more active in particular in awareness raising and engagement with the public.</li> </ul>	

(4)	Public Procurement	<ul style="list-style-type: none"> <li>The new law on concessions and public-private partnerships not in line with the <i>acquis</i></li> <li>Further changes in remedies system are necessary.</li> </ul>	<ul style="list-style-type: none"> <li>The system of public procurement is bureaucratic and time-consuming.</li> <li>Lack of transparency and openness.</li> <li>No up-to date manuals/guidelines.</li> </ul>		<ul style="list-style-type: none"> <li>Current efforts on training for the contracting authorities and economic operators need to be sustained.</li> <li>Little professional assistance available for procurement officers.</li> </ul>
Vertical systems					
(5)	Market economy development	<ul style="list-style-type: none"> <li>Modest progress in the area of corporate accounting auditing.</li> </ul>		<ul style="list-style-type: none"> <li>The Institute for Chartered Auditors (ICA) still only has one full-time employee and has not yet begun to implement the programme for education and training of auditors.</li> </ul>	
(6)	Free movement of goods	<ul style="list-style-type: none"> <li>No progress can be reported as regards general principles.</li> <li>Most of the sectoral <i>acquis</i> on free movement of goods has still to be transposed and implemented ,</li> <li>Comprehensive strategy with milestones for implementation of the <i>acquis</i> for the relevant horizontal institutions has not yet been prepared.</li> </ul>		<ul style="list-style-type: none"> <li>The capacity of the various institutions is still insufficient to ensure proper enforcement.</li> <li>Market surveillance is still very weak.</li> </ul>	
(7)	Free movement of workers		<ul style="list-style-type: none"> <li>Hardly any progress in the area of freedom of movement for workers.</li> </ul>	<ul style="list-style-type: none"> <li>The Employment service agency and its network of employment offices are still weak.</li> <li>The administrative capacity for coordinating social security schemes is insufficient.</li> </ul>	<ul style="list-style-type: none"> <li>The technical capacity and human resources of the employment agency are insufficient.</li> </ul>
(8)	Establishment of freedom to services	<ul style="list-style-type: none"> <li>No progress regarding mutual recognition of professional qualifications.</li> </ul>	<ul style="list-style-type: none"> <li>Lack of transparency and objectivity in granting authorizations still persist.</li> </ul>	<ul style="list-style-type: none"> <li>The Postal Agency was established as an independent regulatory authority, but is not yet fully operational.</li> </ul>	<ul style="list-style-type: none"> <li>The Postal Agency has not yet developed appropriate administrative capacity.</li> </ul>
(9)	Freedom of the movement of capital			<ul style="list-style-type: none"> <li>The administrative capacity and enforcement record on combating money laundering are not sufficient.</li> </ul>	

(10) Customs	<ul style="list-style-type: none"> <li>The customs legislation is well aligned with the <i>acquis</i>, but still has to be further harmonized.</li> </ul>	<ul style="list-style-type: none"> <li>Adoption of the single administrative document has not been addressed.</li> <li>Customs procedures need to be further strengthened.</li> <li>A comprehensive IT system and a strategy for interconnectivity with the Community IT systems have yet to be developed.</li> </ul>		
(11) Competition		<ul style="list-style-type: none"> <li>Progress made in the area of State aid, but the ex-ante control of state aid is not sufficiently effective.</li> </ul>	<ul style="list-style-type: none"> <li>The financial independence of the Commission for Protection of Competition secured (CPS), but the MoF still determines the size of the CPC's budget.</li> <li>Some overlap of competencies between CPC and the public prosecutor's office.</li> </ul>	<ul style="list-style-type: none"> <li>The CPC still needs better qualified staff and adequate funding.</li> </ul>
(12) Financial services			<ul style="list-style-type: none"> <li>Deficiencies persist in the administrative capacity of the supervisory bodies, in particular as regards insurance, where enforcement is particularly insufficient.</li> </ul>	
(13) Intellectual property rights		<ul style="list-style-type: none"> <li>Further effort needed in order to improve the track record, strengthen the capacity of enforcement bodies, adopt a coherent IPR strategy and carry out awareness raising activities.</li> </ul>		<ul style="list-style-type: none"> <li>Enforcement of IPR hampered by lack of appropriate awareness, experience and qualifications of the inspectors and judges in the field.</li> </ul>



(14) Social protection	<ul style="list-style-type: none"> <li>Limited progress reported in social policy and employment. A moderate level of alignment has been reached.</li> <li>Little progress made in the area of labour law, social dialogue, social protection and anti-discrimination.</li> </ul>		<ul style="list-style-type: none"> <li>Administrative capacity in the Labour Inspectorate is insufficient .</li> <li>Coordination between institutions involved in implementing social inclusion policies remains inadequate.</li> <li>Insufficient administrative capacity in the field of social inclusion</li> </ul>	
(15) Consumer and health protection		<ul style="list-style-type: none"> <li>A strategy on public health has not yet been developed.</li> </ul>	<ul style="list-style-type: none"> <li>The administrative capacity within the Public Health Institute is limited.</li> <li>The administrative capacity of the coordination n body market surveillance has not been strengthened.</li> </ul>	
(16) Agriculture and fisheries	<ul style="list-style-type: none"> <li>There has been modest progress in the area of food safety, veterinary and phytosanitary policy, mainly regarding legislative preparedness.</li> </ul>	<ul style="list-style-type: none"> <li>The animal health control system does not comply with EU legislative and institutional requirements.</li> </ul>		
(17) Environment	<ul style="list-style-type: none"> <li>The implementing legislation intended to transpose the <i>acquis</i> on strategic environmental assessment has been adopted, but is not yet fully aligned.</li> </ul>	<ul style="list-style-type: none"> <li>Environmental protection requirements are not yet well integrated into policy-making and implementation in other areas. <ul style="list-style-type: none"> <li>Judicial enforcement of environment legislation needs to be strengthened.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The Environmental Protection Agency lacks the proper capacities.</li> <li>Administrative capacity in terms of human and financial resources is insufficient and its strengthening .remains a priority.</li> </ul>	
(18) Transport policy		<ul style="list-style-type: none"> <li>The reforms undertaken in railways still need further implementation.</li> </ul>	<ul style="list-style-type: none"> <li>Administrative capacity in all sectors remains insufficient.</li> <li>Regulatory bodies and safety authorities have yet to become operational in the fields of land, air and rail transport</li> </ul>	

(19) Energy policy	<ul style="list-style-type: none"> <li>In the field of energy, the country is yet not sufficiently prepared.</li> <li>There has been modest progress in the area of state aid, but preparations in this area are advanced.</li> </ul>	<ul style="list-style-type: none"> <li>The administrative capacity to enforce energy efficiency policy and radiation protection regulations has improved, but requires further strengthening.</li> <li>The degree of independence of the energy regulator and the radiation protector regulator remains inadequate.</li> </ul>	
(20) Information society and media		<ul style="list-style-type: none"> <li>Despite legal provisions regulating the independence of the Broadcasting Council and the public service broadcaster, both remain vulnerable to political interference.</li> <li>In the media the financial situation of the Broadcasting Company and the public service broadcaster remain a cause for concern. The Broadcasting Council is understaffed. Decisions of the Broadcasting Council are sometimes not respected by the broadcasters.</li> </ul>	
(21) Financial control		<ul style="list-style-type: none"> <li>The administrative capacity of the institutions responsible for public internal financial control and external audit has been strengthened, but is still inadequate to meet the obligations arising from the <i>acquis</i>.</li> <li>The State Audit Office (SAO) is still not fully independent.</li> </ul>	
(22) Taxation	<ul style="list-style-type: none"> <li>The level of legislative alignment in indirect taxation is sufficient, but need to be improved in direct taxation.</li> </ul>		

