



# PROMOTING COOPERATION THROUGH GOOD GOVERNANCE IN THE ANTI-CORRUPTION POLICY IMPLEMENTATION

Surveys and analysis





Република Македонија  
ДРЖАВНА КОМИСИЈА  
ЗА СПРЕЧУВАЊЕ НА КОРУПЦИЈАТА



# **PROMOTING COOPERATION THROUGH GOOD GOVERNANCE IN THE ANTI-CORRUPTION POLICY IMPLEMENTATION**

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**December, 2014**

**PROJECT:**

PROMOTING COOPERATION THROUGH GOOD GOVERNANCE IN THE ANTI-CORRUPTION POLICY IMPLEMENTATION

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## FOREWORD

This publication is integral part of the project activities in the frames of the cooperation between the State Commission for Prevention of Corruption and the OSCE Mission to Skopje in 2013 and 2014. It contains a total of five qualitative analysis conducted on the basis of National Integrity System (NIS) methodology of Transparency International, as well as three public opinion polls conducted by the Rating Agency to screen the citizens perception about the existence of corruption in selected sectors of the State Programme for Prevention and Repression of Corruption and Conflict of Interest 2011-2015. All these reports are part of the multiannual plan of the OSCE to support the anti-corruption activities in the country with regard to the corruption prevention and promotion of regional cooperation.

The project: “Promoting Cooperation through Good Governance in the Anti-corruption Policy Implementation” 2014 was implemented by the OSCE Mission to Skopje, Democratic Governance Unit in Partnership with the State Commission for Prevention of Corruption (SCPC). The project included three interrelated components:

- 1) Strengthening quality management system at the State Commission for Prevention of Corruption;
- 2) Building the capacity of the local self-government units to develop corruption risk management strategies; and
- 3) Facilitating international and regional cooperation among national anti-corruption bodies

The purpose of the eight reports published in this publication, which have been produced in direct cooperation with the SCPC, is to enable SCPC to propose more efficient measures and legislative solutions in the area of corruption prevention, based on methodologically grounded analysis, as well as to raise the awareness of the civil society and general public about the activities and challenges related to preventing the corruption in the country. The recommendations published under each of the qualitative analysis in this publication regarding the sectors: private, political, local self-government, public administration and media and civil society are expected to be incorporated into the new State Programme for Prevention and Repression of Corruption and Conflict of Interest and in this way to contribute to a bigger integrity, accountability and transparency as key principles of the democratic governance promoted by the OSCE Mission and the SCPC in the country.



## **I.OPINION POLLS 2013:**

1. SURVEY ON THE CORRUPTION IN THE PRIVATE SECTOR
2. SURVEY ON THE CORRUPTION IN THE POLITICS
3. SURVEY ON THE CORRUPTION IN THE LOCAL SELF-GOVERNMENT SECTOR

**Conducted by**





## **1. SURVEY ON THE CORRUPTION IN THE PRIVATE SECTOR**

NARRATIVE REPORT

June, 2013

## 1. INTRODUCTION

Corruption in the private sector assumes many different forms. It most frequently appears in the form of bribe, buying off influence in decision-making, fraud by bypassing legislation and lack of transparency in conducting procedures. It is closely related to corruption in the public sector. Bribe is most frequently used for the following purposes:

- Winning of public procurement contracts by less competitive participants in the market,
- Maintaining the monopoly on the market by preventing the competitive companies to offer their products or services on the market,
- Establishing market cartels or monopolies, obtaining concessions over state-owned land without meeting the necessary requirements,
- Obtaining various licenses and permits without meeting the requirements,
- Acquiring taxation privileges and tax relief, and many other cases.

Various international surveys of corruption in the business sector highlight that bribe can take many different forms – from direct bribery of decision-makers and people competent to adjust the tender requirements, through various forms of secret agreements, contract clauses for “consultancy services” and “facilitation” provisions, to using various types of sponsorship for persons, giving donations to political parties and making payments on different grounds as a compensation for the illegally obtained services, establishing public-private partnership with permanent clauses etc.

This type of private sector corruption disturbs the market. It makes companies’ market competitiveness irrelevant, it endangers the business led by the companies that are competitive on the market and it harms both consumers and the state budget. Above all, corruption in the private sector leads to economic instability and human rights violation, it erodes the trust in public institution and it deprives citizens of the necessary funds and capital required for proper economic development. For example, by means of corruption, some companies, regardless whether they are domestic or foreign, can avoid their obligation to place filters in their industrial facilities for the purpose of environmental protection or disregard the food safety or drugs import standards or the traffic safety rules, which is a direct threat to human health and safety.

Through the State Program for Prevention and Repression of Corruption and the State Program for Prevention and Reduction of Conflict of Interests 2011-2015, the SEC particularly highlights the issue of corruption in the private sector. According to the State Programs, the main activities to prevent corruption in the private sector should lead to promoting the main principles of rule of law by promoting good governance, good practices and procedures, providing transparency, accountability and efficiency, protection of the competition, observance of the market laws and implementation of good business practices towards promoting a healthy business climate in the country.<sup>1</sup>

The Program also foresees conducting research in order to identify the bottlenecks in preventing and sanctioning private sector corruption in our country that would serve as a basis for overcoming these issues.

Having this objective in mind and by working in cooperation with the SCPC and the OSCE Mission to Skopje, the Rating Agency research team conducted a survey of the perception of 800 citizens employed in the private sector all over the country.

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<sup>1</sup> State Programs for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interests 2011-2015

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## SURVEY OBJECTIVES

The main objectives of this survey were to collect relevant information regarding the following issues:

- The level and forms of corruption in the private sector in the country based on the perception of the people employed in the private sector concerning the prevalence of corruption and the reasons for losing business due to corruption;
- The reasons for persistence of private sector corruption;
- The level of the companies' awareness of their obligation to prevent corruption;
- The existence and application of internal corruption prevention measures inside the companies;
- The effectiveness of the national legislation and investigative journalism for preventing private sector corruption;
- Trust in the institutions competent to prevent and sanction private sector corruption;
- The level of private sector corruption today, compared to four years ago.

This survey has been designed based on information in similar surveys that have been conducted by Transparency International worldwide so that the data received from this survey would be comparable to data received from other surveys conducted in other countries over the past several years.

## METHODOLOGY

The Survey of Citizens' Perception of Private Sector Corruption was conducted in our country via telephone interviews using a representative sample of 800 citizens employed in private companies all over the country. The survey was carried out in the period 15 -19 May 2013.

The design of a representative sample that reflects the attitudes of the citizens residing in the country has undergone several systematic procedures. The representativeness of the sample was provided by adhering to certain procedures in the course of its formulation deriving from the random sampling rules. The sample selection procedure was based on the design principle for regional and national sample, defined by the region and in compliance with its definition given by the State Statistical Office (NUTS3 the EU16). Namely, pursuant to the geo-demographic structure of the population, the country was divided into the following eight regions: Skopje, Polog, Pelagonija, Vardar, Northeast, Southeast, Southwest and East. Furthermore, respondents employed in the private sector in all 84 municipalities were proportionately included in the sample. The number of respondents was proportionately distributed with reference to the total population of all the regions, and by using the official data from the State Statistical Office Labour Survey from 2011. The statistical error for such a survey is +/- 3%.

**Table1:** Demographic structure of the sample

| Demographic structure of the sample |   | %    |
|-------------------------------------|---|------|
| Region                              | Pelagonija                              | 15.3 |
|                                     | Vardar                                  | 8.6  |
|                                     | Northeast                               | 7.7  |
|                                     | Southwest                               | 9.3  |
|                                     | Skopje                                  | 34.5 |
|                                     | Southeast                               | 7.2  |
|                                     | Polog                                   | 6.3  |
|                                     | East                                    | 11.1 |
|                                     |   | 100  |
| Company Location                    | Skopje                                  | 36.3 |
|                                     | Large town                              | 43.1 |
|                                     | Small town                              | 17.6 |
|                                     | Village                                 | 2.9  |
|                                     |   | 100  |
| Company Size                        | Up to 10 employees                      | 38.4 |
|                                     | From 11 to 50 employees                 | 26.2 |
|                                     | From 51 to 100 employees                | 7.2  |
|                                     | More than 101 employees                 | 28.2 |
|                                     |   | 100  |
| Position Held in the Company        | Owner/Director/General Manager          | 20.1 |
|                                     | Chief/Managerial Position/Staff Manager | 23.7 |
|                                     | Non-managerial position                 | 56.2 |
|                                     |   | 100  |
| Company's Business Sector           | Industry and Mining                     | 19.4 |
|                                     | Commerce                                | 25.3 |
|                                     | Services                                | 33.0 |
|                                     | Education and Science                   | 1.6  |
|                                     | Health Sector                           | 8.8  |
|                                     | Agriculture                             | 2.0  |
|                                     | Security and Defense                    | 0.5  |
|                                     | Civil Construction                      | 4.5  |
|                                     | Other                                   | 5.0  |
|                                     |   | 100  |
| Gender                              | Female                                  | 45.4 |
|                                     | Male                                    | 54.6 |
|                                     |   | 100  |
| Monthly Income                      | Up to 10,000 denars                     | 20.1 |
|                                     | From 10,000 to 18,000 denars            | 48.5 |
|                                     | From 18,000 to 25,000 denars            | 16.5 |
|                                     | More than 25,000 denars                 | 8.6  |
|                                     | No answer                               | 6.3  |
|                                     |   | 100  |
| Age                                 | 18 до 29                                | 12.9 |
|                                     | 30 – 49                                 | 53.5 |
|                                     | 50 - 64                                 | 33.0 |
|                                     | 64 +                                    | 0.7  |
|                                     |   | 100  |
| Education                           | Primary and less                        | 2.0  |
|                                     | Secondary                               | 58.0 |
|                                     | Higher, Master's, PhD                   | 40.0 |
|                                     |   | 100  |

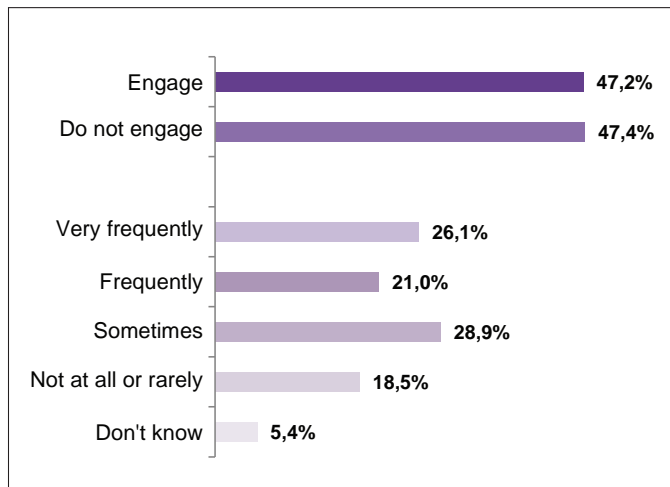
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## 2. PREVALENCE AND TYPES OF PRIVATE SECTOR CORRUPTION

### 2.1 PERCEPTION OF THE PREVALENCE OF PRIVATE SECTOR CORRUPTION

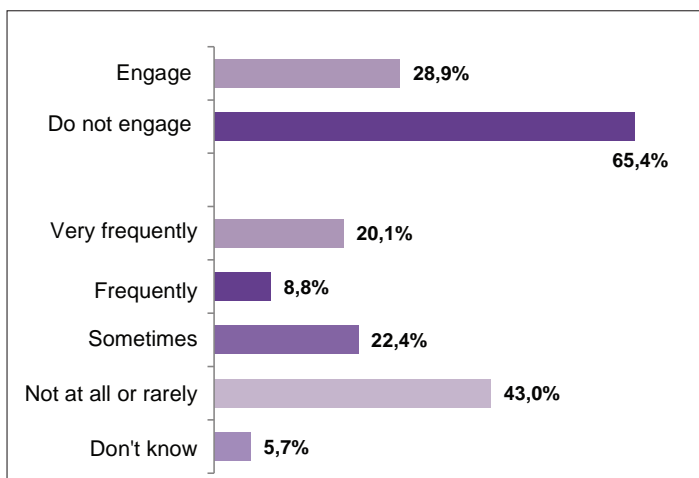
Corruption as an act between two parties (or persons) takes place in complete secrecy and is hard to discover, as it assumes the form of an agreement between two parties at the detriment of a third party in a business sphere such as competition, but it also harms citizens and the state budget. Any evidence present in the public, even reasonable doubts for the existence of corruption that are based on rumours can serve as a starting point to initiate an investigation and if enough evidence is collected following the investigation, the perpetrators might be faced with serious sanctions. However, regardless of the number of discovered and sanctioned cases of corruption or bribery in a country, citizens, based on the information they receive from media, friends and from their own experience, shape certain perceptions of their own regarding the prevalence of corruption. There are many different methodologies that are used worldwide to measure the so-called Corruption Perceptions Index which serves as a basis for comparing the level of corruption in different countries and monitoring their individual progress in their fight against corruption.

In this survey, in order to measure the level of prevalence of corruption in the private sector, the private sector employees were first asked to give their opinion on how often private companies in the country engage in bribery, i.e. corruption in order to cut a deal or win business and to measure it on a scale of 1-10 (where 1 means *not at all* and 10 means *very frequently*). The answers to this question reveal opinions that are quite divided. If we merge this scale's marks 1-3 as *not at all or rarely*, marks 4 and 5 as *sometimes*, marks 6 and 7 as *frequently* and marks 8-10 as *very frequently*, then we would get the following chart:



**Chart 1:** On a scale of 1-10, where 1 means *not at all* and 10 means *very frequently*, how often do you think private companies in the country engage in bribery, i.e. corruption in order to cut a deal or win business?

This estimation of the prevalence of corruptive practices in the private sector made by the private sector employees was significantly milder when they were asked whether companies in their business sector use corruption to win business. By applying the same aggregation method from the previous question and merging marks 1-10 into several groups, the answers reveal that when it comes to prevalence of corruption in their economic activity, there is a smaller percentage of employees who believe that corruption is widespread, i.e. there is a smaller number of respondents who believe that companies and enterprises working in the same activity (sector) resort to corruption in order to win business.



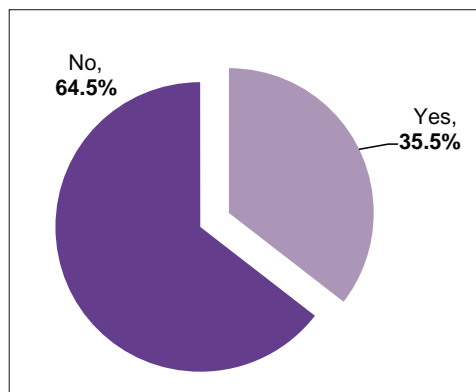
**Chart 2:** On a scale of 1-10, where 1 means *not at all* and 10 means *very frequently*, how often do you think companies from your business activity (sector, industry) engage in bribery, i.e. corruption in order to cut a deal or win business

These answers might lead to the conclusion that businesspeople and employees perceive a lower level of corruptive practices in their own economic activity compared to other activities, i.e. they believe that such practices are more prevalent in other private sector activities.

In 2011 Transparency International started measuring the Bribe Payers Index in 28 countries worldwide by conducting a survey of business executives. Countries are scored on a scale of 0-10, where a maximum score of 10 corresponds with the view that companies from that country never bribe abroad and a 0 corresponds with the view that they always do.<sup>2</sup>

## 2.2. LOSING BUSINESS DUE TO CORRUPTION

In order to verify the extent to which domestic businesses suffer direct consequences from corruption and the personal experience of private sector employees in this respect, the respondents who participated in this survey were asked whether over the past 12 months their company has been denied a tender or has lost a new business as a result of bribe given by the competitors. The answers to this question have been presented in the following chart:



**Chart 3:** Has your company been denied a tender or lost a new business as a result of bribe given by your competitors over the past 12 months?

<sup>2</sup> <http://bpi.transparency.org/bpi2011/>

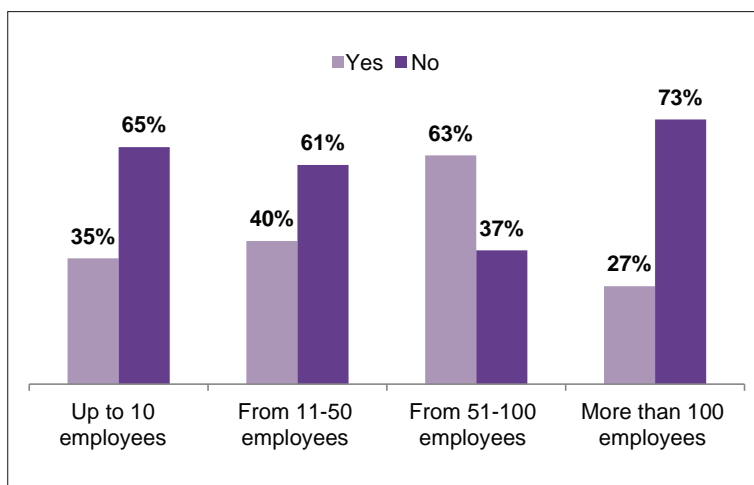


The answers presented in this chart include the positive and negative answers given by respondents who believe that they possess relevant information. The answers given by respondents who answered “Don’t know” or whose companies have not participated in a single tender procedure over the last 12 months or who did not try to win a new business are not included in the chart.

As many as 40% of the company owners that have been surveyed gave a positive answer to this question, and 41.8% of the people working in Skopje stated that their company has been denied a tender or lost a new business as a result of bribe given by their competitors over the past 12 months.

The analysis of the answers to this question by activity reveals that greatest damages due to bribery given by competitors have been suffered by the organizations engaged in civil construction, where 68.1% of the respondents gave an affirmative answer to this question, followed by people working in trade (38.1%) and farming companies (37.4%) who provided the same answer. Companies that have been least exposed to damages from bribery given by their competition over the last 12 months are companies working in the sphere of industry, where 27.8% of the employees stated that their company has been denied a tender or lost a new business because a competitive company engaged in bribery or another form of corruption.

The analysis of the answers by number of people employed in the company reveals that companies that employ 51-100 people are the ones that have been most severely affected by this type of corruption, as opposed to companies with more than 100 people employed that have been least affected.



**Chart 4:** Has your company been denied a tender or lost a new business as a result of bribe given by your competitors over the past 12 months? (presented by company size)

This same question was asked as part of the Transparency International survey conducted from March-July 2011, including 3,000 businesspeople from 30 diverse countries around the world, our country not being one of them.<sup>3</sup> When comparing the answers provided by the employees from our country to the answers provided in the survey covering the sample of 3,000 businesspeople from 30 other countries, one might come to the conclusion that our country is among the countries where business is often lost as a result of corruption.

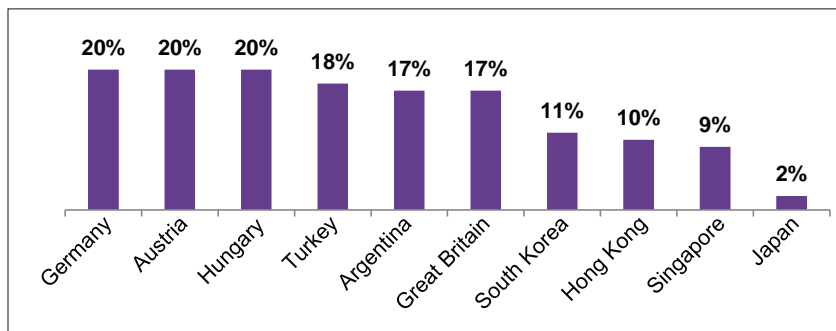
3 <http://www.transparency.org/research/bps2011>

Countries with a higher percentage of affirmative answers to the question whether, during the last 12 months, their company has failed to win a contract or gain new business in this country because a competitor paid a bribe include the following:



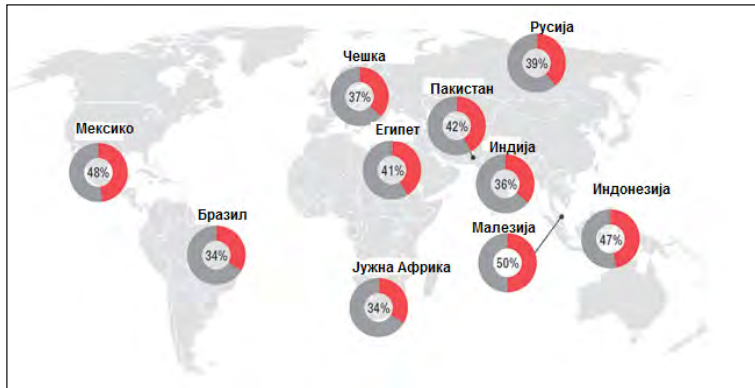
**Chart 5:** Countries with a higher percentage of affirmative answers to the question whether, during the last 12 months, their company has failed to win a contract or gain new business in this country because a competitor paid a bribe

The next chart presents the countries with lower corruption in business and lower percentage of affirmative answers to the question whether their company has failed to win a contract or gain new business in this country because a competitor paid a bribe.