(23) Statistics			<ul style="list-style-type: none"> <li>• Cooperation with the MoF and the Central Bank has improved, however roles have still to be clearly defined.</li> <li>• The human and financial resources of the statistical office remain weak.</li> </ul>	
(24) Economic and monetary policy	<ul style="list-style-type: none"> <li>• No progress reported in aligning the legal framework with the <i>acquis</i> in the area of monetary policy.</li> </ul>		<ul style="list-style-type: none"> <li>• Administrative capacity has improved, but some gaps remain.</li> </ul>	
(25) Enterprise and industrial policy			<ul style="list-style-type: none"> <li>• The SME Agency still lacks sufficient human and financial resources.</li> </ul>	
(26) Trans European networks	<ul style="list-style-type: none"> <li>• No progress reported in the area of telecommunication networks.</li> </ul>			
(27) Police and justice, freedom and security	<ul style="list-style-type: none"> <li>• Secondary legislation on migration policy and integration policy plan is still lacking.</li> <li>• The Council of Europe Convention on Action against Trafficking in Human Beings has not yet been ratified.</li> </ul>	<ul style="list-style-type: none"> <li>• The law on employment of foreigners and the Law on Aliens not fully implemented.</li> <li>• .Asylum procedures are not yet fully in line with European standards.</li> <li>• Little progress can be reported in the area of judicial cooperation in civil and criminal matters.</li> <li>• Little progress reported in the area of drugs.</li> <li>• Regulations on private possession of firearms are still insufficiently enforced.</li> </ul>	<ul style="list-style-type: none"> <li>• Structural problems in the police forces persist. Considerable differences in the capacities of departments and services as well as a lack of coherent approach to human resources and financial management within the Ministry of Interior pose serious challenges for ongoing reform efforts.</li> <li>• Cooperation between public prosecutors and criminal bureau of the regional police headquarters has improved, but not sufficiently.</li> <li>• The internal control department has not been sufficiently effective owing to limited support within the police, staff shortages and a lack of resources.</li> </ul>	<ul style="list-style-type: none"> <li>• Staff who implement visa policy are undergoing training.</li> <li>• An overall strategy for HRM management for the border police has not yet been adopted, and in- depth analysis of the staffing situation is lacking.</li> <li>• Merit-based career development and appraisal not yet ensured, politicization of senior police officers is a problem.</li> </ul>

			<ul style="list-style-type: none"> <li>Shortcomings in the logistics and funding of the department for witness protection have not been fully addressed.</li> </ul>	
(28) Fundamental rights and citizens rights		<ul style="list-style-type: none"> <li>With regard to <i>freedom of expression</i> including freedom and pluralism <i>of the media</i>, the legal framework continues to meet most international standard. However, poor implementation leads to weaknesses in practice.</li> <li>There are several cases pending at the European Court of Human Rights concerning police abuse of the Roma people.</li> <li>No state funds are available for legal aid in civil cases.</li> </ul>	<ul style="list-style-type: none"> <li>The inter-ministerial body for protection of human rights is not yet effective. The Committee for the Prevention of Torture has expressed deep concern about conditions in prisons.</li> <li>The economic and financial autonomy of the public service broadcaster and the regulatory body has still not been ensured .The media continues to be subject to significant political interference.</li> </ul>	<ul style="list-style-type: none"> <li>The Directorate for Personal Data Protection remains understaffed.</li> </ul>
(30) Judiciary and fundamental rights		<ul style="list-style-type: none"> <li>Access to justice still limited in case of appeals against actions and decisions by civil servants. Government commissions which decide on complaints against decisions of administrative bodies were the least responsive to the Ombudsman's recommendations.</li> <li>The new system of enforcement has had a mixed record.</li> <li>Little progress reported as regards observance of international human rights law.</li> </ul>	<ul style="list-style-type: none"> <li>A significant number of vacancies remain open in the public prosecution service, and the Higher Prosecutor's Office which is yet to be set up. Furthermore, prosecutors are not using their competence to the full.</li> <li>The Administrative Court and the Court of Appeal are not fully staffed which hinders the efficiency of these courts.</li> <li>The budget of the courts is too low and jeopardizes the efficiency of the judiciary system .</li> </ul>	

## 2.2 Potential areas for Norwegian support to Macedonia – an overview

Together with Macedonian officials the Difi project team has developed 9 promising project ideas which are summarized in table 4 below.

**Table 4 Potential areas for Norwegian support to Macedonia**

	Legal framework	Processes	Institutions	Personnel
Rule of law				
Horizontal systems		<ul style="list-style-type: none"> <li>The Judicial Council</li> <li>The Public Attorney (Ombudsman)</li> <li>The Directorate for Personal Data Protection</li> </ul>		
Vertical systems				
Security sector reform				
Horizontal systems				
Vertical systems				
Public administration reform				
Horizontal systems		<ul style="list-style-type: none"> <li>The Secretariat of Legislation</li> </ul>		
		<ul style="list-style-type: none"> <li>The Ministry of Justice, consolidation of public service legislation</li> <li>The State Administrative Inspectorate, supervisory bodies</li> </ul>		
		<ul style="list-style-type: none"> <li>The Ministry of Finance</li> </ul>		
Vertical systems				
Regulatory frameworks for market economy				
Horizontal systems		<ul style="list-style-type: none"> <li>The State Committee for Complaints to Public Procurement</li> <li>The Commission for Protection of Competition</li> </ul>		
Vertical systems				

Three of the projects seem to address benchmarks delivered by the EU Commissioner Olli Rehn (March 2008):

- The judicial Council
- The Ministry of Justice, consolidation of public service legislation
- The State Administrative Inspectorate, supervisory bodies

## 2.3 Macedonia: the rule of law

### The Judicial Council

In 2004 the Government adopted a strategy and an action plan for the reform of the judiciary. The aim was to strengthen independence and efficiency of the court system and thereby to safeguard international human rights standards.

Since then, a series of reform measures have been implemented, regarding *i.a.* the Judicial Council (JC). According to the Law on the Judicial Council which entered into force on 1 January 2007 the JC among other things nominates and evaluates the work of judges (who are still elected by Parliament), monitors the reputation of judges and the confidence of the general public in the judiciary, and acts upon citizens' complaints regarding the courts and members of the courts. The JC has been given extended powers to counteract the tendency of political appointment of judges. Apparently, the reformed JC has also taken a more resolute approach to combating corruption.

Justice reform is a key priority in the EU accession process. The 2005 European Partnership drew special attention to the need to ensure a timely implementation of the Strategy and Action Plan on Judicial Reform.

Progress in this area has been noted by the EU Commission. The 2008 progress report emphasizes that the JC is now complete and functioning. The Commission insists, however, that a track record needs to be established. The Commission regards the JC as a main pillar in a reformed judiciary system, not least because of its role in promoting, protecting and monitoring judicial independence. Further strengthening of the JC is considered an important measure to alleviate seemingly persistent problems with lengthy judicial proceedings. One of the benchmarks delivered by EU Commissioner Olli Rehn (March 2008) obliges the Macedonian government to “Achieve continuous results in the implementation of judicial reforms and enhance the independence and overall capacity of the judiciary system [...]”.

The JC has suggested a project with two main components; it will review and further develop

- methods for monitoring the work of courts and judges, *i.a.* through the improvement of criteria for defining efficiency and professionalism in the court system
- procedures for the selection and the dismissal of judges, *i.a.* through an assessment of the current Macedonian arrangements in the light of European standards and practices

Although the EU and many other donors have been engaged in development and implementation of reform in the judicial sector, it is clearly stated in the multi-indicative planning document for IPA (MIPD) that elements of the Judicial Reform Strategy needs further attention, such as efforts to strengthen the independence and efficiency of the court system. As far as we are aware, no other donors currently support the JC, and there are no plans for future assistance that would overlap or conflict with the project activities suggested above.

*Given the centrality of court-related issues in the Macedonian reform process, the Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the JC proposal with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

#### **The public attorney (ombudsman)**

The competence of the Public Attorney (Ombudsman) is laid down in the Constitution and the Law on the Ombudsman. “The Public Attorney protects the constitutional rights and legal rights of citizens when these are violated by bodies of state administration and by other bodies and organizations with public mandates. The Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life”.<sup>9</sup>

The legal framework provides the Ombudsman with a relatively firm institutional basis for promoting and safeguarding human rights. The office has expanded over the years and currently has some 70 employees. Citizens approaching the ombudsman submit complaints, mostly about violations of procedural rights and fair trial guarantees, as well as police

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<sup>9</sup> Article 77 in the Constitution of the Republic of Macedonia

conduct. Property rights, labor relations, social protection and children`s rights are other key areas of concern. A deputy ombudsman for children has recently been appointed.

The EU, UNDP, OSCE and local NGOs report that the Ombudsman has succeeded well in its efforts to reach out to the citizens, cooperate with NGOs, and be highly visible in the media. There has been some improvement over the years regarding the cooperation of the Ombudsman with the public bodies, reflected in the percentage of cases where the public bodies responded on the instructions of the Ombudsman. In 2007 and 2008 the response rate was around 85 per cent, compared with 77 per cent in 2006.