**Chart 6:** Countries with lower percentage of affirmative answers to the question whether, during the last 12 months, their company has failed to win a contract or gain new business in this country because a competitor paid a bribe

In order to gain better understanding of the condition, analysts of this type of answers point to the need for such findings to be compared to the changes in the global corruption perceptions index which is published every year and includes a great number of indicators and other indexes on the prevalence of bribery in doing business.



**Chart 7:** Transparency International’s global Corruption Perceptions Index based on the inclusion of a greater number of indicators and other indexes to measure the prevalence of bribery in doing business

*Source: Corruption Perceptions IndexGlobal Corruption Barometer*

### 2.3. CORRUPTION PERCEPTION IN WINNING A PUBLIC PROCUREMENT TENDER

The section that deals with private sector corruption in the State Programs adopted by the SCPC for the period 2011-2015 underlines that private sector corruption is related to public sector corruption. It highlights that “The public spending of budget funds by the national institutions (the tendency for draining of budget funds through various contracts for public-private partnerships or concessions to the private sector); the spending of budget funds in a non-transparent manner with favoritism and granting privileges; the lack of accountability, efficiency and oversight in granting contracts for donations, sponsorships or partnerships are seen as risky problems and factors of corruption and conflict of interest in the public and private sectors.”

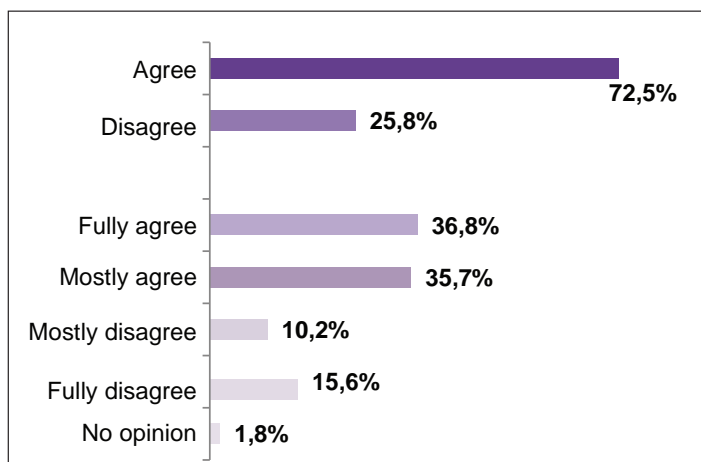
In order to collect relevant information on the perceptions of the private sector employees on whether companies in our country use bribery to win business by winning public procurement tenders from the state, the respondents were asked the following question: “To what extent do you agree with the following statement: Companies use bribery to win business by winning a state tender?”

The answers presented in following chart reveal that over 70% of the private sector employees in our country are convinced that companies engage in bribery when they want to obtain business by winning a state tender. The number of respondents who fully agree with this statement is twice as high as that of the respondents who fully disagree with it.<sup>4</sup>

According to the information provided by our country’s Ministry of Finance and by the Public Procurement Bureau, in 2012 there was an average of 70 e-auctions per work day. Nearly 24,000 public procurement contracts were signed in a total amount of EUR 917 million, i.e. 12% of GDP.<sup>5</sup>

4 The Centre for Civil Communications, which regularly monitors all public procurements in the country, informs in the latest report that EUR 65 million were spent in non-transparent procedures by negotiating without publishing an announcement. The legally binding e-auction was not scheduled in 40% of the sample monitored, and in one out of four e-auctions the initial price did not go down. Thus with most of the procurements there was no saving budget resources, as stated in the report. The survey also points to a record in highest number of tender procedures that have been annulled in 2012 – 24.2%, which is the highest level in the past four years.

5 <http://www.alfa.mk/News.aspx?ID=57151#.UaXPdtizegA>



**Chart 8:** To what extent do you agree with the following statement: Companies use bribery to win business by winning a state tender?

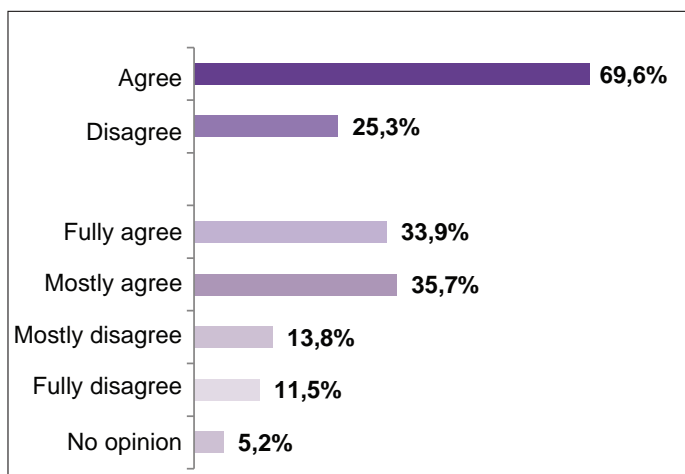
The analysis of the socio-demographic features of the respondents reveals that this statement is more supported by older than younger respondents employed in the private sector. Only 28% of the respondents aged 18-29 fully agree with this statement, as opposed to 40% of the respondents aged 50-64 who fully agree with it. The percentage of Albanians who fully agree with this claim (42%) is higher than the one of the ethnic Macedonians (36.6%), whereas one in three respondents from other ethnicities (33.3%) fully agree that companies use bribery to win business by means of a state tender. Furthermore, 41% of the respondents employed in companies with 11-50 employees fully agree with this statement, and the percentage of respondents who are employed in companies located out of Skopje and who fully agree with this statement is identical.

**Table 2:** To what extent do you agree with the following statement: Companies use bribery to win business by winning a state tender? / presented by respondents' age

|                 | Aged 18-29 | Aged 30-49 | Aged 50-64 |
|-----------------|------------|------------|------------|
| Fully agree     | 28%        | 38%        | 40%        |
| Mostly agree    | 42%        | 37%        | 31%        |
| Agree           | <b>70%</b> | <b>74%</b> | <b>71%</b> |
| Disagree        | <b>30%</b> | <b>24%</b> | <b>27%</b> |
| Mostly disagree | 12%        | 11%        | 9%         |
| Fully disagree  | 18%        | 14%        | 18%        |
| No opinion      | /          | 2%         | 3%         |

## 2.4. CORRUPTION IN OBTAINING SPONSORSHIPS AND DONATIONS

There is a widespread belief among private sector employees that sponsorships and donations given by private companies are used for bribery and corruption. The respondents were asked to answer the question “To what extent do you agree with the following statement: ‘Companies misuse donations and sponsorships for corruptive purposes?’” and the answers are presented in the following chart:



**Chart 9:** To what extent do you agree with the following statement: “Companies misuse donations and sponsorships for corruptive purposes”?

Similar to the answers referring to the state tenders, about 70% of the respondents answered that they fully or mainly agree with the statement that companies misuse donations and sponsorships for corruptive purposes. The number of people who fully agree with this statement is three times higher than the ones who fully disagree.

However, when it comes to misusing sponsorships and donations, there is a significantly higher percentage of young people aged 18-29 who fully agree with this statement (40%), compared to the other age groups.

**Table 3:** To what extent do you agree with the following statement: “Companies misuse donations and sponsorships for corruptive purposes”? / presented by respondents’ age

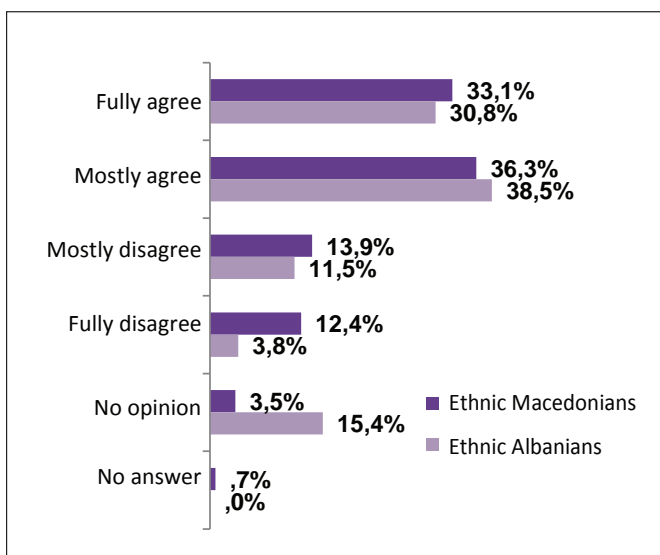
|                 | Aged 18-29   | Aged 30-49   | Aged 50-64   |
|-----------------|--------------|--------------|--------------|
| Fully agree     | 40.4%        | 29.1%        | 39.7%        |
| Mostly agree    | 35.1%        | 38.8%        | 30.8%        |
| <b>Agree</b>    | <b>75.5%</b> | <b>67.9%</b> | <b>70.5%</b> |
| <b>Disagree</b> | <b>22.8%</b> | <b>27.4%</b> | <b>22.6%</b> |
| Mostly disagree | 15.8%        | 16.0%        | 9.6%         |
| Fully disagree  | 7.0%         | 11.4%        | 13.0%        |
| No opinion      | 1.8%         | 3.8%         | 6.2%         |
| No answer       | .0%          | .8%          | .7%          |

Furthermore, nearly 38% of the respondents who work in companies of more than 100 employees fully agree with this statement, whereas 36% of the employees who do not hold a managerial position also fully agree that companies misuse donations and sponsorships for corruption purposes.

**Table 4:** To what extent do you agree with the following statement: “Companies misuse donations and sponsorships for corruptive purposes”? / presented by company size

|                 | Up to 10 employees | 11 – 50 employees | 51 – 100 employees | + 101 employees |
|-----------------|--------------------|-------------------|--------------------|-----------------|
| Fully agree     | 31.8%              | 34.5%             | 28.1%              | 37.6%           |
| Mostly agree    | 38.2%              | 30.2%             | 37.5%              | 36.8%           |
| Agree           | <b>70.0%</b>       | <b>64.7%</b>      | <b>65.6%</b>       | <b>74.4%</b>    |
| Disagree        | <b>22.4%</b>       | <b>30.2%</b>      | <b>28.1%</b>       | <b>24.0%</b>    |
| Mostly disagree | 12.4%              | 14.7%             | 15.6%              | 14.4%           |
| Fully disagree  | 10.0%              | 15.5%             | 12.5%              | 9.6%            |
| No opinion      | 6.5%               | 5.2%              | 3.1%               | 1.6%            |
| No answer       | 1.2%               | .0%               | 3.1%               | .0%             |

One in three Macedonian respondents (33%) and a slightly lower percentage of Albanian respondents (31%) also fully agree with this statement.



**Chart 10:** To what extent do you agree with the following statement: “Companies misuse donations and sponsorships for corruptive purposes”? / presented by ethnicity

As for the perceptions of the employees in terms of their monthly income, 38% of the employees earning up to MKD 10,000 fully agree with the statement that sponsorships and donations are used by companies for corruption purposes, whereas the percentage of employees with monthly earnings of MKD 10,000 - 25,000 who fully support this statement is slightly lower (36%).

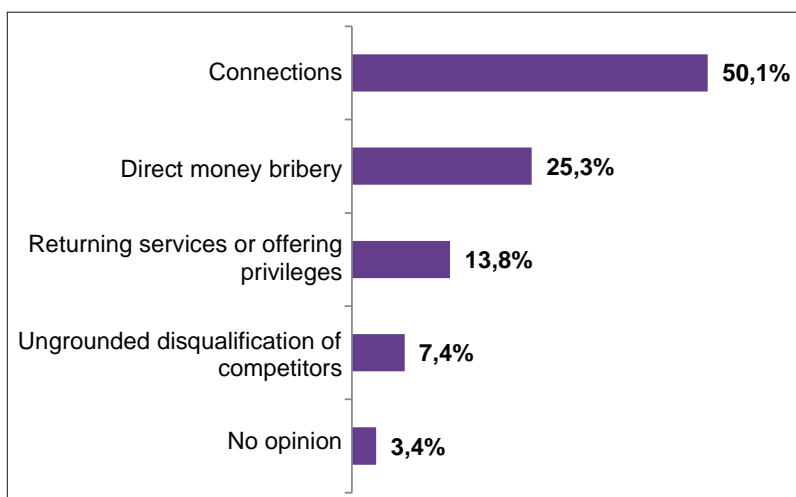
Such a distribution of answers leads to the conclusion that the employees who do not participate in the decision-making process for granting scholarships and donations believe that such non-transparent manner of transferring company funds to external people and entities is not only for “winning business” but also for personal benefit of a small number of decision-makers.

### 3. FORMS OF BRIBERY

Private companies use various unethical methods in the fight against competitors to win business deals, preserve the monopoly or gain advantage or benefit. All over the world, and also in our country, it is frequently believed that that company owners or managers have established relations with the authorities based on their political affiliation or family and friendly relations. Such connections, by committing misfeasance in public office, can provide certain companies or owners with a privileged access to information pertaining to public procurement or investing and can be used to adjust tenders, annul tenders if the expected client’s offer does not turn out to be the most favourable one and many other corrupt activities that would yield benefit to both parties but cause damages to the competitive companies, citizens and the state budget. Companies with such relations may not pay bribery directly, but they are quite frequently illegal sponsors of the ruling political parties or the influential people with high authorities. This manner of winning business also refers to the local government as it spends a lot of funds in public procurement.

Those who have no such political or family connections with the state authorities, such as foreign private companies in the county, use corrupt contracts to pay off individuals the desired amount of money (cash and in person, when it comes to smaller amounts, or using secret accounts, using consultancy services or mediation fees contracts). Misfeasance in public office by giving privileges to certain entities involved in public procurement procedures can also be a result of service providers paying back for the employment of their child, spouse or relative in a successful private company, acquiring privileged access, sponsorships or donations (travels, studying etc.).

This survey also looked into the various forms of corrupt and unethical behaviour that are most likely to bring in business by participating in a state tender procedure in our country and therefore respondents were asked to answer the following question: “Which of the following forms of corrupt and unethical behaviour is most likely to bring in business through a state tender?”



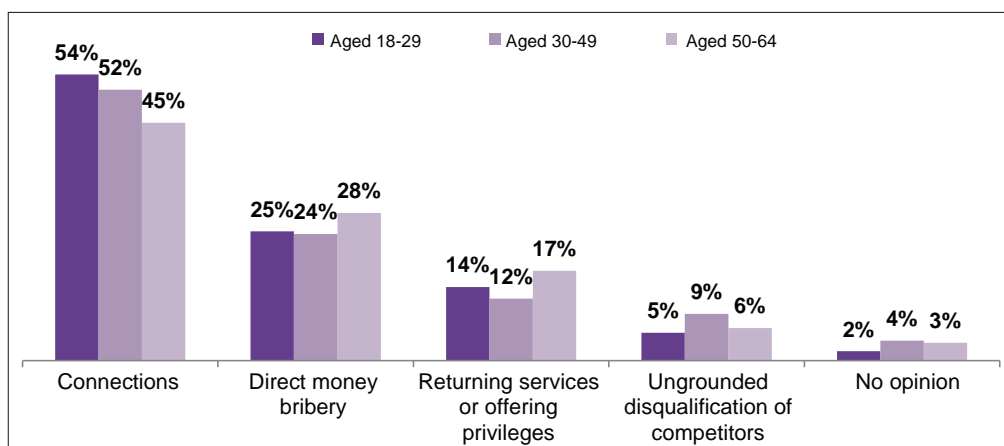
**Chart 11:** Which of the following forms of corrupt and unethical behaviour is most likely to bring in business through a state tender?

The answers obtained reveal that there is a widespread belief in our country that connections, whether they are on political, friendly or family basis, are the most important channel to obtain a business contract in public tenders. This means that a high percentage of private sector employees (50.1%) believe that the awarding of public tenders is accompanied by discrimination of companies whose owners or executives are not close to the ruling political parties or who are not in any friendly or family relations with them.

According to the answers, the second form that is most likely to bring in a tender in an unethical and corrupt manner is the economic power of the company participating in the tendering procedure and its ability to pay more, i.e. offer a higher amount as bribe, compared to the other competitors.

The private sector employees stated that the company’s ability to return a service or pay back with some kind of privileges is the third illegal way to be awarded a public tender.

As presented in the following chart, young people aged 18-29 are the most numerous group that believes that political, friendly and family relations are the most effective way of winning business in public procurement (54%), and this opinion is shared by 61% of the ethnic Albanians, half of the ethnic Macedonians (50%) and 47% of the other ethnicities. These relations and connections have been pointed out as most effective by 53% of the employees working in companies with 11-50 employees, and 56% of the employees who do not have a managerial position in the company.



**Chart 12:** Which of the following forms of corrupt and unethical behaviour is most likely to bring in business through a state tender? / presented by respondents’ age

Direct money bribery was pointed out by company directors and managers (34%), employees working in companies that employ up to 10 people (31%) and people working in larger towns in the county, other than Skopje.

Company owners believe that returning services and offering privileges are the most convenient form of corruption to win a public tender and 15% of them replied that it is the most efficient way to win a tender.

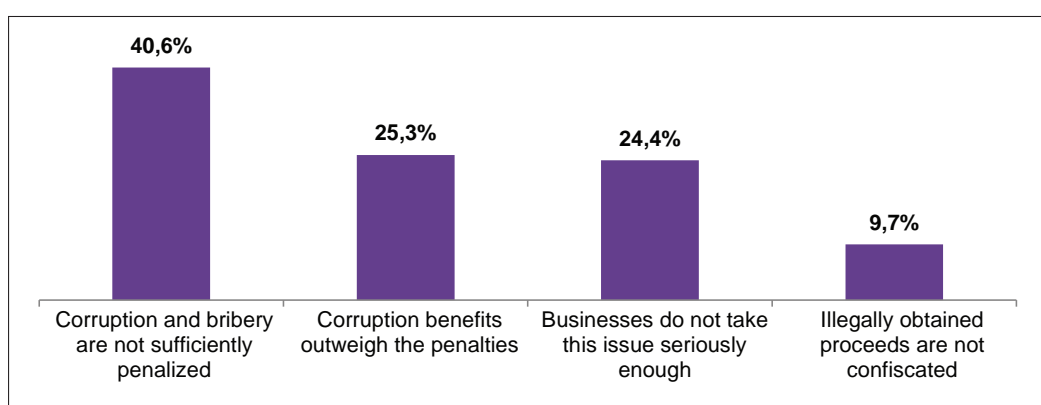


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#### 4. REASONS FOR PERSISTENCE OF PRIVATE SECTOR CORRUPTION

The results of the survey that we have conducted, as well as the results of the surveys conducted by Transparency International all point to the conclusion that in all the countries all over the world people believe, more or less, that there is corruption both in the public and the private sector. If we conclude the question whether there is corruption, next question that deserves to be analyzed is “What are the reasons for the persistence of this phenomenon?”

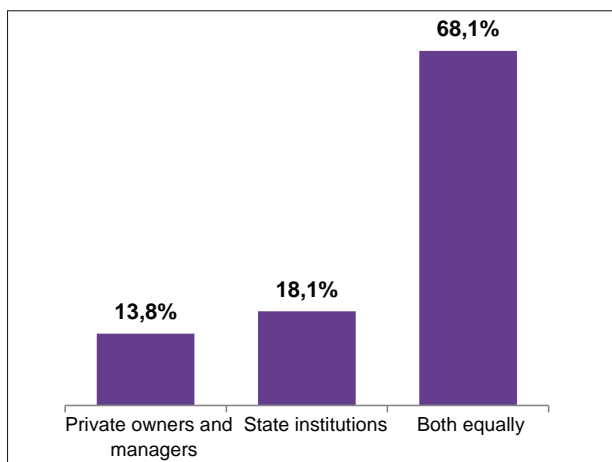
In order to find out the main reason for persistence of corruption in the business sphere, private sector employees were asked the following question: “In your opinion, which of the following is the main obstacle to combating private sector corruption: corruption and bribery are not sufficiently penalized, the corruption benefits outweigh the penalties, businesses do not take this issue seriously enough, the illegally obtained benefit is not confiscated. The answers were as follows:



**Chart 13:** In your opinion, which of the following is the main obstacle to combating private sector corruption: corruption and bribery are not sufficiently penalized; corruption benefits outweigh the penalties; businesses do not take this issue seriously enough; illegally obtained benefit is not confiscated?

The answers reveal the employees’ belief that the main obstacle to combating private sector corruption is insufficient reveal and prosecution of corruption in the country, leaving corruption unpunished, and even when it is discovered and penalized (according to 25% of the respondents), it is believed that the benefits of corruption outweigh the penalties. However, there is a significant percentage of employees who feel that one of the main obstacles to tackling corruption is the fact that businesses do not take corruption seriously enough. In their opinion, businesses accept corruption as a fact or an environment that they do not want to or think they cannot influence, even that persistence of corruption does not depend much on the integrity of the businesses. This opinion is particularly widespread among employees aged 50-65 – 26% of them pointed this out as a main factor for persistence of corruption, and the same answer was provided by 30% of the employees working in companies that employ more than 100 people and 34% of the employees with monthly earnings higher than MKD 35,000.

Starting from the fact that private sector corruption is most frequently related to the competences exercised by the governing institutions and certain individuals working for them, as part of this survey private sector employees were asked to determine who contributes more for the persistence of private sector corruption (private owners, state institutions or both equally).



**Chart 14:** In your opinion, who contributes more for the persistence of private sector corruption (private owners, state institutions or both equally)?

The respondents' answers lead to the conclusion that bribe paid by private companies is of joint interest to both high ranking officials and private company executives who avoid or disable competition and market principles. However, there is a slightly higher number of private sector employees who find the fault with corrupt state institutions and high rank officials rather than private owners. The highest percentage of those employees who find the fault more with state institutions rather than private owners are ethnic Albanians (23%), followed by a slightly lower percentage of Macedonians who share the same opinion (18%). When it comes to the employees' perceptions in terms of the company size, the highest percentage of employees who believe that state institutions contribute most for the persistence of corruption was found in companies that employ 50-100 people (28%)

A similar question was asked as part of the previously addressed Transparency International survey conducted in 30 countries in 2011<sup>6</sup>, and the following answers were received:



**Image 1: Main obstacles to preventing private sector corruption**

Source: Transparency International

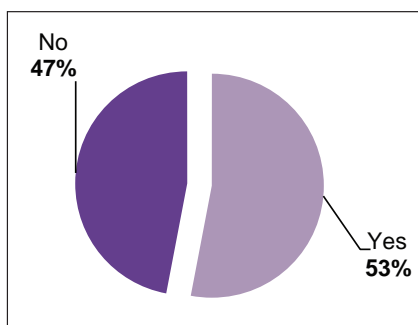
6 <http://www.transparency.org/research/bps2011/>

These results present the answers given in the 30 countries worldwide that participated in this survey and they point to the conclusion that in order to prevent private sector corruption and develop a private sector that possesses integrity, i.e. to enable free business environment, it is necessary that each of the entities involved (public officials, company owners, executives and judiciary) assume their own share of responsibility and work together to change the environment.

## 5. DO COMPANIES FEEL THEY HAVE AN ETHICAL DUTY TO FIGHT CORRUPTION?

Corruption is a phenomenon that cannot be prevented only by introducing severe penalties and strengthening the institutional capacities for its revealing and sanctioning. Being a social deviation, it has to become ethically unacceptable for both citizens and company staff, who should feel an ethical duty to fight bribery and corruption in businesses for the sake of preserving their own integrity and the one of their company. Feeling an ethical duty to prevent corruption points to the staff preparedness to adopt and abide by the code of ethics that excludes corruptive business practices, guarantees other market competitors fair behaviour and restrict the possibility for corruptive behaviour by public administration officials or high rank officials. The staff's sense of ethical duty to prevent corruption represents a basis for their pro-activeness in preventing and reporting corruption, introducing a system based on the rule of law and a good environment for doing business.

Therefore, as part of this survey, respondents were asked whether they think that their company has an ethical duty to prevent corruption. The following chart presents the answers of those who knew how to answer this question.



**Chart 15:** Do you think that your company has an ethical duty to prevent corruption?

The analysis of the answers in terms of the socio-demographic features of the respondents reveals that the level of awareness of the companies' ethical duty to fight corruption is highest among company owners – 60% of them stated that their companies have an ethical duty to fight corruption, staff employed in companies with more than 100 employees - 57% of them shared the same opinion, and employees aged 50-65 (60% of them provided an affirmative answer).

The Transparency International survey that was conducted in 2011 and included 100 (линок упатува на истражување на мислење на 3,000) private company owners from 30 different countries asked the respondents to answer whether they agree with the following statement: "My company has an ethical duty to fight corruption". The total percentage of respondents who agreed with this statement was 79%. However, only 45% of the respondents from Russia agreed with this statement, followed by Malaysia (49%), Egypt (57%) etc. The companies' ethical duty to fight corruption is most strongly felt among respondents from Japan (85%), Great Britain (81%), the USA (78%) etc. <sup>7</sup>.

## 6. EXISTENCE AND APPLICATION OF INTERNAL CORPORATE MEASURES FOR PREVENTING CORRUPTION

The State Program for Prevention and Repression of Corruption and the State Program for Prevention and Reduction of Conflict of Interests 2011-2015 propose a line of measures and activities to empower private companies in their fight against corruption. Private companies are encouraged to implement a series of measures for preventing and penalizing corruption by cooperating with the national chambers of commerce and implementing a training system, as they are the entities that are directly concerned with protection from monopolies, unfair competition and corruption, which leave no space for regular functioning of the free market and free competition.

In this respect, the employees working in private companies were asked whether there are any anti-corruption measures in place in their company and whether they are being implemented. The answers have been presented in the following table and they reveal that most of the employees are informed whether there are such corporate anti-corruption acts and activities in their company, and only 10% of the respondents gave a “don’t know” response.

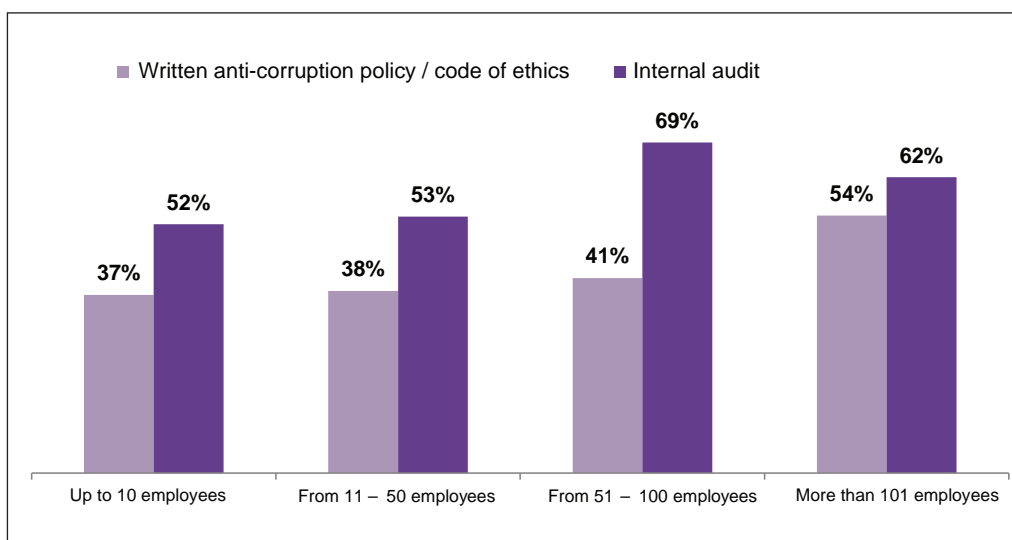
The highest number of the private companies internal auditing in place, codes of ethics that define corruption as an unethical act, clear penalties for violation of the code of ethics and prohibitions on facilitation payments. However, the first glance at the results also reveals that in a large number of companies there are no measures in place to encourage whistleblowers and there is a relatively small number of employees have heard of any anti-corruption training activities.

**Table 5:** Does your company have any of the following corruption-prevention measures in place?

|  | Yes  | No   | Don't Know |
|--|------|------|------------|
|  | %    | %    | %          |
| Measures to encourage whistleblowers   | 38.1 | 58.0 | 3.9        |
| Prohibition on facilitation payments/ commissions paid to “facilitate” some business | 49.0 | 42.2 | 8.8        |
| Anti-corruption policy /Business code of ethics                                      | 42.2 | 41.0 | 8.8        |
| Clear penalties for violating the code   | 52.6 | 43.1 | 4.3        |
| Staff training on anti-corruption policy   | 27.1 | 68.8 | 4.1        |
| Internal auditing  | 56.2 | 40.4 | 3.4        |

The analysis of the employees’ answers to these questions reveals that some of the corporate anti-corruption measures are more present in companies with a higher number of employees than in companies who employ a smaller number of people. However, what should be taken into consideration is that 82% of the commercial entities (trade companies) registered in our country are companies that employ 1-9 people and 75% of them have been registered as individual traders. According to SSO data, 74,424 commercial entities (trade companies, other companies) were registered in 2012 and 82% of them employed 1-9 people, 3.9% employed 10-19, 2.4% had 20-49 employees, 1.7% had 50-249 employees and 0.3% of the companies employed more than 250 people. Most of the commercial entities were registered in the trade and motor vehicle repairing sector (27,307 or 36.7% of the total number of commercial entities), and almost 70% of them have been registered as individual traders in the trade register. <sup>8</sup>

<sup>8</sup> <http://www.utrinski.com.mk/?ItemID=477EA7B3CFE81C469DFCFE0A8D8BFF31>



**Chart 16:** Percentage of respondents who reported a written anti-corruption policy/code of ethics and internal auditing in their company (by number of people employed in the company)

The fact that internal anti-corruption measures exist in most of the companies with more than 11 employees and the fact that these employees are informed that there is a code of ethics that forbids corruption, that there is an internal audit that controls the proper use of the company finances and other internal anti-corruption measures all point to the fact that most of the people employed in our country have been covered with such anti-corruption measures.

The Transparency International survey of 3,000 respondents from 30 different countries has demonstrated similar results.<sup>9</sup>

**Table 6:** Affirmative answers provided by respondents participating in the Transparency International survey conducted in 30 countries regarding the internal corporate measures for preventing corruption

| Does your company:  | Percentage of affirmative answers |
|---|-----------------------------------|
| Have a code of ethics   | 74%                               |
| Have an anti-corruption policy                                | 51%                               |
| Conduct regular staff training on anti-corruption             | 34%                               |
| Include corruption prevention in its risk management strategy | 52%                               |
| Prohibit facilitation payments                                | 68%                               |

9 <http://www.transparency.org/research/bps2011>

**Table 7:** Comparison drawn between different world countries (Transparency international) and our country (Rating Agency) regarding the existence of internal corporate anti-corruption measures

| Internal corporate measures for preventing corruption                                | Our country | 30 countries' average |
|--|-------------|-----------------------|
| Measures to support potential whistleblowers   | 38%         | 43%                   |
| Prohibition on facilitation payments/ commissions paid to “facilitate” some business | 49%         | 68%                   |
| Anti-corruption policy/Code of Ethics  | 42%         | 56%                   |
| Clear penalties for violating the code   | 53%         | 74%                   |
| Staff training on corporate anti-corruption policy                                   | 27%         | 34%                   |
| Internal auditing  | 56%         | 65%                   |

According to the information provided by the staff, internal corporate measures for preventing corruption are slightly less present in private companies in our country compared to the average of the companies in the 30 countries that have been surveyed worldwide, including the most developed global economies, such as the United States, Brazil, Russia, India and China. However, when looking at this comparison it should also be taken into consideration that only 100 private company owners were included in the survey per country, and our survey has covered a representative sample of 800 employees from the total number of private companies in our country.

## 7. EFFECTS OF NATIONAL LEGISLATION AND INVESTIGATIVE JOURNALISM ON PREVENTION OF PRIVATE SECTOR CORRUPTION

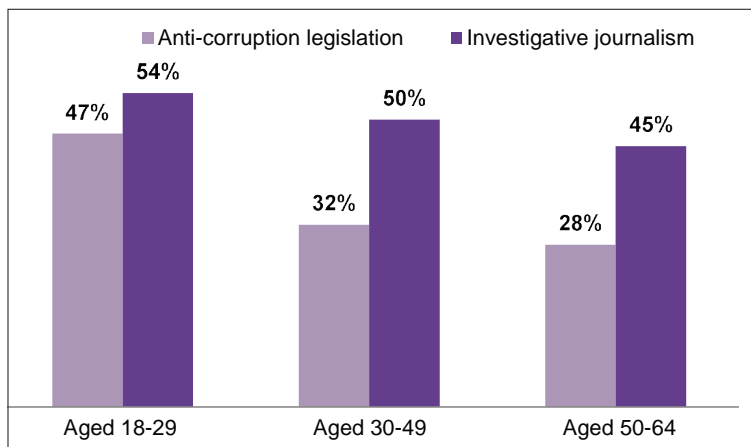
In order to measure the employees’ perception of the effectiveness of some of the measures for preventing and penalizing private sector corruption, as part of this survey, respondents were asked to answer the following question: “In your opinion, which of the following measures/factors are effective in preventing private sector corruption: Anti-corruption legislation, Investigative journalism, Company’s anti-corruption policies?”

**Table 8:** Do you find the following measures/factors effective in preventing corruption within private companies?

|   | Yes (they are effective) | No (they are not effective) | Don't know |
|---|--------------------------|-----------------------------|------------|
| Anti-corruption legislation   | 32.7%                    | 62.3%                       | 5.0%       |
| Investigative journalism  | 49.2%                    | 45.8%                       | 5.0%       |
| Company’s anti-corruption policies / corporate management rules (defined in the Economic chambers’ codes) | 34.3%                    | 55.5%                       | 10.5%      |

As it can be seen in the answers presented in Table 8, one in three respondents find the anti-corruption legislation and the corporate codes of ethics to be effective in the prevention of corruption (32.7% and 34.3% respectively). Two in three private sector employees either think that these two measures are ineffective, or have provided a “don’t know” answer. When it comes to presenting facts or allegations of corruption in public, investigative journalism is a corruption prevention factor that is considered to be an effective anti-corruption tool by the majority of respondents (49.2%)

The following chart also reveals that the percentage of those who believe in the effectiveness of anti-corruption legislation and investigative journalism is higher among young people, i.e. people aged 18-29 than the one among the older and more experienced people in the country.



**Chart 17:** Percentage of respondents who find anti-corruption legislation and investigative journalism to be effective (by respondents’ age)

The trust in the effectiveness of anti-corruption legislation is particularly low among the employees working in companies that employ 51-100 people (19%), a category that was previously mentioned as the one that has suffered greatest loss in the last 12 months as a result of their competitors’ engagement in corruption.

The number of respondents who believe that investigative journalism is effective in corruption prevention is higher among the Albanian respondents (58%) than among the Macedonian respondents (49%), and 53% of the people who do not hold a managerial position believe that investigative journalism is an effective corruption prevention tool, as opposed to 42.9% of the people with a managerial position who share the same opinion.

The Transparency International survey reveals that anti-corruption legislation was considered to be effective in preventing corruption by an average of 38% of the respondents coming from 30 different countries, whereas investigative journalism is considered to be an effective anti-corruption tool by 49% of the respondents.<sup>10</sup>

The analysts investigating the effectiveness of investigative journalism in preventing corruption note that in some countries, such as Brazil, where media have managed to expose high profile corruption cases involving powerful private companies and government officials, investigative journalism is deemed to be effective by as many as 70% of the business people. However, they also highlight that investigating and bringing a corruption case to light is only possible in countries where whistleblowers are protected by the law and can therefore share information with

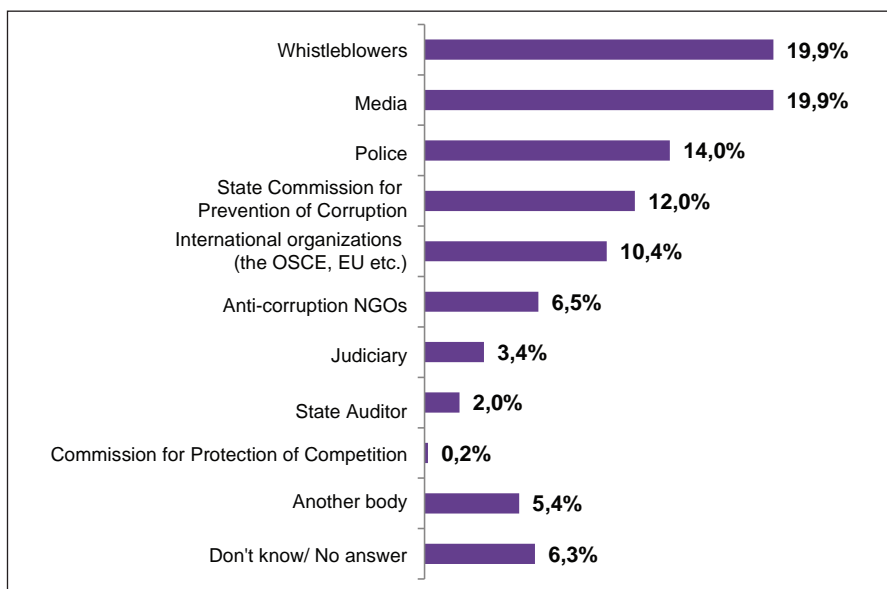
10 <http://www.transparency.org/research/bps2011/>

journalists. On the other hand, they point out that for investigative journalism to be effective, in addition to anti-corruption training for journalists, it is also important to have an environment where citizens do not tolerate corruption and insist that the guilty be prosecuted and punished for the offences that they have committed.<sup>11</sup>

## 8. CONTRIBUTION MADE BY ENTITIES AND INSTITUTIONS COMPETENT FOR PREVENTING AND PENALIZING PRIVATE SECTOR CORRUPTION

There is a number of institutions in our country and abroad that have been entrusted with competences to combat corruption. Citizens in general, as well as people employed in the private sector, have their own perceptions of these institutions' contribution and importance in combating corruption. In order to understand how private sector employees assess these entities' role in the fight against corruption, as part of this survey, respondents were also asked to determine which of the institutions or entities proposed contribute most in the fight against corruption.

The answers presented in the following chart show that the highest number of respondents believe that the greatest contribution to preventing and penalizing private sector corruption in our country is made by people who are brave enough to report corruption (whistleblowers) and those who inform the public of corruption in the business sphere (media). There is an identical percentage of people who believe that whistleblowers and media reporting corruption in the business sphere contribute most towards preventing and penalizing private sector corruption (19.9%).



**Chart 18:** Which of the following do you think contribute most to fighting private sector corruption?

The police have been ranked third in terms of its effectiveness in discovering and preventing corruption by 14% of the respondents who participated in this survey, followed by the State Commission for Prevention of Corruption which was considered to be most effective by 12% of the respondents.

International organizations, such as the OSCE and EU, which direct the attention of the public to the issue of corruption by means of conduct training, publishing reports and other activities, have been pointed out to be most efficient in combating corruption by 10.4% of the respondents

<sup>11</sup> <http://blog.transparency.org/2012/10/31/the-power-of-journalism-as-an-anti-corruption-tool/>  
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and 6.5% of them pointed out the non-governmental organizations as most effective in the fight against private sector corruption.