Although the Ombudsman is increasingly recognized, the functions of the Ombudsman remain insufficiently well understood by the population. Often the Ombudsman receives requests for assistance that are not within its mandate, and often the Ombudsman is not approached in cases where assistance could be provided. Secondly, the staff members of the Ombudsman need exposure to international experiences. For the past few years, internal training has improved the quality of the staff, but the lack of access to international experience is hampering a further development of competence.

The ombudsman has suggested a project proposal with two main elements

- capacity building with regard to the establishment of a special department of children`s right headed by the deputy ombudsman; *i.a.* by studying the experience of the Norwegian Ombudsman for Children
- strengthening the Ombudsman`s international experience as a means of further development of staff competence; *i.a.* enabling the Ombudsman to achieve full membership of The European Network of Ombudsmen for Children

The project will enable Macedonia to better fulfil key international obligations. Macedonia signed the Convention on the Rights of the Child in 1991, and in 2005 the Council of Europe Convention on Action against Trafficking in Human Beings. Recently the Convention on the Protection of Children against Sexual Exploitation was adopted. Ratification and implementation of these conventions are anticipated. The measures taken to strengthen the capacities of the Ombudsman`s institution to promote and monitor children`s rights are in line with recommendations by the Commissioner for Human Rights, CoE.

Currently the Ombudsman does not receive any external support in the field of children`s rights, nor are there plans for such support in the foreseeable future.

*The Difi project team recommends that the project idea suggested by the Ombudsman – when and if fully developed – be carefully considered for Norwegian support.*

#### **The Directorate for personal data protection**

In the last few years a reformed legal and organisational structure has been established to ensure appropriate handling of data protection issues. Macedonia has ratified the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data, and the domestic legal framework has been amended accordingly.

In June 2005, the Directorate for Personal Data Protection (DPDP) was established as an independent state body with the duty to supervise the lawfulness of activities regarding personal data processing. Currently DPDP has 17 staff members.

DPDP is deeply engaged in international cooperation in the areas of the police (INTERPOL, Schengen), the judiciary and human rights. Exchange of experience and learning from counterpart organizations in other European states and beyond, is regarded as an important way of building staff competence. DPDP has so far had few opportunities to meet with counterparts in contexts where there is room for in-depth professional discussions. DPDP has already established contact with the Norwegian Data Inspectorate (NDI) and has applied, in a modified form, some of the tools developed and put to use in Norway.

DPDP has suggested a project on capacity building for directorate staff linked to cooperation with the NDI. Project activities should address *i.a.* data protection and use of smart card/chips (health card, passport, bank card etc.); video surveillance in schools, hospitals workplaces, etc., and personal data protection on the internet.

DPDP is one of the beneficiaries in a project under IPA2008, which will not, however, overlap or conflict with the proposal suggested above.

*The Difi project team recommends that the project proposal suggested by DPDP – when and if fully developed - be carefully considered for Norwegian support.*

## **2.4 Macedonia: public administration reform**

### **The Secretariat for Legislation**

Reinforcing the institutional and administrative capacity by developing the capacity for policy development and legislation is a key requirement for the country's EU accession.<sup>10</sup> To enable the adoption, implementation and compliance with the *aquis communautaire*, Macedonia, as a candidate country, needs to strengthen its institutional and administrative capacities.

Preparing for EU membership requires far-reaching changes in the system for policy and law preparation. In its most recent assessment of policy-making and coordination (November 2008) SIGMA observes that the capacity of the Macedonian government to prepare legislation is deficient, which is reflected in quality.

The Secretariat for Legislation – an expert state body reporting directly to the Macedonian Government – is one of the key players in this system. Its main assignment is to safeguard the quality and internal consistency of the domestic legal system, *i.a.* the constitutionality of new legislation and to ensure that domestic laws and other regulations are harmonized with international agreements. In particular the Secretariat monitors and evaluates the approximation of the national legislation with the EU *acquis*.

Although the Secretariat for Legislation has been continuously engaged in capacity building activities, its current capacity is strained to the utmost and needs to be significantly strengthened.

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<sup>10</sup> Council Decision of 18 February 2008 (2008/212/EC).



The Secretariat for Legislation has suggested a project proposal with two main components:

- The preparation of a comparative study of EU/EEA member states, mapping *i.a.* (i) constitutional amendments that were implemented in these states in consequence of their joining the EU/EEA, (ii) the organization of efforts in these countries to transpose/implement EU/EEA legislation, and (iii) the organization of the national law-making processes of the states studied, especially changes that were necessitated by EU/EEA accession. The study will be used as a basis for proposing institutional and legal/constitutional changes that will be likely results of Macedonia achieving EU membership.
- Strengthening the capacity of the Secretariat staff through *i.a.* the development and implementation of a 1-3 year HR development plan. A key approach might be cooperation and exchange of experience with counterpart organizations of countries in the region and EU member states.

At present the Secretariat for Legislation does not receive external support for capacity building apart from a minor activity for 2009 funded by NORMAK, nor are there plans/prospects of support that might overlap with the suggestion developed above. On the basis of the institution's prior record with project assistance, the Difi project team considers it has a good "absorption capacity".

*We recommend that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the project proposal suggested by the Secretariat for Legislation with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

#### **The State administrative inspectorate, supervisory bodies**

As in all ex-Yugoslav states the work of Macedonian administrative bodies as well as private businesses are monitored by a large number of supervisory bodies/inspection services. The legal status, organizational patterns, working methods and HR systems of these bodies vary a great deal, not always for well-reasoned purposes it seems.

The large number and extensive fragmentation of supervisory bodies may influence the business environment negatively. Moreover it may mean an unnecessary demand on staff and create problems of overlap between supervisory bodies and /or problems of *lacunae*, where issues are not addressed because there is no responsible agency. This state of affairs may in turn hamper the enforcement of and compliance with key regulations. An upgrading of the supervisory bodies may be crucial to strengthening the regularity and quality of the work of state institutions and improving the business environment. As we have mentioned several times, a recurrent criticism from SIGMA regards the exceeding fragmentation of the civil service and civil service legislation, and the insufficient alignment of this legal framework with basic European principles.

In an effort to address this criticism the State Administrative Inspectorate (SAI), which supervises the implementation of the Law on General Administrative Procedure, has been given the task of drafting a framework law on state inspections, aiming at homogenizing the activities of this type of body on the basis of fundamental European standards.

SAI has suggested a project proposal with two main components, regarding

- the preparation of the framework law on inspections, regulating *i.e.* cross-cutting issues concerning personnel policies, organizational patterns, decision-making procedures of inspection services,
- the implementation of the law, *i.e.* adaption of specific legal frameworks, *lex specialis*, to the new framework law, the introduction of cooperative arrangements among supervisory bodies wherever feasible, and preparation of training activities. Expert assistance is needed, *inter alia*, to help make an analysis of strengths and weaknesses of individual inspectorates/inspectors` work, based on an assessment of key European standards, such as impartiality, transparency and predictability.

The suggested project seems to address one of the benchmarks delivered by EU Commissioner Olli Rehn (March 2008) obliging the Macedonian government to strengthen “[...] the common business environment by further improvement of the rule of law [and] strengthening the independence of regulatory and supervisory bodies [...]”.

At present the SAI receives no external support, nor are there plans/prospects of support that might overlap with the suggestion developed above.

*The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal suggested by SAI with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

#### **The Ministry of Finance – improvement of decision-making practices**

As might be expected, the Ministry of Finance (MoF) plays a crucial role in governmental decision-making. It is involved in all major issues and provides on a regular basis input to policy proposals from the other ministries. However, according to MoF’s own assessment the internal procedures of the ministry are inadequate to MoF’s responsibilities and to the challenges it is currently facing.

MoF has suggested two projects to improve its systems of decision-making. The first one regards the MoF’s general systems for internal communication and flow of information. It includes two main components

- an analysis of the internal procedures for communication and document management with a view to developing reform proposals, and
- if warranted by the preceding analysis, a recommendation regarding the introduction of a document management system.