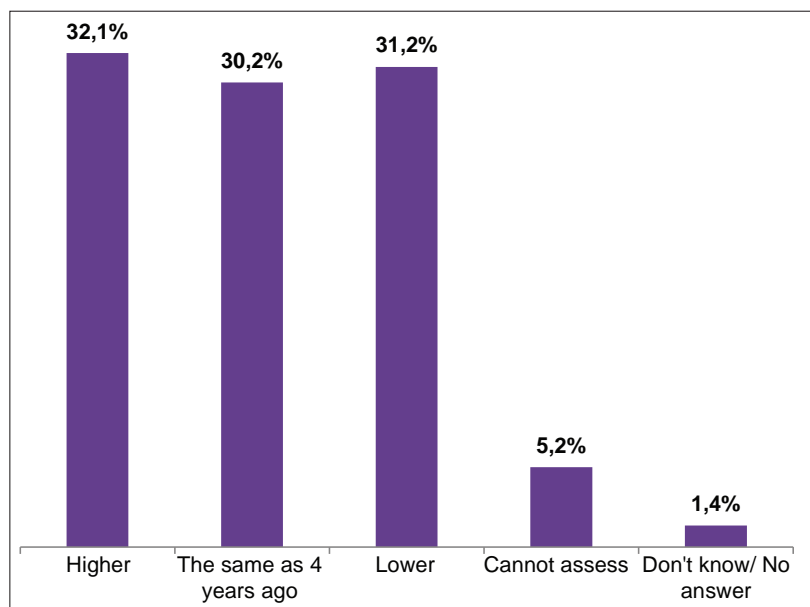
Only 3.2% of the private sector employees pointed to the judiciary being most effective in the fight against corruption, followed by 2% of the respondents who pointed to the State Auditor and 0.2% who pointed to the Commission for Protection of Competition as most effective in the fight against corruption.

The analysis of the socio-demographic features of the respondents does not reveal any significant differences in the respondents' perceptions of the efficiency of the aforementioned entities and institutions. However, it is significant to mention that the police were deemed to be most effective by the respondents with lowest personal incomes. This answer was provided by 23.6% of the respondents and only 7.7% of the ethnic Albanians shared the same viewpoint. As for the ethnic Macedonians, 15% of them responded that the police contribute most to fighting private sector corruption, and there is a similar percentage of respondents from other ethnicities who find the police to be the most efficient tool for combating corruption (14%).

## 9. PRIVATE SECTOR CORRUPTION COMPARED TO FOUR YEARS AGO

Some of the indicators of the fight against corruption in all countries should also include citizens, business people and investors' feeling that corruption has decreased and business climate has improved compared to the past.

In order to discover the private sector employees' perceptions of the level of corruption compared to 4 years ago, respondents participating in this survey were asked to answer the following question: "Do you think that there the level of corruption in businesses in the country is higher, the same or lower compared to the level of corruption four years ago?"



**Chart 19:** Do you think that there the level of corruption in businesses in the country is higher, the same or lower compared to the level of corruption four years ago?

As reflected in the answers, 30% of the respondents participating in this survey think that nowadays the level of private sector corruption is slightly lower compared to the one four years ago.

There is a similar percentage of respondents who believe that the level of private sector corruption has not reduced compared to the one four years ago, and another third of the respondents believe that the level of private sector corruption has increased over the last 4 years. These results lead to the conclusion that more than 63% of the respondents, or 2/3 of them, believe that the level of private sector corruption has either remained the same or has increased over the past 4 years.

The analysis of the socio-demographic features of the respondents reveals that among those who believe that the level of private sector corruption has increased over the last four years the most numerous ones seem to be young respondents aged 18-29, 40% of whom provided such an answer, followed by the ethnic Albanians, 50% of whom share the same opinion, employees working in smaller towns (39%), employees with a monthly personal income of up to MKD 10,000 (44%) and respondents working in companies of 51-100 employees (47%).

According to the 2006 Corruption Perceptions Index published by *Transparency International*, our country was ranked 105<sup>th</sup> whereas in 2007 it was ranked 84<sup>th</sup> out of a total of 179 countries. In 2008 the country managed to improve its position and go up 12 places on the Transparency International list that ranks a total of 180 countries and arrived at the 72<sup>nd</sup> position and one year later, in 2009 (exactly 4 years ago), it slightly improved by ranking 71<sup>st</sup> on the list.

According to the data provided by a non-governmental organization in the country, in 2010 our country ranked 62<sup>nd</sup> out of a total of 178 countries, and in the past two years the country has remained on the 69<sup>th</sup> position.

## CONCLUSIONS

1. More than 35% of the private sector employees stated that over the past 12 months their company has been denied a tender or has lost a new business as a result of bribe given by the competitors. Compared to the situation in 30 other countries worldwide, our country is among the ones where private sector corruption is perceived to be at a higher level.<sup>12</sup>
2. One in three private sector employees in the country believe that the level of corruption is lower compared to four years ago. However, the remaining two thirds of private sector employees believe that corruption has either remained at the same level or has increased compared to four years ago.
3. More than 70% of the private sector employees share the opinion that “companies use bribery to win a state tender” and there is a same percentage of respondents who believe that companies misuse sponsorships and donations for corruption purposes.
4. According to 50% of the private sector employees, the easiest way for a business to win a public tender by means of corruption and unethical behaviour is to have “political and family relations of with the authorities”. Next in line is the companies’ economic power or their ability to pay bribe, which means money, followed by the company’s ability to offer “business providers or facilitators” a service in return, which can be employing a family member, offering sponsorship, donation etc.
5. Private sector employees believe that insufficient penalizing of corruption is the key reason corruption is difficult to eradicate, as the corruption benefits outweigh the penalties, but also because “businesses do not take this issue seriously enough” even though they themselves are also to blame.

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<sup>12</sup> <http://www.transparency.org/research/bps2011>

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6. According to more than 68% of the respondents, business people and public officials equally contribute to the persistence of private sector corruption. However, 18% of them believe that public officials are more to blame, as opposed to 12% of them who believe that the fault lies more with the business people.

7. Companies' awareness of their professional obligation to fight corruption is not sufficiently raised in the business sphere, according to private sector employees.

8. The internal corruption prevention measures that are most frequently in place in companies include internal auditing, existence of an anti-corruption code of ethics, penalties for violating the business code and prohibitions on facilitation payments. The number of companies that have organized anti-corruption training and that have measures in place to support potential whistleblowers is still low.

9. Private sector employees do not consider national anti-corruption legislation to be very effective but "investigative journalism" has been assessed as an effective tool for corruption prevention by 49.2% of them. It seems to be most effective in countries that provide safe protection of potential whistleblowers and in countries where institutions, most notably the prosecution and the judiciary, are effective in investigating and prosecuting publicly exposed corruption cases or investigating reasonable suspicion of corruption.

10. As ranked by the private sector employees, whistleblowers, media, police, the State Commission for Prevention of Corruption, international organizations and missions such as the OSCE and EU in our country, followed by non-governmental organizations for combating corruption, the judiciary, the State Auditor and the Commission for Protection of Competition are the entities that contribute most to the prevention of private sector corruption in our country.



## **2. SURVEY ON THE CORRUPTION IN THE POLITICS**

NARRATIVE REPORT

August, 2013

## 1. INTRODUCTION

Corruption in politics is one of the most widespread phenomena in countries' political systems all over the world. Even most developed parliamentary democracies are not immune to this phenomenon, despite their developed mechanisms for preventing irresponsible behaviour by high-rank officials and public office holders. Corruption in politics can most broadly be defined as abuse of public authority for, above all, obtaining personal gain. However, there are other definitions that define this phenomenon more precisely. One of these definitions defines corruption in politics as "behaviour which deviates from the normal duties of a public role because of private regarding, pecuniary or status gains; or violates rules against the exercise of certain type of private-regarding influence"<sup>13</sup>. Even though this is a much more specific definition of corruption of politics, it does not embed a very important category – damage to public interest caused by corrupt behaviour. Some authors, such as Carl Friedrich, take public interest into consideration when defining political corruption. According to him, "corruption can be said to exist whenever a power-holder who is charged with doing certain things, i.e. who is responsible functionary or office holder, is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides the rewards and thereby does damage to the public and its interests"<sup>14</sup>. There are many definitions that take a different approach when defining corruption in politics. Therefore, we will try to summarize most important aspects when defining this phenomenon. For the purpose of this survey, the term *corruption in politics* refers to *abuse of public office for the purpose of acquiring personal benefit and privileges that are not provided for in the function performed and which cause damage to public interest*.

Corruption in politics can be defined even more specifically by looking at its various types, forms and kinds. Most frequent forms of corruption in politics include:

- *Bribery*, which refers to a favour, in money or kind, paid to public officials in exchange for their use of their official duties/competences.
- *Embezzlement* refers to the misuse or misappropriation of public funds (goods) by public officials.
- *Blackmailing* refers to extorting money or other kind of goods from a third party, used by office holders by misusing their official authority and political power.
- *Favouritism* is the practice of awarding special privileges, favours, benefits, and public funds only to certain people or groups thus putting other citizens in a disadvantaged position.
- *Nepotism* refers to a special form of favouritism, in which office holders misuse their authorities to their closest family members' benefit.<sup>15</sup> When such favouritism serves political parties' interest, it is called *cronyism*.

Corruption in politics is most frequently seen as a method used by political parties to fund the election campaigns and electoral process and to skew voting. Yet corruption in politics is not solely related to the electoral process; it involves any office holders' behaviour that steers away from the principles of good government. Corruption also occurs when public officials pass decisions which benefit those who fund them or their political parties. In such cases, public interest

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<sup>13</sup> J. S. Nye, „Political Corruption: a Cost-Benefit Analysis“ in A. J. Heidenheimer, M. Johnston and V. LeVine, *Political Corruption: a Handbook* (New Brunswick NJ, Transaction, 1989), p.966.

<sup>14</sup> A. J. Heidenheimer, *Political Corruption: A Handbook*, Transaction Publishers, 1989, p.10.

<sup>15</sup> I. Amundsen, *Political Corruption: An Introduction to the Issues*, Chr. Michelsen Institute Development Studies and Human Rights, 1999. p. 10 – 15. <http://www.cmi.no/publications/1999/wp/wp1999-7.pdf>

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comes second. Political corruption can also divert state resources from poor and disadvantaged groups towards the ones of higher social standing or influence over the institutions or political decision-making. This is especially common in countries where democratic institutions are weak or absent.<sup>16</sup>

Negative effects of corruption in politics can be felt in every sphere of social life. In those countries where institutions are not strong enough and have no control over corruption, the institutional capacity keeps decreasing, thus reducing the stability of the social order in general.<sup>17</sup> Therefore, institutions enjoy higher legitimacy and citizens' support in countries with a lower level of corruption.

## **SURVEY OBJECTIVES**

The main objectives of this survey of citizens' perception were to collect relevant information and data regarding the following issues:

- The level and forms of corruption in politics in our country based on the citizens' perception of its existence and prevalence in the institutions of the system;
- The way in which public officials use public authorities;
- The extent to which public officials observe ethical standards while performing their legal duties;
- The level of corruption among political parties in the process of election campaign and electoral process funding;
- The level of efficiency of state bodies and societal institutions in preventing corruption in politics;
- Current level of corruption in politics compared to the one four years ago.

This survey has also been designed based on information and data from similar surveys that have been conducted worldwide by the distinguished international organization Transparency International, so that the data received from this survey would be comparable to data from similar surveys that have been conducted in other countries over the past several years.

## **METHODOLOGY**

The Survey of Citizens' Perception of Corruption in Politics was conducted in our country via telephone interviews using a representative sample of 1080 citizens aged 18+ from all over the country. The survey was carried out in the period 01-05 July 2013.

The design of a representative sample that reflects the attitudes of the citizens residing in the country has undergone several systematic procedures. The representativeness of the sample was provided by adhering to certain procedures in the course of its formulation deriving from the random sampling rules. The sample selection procedure was based on the design principle for regional and national sample, defined by the region and in compliance with its definition given by the State Statistical Office (NUTS3 the EU16). Namely, pursuant to the geo-demographic structure of the population, the country was divided into the following eight regions: Skopje, Polog, Pelagonija, Vardar, Northeast, Southeast, Southwest and East. Furthermore, respondents

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<sup>16</sup> [http://www.transparency.org/topic/detail/politics\\_and\\_government](http://www.transparency.org/topic/detail/politics_and_government)

<sup>17</sup> I. Amundsen, Political Corruption: An Introduction to the Issues, Chr. Michelsen Institute Development Studies and Human Rights, 1999. p. 10 – 15. <http://www.cmi.no/publications/1999/wp/wp1999-7.pdf>

from all 84 municipalities were proportionately included in the sample, including both urban and rural population. The number of respondents was proportionately distributed with reference to the total population of all the regions, and by using the official data from the official population census conducted in 2002. The statistical error for such a survey is +/- 3%.

**Table 1: Demographic Structure of the Sample**

| Demographic structure of the sample |                       | %    |
|-------------------------------------|-----------------------|------|
| Region                              | Pelagonija            | 12.6 |
|                                     | Vardar                | 7.4  |
|                                     | Northeast             | 7.8  |
|                                     | Southwest             | 11.3 |
|                                     | Skopje                | 27.8 |
|                                     | Southeast             | 8.7  |
|                                     | Polog                 | 14.6 |
|                                     | East                  | 9.8  |
|                                     | 100                   |      |
| Residence                           | City/Town             | 59.4 |
|                                     | Village               | 40.6 |
|                                     |                       | 100  |
| Ethnicity                           | Macedonian            | 69.4 |
|                                     | Albanian              | 24.3 |
|                                     | Other                 | 6.3  |
|                                     |                       | 100  |
| Gender                              | Female                | 53.2 |
|                                     | Male                  | 46.8 |
|                                     |                       | 100  |
| Age                                 | 18 - 29               | 17.0 |
|                                     | 30 -49                | 37.0 |
|                                     | 50 -64                | 33.0 |
|                                     | 65+                   | 13.0 |
|                                     |                       | 100  |
| Education                           | Primary and less      | 15.5 |
|                                     | Secondary             | 52.8 |
|                                     | Higher, Master's, PhD | 31.7 |
|                                     |                       | 100  |

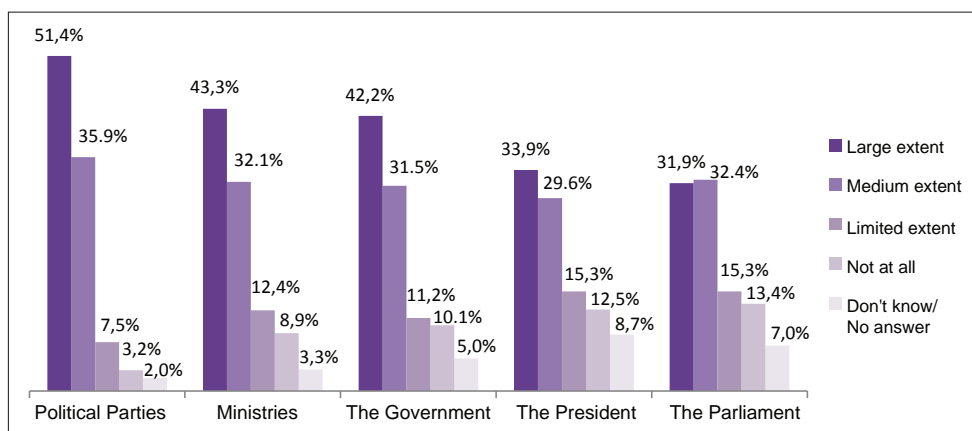


## 2. PERCEPTION OF PREVALENCE OF CORRUPTION IN THE SYSTEM

Corruption within the system is a serious problem that nearly every single country worldwide is faced with. According to the last Transparency International Global Corruption Barometer 2013 Report<sup>18</sup>, which draws on a survey of more than 114,000 respondents in 107 countries worldwide and which measures citizens' perceptions of the level of corruption in various social life spheres, in most of the countries citizens believe that the level of corruption is highest among the political institutions in their countries. Considering these results, but also having in mind this survey's objectives, it is necessary to start off by summarizing the results obtained when measuring citizens' perceptions of corruption in political institutions in our country, in order to obtain a realistic image of citizens' perception of corruption in politics.

The survey questionnaire was shaped to measure citizens' perceptions of the prevalence of corruption in the following institutions:

- Political parties;
- The government and the ministries;
- The Parliament;
- The President.



**Chart 1:** To what extent do you see the following categories to be affected by corruption in this country?

Respondents were given the possibility to choose more than one of the proposed answers. As presented in Chart 1, the highest percentage of respondents participating in this survey (51.4%) believe that there is a lot of corruption among the political parties, followed by corruption among the ministries (43.3%), the Government (42.2%), the President (33.9%) and the Parliament (31.9%).

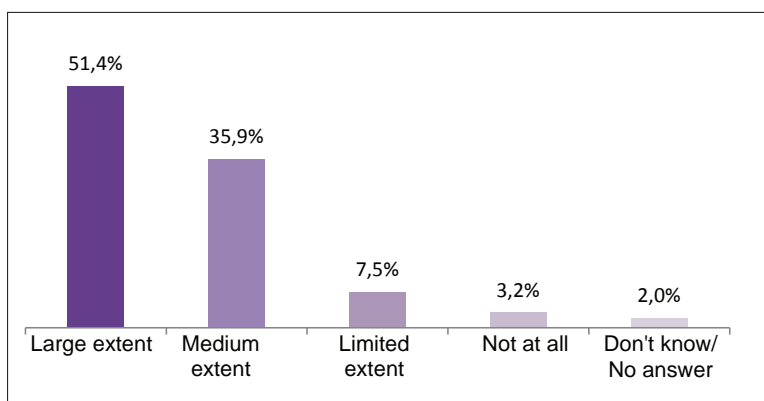
18 <http://www.transparency.org/gcb2013/report/>

### 3. EXTENT OF CORRUPTION IN POLITICAL PARTIES

Parliamentary democracy cannot be conceived without the existence of political parties, which represent a means used by citizens to articulate their interests in the institutions in the system. The end goal of any political party is to take over the government in the country by participating in and winning the election. However, in order to fulfil this goal, political parties often resort to certain corrupt methods. Having in mind the political parties' key position in the political life of a society, the issue of political parties' corruption is of fundamental importance.

According to the last Transparency International survey, respondents in 51 out of a total of 107 countries perceive political parties as most corrupt institution in their countries.<sup>19</sup> As for the countries in our region, 72% of the respondents in Croatia<sup>20</sup> and Albania<sup>21</sup> perceive political parties in their countries as extremely or mostly corrupt, and this perception is supported by 75% of the respondents from Kosovo<sup>22</sup>, 76% of the respondents from Bulgaria<sup>23</sup>, 77% of the respondents in Bosnia and Herzegovina<sup>24</sup> and even 80% of the respondents from Serbia<sup>25</sup> who share the perception that political parties in their country are extremely or mostly corrupt.

However, the survey also confirms that the perception of political parties' corruption is not a feature that is typical only for the Balkans' post-transition countries; it is a belief that is widespread among citizens in nearly all countries worldwide. For example, the highest percentage of respondents from the United States of America (76%) believes that political parties are the most corrupt institution in their society.<sup>26</sup>



**Chart 2:** To what extent do you see the following categories to be affected by corruption in this country?  
Category: political parties

The previous chart reveals that 51.4%, or somewhat more than half of the respondents, perceive large extent of corruption in political parties in our country, whereas 35.9% of the respondents perceive medium extent of corruption in political parties. These results lead to the conclusion that citizens perceive political parties as the most corrupt entity in the politics in our country.

19 <http://www.transparency.org/gcb2013/results>

20 <http://www.transparency.org/gcb2013/country?country=croatia>

21 <http://www.transparency.org/gcb2013/country?country=albania>

22 <http://www.transparency.org/gcb2013/country?country=kosovo>

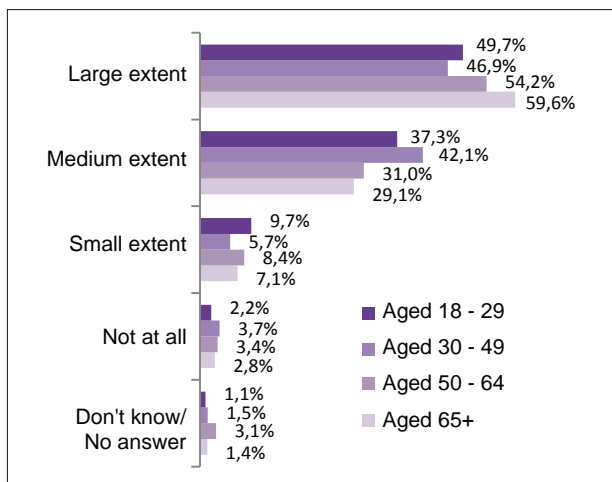
23 <http://www.transparency.org/gcb2013/country?country=bulgaria>

24 [http://www.transparency.org/gcb2013/country?country=bosnia\\_and\\_herzegovina](http://www.transparency.org/gcb2013/country?country=bosnia_and_herzegovina)

25 <http://www.transparency.org/gcb2013/country?country=serbia>

26 [http://www.transparency.org/gcb2013/country?country=united\\_states](http://www.transparency.org/gcb2013/country?country=united_states)

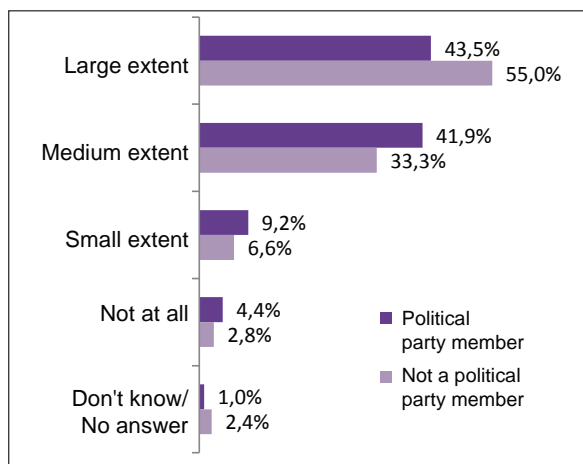
The socio-demographic analysis of the respondents' answers reveals that there is a slightly higher percentage of male respondents (53.1%) who perceive a large extent of corruption in political parties in our countries, compared to 50.1% of female respondents who provided the same answer. Furthermore, in terms of the respondents' age group, it seems that the highest percentage of respondents who perceive large extent of corruption in political parties is found among the respondents aged 65+ (59.6%).



**Chart 3:** To what extent do you see the following categories to be affected by corruption in this country?  
 Category: political parties (by respondents' age)

In addition, there is a higher percentage of ethnic Albanians who consider that there is a large extent of corruption in political parties (59.1%), as opposed to 49.4% of the ethnic Macedonians and 44.1% of the respondents from other ethnicities in the country who provided the same answer.

Similar to the results provided for other political institutions, the percentage of respondents who are not political party members and who believe that political parties are corrupt to a large extent (55.0%) is higher than the ones who are not members of a political party. However, it is also important to highlight that there is a very high percentage (43.5%) of the respondents who are political party members who share the perception that there is a large extent of corruption in these organizations.

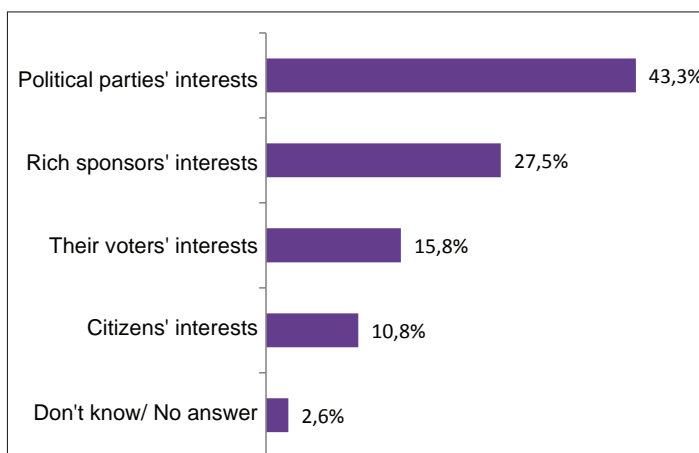


**Chart 4:** To what extent do you see the following categories to be affected by corruption in this country?  
 Category: political parties (by respondents' political party membership)

The political parties' main objective and function is to serve as a tool for citizens' representation in the institutions in the system.

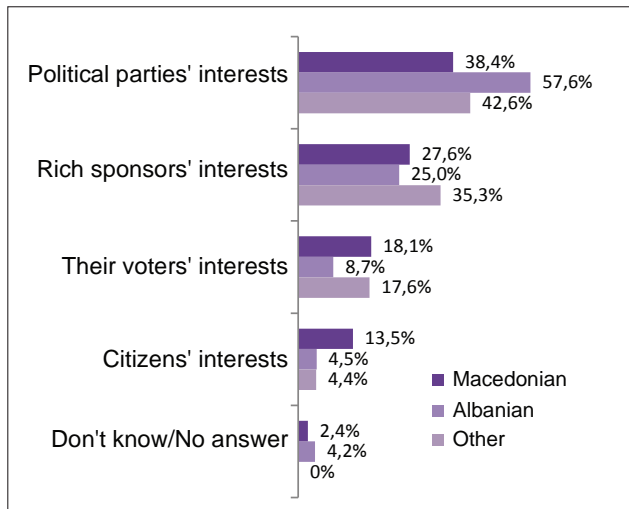
Therefore it is of great importance to look into the issue of interests that political parties serve while in charge of the government in a country.

To that end, the respondents who participated in this survey were asked to state whose interests political parties serve while in power.



**Chart 5:** Whose interests do political parties serve while in power?

The answers reveal that as many as 43.3% of the respondents believe that political parties in power serve the political party interests, and 27.5% of the respondents believe that, while in power, political parties protect their rich sponsors' interests. Only 10.8% of the respondents think that, while in power, political parties protect the citizens' interests.



**Chart 6:** Whose interests do political parties serve while in power? (by respondents' ethnicity)

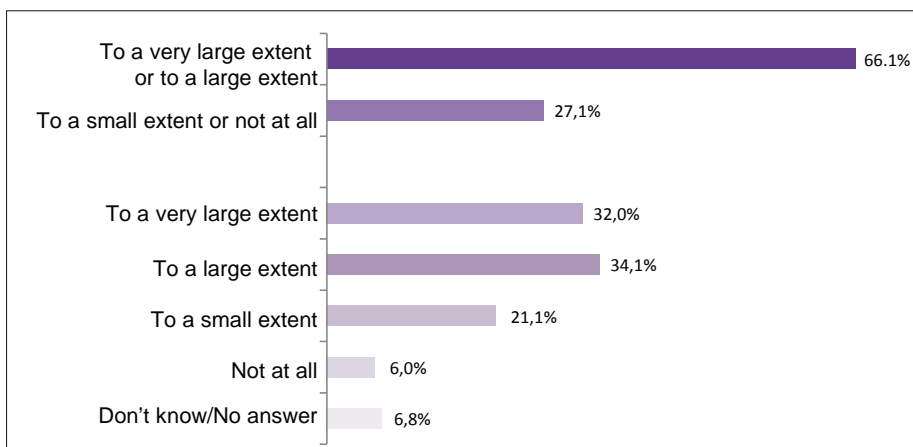
When comparing the socio-demographic features of the respondents, we noticed that the percentage of respondents who believe that political parties serve citizens' interests is lowest among respondents with higher education (9.9%) but also that among the highest percentage can be found of respondents who believe that, while in power, political parties serve their political party interests (48.3%). Furthermore, 13.5% of the ethnic Macedonians believe that, while in power, political parties protect citizens' interests, as opposed to 4.5% of the ethnic Albanians and 4.4% of respondents of other ethnicities in the country who share the same opinion. As many as 57.6% of the ethnic Albanians believe that political parties, while in power, serve the political party interests, opinion shared by 42.6% of the respondents from other ethnicities in the country, but also 38.4% of the ethnic Macedonian respondents.

### 3.1. TRANSPARENCY IN POLITICAL PARTY FUNDING AND BUYING INFLUENCE

Political party funding legislation varies among countries worldwide. However, almost all democracies mark an increase in the costs that are necessary for their functioning. There are many reasons for such a trend. First and foremost, today, more than ever, political parties' success depends on the advertising which surely costs a lot, but it is also the most efficient way for the constituency to get familiar with the political party's objectives and programme. If political parties' functioning formerly depended on their volunteers' engagement, today it is becoming increasingly dependent on the work done by professional marketing agencies and political consultants who receive some kind of compensation by the political parties. Even in the period between two electoral cycles political parties have to spend funds in order to remain present in the media. Therefore political parties use all possible means at their disposal to maintain their position but sometimes they also reach out for some illegal (corrupt) methods. For these reasons, over the past several years, largest corruption scandals in the European countries are not related to personal abuse of public authority as before; they are related to illegal and non-transparent political party funding.<sup>27</sup>

In order to determine citizens' perceptions of the transparency of political party funding in our country, respondents were asked the following question: "To what extent to you think that the funding of political parties is illegal? ". Here are the answers:

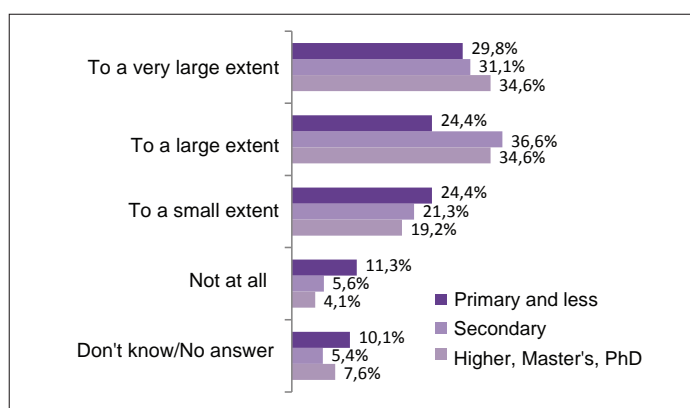
27 P. Heywood, Political Corruption: Problems and Perspectives. Political Studies, 45. p: 417–435



**Chart 7:** To what extent to you think that the funding of political parties is illegal?

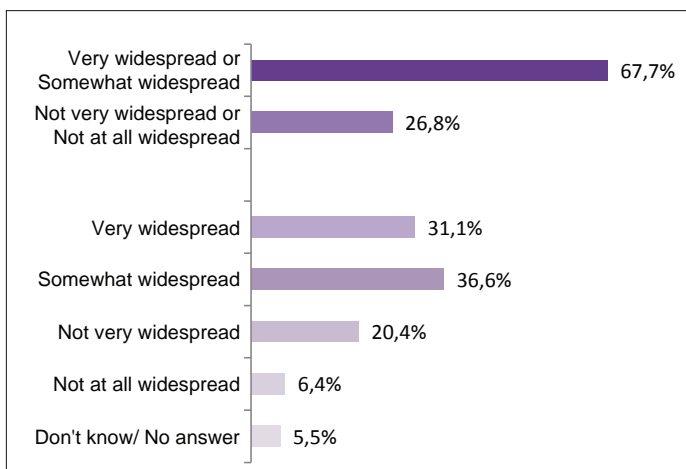
As we can see, as many as 2/3 of the respondents believe that political party funding is illegal to a very large or to a large extent, as opposed to 27.1% of the respondents who perceive political party funding to be illegal to a small extent or not at all. If we compare the two extreme answers, we will notice that as many as 32.0% of the respondents find political party funding to be illegal to a very large extent, unlike 6.0% of the respondents who think it is not illegal at all. However, without verifying citizens' level of informedness of the legal sources and ways of political party funding, these data can create a non-realistic and negative impression of the legality of political party funding.

Furthermore, the percentage of men who believe that political parties are funded in an illegal way to a large extent (37.2%) is higher than the one of the female respondents who shared the same view (27.4%). In addition, there is a higher percent of respondents who have completed higher education and who believe that political party funding is illegal (34.6%), compared than the one of the respondents with a lower level of education. In terms of the respondents' ethnicity, the percentage of ethnic Albanians who support this view (38.3%) is higher than the one of ethnic Macedonians (29.3%) and of the respondents from other ethnicities (36.8%)



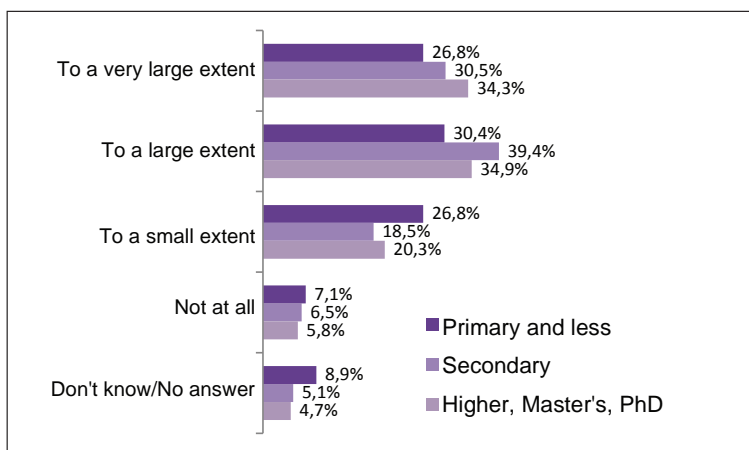
**Chart 8:** To what extent to you think that the funding of political parties is illegal? / (by respondents' education)

The survey also analyzed citizens' perceptions of financing of political parties in order to be granted a favour, and the following answers have been obtained:



**Chart 9:** How widespread is the practice of financing political parties in exchange for a favour?

The answers reveal that more than 2/3 of the respondents think that the practice of financing political parties in exchange of a favour is very or somewhat widespread, as opposed to 26.8% of the respondents who believe that this practice is not very widespread or not at all widespread.



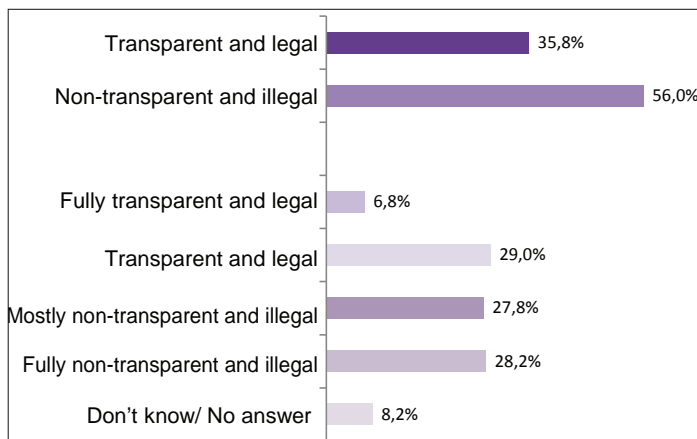
**Chart 10:** How widespread is the practice of financing political parties in exchange for a favour?/ (by respondents' level of education)

In terms of the socio-demographic features of the respondents, it seems that the perception of this phenomenon is higher and grows proportionately to the respondents' age. More precisely, 25.9% of the respondents aged 18-29 think that the practice of financing political parties in exchange of a favour is very widespread, followed by 33.0% of the respondents aged 50-64 and 35.5% of the respondents aged 65+ who share the same perception.

The highest percentage of respondents who share the perception that this practice is very widespread is found among respondents who have completed higher education (34.3%), followed by 30.5% of the respondents who have completed secondary education and 26.8% of the respondents who have completed primary education.

### 3.2. POLITICAL PARTY CORRUPTION DURING ELECTIONS, POLITICAL PARTY FUNDING AND VOTE-BUYING

In order to gain insight in the extent and the various forms of corruption that political parties resort to, it is necessary to survey citizens' perception of political parties' behaviour in times of elections. Respondents were asked to answer if, and to what extent they believe that political party campaign funding is legal and transparent.

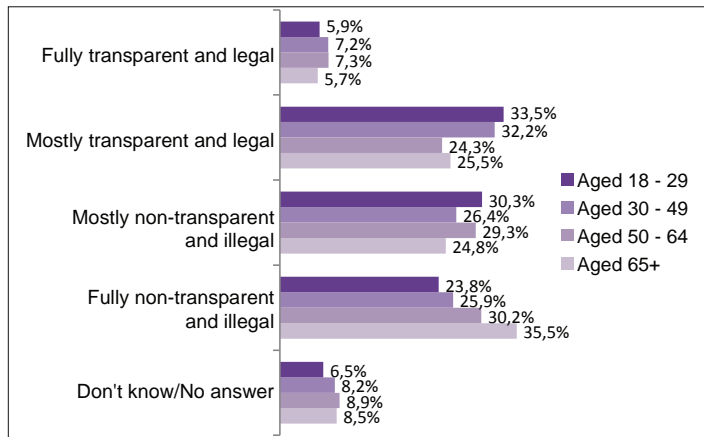


**Chart 11:** How would you describe the funding of political parties' election campaigns?

Results show that 56.0% of the respondents believe that the funding of political parties' election campaigns is non-transparent and illegal, as opposed to 35.8% of the respondents who find it to be transparent and legal. However, it is important to highlight the difference between the two extreme answers. Only 6.8% of the respondents think that the funding of political parties' election campaigns is fully transparent and legal, unlike 28.2% of the respondents who think that the funding of political parties' election campaigns is fully non-transparent and illegal.

The analysis of the respondents' socio-demographic features reveals that the percentage of respondents who think that the funding of political parties' election campaigns is fully non-transparent and illegal is higher among male than among female respondents (33.1% and 23.9% respectively). Also, the perception that political parties' election campaigns are funded in a manner that is non-transparent and illegal grows with the respondents' age and while there are 23.8% of the respondents aged 18-29 who find political parties' election campaigns to be funded in a fully non-transparent and illegal way, this viewpoint is shared by even 35.5% of the respondents aged 65+.



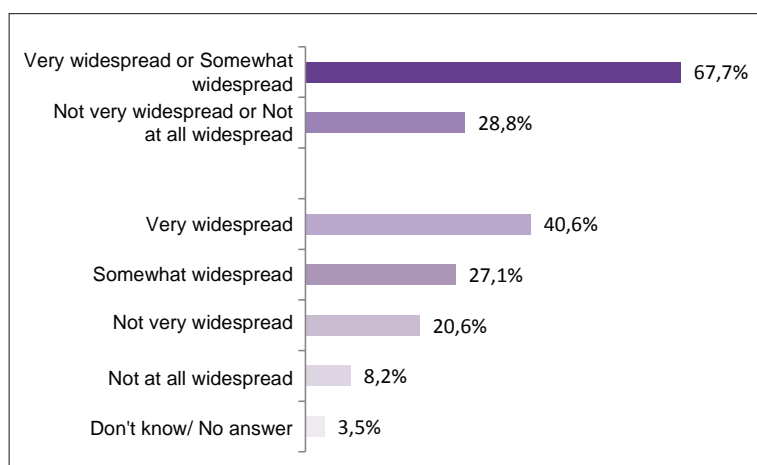


**Chart 12:** How would you describe the funding of political parties' election campaigns? (by respondents' age)

As many as 37.1% of the ethnic Albanians share the perception that the funding of political parties' election campaigns is fully non-transparent and illegal, as opposed to 34.0% of the respondents from other ethnicities in the country and 23.1% of the ethnic Macedonians who provided the same answer.

Political party corruption during elections does not only refer to the way political parties are financed in the pre-election campaign. It is not seldom that political parties try to buy the electorate in the pre-election period in order to win their vote and thus increase the likelihood of them winning the elections. There are many different forms of bribery that political parties use and they can vary greatly, from one-time monetary awards to promises of employment or returning a favour.