The second project regards capacity building in the area of regulatory impact analysis (RIA). Currently, MoF’s assessments of policy proposals submitted for the Government’s consideration are not based on proper cost-benefit analysis. This situation seriously weakens the value and impact of MoF’s contributions and ultimately also the quality of the Government’s decisions. RIA was made compulsory for Macedonian state authorities in 2008. However, the public administration is not sufficiently acquainted with RIA concepts and methodology. Thus, the current regulation remains largely unimplemented. The consequence of this is that the government is not able to calculate properly the social and economic consequences of its decisions, which of course is particularly serious in the current economic and financial crisis.

MoF has suggested a project to strengthen its capacity – and if possible that of other relevant ministries as well – to make quantitative analyses in general, and cost-benefit analysis in particular. MoF applied for IPA 2009 funds for institutional capacity building in respect of *i.a.* cost-benefit analysis. However, this potential project would start at the earliest in 2011, and thus would not meet the Ministry's current and acute needs.

*The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposals suggested by MoF with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

### **The Ministry of Justice, consolidation of public service legislation**

As we have indicated in the main report (section 4.2), a recurrent criticism by SIGMA concerns the fragmentation of legal frameworks for the public service. Different laws that are not harmonized with basic European standards govern HR management in different parts of the public administration. In response to the SIGMA assessment, the Ministry of Justice (MoJ) has suggested a proposal with two components

- preparation of a framework law on public servants specifying the main principles – based on European standards – for personnel management in public institutions that are currently subject to special laws, *lex specialis*,
- adaption of relevant special laws to the principles set out in the planned law on public servants, and development of a programme to assist the affected institutions to implement the new provisions.

The suggested project seems to address one of the benchmarks delivered by EU Commissioner Olli Rehn (March 2008) obliging the Macedonian government to “Ensure that the recruitment and career advancement of civil servants are not subject to political affiliation, further strengthen the merit-based career system, and fully implement the law on civil servants”.

*The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposals suggested by MoJ with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

## **2.5 Macedonia: Regulatory frameworks for market economy**

### **The Commission for protection of competition**

The Commission for Protection of Competition (CPC) is responsible for enforcing the Law on Protection of Competition, adopted on 11 January 2005

The purpose of the competition rules is to ensure equal conditions for all business operators so that their market position is solely determined by the quality and price of the goods and services they produce. The key task of competition authorities is to counteract schemes which will give some market operators unwarranted advantages over others.

According to the Stabilization and Association Agreement, article 69, EC competition rules under Articles 81 and 82 EC Treaty applies in Macedonia. Article 8 of the 2008 Accession Partnership stipulates that Macedonia should “Strengthen the administrative capacity of the Commission for Protection of Competition and provide the adequate budget and staff”.

The EU Progress Report for 2008 notes progress in the area of anti-trust policies, including mergers. According to the report progress has also been made in the area of State aid, inter alia through legislative measures. The decisions of the CPC on State aid are respected, but the administrative capacity is not regarded as sufficient for proper monitoring of state aid.

Although CPC performs its duties independently, its financial autonomy has been questioned, as the Ministry still determines the size of the CPC`s budget, which was reduced in 2008. According to the EU Commission, CPC`s need for better qualified staff and adequate funding, may undermine further progress.

The CPC has suggested a project proposal with two main elements:

- preparation of a comparative study to address issues of inter - institutional cooperation in the area of competition and adjacent areas (*e.g.* energy and telecommunications)
- capacity building for CPC staff and support for administrative functions (purchase of literature, participation in workshops, translation of professional literature on EU regulations).

CPC has expressed interest in entering into cooperation with relevant Norwegian authorities: the Competition Authority and the Telecom and Energy regulators.

The CPC does not currently receive other foreign assistance that would duplicate the project idea outlined above.

*The Difi project team recommends that the project suggested by CPC – when and if fully developed – be carefully considered for Norwegian support.*

### **Public procurement**

The setting up of an efficient public procurement system is a fundamental precondition for the success of a market economy. It contributes to long-term economic growth and the emergence of a competitive market culture focused on business efficiency and on “best value for money”. Moreover, a well-run public procurement system may contribute to reducing both public expenditure and the extent of corruption.

Development of the Macedonian system for public procurement will contribute towards the implementation of the SAA article 72 on the opening-up of the award of public contracts on the basis of non-discrimination and reciprocity. For public procurement, the Accession Partnership, article 8, outlines the importance of strengthening the complaints committee for public procurement, with the aim to provide an effective remedies system. It calls for achieving fully operational public procurement structures which ensure that public procurement procedures are conducted fully in accordance with the EC standards.

The National Plan for Adoption of the *Acquis* with regard to public procurement intends to further strengthen the capacities of the Public Procurement Bureau (PPB) as well as those of a State Appeals Commission (SAC).

In its most recent assessment of the public procurement system (November 2008) SIGMA observes *i.a.* that there is a lack of transparency and openness and that there are no up-to date manuals/guidelines .

The Difi project team met with representatives of both PPB and SAC. Both institutions have suggested areas for Norwegian project support.

The proposal regarding PPB has two components

- an analysis of public procurement processes in order to develop a methodology for detecting corrupt practices in the various stages of these processes
- capacity building for PPB staff and support for administrative functions (*e.g.* purchase of literature, participation in workshops)

PPB has ongoing project cooperation with *i.a.* SIGMA and USAID, but none of these projects will overlap the proposal suggested above.

SAC started its operations in 2008 despite the fact that no budgetary funding was allocated that year. All expenditures for November and December 2008 had to be covered by the budget for 2009. The committee met further obstacles with regard to office premises; first of all, the Government did not offer the State Committee for Complaints any furnishings or IT equipment in the new premises, nor did they have a budget for this. With the forthcoming central budget revision the budgetary item for the State Committee will be reduced by some 11 per cent.

SAC has suggested a project proposal regarding

- capacity building for SAC members and public officials working with public procurement across the public administration, mostly training
- support for administrative functions, *i.a.* establishment of a website, procurement and installation of a document management system
- technical assistance, *i.a.* regarding development of strategic documents, and a media strategy.

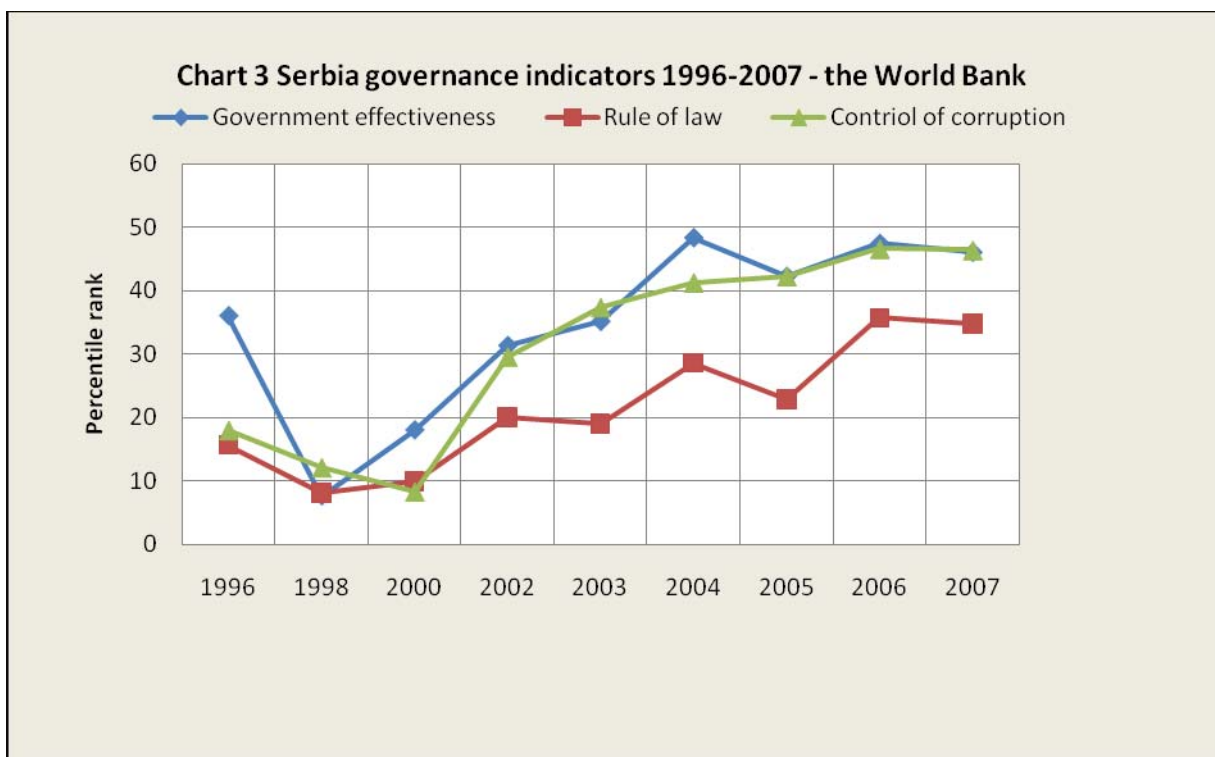
Currently SAC does not receive any foreign assistance. It will benefit from IPA 2008 support, but this assistance will not duplicate activities outlined above.

*The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposals developed by PPB and SAC with the intention of defining more precisely the content of future projects that may be funded as of 2010.*

## 3 Serbia

### 3.1 Serbian developments and challenges

Since 2000 there has been progress for all governance indicators included in the chart below. Improvement of government effectiveness and control of corruption is more pronounced than enhancement of the rule of law. However, government effectiveness actually deteriorated during the 2004-2007 period. A report published in September 2007<sup>11</sup> estimated that the reduction of corruption has mainly been fostered by foreign trade liberalization, the reform of public finances, and liberalization in general. No major improvement – the argument goes – has resulted directly from government policies. Governments are said to have lacked necessary political will.



The most recent assessments of the Serbian public administration by SIGMA and the EU Commission are summarized in table 5 below. SIGMA identifies a series of challenges in horizontal management systems, policy-making and coordination, public service, the general administrative law framework, and public procurement. The weaknesses relate to legal frameworks (*i.a.* in the area of administrative procedures), processes of the public

<sup>11</sup> Boris Begovic et al. “*Corruption in Serbia: Five years later*”, Center for Liberal-Democratic Studies, Belgrade 2007.

administration (*i.a.* inadequate procedures for drafting of legislation), institutions (*i.a.* insufficient technical conditions for the functioning of the Ombudsman's office), and personnel (*i.a.* lack of training in most institutions responsible for horizontal management systems).

Table 5 IB Needs Serbia – EU Assessments 2008<sup>12</sup>

		IB topics			
		Legal framework	Processes	Institutions	Personnel
Horizontal systems					
(1)	Policy-making and coordination	<ul style="list-style-type: none"> <li>Legal competencies of the General Secretariat inadequately reflected in Law on Government and Rules of Procedure of Government</li> </ul>	<ul style="list-style-type: none"> <li>Lack of strategic focus.</li> <li>Overly legalistic approach.</li> </ul>	<ul style="list-style-type: none"> <li>Weak capacities in the General Secretariat .</li> <li>Weak capacities in ministries.</li> </ul>	
(2)	Public service	<ul style="list-style-type: none"> <li>Implementation of the 2005 law on Civil Servants proceeds at a slow pace.</li> <li>Merit-based recruitment and professionalism remain fragile.</li> <li>Mechanisms to protect the integrity of civil servants are weak and inefficient.</li> <li>Action plan for fight against corruption lacks clear deadlines, specific action and necessary resources.</li> <li>Specific statutes, especially for security forces and information services need to revised and aligned with basic principles for the civil service.</li> </ul>		<ul style="list-style-type: none"> <li>HRM units insufficiently staffed.</li> <li>Centralized training facility should be set up.</li> <li>Anti-Corruption Council unable to perform its advisory role.</li> <li>Anti-corruption agency has not yet been established</li> </ul>	<ul style="list-style-type: none"> <li>Training needed for staff of HRMS and HR units across the public administration.</li> </ul>

<sup>12</sup> The information in the table is extracted from: The European Commission: Serbia 2008 Progress Report, SIGMA: Public Service and the Administrative Framework (2008), SIGMA: Policy Making and Coordination (2008), and SIGMA: Public Procurement (2008).



(3) General administrative law framework	<ul style="list-style-type: none"> <li>Legislation of administrative procedures and administrative disputes is inadequate.</li> <li>Legal framework in the area of free access to information is inadequate.</li> </ul>	<ul style="list-style-type: none"> <li>Transparency in the public administration has not yet been achieved.</li> <li>Inadequate procedures for law drafting.</li> </ul>	<ul style="list-style-type: none"> <li>Overlapping of tasks and responsibilities between ministries create confusion.</li> <li>Organisation of administration excessively complex.</li> <li>Insufficient technical conditions for the functioning of the Office of the State Ombudsman.</li> </ul>	<ul style="list-style-type: none"> <li>Training needed in Council for Regulatory Reform.</li> <li>Courts and administrative bodies.</li> </ul>
(4) Public Procurement	<ul style="list-style-type: none"> <li>Public procurement law not fully harmonized with <i>acquis</i>.</li> </ul>	<ul style="list-style-type: none"> <li>System bureaucratic and time-consuming.</li> <li>Lack of transparency and openness.</li> <li>Little professional assistance available for procurement officers.</li> <li>No up-to date manuals/guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>Key functions of Public Procurement Office seriously neglected (development of system, training, advice)</li> </ul>	<ul style="list-style-type: none"> <li>Training for procurement officials needed.</li> </ul>
Vertical systems				
(5) Market economy development	<ul style="list-style-type: none"> <li>Several reform-related laws have been held up and implementation of existing laws is often weak.</li> </ul>			<ul style="list-style-type: none"> <li>Courts and administrative bodies lack the technical capacities and personnel to perform their tasks properly.</li> </ul>
(6) Free movement of goods		<ul style="list-style-type: none"> <li>Coordination among market surveillance authorities is lacking.</li> </ul>	<ul style="list-style-type: none"> <li>The preparation of a proper market surveillance structure has not yet started.</li> <li>The administrative capacity of the Ministry of Trade and services is weak.</li> <li>There are no out-of-court dispute resolution bodies.</li> </ul>	

			<ul style="list-style-type: none"> <li>• The Standardisation Institute needs to strengthen HR and improve training facilities</li> <li>• The Accreditation Bureau suffers from lack of HR and training facilities.</li> </ul>	
(7)	Free movement of capital		<ul style="list-style-type: none"> <li>• The Securities Commission is not sufficiently independent and lacks competencies as defined by international standards.</li> <li>• Supervisory capacities in the banking sector need to be further strengthened.</li> </ul>	
(8)	Customs	<ul style="list-style-type: none"> <li>• Customs procedures need to be further strengthened.</li> </ul>	<ul style="list-style-type: none"> <li>• The infrastructure of the customs administration needs to be strengthened.</li> </ul>	
(9)	Competition		<ul style="list-style-type: none"> <li>• The enforcement capacity and independence of the Competition Commission are weak.</li> <li>• There is still no operationally independent state aid authority.</li> </ul>	
(10)	Intellectual property		<ul style="list-style-type: none"> <li>• The Intellectual Property Office is not sufficiently developed.</li> </ul>	
(12)	Social protection	<ul style="list-style-type: none"> <li>• Implementation of strategies at the local level remains weak.</li> </ul>		
(13)	Public health	<ul style="list-style-type: none"> <li>• A law on public health has not yet been prepared.</li> <li>• A strategy on public health has not yet been developed.</li> </ul>	<ul style="list-style-type: none"> <li>• The administrative capacity within the Public Health Institute is limited.</li> </ul>	<ul style="list-style-type: none"> <li>• Managerial skills are not sufficiently developed.</li> </ul>
(14)	Education		<ul style="list-style-type: none"> <li>• Limited administrative capacities and lack of coordination among responsible institutions remain a concern.</li> </ul>	