In order to obtain information whether political parties in our country use some of these corruption methods, the respondents who participated in this survey were asked the following question: "How widespread is corruption of the electorate (vote-buying) during the elections in the country?" The following answers have been received:

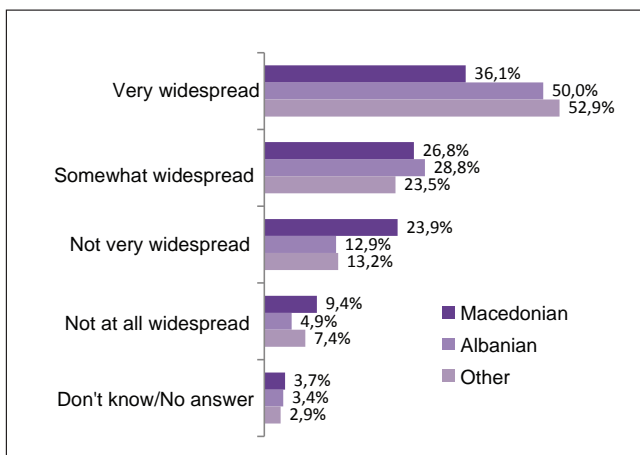


**Chart 13:** How widespread is corruption of the electorate (vote-buying) during the elections in the country?

The answers reveal that two thirds i.e. 67.7% of the respondents think that vote-buying is very or somewhat widespread during elections, as opposed to 28.8% of the respondents who think that vote-buying is not very widespread or not at all widespread. As many as 40.6% of the respond-

ents stated that this is a very widespread method, as opposed to only 8.2% of the respondents who stated that there is no vote-buying during elections.

The highest percentage of respondents who believe that vote-buying is very widespread (49.2%) can be found among the youngest population (respondents aged 18-29), followed by people living in villages (45.2%) and respondents who are from the ethnic Albanian and other ethnic communities – half of them think that vote-buying during elections is a very widespread phenomenon.



**Chart 14:** How widespread is corruption of the electorate (vote-buying) during the elections in the country? (by respondents' ethnicity)

A survey that measured citizens' exposure to vote-buying by political parties reveals that citizens living in rural areas, citizens with lowest incomes and citizens with lowest level of education are much more frequently exposed to vote-buying by political parties or candidates during elections than others.<sup>28</sup>

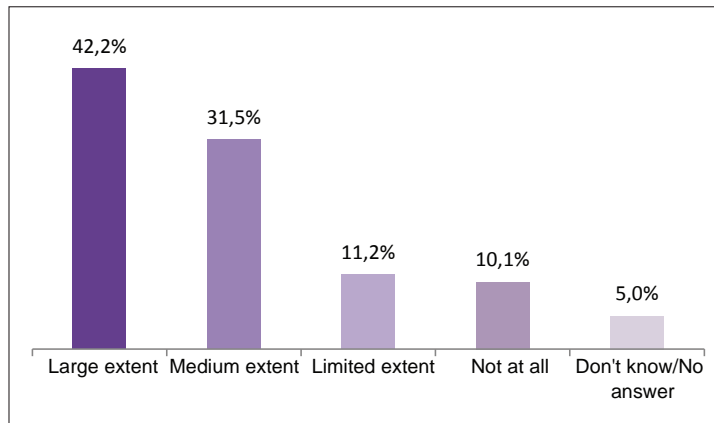
## 4. PERCEPTION OF PREVALENCE OF CORRUPTION IN CENTRAL AND LOCAL GOVERNMENT

### 4.1. PERCEPTION OF PREVALENCE OF CORRUPTION IN THE CENTRAL GOVERNMENT

Having in mind that there is a widespread perception of corruption in government bodies in nearly every country worldwide, this survey tried to measure the perceptions of the citizens in our country regarding this issue.

Respondents were asked to provide their perception of the prevalence of corruption in our central government, and these are the answers that they have provided:

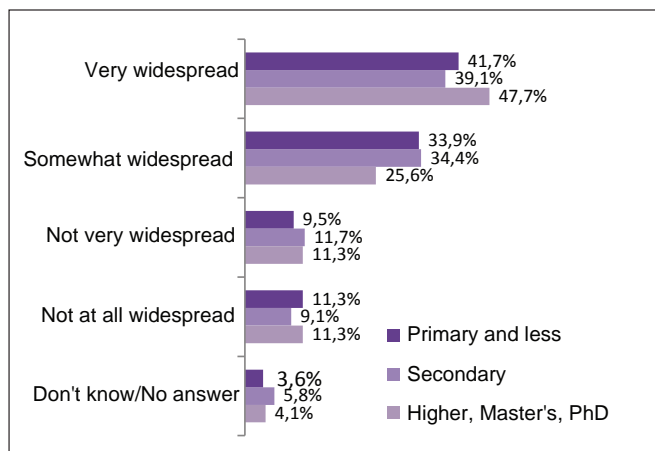
<sup>28</sup> UNODC: Corruption in the Former Yugoslav Republic of Macedonia: Bribery as Experienced by the Population, 2011.



**Chart 15:** In your opinion, how widespread is corruption in the central government in our country?

It is evident that 42.2% of the respondents believe that corruption is very widespread in our country's Government. It is also worth mentioning that nearly one third of the respondents believe that corruption is somewhat widespread in our Government, whereas 10.1% of the respondents answered that there is no corruption at all in the Government. The perception of the prevalence of corruption in the executive branch of the government is relatively high in the other countries of the region. Namely, the results of a recent survey conducted by Gallup show that respondents from all countries in the region, with nearly no exception, believe that corruption is very widespread in their country.<sup>29</sup>

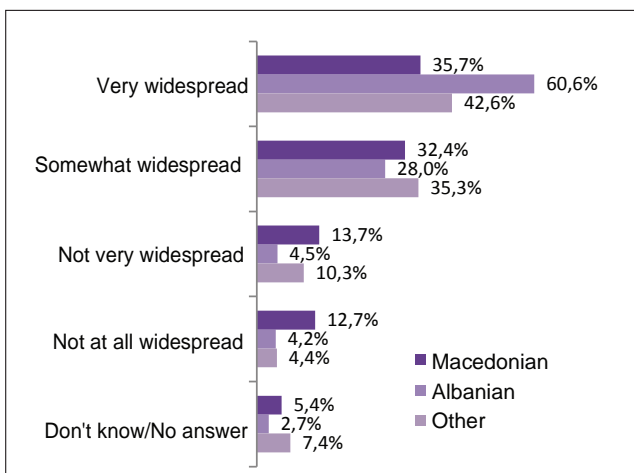
The analysis of the socio-demographic features of the respondents gave the following results:



**Chart 16:** In your opinion, how widespread is corruption in the central government in our country? (by respondents' level of education)

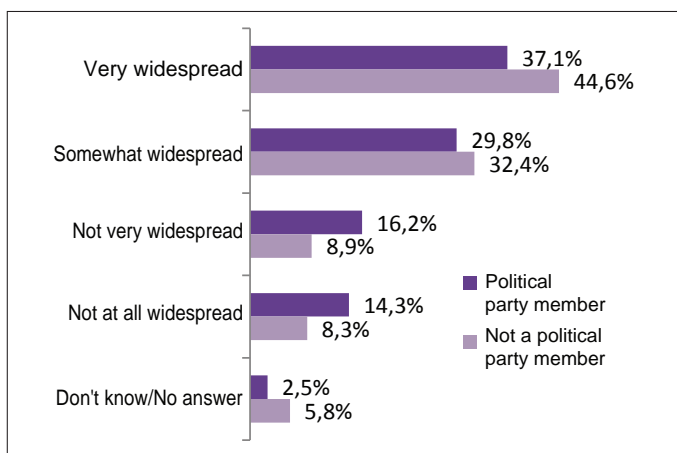
As presented in the chart, there is a higher percentage of the respondents who have completed higher education and who believe that corruption is very widespread in the Government (47.7%), compared to the percentage of the respondents who have completed only secondary education (39.1%) or primary education (41.7%) and who share this perception.

In addition, it is also interesting to mention that there is a very high percentage of ethnic Albanians who believe that corruption is very widespread in the country. As many as 60.6% of them answered that corruption is very widespread in the Government, as opposed to 35.7% of the ethnic Macedonians and 42.6% of the respondents from other ethnicities who provided the same answer. It is also important to highlight that more than 25% of the ethnic Macedonians think that corruption is not very widespread or not at all widespread in the Government, and this percentage is significantly lower among the ethnic Albanians – only 8.7%.



**Chart 17:** In your opinion, how widespread is corruption in the central government in our country (by respondents' ethnicity)

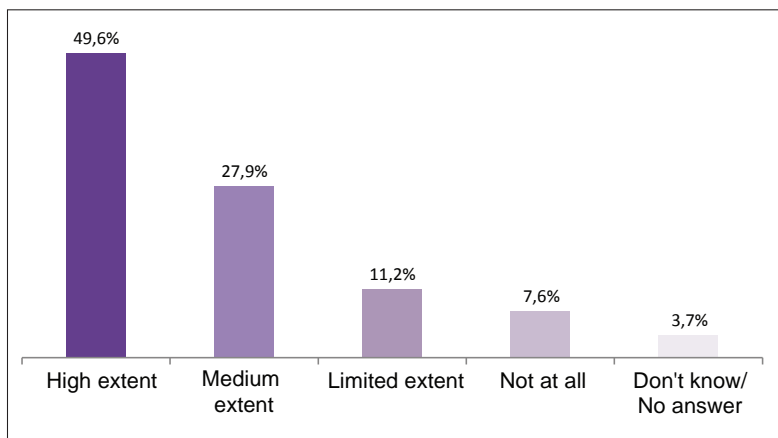
Furthermore, the percentage of respondents who answered that corruption is very widespread in the Government is higher among respondents who are not members of any political party (44.6%), unlike 37.1% of the political party members who are of the same opinion.



**Chart 18:** In your opinion, how widespread is corruption in the central government in our country (by respondents' political party membership)

## 4.2. PERCEPTION OF PREVALENCE OF CORRUPTION IN THE LOCAL GOVERNMENT

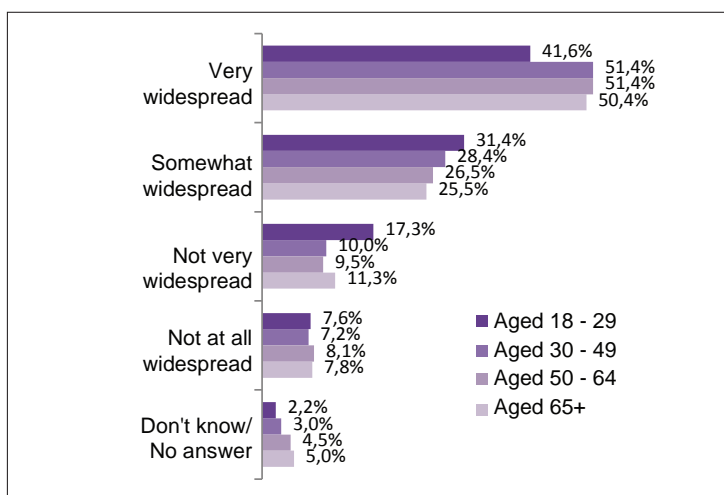
In order to measure citizens' perception of corruption in the local government, respondents were asked to answer the following question: "In your opinion, how widespread is corruption in the local government in our country?". Their answers are as follows:



**Chart 19:** In your opinion, how widespread is corruption in the local government in our country?

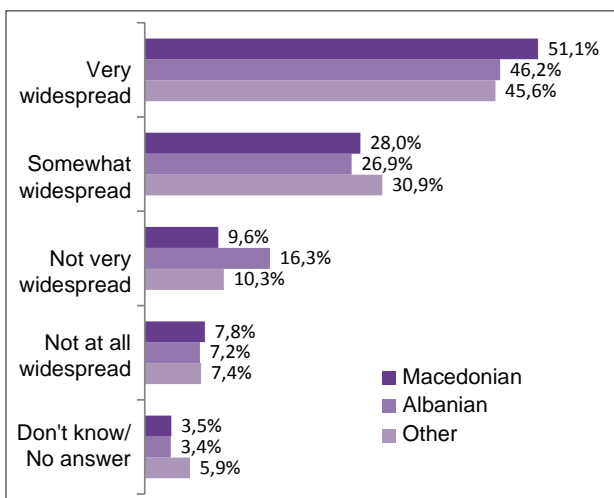
It is obvious that nearly half of the respondents (49.6%) believe that corruption is very widespread in the local government and only 7.6% of the respondents believe that there is no corruption at all in the local government. This information is worrying, considering the fact that, while dealing with local and communal issues in the municipalities, citizens experience the effects and consequences of corruption more directly.

It can also be concluded that among the respondents who have completed higher education, the percentage is highest when it comes to corruption being very widespread in local government (57.1%), and at the same time lowest in terms of the perception that corruption is not widespread at all (5.5%). Among the youngest group of respondents (aged 18-29), there is a slightly lower percent of respondents, or 41.6%, who perceive corruption to be very widespread in the local government, compared to other age groups.



**Chart 20:** In your opinion, how widespread is corruption in the local government in our country (by respondents' age)

Furthermore, there is a higher percent of respondents living in a town who perceive that corruption is very widespread in the local government (52.7%), compared to 45% of the respondents living in villages who share the same perception. There is also a higher percentage of ethnic Macedonians who share the same opinion (51.1%), compared to 46.2% of the ethnic Albanians and 45.6% of the respondents from other ethnicities who provided the same answer.



**Chart 21:** In your opinion, how widespread is corruption in the local government in our country? (by respondents' ethnicity)

When analyzing the respondents' answers by region, it is obvious that the percentage of respondents who find corruption to be very widespread in the local government is highest in the Pelagonija region (58.4%), followed by the Northeast region (52.9%), the Vardar region (52.5%) and the Skopje region (50.7%). However, in general, there is a relatively high percentage of respondents who are convinced that the local government is corrupt.

**Table 2:** In your opinion, how widespread is corruption in the local government in our country's system? (by regions)

|            | Very wide-spread | Somewhat wide-spread | Not very wide-spread | Not at all wide-spread | Don't know/No answer |
|------------|------------------|----------------------|----------------------|------------------------|----------------------|
| Northeast  | 52.9%            | 30.6%                | 4.7%                 | 8.2%                   | 3.5%                 |
| East       | 44.3%            | 27.4%                | 17.0%                | 9.4%                   | 1.9%                 |
| Southeast  | 41.5%            | 36.2%                | 8.5%                 | 8.5%                   | 5.3%                 |
| Skopje     | 50.7%            | 26.2%                | 9.9%                 | 7.9%                   | 5.3%                 |
| Polog      | 49.4%            | 29.1%                | 17.1%                | 2.5%                   | 1.9%                 |
| Pelagonija | 58.4%            | 23.4%                | 7.3%                 | 8.8%                   | 2.2%                 |
| Vardar     | 52.5%            | 28.8%                | 7.5%                 | 8.8%                   | 2.5%                 |
| Southwest  | 43.9%            | 27.6%                | 15.4%                | 8.9%                   | 4.1%                 |

## 5. HOW PUBLIC OFFICIALS USE THEIR AUTHORITY

In order to get a complete idea of the existence and prevalence of corruption in politics, this survey was conducted not only at an institutional, but at an individual level, too.

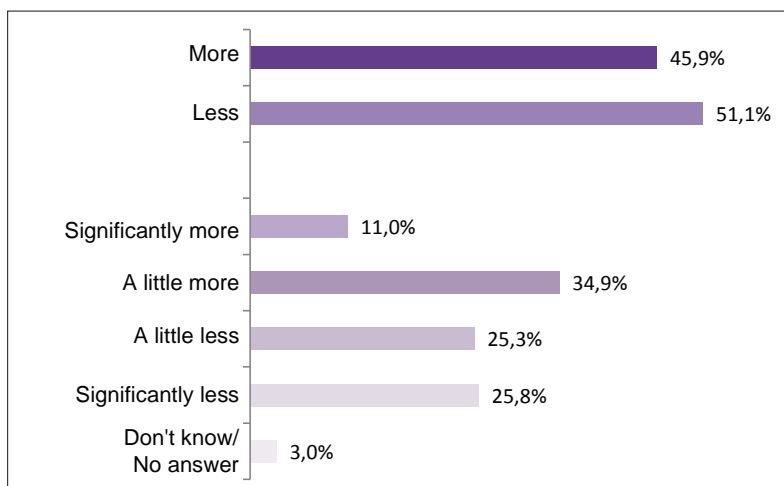
Thus, respondents were asked questions referring to the way in which people entrusted with power perform their public function in the state. More specifically, the questions referred to whether people in power abuse their power in their own personal interest, take bribe, act untouchable and beyond the law, perform their entrusted duties only by acting in the public interest, submit a correct statement of ownership and strive to set a positive example in their professional and personal environment.

**Table 3:** How many of the people in power do the following?

|   | Most of them | Many of them | Some of them | None of them | Don't know/No answer |
|---|--------------|--------------|--------------|--------------|----------------------|
| Abuse their power in their own personal interest                                | 42.8%        | 30.8%        | 23.5%        | 2.4%         | 0.5%                 |
| Take bribe  | 24.0%        | 31.4%        | 35.0%        | 4.4%         | 5.2%                 |
| Act untouchable and beyond the law  | 26.9%        | 31.8%        | 34.7%        | 3.8%         | 2.8%                 |
| Perform their entrusted duties only by acting in the public interest            | 13.1%        | 30.3%        | 44.1%        | 9.4%         | 3.1%                 |
| Submit a correct statement of ownership   | 4.5%         | 11.1%        | 39.0%        | 43.1%        | 2.3%                 |
| Strive to set a positive example in their professional and personal environment | 16.0%        | 29.2%        | 39.4%        | 13.4%        | 1.9%                 |

As presented in the previous table, as many as 42.8% of the respondents participating in this survey believe that people in power abuse their power in their own personal interest. There is also a high percentage of respondents who stated that many of the people in power abuse their power in their own personal interest (30.8%). Furthermore, nearly one in four respondents (24.0%) believe that most of the people in power take bribe and 31.4% of the respondents stated that many of them do the same. Only 3.8% of the respondents believe that none of the people in power act as untouchable and beyond the law, but it is also worrying that there is a low percentage of respondents who think that people in power perform their duties only by acting in the public interest (13.1%). The percentage of respondents who think that people in power submit a correct statement of ownership is also very low - only 4.5%, whereas only 16.0% of the respondents share the opinion that public officials strive to set a positive example both in their professional and personal environment.

In order to eradicate corruption in politics in a country, it is equally important that people who perform public service observe the ethical standards resulting from the service that they perform. For this reason, respondents were asked to answer the following question: "To what extent do you think that ethical (moral) standards are observed by public officials nowadays, compared to before?" The respondents submitted the following answers:

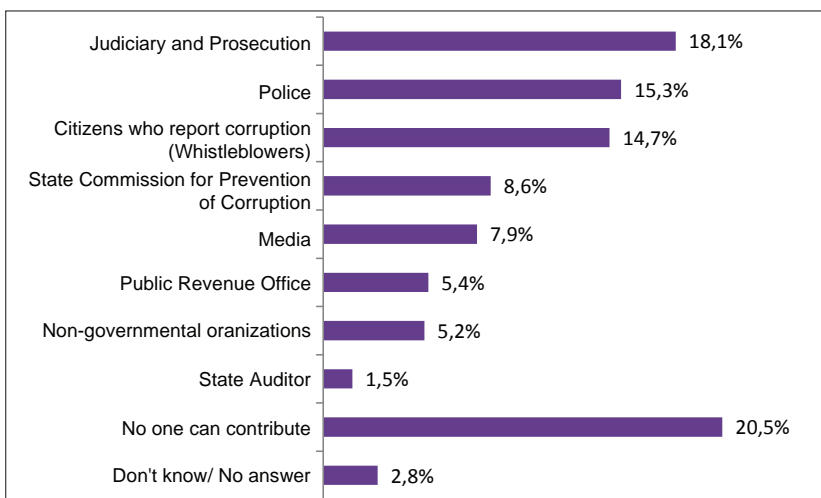


**Chart 22:** To what extent do you think that ethical (moral) standards are observed by public officials nowadays, compared to before?

It is obvious that a higher percentage of respondents (51.1%) believe that ethical standards nowadays are less observed by public officials, compared to the past period, unlike 45.9% of the respondents who believe that nowadays ethical standards are observed more than in the past. However, the two extreme answers to this question also call for some consideration. It seems that one in four respondents (25.8%) believe that nowadays ethical standards are significantly less observed than before, whereas only 11% of the respondents believe that nowadays ethical standards are significantly more observed by public officials, compared to the past period.

## 6. BODIES AND INSTITUTIONS THAT CONTRIBUTE TO PREVENTION OF CORRUPTION IN POLITICS

There are a number of institutions in our country, as well as in other countries, that are entrusted with fighting corruption in politics. With the purpose of investigating how citizens in our country rank the importance of these entities, this survey also asked respondents to identify the body that could contribute most to preventing corruption in politics.



**Chart 23:** Which of these entities could contribute most to preventing corruption in politics?

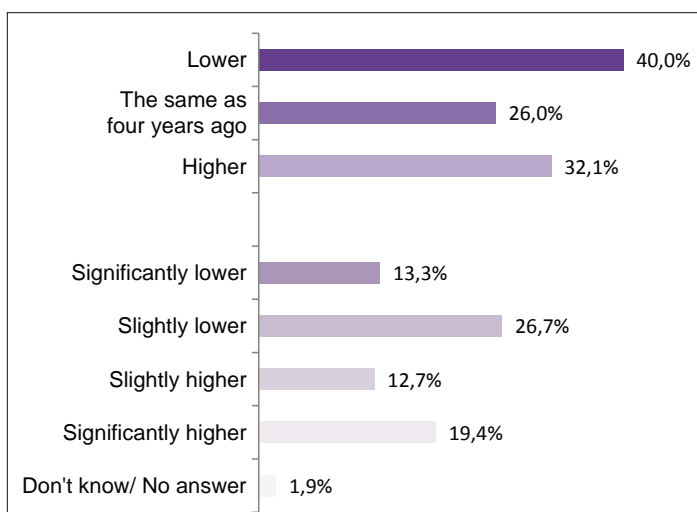


Even though these institutions have different competencies in terms of combating corruption, there is a remarkably high percentage of respondents who reported that none of them can contribute to preventing corruption in politics. There are as many as 20.5% of the respondents who think that none of these institutions can be effective in the fight against this phenomenon.

## 7. MORE OR LESS CORRUPTION IN POLITICS COMPARED TO FOUR YEARS AGO?

Some of the indicators of the fight against corruption in all countries should also include citizens feeling that there is less corruption than before and that as a result, institutions and public officials perform their duties in a manner which is both legal and transparent.

In order to discover the citizens' perceptions of the level of corruption, respondents were asked to answer the following question: "Do you think that there the level of corruption in politics in our country is significantly lower, slightly lower, the same, slightly higher or significantly higher compared to the level of corruption four years ago?"

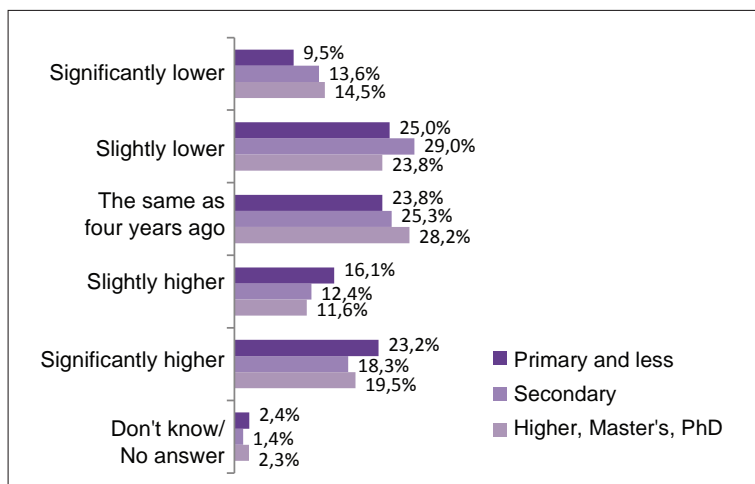


**Chart 24:** Do you think that there the level of corruption in politics in our country is significantly lower, slightly lower, the same, slightly higher or significantly higher compared to the level of corruption four years ago?

The results reveal that 40% of the respondents reported that the level of corruption in politics has decreased compared to four years ago; 26.0% of the respondents stated that the level of corruption is the same as four years ago, whereas 32.1% of the respondents stated that the level of corruption has increased. According to 13.3% of the respondents, the level of corruption in politics is now significantly lower, whereas 19.4% of the respondents stated that it is now significantly higher, compared to the level of corruption in politics four years ago.

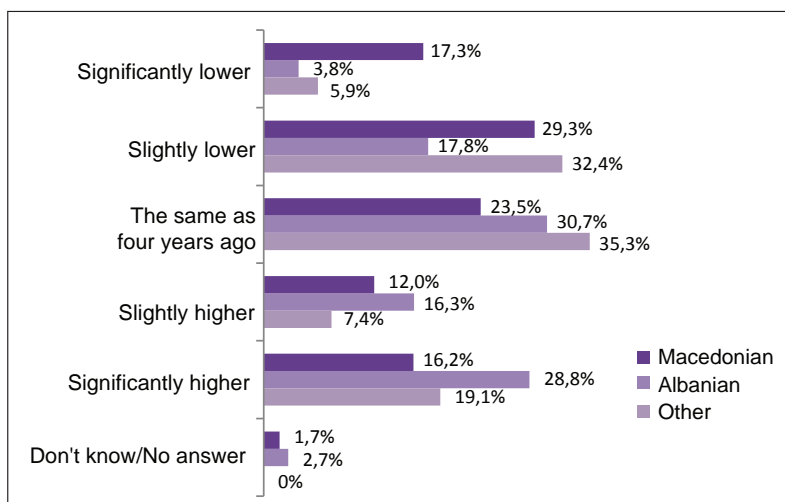
When we considered the socio-demographic features of the respondents, we came to the conclusion that there are no significant differences male and female respondents' perceptions of this issue. As for the respondents' age, it is obvious that the oldest population (65+) provided the highest percentage of answers (14.2%) that there is significantly less corruption today, compared to four years ago, but this population also provided the highest percentage of answers (24.1%) that the level of corruption is significantly higher today, compared to four years ago. The differences in the answers provided by respondents with different level of education are also worth mentioning. The lowest percentage of respondents who stated that the level of corruption is

significantly lower today can be found among respondents who have completed only primary education or less (9.5%), but also 23.2% of the respondents from this same category also think that the level of corruption today is significantly higher than the one four years ago.



**Chart 25:** Do you think that there the level of corruption in politics in our country is significantly lower, slightly lower, the same, slightly higher or significantly higher compared to the level of corruption four years ago? (by respondents' education)

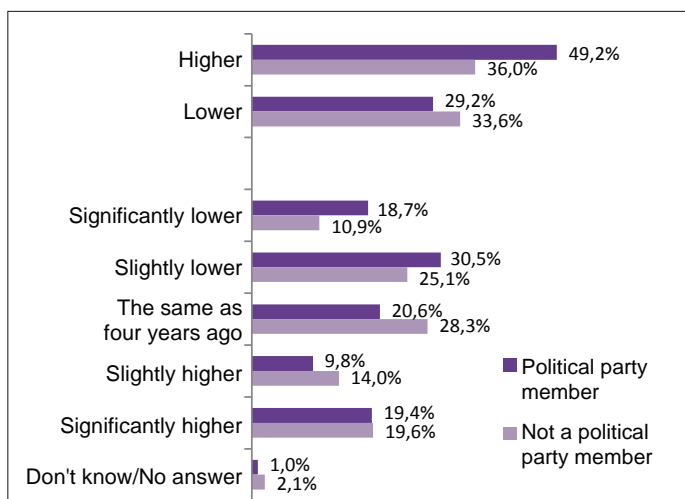
In terms of the respondents' ethnicity, we can notice that the highest percentage of ethnic Macedonians (46.6%) believe that corruption in politics has decreased compared to four years ago, whereas the highest percentage of ethnic Albanians (45.1%) think that the level of corruption today is higher than the one four years ago.



**Chart 26:** Do you think that there the level of corruption in politics in our country is significantly lower, slightly lower, the same, slightly higher or significantly higher compared to the level of corruption four years ago? (by respondents' ethnicity)

Another feature of the respondents that is worth considering when analyzing their answers is their membership in a political party. Almost one in two political party members (49.2%) believe that the level of corruption in politics is lower nowadays, as opposed to 29.2% of them who believe that it is higher. On the other hand, the answers provided by respondents who are not members of a political party are quite balanced.

Namely, 36.0% of these respondents believe that the level of corruption nowadays is lower, 33.6% believe that it is higher and 28.3% believe that nowadays the level of corruption in politics is the same as the one four years ago.



**Chart 27:** Do you think that there the level of corruption in politics in our country is significantly lower, slightly lower, the same, slightly higher or significantly higher compared to the level of corruption four years ago? (by respondents' political party membership)

Having in mind the results that we have obtained, we can conclude that there is a slightly lower percentage of respondents who believe that the current level of corruption in politics is lower than the one four years ago. However, it is also important to consider the fact that one in three respondents believe that the current level of corruption is higher, whereas one in four respondents believe that the current level of corruption is the same as four years ago.

## CONCLUSIONS

1. This survey confirmed the risks of political corruption in the country that have been identified in the State Program for Prevention and Repression of Corruption and Conflict of Interests 2011-2015.
2. Citizens perceive corruption to be very widespread in political parties and central and local government institutions.
3. Citizens perceive political parties in the country (like all other countries in the region but also in many countries worldwide) as institutions where corruption is very widespread.
4. Only 10% of the citizens think that while in power, political parties protect the citizens' interests, as opposed to 24% of them who think that they protect the rich sponsors' interests and 43% who believe that they only act in their political party's interests.
5. According to the citizens that participated in the survey, there is a widespread belief that the main motive for financing political parties is the expectation of receiving a favour in return.
6. Two thirds of the respondents believe that the practice of illegal political party funding is very widespread in our country.
7. More than 56% of the citizens think that political parties' election campaigns are funded in a manner that is mainly or fully non-transparent and illegal, and more than two thirds, or 68% of the respondents, share the perception that the political parties' practice of using money to bribe voters is very widespread or somewhat widespread.

8. The respondents' perception of the high level of illegal political party funding is a direct result of the fact that there is a low level of transparency in political parties' finances and financial operation.
9. Respondents' perception of high officials' ethics and behaviour is not favourable.
10. One in five respondents is convinced that no one can prevent political corruption in our country.
11. The measuring of citizens' perception of the efficiency in the fight against political corruption revealed that 40% of the respondents believe that nowadays there is less political corruption than four years ago. There are additional 32% of the respondents who are convinced that the current level of corruption is higher compared to four years ago and 26% percent who believe that the level of corruption has remained the same over the past four years.
12. The survey confirmed that when accessing the effectiveness of the anti-corruption efforts, the answers received implied a political party connotation. Political party members reported that the situation with corruption has improved, as opposed to the respondents who are not members of a political party, who stated that the situation has deteriorated. The survey as a whole demonstrated that the surveyed citizens, 29% of whom are political party members, do not have a positive opinion of the political parties or most of the high officials. The key finding is related to the low level of ethics, high level of prevalence and impunity of political corruption and lack of belief in the efficiency of measures to prevent corruption.

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- <http://www.transparency.org/gcb2013/country?country=albania>
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- [http://www.transparency.org/gcb2013/country?country=bosnia\\_and\\_herzegovina](http://www.transparency.org/gcb2013/country?country=bosnia_and_herzegovina)
- <http://www.transparency.org/gcb2013/country?country=serbia>
- [http://www.transparency.org/gcb2013/country?country=united\\_states](http://www.transparency.org/gcb2013/country?country=united_states)

### **3. SURVEY ON THE CORRUPTION IN THE LOCAL SELF-GOVERNMENT SECTOR**

NARRATIVE REPORT

November, 2013

## 1. INTRODUCTION

Decentralization of government is one of the most significant gains of democratic political systems. It allows for the decision-making process to come closer to citizens by enabling greater participation in local policy-making. Transferring certain competences from the central to the local government is an essential feature that provides for the accomplishment of citizens' sovereignty at the local level.

However, increased local government competencies also lead to increased likelihood of corrupt behaviour by local government officials. Local government corruption is a very serious problem, particularly considering the fact that citizens experience its consequences and effects much more directly.

For these reasons, it is necessary to look into the various conditions and reasons that lead to the occurrence of local government corruption, as it is the only possible way to address this issue by implementing the appropriate policies.

According to Robert Klitgaard, corruption equals "*monopoly plus discretion minus accountability*"<sup>30</sup>. In the broadest sense, corruption can be defined as "the abuse of entrusted power for private gain"<sup>31</sup>. In local government, citizens elect local government officials to carry out their duties in a way that serves the public interest. Corruption occurs when they use their power to influence decisions or policies or allocate funds in ways that they are not supposed to do and in order to achieve a private benefit.<sup>32</sup>

In order to gain a clear idea about local government corruption, it is important that we look into the various forms and shapes it assumes.

In addition to bribery, blackmailing and nepotism, which appear at all levels of politics in a society, in its last publication<sup>33</sup>, the international organization *Transparency International* refers to several types of corrupt activities that are typical for the local government. Local government corruption is most likely to assume one of the following forms:

- *Collusion* is a secret agreement between parties, in the public and/or private sector, to conspire to commit actions aimed to deceive or commit fraud with the objective of illicit financial gain.
- *Conflict of interest* occurs when an individual who holds a public office faces a conflict between the duties and demands on the one hand, and his/her private interests, on the other.
- *Fraud* is the act of intentionally deceiving someone in order to gain financial, political or other kind of benefit.
- *Offering gifts* refers to the provision of material gains for the people holding a public office in order to affect the outcome when awarding public funds or public procurement contracts to the benefit of those offering the gifts.
- *Abuse of authority* refers to the act of abuse of information obtained by means of the authority that a public official is entrusted with to obtain personal benefit or privileges.

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30 [http://www.icgg.org/downloads/contribution02\\_klitgaard.pdf](http://www.icgg.org/downloads/contribution02_klitgaard.pdf)

31 Transparency International: Corruption Perception Index 2011 [http://www.transparency.org/cpi2011/in\\_detail](http://www.transparency.org/cpi2011/in_detail)

32 Corruption in UK Local Government: The Mounting Risks. Transparency International UK, October 2013. p:12

33 Ibid. p: 16 - 18

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- *Illicit lobbying* refers to any non-transparent influence on public officials, performed by companies, organisations and individuals in order to influence policies in their own interest, which also includes obtaining illicit financial gain.

The prevalence of corruption in the local government seems to be a global phenomenon. Even countries with a rich democratic tradition and well developed institutional mechanisms for discovering public officials' abuse are obviously facing this phenomenon. However, local government corruption is most likely to occur in conditions where public officials have the opportunity to exercise discretion in a decision-making process or are the sole person responsible for a particular decision. Insufficiently developed mechanisms for preventing corrupt behaviour contribute to public officials feeling encouraged that their illegal behaviour will go unnoticed and unpunished.<sup>34</sup> In absence of accountability, public officials can abuse the power they have been entrusted with for personal gain. These very reasons give rise to the necessity of good quality legislation and functional institutions to implement it, as this is the only way to make it possible for public officials to perform their duties openly and transparently.

## **SURVEY OBJECTIVES**

The main objectives of this survey were to collect relevant information and data regarding the following issues:

- The level and forms of corruption in local government bodies based on the citizens' perception of its existence and prevalence;
- Citizens' level of acquaintance with the local government operation and the level of satisfaction with its mode of operation;
- Citizens' direct exposure to corruption activities among local government bodies and public officials at the local level;
- Citizens' preparedness to report corruption with the competent authorities as well as their satisfaction with their efficiency upon the reporting;
- The current level of local government corruption, compared to the one two years ago.

This survey has also been designed based on information and data from similar surveys that have been conducted worldwide by the international organization Transparency International, as well as on local surveys of local government and its operation.

## **METHODOLOGY**

The Survey of Citizens' Perception of Local Government Corruption was conducted via telephone interviews using a representative sample of 1080 citizens aged 18+ from all over the country. The survey was carried out in the period 28 October -01 November 2013.

The design of a representative sample that reflects the attitudes of the citizens residing in the country has undergone several systematic procedures. The representativeness of the sample was provided by adhering to certain procedures in the course of its formulation deriving from the random sampling rules. The sample selection procedure was based on the design principle for regional and national sample, defined by the region and in compliance with its definition given by the State Statistical Office (NUTS3 the EU16). Namely, pursuant to the geo-demographic structure of the population, the country was divided into the following eight regions: Skopje,

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34 Robert Klitgaard: *Controlling Corruption*, University of California Press: 1998

Polog, Pelagonija, Vardar, Northeast, Southeast, Southwest and East. Furthermore, respondents from all 84 municipalities were proportionately included in the sample, including both urban and rural population. The number of respondents was proportionately distributed with reference to the total population of all the regions, and by using the official data from the official population census conducted in 2002. The statistical error for such a survey is +/- 3%.

**Table 1: Demographic Structure of the Sample**

| Demographic structure of the sample |                       | %    |
|-------------------------------------|-----------------------|------|
| Region                              | Pelagonija            | 12.7 |
|                                     | Vardar                | 7.5  |
|                                     | Northeast             | 8.2  |
|                                     | Southwest             | 11.4 |
|                                     | Skopje                | 27.9 |
|                                     | Southeast             | 8.7  |
|                                     | Polog                 | 14.3 |
|                                     | East                  | 9.3  |
|                                     |                       | 100  |
| Residence                           | Skopje                | 21.2 |
|                                     | Large town            | 23.1 |
|                                     | Small town            | 15.7 |
|                                     | Village               | 40.0 |
|                                     |                       | 100  |
| Ethnicity                           | Macedonian            | 68.1 |
|                                     | Albanian              | 24.5 |
|                                     | Other                 | 7.4  |
|                                     |                       | 100  |
| Gender                              | Female                | 52.7 |
|                                     | Male                  | 47.3 |
|                                     |                       | 100  |
| Age                                 | 18 - 29               | 11.3 |
|                                     | 30 -49                | 36.5 |
|                                     | 50 -64                | 32.0 |
|                                     | 65+                   | 20.2 |
|                                     |                       | 100  |
| Education                           | Primary and less      | 19.9 |
|                                     | Secondary             | 47.9 |
|                                     | Higher, Master's, PhD | 32.2 |
|                                     |                       | 100  |



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## 2. LOCAL GOVERNMENT CORRUPTION

The SCPC State Program for Prevention and Repression of Corruption 2011-2015<sup>35</sup> highlights that “local self-government, as a segment of the political system in the country, assumes a prominent role in meeting the legally determined rights and freedoms of the citizens. The decentralization process and the related transfer of important competences from the central to local level (including the ongoing processes of fiscal decentralization and decentralization of property ownership), make the local self-government sector vulnerable to corruptive behavior.”

This Program also states that “the process of detecting the forms of corruption and conflict of interests in the local self-government sector revealed similar generators for corruption at central and local levels.” Accordingly, it identifies the main generators of corruption and conflict of interests in the work of the public administration at local level as follows:

- Insufficiently regulated operating procedures of the public administration in the local government, which leave room for arbitrary decision-making
- Lack of guarantees for strict implementation of the operating procedures
- Lack of delegation of authority (centralized decision-making)
- Lack of corruption risk assessment in the public administration at the local level and lack of integrity and prevention of corruption plans
- Lack of transparency in the work of the public administration
- Lack of control over the work of the public administration

Based on the established risks and generators of corruption in the local government, the SCPC State Program 2011-2015 envisages a number of measures and activities to reduce corruption risks and prevent corruption in the local self-government units.

The SCPC has identified the following activities for prevention of corruption at the local level as the most important ones that need to be implemented during that period:

1. The local self-government units have to **insist on consistent implementation of the Law on Spatial and Urban Planning** in terms of updating the municipal detailed urban plans within the legally determined deadlines and in a transparent and participatory manner.
2. In order to prevent the abuse of funds and property of the municipalities, **the plan on investments and development of the municipalities needs to be adopted in a transparent procedure**, with clearly indicated implementation dynamics and priorities.
3. **The municipal budgets should be adapted to the annual, mid-term or long-term plans** for development and investments, while the monitoring of the scope and manner of budget execution should be ongoing through a special computer-based financial system.
4. **The municipal plans for public procurement and public investments should be adopted in a transparent and participatory procedure.**
5. **The newly transferred fiscal competences, within the fiscal decentralization process, should be efficiently implemented** primarily through conducting trainings for all employees and through a system for monitoring and oversight by the Ministry of Finance.