(15) Agriculture and fisheries			<ul style="list-style-type: none"> <li>• Efforts are needed to strengthen the administrative capacities in the fields of food safety, veterinary and phytosanitary policy, <i>i.a.</i> in the Veterinary Directorate.</li> </ul>	<ul style="list-style-type: none"> <li>• The Veterinary Directorate is in need of training activities.</li> </ul>
(16) Environment		<ul style="list-style-type: none"> <li>• Coordination between local and central levels is insufficient.</li> <li>• Judicial enforcement of environment legislation needs to be strengthened.</li> </ul>	<ul style="list-style-type: none"> <li>• The Environmental Protection Agency lacks the proper capacities to ensure proper implementation of the integrated monitoring strategy.</li> <li>• Institutional capacity and HR at the local level are insufficient.</li> </ul>	
(17) Transport policy			<ul style="list-style-type: none"> <li>• The administrative capacities of the Ministry for Infrastructure need to reinforce its capacities. The operational structures need to be reorganized.</li> <li>• Responsibilities divided between the Ministry and the Civil Aviation Directorate need to be clarified.</li> </ul>	<ul style="list-style-type: none"> <li>• Expertise of ministerial staff needs to be strengthened especially as regards the alignment of national legislation with the <i>acquis</i>.</li> </ul>
(18) Energy	<ul style="list-style-type: none"> <li>• Amendments to the energy law, concerning electricity distribution grid codes and electricity market rules, have not yet been adopted. The separation between the distribution and supply of electricity has still to be implemented, and the related deadlines of the Energy Treaty have not been respected.</li> </ul>		<ul style="list-style-type: none"> <li>• An appropriate regulatory authority has still to be established in the area of energy efficiency and renewable energy.</li> </ul>	
(19) Information society and the media		<ul style="list-style-type: none"> <li>• The enforcement of judicial decisions need to be strengthened.</li> </ul>	<ul style="list-style-type: none"> <li>• The administrative capacities of the Ministry of information society and the media need to be strengthened.</li> <li>• The Telecommunication Agency does not have sufficient expertise to regulate an open telecommunications market. Its independence needs to be strengthened.</li> <li>• The transparency and accountability of the Broadcasting Agency need to be strengthened</li> </ul>	

(20)	Financial control			<ul style="list-style-type: none"> <li>The State Audit Institution is not fully operational</li> </ul>	
(21)	Visa, border control, asylum and migration	<ul style="list-style-type: none"> <li>There are procedural weaknesses in the law on asylum. In particular there is no appeal to an independent judicial body.</li> </ul>		<ul style="list-style-type: none"> <li>Technical capacities of agencies involved in the issuing of visas need to be strengthened</li> <li>The capacities of the Asylum Office and the Asylum Commission remain weak.</li> </ul>	<ul style="list-style-type: none"> <li>Staff of the Asylum Office need to be trained.</li> </ul>
(21)	Money laundering		<ul style="list-style-type: none"> <li>Criminal investigations of money laundering cases have very little success.</li> </ul>	<ul style="list-style-type: none"> <li>Police and prosecution service lack capacities and expertise to investigate suspicious economic transactions.</li> </ul>	
(22)	Police	<ul style="list-style-type: none"> <li>Legislation on the reform of the security service has not been adopted.</li> </ul>	<ul style="list-style-type: none"> <li>In the absence of new legislation on the division of responsibilities, there is a lack of coordination in core areas such as corruption, organized crime, and war crimes.</li> <li>Concerns remain over the level of transparency in police work and potential undue political influence.</li> </ul>	<ul style="list-style-type: none"> <li>Structural problems in the police forces persist. Considerable differences in the capacities of departments and services as well as a lack of coherent approach to human resources and financial management within the Ministry of Interior pose serious challenges for ongoing reform efforts.</li> <li>The internal control department has not been sufficiently effective owing to limited support within the police, staff shortages and a lack of resources.</li> </ul>	
(22)	Protection of personal data	<ul style="list-style-type: none"> <li>Existing data protection rules have not been implemented</li> </ul>		<ul style="list-style-type: none"> <li>There is no independent and efficient data protection supervisory authority</li> </ul>	

According to the European Commission most sectoral institutions responsible for the accession agenda perform inadequately. A red thread running through the most recent progress report is the argument that professional authorities are insufficiently independent and/or have insufficient capacities, e.g. the Competition Commission, the Intellectual Property Office, the Veterinary Directorate, the Telecommunication Agency, and the State Audit Institution).

### 3.2 Potential areas for Norwegian support to Serbia – an overview

Together with Serbian officials the Difi project team has developed 8 project ideas which are summarized in table 6 below

**Table 6 Potential areas for Norwegian support to Serbia**

	Legal framework	Processes	Institutions	Personnel
Rule of law				
Horizontal systems		<ul style="list-style-type: none"> <li>The National Ombudsman (Protector of Citizens)</li> <li>The Commissioner for Freedom of Information and Personal Data Protection</li> </ul>		
Vertical systems				
Security sector reform				
Horizontal systems				
Vertical systems		<ul style="list-style-type: none"> <li>Police accountability</li> </ul>		<ul style="list-style-type: none"> <li>Police HRM</li> </ul>
Public administration reform				
Horizontal systems				<ul style="list-style-type: none"> <li>A strategy for civil service training</li> </ul>
Vertical systems				
Regulatory frameworks for market economy				
Horizontal systems		<ul style="list-style-type: none"> <li>Public procurement</li> </ul>		
Vertical systems		<ul style="list-style-type: none"> <li>Market surveillance</li> <li>Energy regulation</li> </ul>		

### 3.3 Serbia: the rule of law

#### The National Ombudsman (the Protector of Citizens)

Over the past few years Serbia has made progress regarding the rule of law, human rights and protection of minorities. However, the European Commission also observes that there has been insufficient progress on implementing international human rights law and that the institutional structures for the implementation of human and minority rights have to be further reinforced.<sup>13</sup>

<sup>13</sup> The European Commission: Serbia 2008 Progress Report.

The newly established Office of the State Ombudsman (OSO) has been very active. Good cooperation has been established between the State ombudsman, the ombudsman in Vojvodina and municipal ombudsmen. However, due to *i.a.* insufficient technical conditions the OSN still does not function properly. Moreover, the Serbian administration lacks sufficient knowledge of the ombudsman institution and its role and has not paid sufficient attention to its recommendations.

The European Partnership document defines as a short-term priority Serbia's obligation to implement legislation regarding the establishment of the Ombudsman's Office. As mentioned above in its most recent progress report the EU Commission underlines the need to strengthen the functioning of this office.

Apart from stating the necessity of establishing the institution of Ombudsman, the Serbian

National Strategy for Accession to the European Union clearly stresses the importance of capacity building in the office once it is established, with the aim of achieving generally accepted international standards in the field of protection of human rights and freedoms.

Moreover, the Serbian strategy for public administration reform highlights the importance of the Ombudsman's Office as an external mechanism for overseeing the work of public administration.

The OSO has suggested a project regarding the establishment of a comprehensive IT system which will

- facilitate communication and information-sharing with other state supervisory bodies, including the Internal Affairs Division of the Ministry of the Interior (MoI)
- allow citizens to access the ombudsmen via at least 12 public libraries
- facilitate statistical and other analyses of the ombudsman's casework
- make it possible to include an on-line complaints section on the ombudsman's website.

The project idea seems to meet the criteria regarding IT projects we have suggested in the main report (section 4.3). Among other things the acquisition of equipment/software is directly and plausibly linked to reforms of the OSO regarding *i.a.* improved access and transparency. The suggested link to the Internal Affairs Division of the MoI seems interesting as several international expert organisations such as the UNDP and OSCE recommend that OI's have roles in the external monitoring of the police. We return to this topic in greater detail below. At the time of our meetings with representatives of the OSO there appeared to be no risk of overlap/duplication with other external support.

*The Difi project team recommend that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the project idea developed by the OSO with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

## The Commissioner for Information of Public Importance and Personal Data Protection

The Commissioner for Information of Public Importance and Personal Data Protection is an independent public authority with the primary function of protecting human rights in the areas of free access to information and personal data protection.

The functions covered by the Commissioner are central in the EU accession process.

The SAA, article 81 obliges the Serbian government to “harmonize its legislation concerning personal data protection with Community law and other European and international legislation on privacy upon the entry into force of this Agreement. Serbia shall establish one or more independent supervisory bodies with sufficient financial and human resources in order to efficiently monitor and guarantee the enforcement of national personal data protection legislation”.

The European Partnership document calls on Serbia to revise the legal framework, sign the relevant international conventions and set up an independent supervisory authority for data protection. Sufficient protection of personal data is a precondition for Serbia to achieve visa liberalisation.<sup>14</sup>

Despite the political centrality of the issues dealt with by the Commissioner, the institution faces great difficulties in implementing its statutory responsibilities; *i.a.* lack of qualified staff and lack of willingness in the case of public authorities to comply with the Commissioner’s decisions.

The Commissioner has suggested a project with two components:

- a comparative analysis of organizational patterns and working methods of bodies for data protection in Western Europe/new EU member states outlining implications for Serbia,
- the establishment of a public register data base.

At present the Commissioner receives no external support, nor are there plans/prospects of support that might overlap with the suggestion developed above.

*The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal developed by the Commissioner with the intention of defining more precisely the content of a future project that may be funded as of 2010.*

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<sup>14</sup> Benchmarks 32-33, Updated assessment for the implementation by Serbia of the roadmap for visa liberalization, EU Commission Expert Document, 18 May 2009.

### 3.4 Serbia: security sector reform

#### Police accountability

In the process of supporting democratization in Serbia, the Ministry of the Interior has one of the most important roles. The European Partnership document identifies police reform and the need to ensure accountability, reform of police education and co-operation among law enforcement agencies as crucial steps in the transformation of Serbia's judicial system. The SAA, article 80, identifies improved functioning of the police and other law enforcement bodies through the provision of adequate police training and fighting corruption as the key to the reform of the judicial system.

Under the 2005 Police Law, the Internal Control Section of the MoI will monitor the legality of police work, especially with regard to respect and protection of human rights. As we have noted the EU Commission in its most recent progressive report calls for measures to improve the functioning of this unit. According to the Ministry's own assessment the Internal Control Section suffers from insufficient knowledge of EU standards and practices, and lack of good communication links between central and regional offices. Thus, the unit cannot readily implement preventive or punitive actions against corruption.

There are indications that the current Government and the Minister of the Interior in particular give higher priority to police reform and police accountability than their predecessors. The Government emphasizes that the provision for internal oversight of the policing services is a key part of the reform process and that the relationship between accountability and policing is directly connected to the social values of a democratic society. Key objectives of the ongoing reform of the public administration are tackling corruption and ensuring accountability in all parts of the administration.

The Ministry of the Interior has suggested a project idea with the overall objective to promote the professionalism and capabilities of the Section for Internal Control of Police. The proposal includes two elements, (i) development of methods regarding control of personnel and financial management, and (ii) procurement of surveillance equipment.

Given the centrality of police accountability in the Serbian reform process and the current "window of opportunity", the Difi project team recommends that the NMFA follow up the MoI suggestion with the intention of studying more closely the possibility of defining the content of a future project. Having said this, it must be added that the current arrangements for the monitoring of the police suffer from serious structural deficiencies, which to some extent should be addressed in an eventual project. In Serbia there is *i.a.* no external monitoring and no efficient Parliamentary control mechanism. While ideally, the MoI internal control unit should enjoy a certain degree of independence, the head of the unit is under the (potentially) strict control of the minister. The unit's key focus is control of individual police officers. However, according to CoE/OSCE standards police investigating other police should not be the rule,



but the exception. Complaints against police officers should be investigated by or under the supervision of an independent body.<sup>15</sup> Instead of focusing on individual cases the attention of the Internal Affairs Unit should be directed to more general aspects of police performance.

Two topics may be suggested for further discussions with the MoI (and OSO) regarding possible Norwegian support: (i) acquainting the ministry with arrangements for control and measurement of police performance in Western countries, *e.g.* Sweden and the UK, and (ii) exploring the possibilities of entrusting the ombudsman with greater responsibilities for investigating issues relating to the police services. The OSCE mission to Serbia has proposed introducing a position of assistant Ombudsman with such authority<sup>16</sup>. The OSCE suggestion is in line with general guidance from the UNDP and the Geneva Centre for Democratic Control of the Armed Forces (DCAF) regarding the role of OIs in the oversight of security institutions<sup>17</sup>.

*We recommend that a minor pilot study be carried out with a view to exploring these issues further and clarifying the basis for a possible future project.*

MoI has submitted a project proposal for IPA funding, which will be decided upon towards the end of 2009. This proposal does not involve the OI component indicated above nor control with personnel or finance management. The project discussed below regarding police HR is clearly relevant for the issue of police accountability and the role of the Internal Affairs Division, for instance as regards disciplinary procedures and protection of police officers from false allegations. The two projects should be considered jointly.

### Police HRM

The Serbian Ministry of the Interior (MoI), with the assistance of the OSCE Mission to Serbia, has asked (NMFA to support a project to strengthen key elements in the MoI system of human resources management (HRM). In a meeting between representatives of MoI, OSCE and Difi on 27 April, MoI officials expressed a wish to proceed, as a first step, with a gap analysis emphasizing that it should “be the beginning of a deep, sustainable process of reform of human resources planning and management in the MoI, including revision of the regulatory framework and procedures, increase of capacities, and updating of human resources management practices.”

The Difi project team will strongly recommend that a key objective of the current and possible future HR project is to establish

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<sup>15</sup> See *i.a.* OSCE, Office for Democratic Institutions and Human Rights, “Comments on the draft police act and the draft parliamentary police oversight act of the republic of Serbia”, Warsaw, 3 February 2005.

<sup>16</sup> “Police Reform in Serbia. Towards the creation of a modern and accountable police service”, Law enforcement department, OSCE Mission to Serbia and Montenegro, January 2004, at 55.

<sup>17</sup> UNDP and DCAF argue that independent OIs can play an important role in monitoring and investigating the security sector. See K. Kinzelbach and E. Cole (eds.), “Monitoring and Investigating the Security Sector: Recommendations for Ombudsman Institutions to Promote and Protect Human Rights for Public Security”, UNDP/DCAF, 2007.

- essential administrative and legal regularity based on European standards regarding *i.a.*(a) HR systems (HR plans, systematization/job descriptions, and HR management), (ii) selection scheme (recruitment, promotion, and career development), (iii) obligations/rights/discipline, (iv) salary system, (v) performance appraisal, (vi) training, and (vii) accountability mechanisms.
- necessary alignment with recently amended Serbian civil service legislation, *i.a.* the Laws on Civil Servants, on Prevention of Conflict of Interest in the Exercise of Public Functions, and on Salaries of Civil Servants and State Employees
- necessary contact/cooperation with ongoing Serbian PAR efforts.

As already mentioned the pilot phase of the project (gap analysis) could be used to identify measures to strengthen police accountability that would involve the Internal Affairs Division.

### 3.5 Serbia: public administration reform

#### A strategy for civil service training

As noted above, Serbian progress in public administration reform remains sluggish. In its most recent progress report the EU Commission observes that the reform effort actually slowed down during the reporting period. Significant weaknesses in the horizontal systems of the public administration (relating to *i.a.* merit based recruitment and professionalism, see table 2 above, lines 2 and 3) jeopardize the sustainability of sectoral reforms. Development of administrative capacities remains one of the key criteria for EU membership. By the same token the EU integration process remains the main guideline for the Serbian PAR process.<sup>18</sup> Lack of PAR progress, *i.a.* regarding civil service training has been a key concern in a number of Commission and SIGMA documents.

Key PAR priorities are defined in the PAR strategy adopted in 2004. According to this document the Serbian reform effort is guided by five overall principles, decentralization, de-politicization, professionalization, rationalization and modernization. These principles will be the cornerstones of a Serbian “European” public administration. While the reform process suffered a number of setbacks in the post 2003 period, there are indications that the current

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<sup>18</sup> The European Partnership document obliges Serbia in the short term to, “Continue efforts to implement the reform of the public administration, including the civil service pay system, to ensure transparent recruitment and promotion as well as professionalism and accountability, strengthen the European integration structures, improve coordination throughout the public administration and parliament and pay particular attention to policy coordination.” In the medium term the EP document stipulates that Serbia shall ensure, “full implementation of civil service and public administration laws, implement measures to develop human resources in the civil service, strengthen the policy-making and coordination capacity of the public administration.” The SAA, article 114, lays down that the “Cooperation shall aim at ensuring the development of an efficient and accountable public administration in Serbia, notably to support rule of law implementation, the proper functioning of the state institutions for the benefit of the entire population of Serbia as a whole and the smooth development of the relations between the EU and Serbia.”

government may pursue a more vigorous reform agenda than some of its predecessors. Due to recent amendments in the Law of Ministries giving MPALSG more comprehensive PAR responsibilities, former uncertainties as to the actual authority of the ministry may have been reduced.

The Ministry of Public Administration and Local Self Government (MPALSG) and the Human Resources Management Service (HRMS) have submitted a project proposal to NMFA with a view to developing a strategy for civil service training. Based on *i.a.* the recommendation by the Difi project team the NMFA has expressed its readiness to support the project.

### **3.6 Serbia: Regulatory frameworks for market economy**

#### **Market surveillance**

Market surveillance is a fundamental mechanism for ensuring free movement of goods and services. It makes certain that only goods and services complying with all applicable EC legislation are allowed to be put into circulation in the internal market. The problems faced by Serbia in the field of trade are particularly worrisome with a view to the effort of the Serbian government to harmonize framework conditions for business enterprises with those of the EU. Main challenges concern (i) illegal marketing of goods, and (ii) the presence of a grey economy. These deficiencies entail distinctly negative consequences for (a) the consumers (low product quality/safety), (b) employees of trade businesses (non-payment of social contributions), and (c) for the state (tax evasion).

In Serbia the preparation of a proper market surveillance structure has not yet started and there is little or no coordination between the various inspection authorities. In short, there is a serious mismatch between the gravity and acuteness of the problems which the Ministry of Trade and Services is facing on the one hand, and the capacity and the resources of the inspection services to deal with them on the other.

The issue of market surveillance is highly relevant in the EU accession process. The European Partnership document stipulates that Serbia should “establish a market surveillance structure and ensure proper coordination among the market surveillance authorities.”<sup>19</sup> According to article 77 of the SAA “effective consumer protection is necessary in order to ensure the proper functioning of the market economy, and this protection will depend on the development of an administrative infrastructure in order to ensure market surveillance and law enforcement in this field”. As we have noted the Commission’s 2008 Progress Report identifies a number of weaknesses in the Serbian system of market surveillance.

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<sup>19</sup> 2008/213/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC.

The National Plan for EU-Integration explicitly emphasizes the need to enhance the institutional framework for market surveillance, including the Ministry of Trade and Services. The NFIA document mentions as mid-term priorities for trade and services:

- Market inspection developed according to European standards and preparations implemented for the introduction of self-regulation systems for market operators.
- Capacities, organization and operational methods of the Ministry of Trade and Services structured according to programmatic activities in the field of trade and services.

The strategy of public administration reform makes reference to the OECD principle that it is essential to monitor the effectiveness and enforcement of the principle of free competition and if necessary, to strengthen it. The strategy particularly mentions that the policy of decentralization should be considered for state inspections.

The poverty reduction strategy stresses the need to establish strong public institutions as bases for the development of a market economy. The reform of the inspection services is defined as a high priority in the Annual Operational Plan of Activities (GOP) of the Ministry of Trade and Services.

The MTS has proposed a project with two main components: (i) review of the institutional structure in the area of market surveillance, with emphasis on improved coordination – analysis of the current situation, proposal for a reformed market surveillance structure, and (ii) a review of revised/new methods/inspection procedures in the area of product safety – especially of internal control and their potential applicability in Serbia.

MTS has previously received support under the CARDS programme relating to the preparation of a revised legal framework for consumer protection. At present the EU is funding a project regarding market surveillance aiming at harmonizing other legal acts with the EU *acquis* and strengthening capacities for law preparation and enforcement. A smaller EU-funded project regarding IT based systems for the control of unsafe products will be completed by mid-2009. A project proposal has been submitted for 2009 IPA funds. However, due to the ongoing revision of IPA the project will not be considered for support this year. In this case the earliest possible start time for the project is 2012.

*The Difi project team clearly recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the project proposal suggested by MTS with the intention of defining more precisely the content of a future project that may be funded as of 2010. Given the fact that the EU Commission has recently pointed out that the administrative capacity of the Ministry of Trade and Services is weak<sup>20</sup>, we recommend that a minor pilot*

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<sup>20</sup> The EU Commission: Serbia 2008 Progress Report

*study be carried out to define more precisely (i) the issues that could be addressed by a possible full project, and (ii) arrangements for project management.*

### **Public procurement**

As we have already noted the setting up of an efficient public procurement system is a fundamental precondition for the success of a market economy and it contributes to long-term economic growth.

According to the European Partnership document , Serbia shall, “implement a consistent and effective public procurement regime [and] ensure transparent procedures, regardless of the value of the contract concerned. ” The SAA (article 81) emphasizes the importance of public procurement: “[...] Serbia shall report annually to the Stabilisation and Association Council on the measures they have taken to enhance transparency and to provide for effective judicial review of decisions taken in the area of public procurement.” As noted above (table 5, line 4) the most recent EU assessments (SIGMA and the European Commission) identify serious weaknesses in the Serbian legal framework for public procurement, public procurement procedures and the Public Procurement Office. According to the Office’s own estimation it has a lack of capacities due to inadequately defined duties as well the absence of other institutions necessary for a well-functioning system of public procurement (*e.g.* a fully operational Supreme Audit Institution).

The National Strategy for EU Accession emphasizes that “[...]The area of public procurement is especially important as its functioning affects the relations between the state and the economic sector, and influences proper use of the budget, the economic development of the Republic of Serbia, as well as other, non-economic parameters such as the fight against corruption. Regulation of public procurement in the European Union has a significant role in the forming of a common market with equal terms of participation for all interested economic entities in the European Union [...]”.

The National Anti-corruption Strategy includes the following recommendations regarding the public procurement sector: improvement and strict implementation of legislation in the field of public procurement and creation of efficient control mechanisms with the necessary independence from the executive branch of government.

The Public Procurement Office has suggested a project to support capacity development in the Office. The projects will include *i.a.* the development of (i) a scheme for benchmarking and monitoring public procurement in Serbia, (ii) a methodology for assessing the capacity of purchasing entities across the Serbian public administration, and (iii) a training strategy and curriculum for certification of civil servants.

*The Difi project team recommends the project proposal suggested by the Public Procurement Office – when and if fully developed - be carefully considered for Norwegian support.*

## Energy regulation

In order to introduce market mechanisms and competition in the area of energy supply and to attract foreign investment in the energy sector it is vital to establish an effective, stable and transparent regulatory regime. Moreover, such a regime will significantly contribute to the fulfilment of Serbia's obligation under the Energy Community Treaty, a regulatory and market framework to which the entire Western Balkans region has now subscribed. This Treaty aims to create an integrated regional market for electricity and gas compatible with the European Union's internal energy market. However, a number of regulatory issues relating to the EI process and the Western Balkans Energy Treaty have not yet been solved (see table 2 above, line 18).

The project proposal addresses directly short term priorities of the European Partnership document stipulating that Serbia shall "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 [and] amend and implement the Energy Law and ensure smooth functioning of the independent energy regulatory agency". The SAA states (article 109) that the cooperation between the EU and Serbia shall be based on priority areas related to the *acquis* in the field of energy, and be developed with a view to the gradual integration of Serbia into Europe's energy markets.

The National Strategy for EU integration identifies AERS as the most important new institution resulting from the reform of the legal and institutional framework of the energy sector. The National Programme for the Integration of the EU (NPI) identifies the need to transpose into domestic law a series of EC legal acts directly relating to the AERS field of responsibility. The same concern is expressed in the National Strategy of Economic Development of Serbia (2006-2012) and the Energy Development Strategy.

The Energy Agency of the Republic of Serbia (AERS) has suggested a project proposal with the objective to strengthen the capacity of the agency so that it is capable of developing and implementing regulatory policies and strategies and overseeing necessary reform in the energy sector. The project proposal include four main components related to, (i) upgrading the AERS IT system, (ii) exchange of expertise with the Norwegian Water Resources and Energy Directorate (NVE), (iii) capacity building of AERS staff, (iv) as of the beginning of 2011, technical assistance related to (a) the implementation of existing regulations, (b) the introduction of new regulatory concepts, and (c) the implementation of expected new competencies.

AERS has been supported by EU funding. While previous projects focused on the establishment of the agency and preparation of secondary legislation, future projects should, according to AERS, be aimed at assisting the agency in implementing – in accordance with best regulatory practices – regulations already adopted. A project financed within IPA 2007 is currently in the tendering procedure. Indicated commencement date is June 2009. However, the project does not duplicate the activities mentioned above for possible

Norwegian support. A proposal regarding the strengthening of *i.a.* the organisational and management capacities of AERS was submitted for IPA funding in 2009 but was turned down because it was considered too small for this type of assistance.

*The Difi project team recommends the project proposal developed by the Public Procurement Office - when and if fully developed - be carefully considered for Norwegian support. In particular we recommend that a minor pilot study be carried out to define more precisely the issues that could be addressed by a possible full project regarding technical assistance, with early 2011 as a possible start date.*