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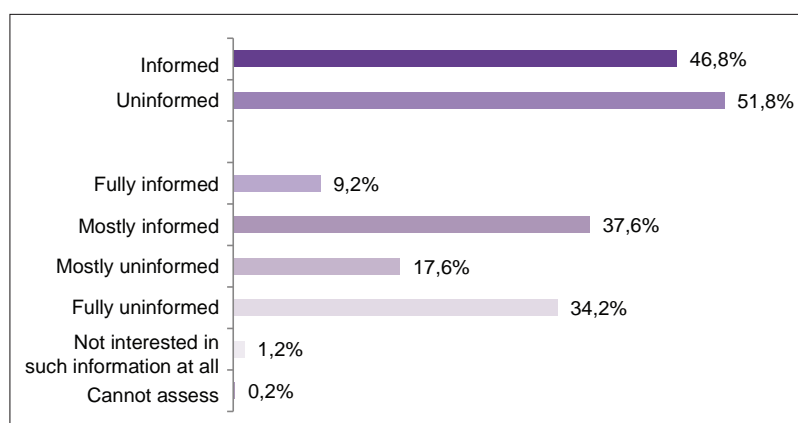
35 <http://www.dsk.org.mk/images/stories/pdf/drzavna%20programa/dprograma%2026.12.11.pdf>

- Units for internal audit should be established and properly staffed in every municipality.** The envisaged amendments to the Law on Public Internal Financial Control should introduce licenses for work for the internal auditors.
- The local self-government units should design risk management strategies, along with a register of risks for all municipalities and the City of Skopje,** which would allow for creating preconditions for building and strengthening the individual and institutional integrity of the local self-government units.

Starting from the main project idea to use the survey in order to assess the state of affairs and the progress with the implementation of the State Program, this time in the local government sector, citizens were asked a number of questions related to their perceptions of corruption in the local self-government units, their personal experience with corruption and their assessment of the results of the plan for prevention of local government corruption.

### 2.1. TRANSPARENCY IN THE LOCAL SELF-GOVERNMENT

Since transparency in the work of the local self-government is one of the most important preconditions for preventing corruption, the respondents who participated in this survey were asked the following question: “How would you describe yourself with regard to the operation of the municipality: fully informed, mostly informed, mostly uninformed, completely uninformed, or not interested in such information at all?”



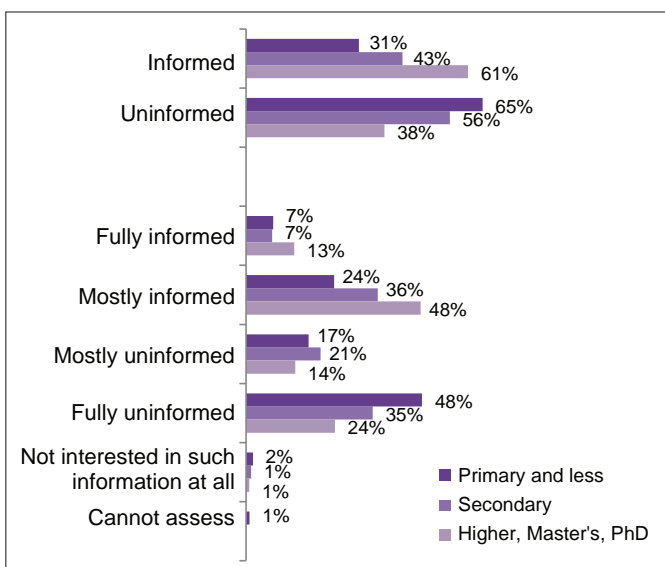
**Chart 1:** How would you describe yourself with regard to the operation of the municipality: fully informed, mostly informed, mostly uninformed, fully uninformed, or not interested in such information at all?

As seen from the answers obtained, there is a relatively high percentage of citizens in the country who consider themselves to be informed of the operation of the local self-government bodies in their municipality. The analysis of the answers to this question points to the notion that citizens’ informedness of the operation of the local self-government bodies significantly increases with the level of their education.

Thus, 61.2% of the respondents who have completed higher education stated that they are informed of the operation of the municipality. As for the respondents who have completed only secondary education, 43.4% of them feel that they are informed of the operation of the municipality, and this perception was shared by 31.6% of the respondents who have completed primary education or less. The fact that nearly two in three citizens who have completed higher education consider themselves to be fully or mostly informed of the local self-government bodies in their municipality points to a relatively high transparency in the operation of the elected

local self-government bodies and the local public administration. In addition, the fact that only 1.2% of the respondents stated that they are not interested in the work of the local self-government points to the conclusion that there is high citizen participation in the work of the local government but also high awareness of how important it is to be familiar with the work of these authorities.

The survey results also show that the percentage of respondents who consider themselves to be informed of the work of the local self-government is higher among respondents who live in municipalities with a smaller number of citizens, compared to citizens living in larger towns and in Skopje. As for the citizens living in smaller municipalities, 55% of them consider themselves to be informed of the work of the municipality. Furthermore, 53% of the respondents who live in larger towns consider themselves to be informed of the operation of the municipality, and this same opinion is shared by 51% of the citizens living in Skopje. However, when it comes to citizens living in a village that is further away from the municipal centre, the percentage of respondents who qualified themselves as informed of the operation of the local self-government amounts to 37%. Citizens living in smaller municipalities can have more frequent communication with the people working at the local self-government and they can find out more information through interpersonal communication, and not only through media, and this is probably one of the reasons for the increased level of transparency in the operation of such municipalities, but it also impedes the occurrence of any corruptive activities that would remain unknown to the local public.

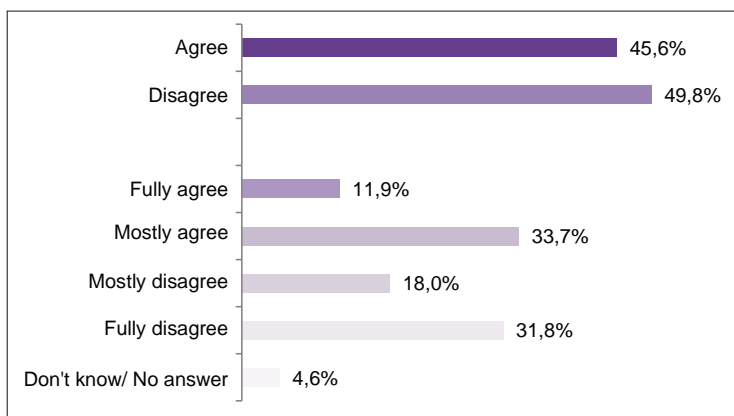


**Chart 2:** How would you describe yourself with regard to the operation of the municipality: fully informed, mostly informed, mostly uninformed, completely uninformed, or not interested in such information at all? (by respondents' level of education)

Starting from the assumption that the level of communication with the municipal bodies, the trust in them and other corruption-related issues are also closely related to the size of the municipality and how developed it is, we divided all municipalities into three groups, i.e. small municipalities (up to 10,000 inhabitants), medium municipalities (10,000-30,000 inhabitants) and large municipalities (more than 30,000 inhabitants). This cross-analysis provided interesting results that will be presented as an integral part of the overall analysis.

Based on the information that citizens have at their disposal, they shape their own opinions and assessment of the work of the local self-government, but also the likelihood of prevalence of corruption in their municipality. Having in mind the that one of the most important objectives of the

fight against corruption is to make local self-government bodies and local public administration behave in a manner that would prevent any possible abuse of municipal budget funds, respondents were asked the following question: “To what extent do you agree with the statement that budget funds from your municipality are used to meet the citizens’ needs?”.



**Chart 3:** To what extent do you agree with the statement that budget funds from your municipality are used to meet the citizens’ needs?

The respondents’ answers to this question reveal that the percentage of those who believe that the municipal budget is not used to meet the citizens’ needs is rather high. This perception refers to the widespread doubt among citizens that funds from the municipal budget are being abused, but it also refers to possible corruption among local government officials and local public administration.

The analysis of the respondents’ answers leads to the conclusion that among citizens who consider themselves to be well informed of the operation of the municipality, there is a higher number of respondents who agree that municipal budget funds are used to meet the citizens’ needs. For example, only 39.4% of the respondents who have completed higher education hold the opinion that municipal budget funds are not used to meet the citizens’ needs. Furthermore, 52.4% of the respondents who have completed secondary education have doubts about the proper use of municipal budget funds, as opposed to even 60.0% of the respondents who have completed primary education or less who believe that municipal budget funds are not used to meet the citizens’ needs. There is also a relatively high percentage of them who stated that they do not know how municipal budget funds are used (8.4%).

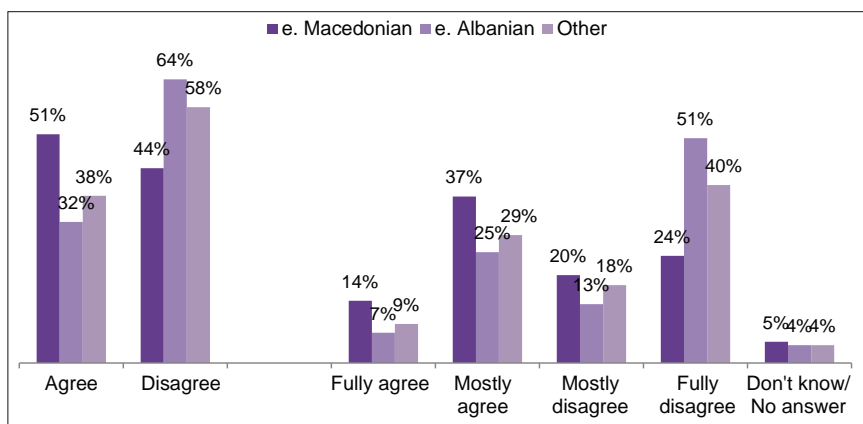
When we analyse the respondents’ answers to this question by their level of informedness of the operation of the local self-government, it becomes clear that the higher level of informedness results in increased trust and less suspicions of prevalence of corruption in the spending of municipal budget fund.

**Table 2:** Percentage of citizens who agree with the statement that their municipality’s budget is used to meet the citizens’ needs (by their informedness of the operation of the municipality)

|                      | Fully informed | Mostly informed | Mostly uninformed | Not informed at all |
|----------------------|----------------|-----------------|-------------------|---------------------|
| Fully agree          | 37.4%          | 16.5%           | 4.7%              | 3.5%                |
| Mostly agree         | 30.3%          | 48.8%           | 35.3%             | 17.6%               |
| Agree                | 67.7%          | 65.3%           | 40.0%             | 21.1%               |
| Disagree             | 30.3%          | 31.8%           | 53.7%             | 73.3%               |
| Mostly disagree      | 13.1%          | 16.0%           | 25.8%             | 17.6%               |
| Fully disagree       | 17.2%          | 15.8%           | 27.9%             | 55.6%               |
| Don't know/No answer | 2.0%           | 2.9%            | 6.3%              | 5.6%                |

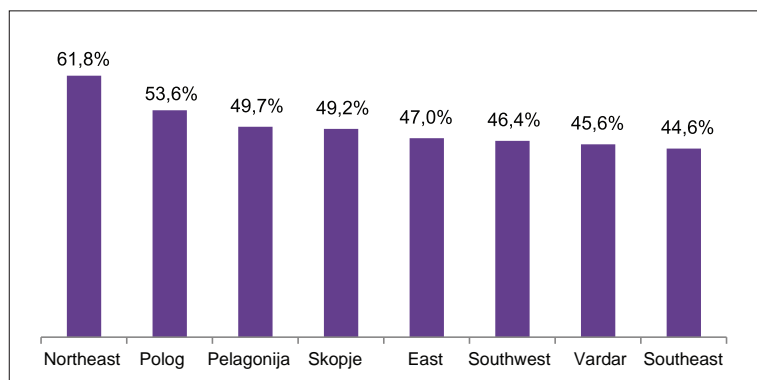
These answers that have been provided by the citizens can be interpreted in two ways. The first one implies that when citizens are well informed or believe that they have enough information on the operation of the local self-government, they believe less in accusations that the local self-government misuses the municipal budget funds. When citizens are uninformed, for some reason there is more room for suspicion of corruption. The other way to interpret these results implies that the perception of possible abuse of municipal budget funds among the population with a lower level of education is a result of them living in villages and suburban settlements, and therefore their viewpoint that budget funds are not used to meet citizens’ needs might not be due to suspicions of corruption but rather to the impression that budget funds are used to beautify city centres and not to resolve the problems in the villages and suburban settlements where they live. Moreover, as a result of bad financial standing, citizens from lower social background often tend to be more critical of the authorities than citizens with better financial standing.

The analysis of these answers with regard to the respondents’ ethnicity reveals that the number of ethnic Albanian citizens who think that their municipality’s budget funds are used for the citizens’ needs is much higher than the number of ethnic Macedonians who share the same perception. The percentage of ethnic Albanians who provided this answer is 64%, as opposed to 44% of the ethnic Macedonians who hold the same view.



**Chart 4:** To what extent do you agree with the statement that the funds from your municipality are used to meet the citizens’ needs? (by respondents’ ethnicity)

The analysis of the answers provided to this question, with regard to the regional distribution of the population, reveals that in the Northeast and the Polog region there is a widespread belief among citizens that the municipal budget funds are not used for the citizens' benefit, and the use of the municipal budget funds is significantly more favourably assessed in the Southeast and the Vardar region.



**Chart 5:** Percentage of citizens who **disagree** with the statement that the budget funds from their municipality are used to meet the citizens' needs (by regions)

In terms of the size of the municipality, it seems that slightly more positive answers were received in smaller municipalities, which means that in smaller municipalities, when compared to medium and large municipalities, there is a higher percentage of respondents who stated that budget funds are used to the citizens' benefit.

### 3. LOCAL GOVERNMENT PROCEDURES IN WHICH CITIZENS RECOGNIZE PREVALENCE OF CORRUPTION

The process of increasing the local self-government competences and especially the fiscal decentralization process led to significantly increased rights and competences of the units of the local self-government in the country in areas that are of crucial importance to the citizens living in the municipality.

In addition to the increased possibilities for employment in the public administration, public enterprises set up by the municipalities, kindergartens, primary and secondary schools and other institutions at the local level, the municipalities also acquired fairly large budgets used for public procurement, infrastructural improvements in the municipality and construction of new facilities. Furthermore, municipalities were also transferred the authority to adopt and change detailed urban plans, manage construction land, determine property tax as well as provide inspection oversight. All these processes, as noted in the SCPC State Program for Prevention and Repression of Corruption, "make the local self-government sector vulnerable to corruptive behaviour"<sup>36</sup>.

In order to determine the local government activities in which citizens most frequently perceive corruption, respondents were asked the following question: 'To what extent do you think corruption is widespread among the municipal authorities when implementing the following activities that are in their competence?'

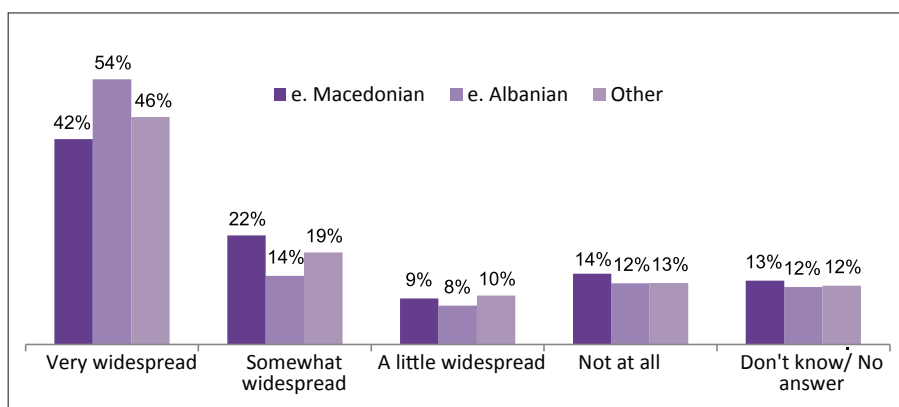
<sup>36</sup> <http://www.dksk.org.mk/images/stories/pdf/drzavna%20programa/dprograma%2026.12.11.pdf>

The answers received are presented in Table 3 and they point to the following conclusions:

**Table 3:** To what extent do you think corruption is widespread among the municipal authorities when implementing the following activities that are in their competence?

|   | Very wide-spread | Somewhat widespread | Little wide-spread | Not at all | Don't know/ No answer |
|---|------------------|---------------------|--------------------|------------|-----------------------|
| Employment  | 45.1%            | 19.9%               | 9.1%               | 13.8%      | 12.1%                 |
| Work of the inspection services                           | 25.7%            | 29.1%               | 10.2%              | 16.9%      | 18.1%                 |
| Awarding public procurement contracts by the municipality | 22.0%            | 30.1%               | 11.9%              | 15.2%      | 20.8%                 |
| Issuance of construction permits                          | 21.2%            | 23.2%               | 11.4%              | 19.5%      | 24.7%                 |
| Adopting or changing urban plans                          | 20.3%            | 24.1%               | 11.9%              | 21.4%      | 22.3%                 |
| Determining property tax                                  | 16.3%            | 21.8%               | 9.9%               | 30.6%      | 21.4%                 |

Firstly, if there is corruption at the local level and it is defined as “abuse of public office for private gain”, then citizens observe it most in those areas in which their families are directly affected by its occurrence. According to the respondents’ answers, this refers to the area of employment. The answers clearly reveal that the majority of respondents see employment in the local self-government government bodies, local administration, local public enterprises or institutions under the competences of the local self-government (primary and secondary schools kindergartens etc.), as a process in which local-level corruption is very visible and widespread. Even when it does not refer to corruption in the traditional sense, as “exchange of a service for money”, but rather as typical abuse of official duties for in the process of new employment, by rigging the legislation for the sake of political parties’ interest or family and friendly relations, citizens still perceive this as local self-government corruption (deviance).



**Chart 6:** To what extent do you think corruption is widespread among municipal authorities when it comes to employment? (by respondents’ ethnicity)

Corruption in employment is also experienced as discrimination and this can be seen in the answers provided by the respondents from different ethnicities concerning the prevalence of corruption in employment at the local level. However, when comparing the answers to this question provided in regions with predominantly ethnic Albanian and ethnic Macedonian population, it is obvious that the perception of local level corruption in employment is more widespread in such regions.

**Table 4:** To what extent do you think corruption is widespread among municipal authorities when it comes to employment? (by region)

|                      | Northeast | East | Southeast | Skopje | Polog | Pelagonija | Vardar | Southwest |
|----------------------|-----------|------|-----------|--------|-------|------------|--------|-----------|
| Very widespread      | 47%       | 42%  | 38%       | 41%    | 53%   | 49%        | 47%    | 46%       |
| Somewhat widespread  | 16%       | 18%  | 24%       | 19%    | 21%   | 20%        | 27%    | 17%       |
| Little widespread    | 16%       | 6%   | 14%       | 7%     | 10%   | 9%         | 10%    | 6%        |
| No corruption        | 12%       | 19%  | 17%       | 14%    | 9%    | 12%        | 14%    | 17%       |
| Don't know/No answer | 9%        | 15%  | 7%        | 19%    | 7%    | 10%        | 2%     | 14%       |

The second area that is perceived by citizens as most corrupt, immediately after the employment, is the work of the inspection services. Having in mind that many of them are exposed to inspection oversight, starting from smoking in public places to verification of illegal constructions, citizens perceive that local-level corruption is also widespread in the work of the inspection services. The accusations of the inspection services' unequal treatment of all cases of violation of a law sustain citizen's feeling that such behaviour is motivated by corruption or interests.

Corruption in public procurement by the local self-government was ranked third by the citizens. The amounts that municipalities spend in public procurement vary depending on their size and their financial power. According to the data published by the Center for Civil Communications, the amounts spent in public procurement vary from EUR 2 per citizen in the municipality of Suto Orizari, up to EUR 400 in richer municipalities, such as Centar.<sup>37</sup> Even though a small number of citizens are directly involved in public procurement, they still share the perception that local-level corruption is prevalent in this area, and this is a result of the information that citizens receive, both informally and through media. In addition, the analysis conducted by the Center for Civil Communications at the beginning of this year reveals that most of the public procurement contracts have been awarded in a non-transparent manner, by means of direct contracts. There are many citizens in the country who fall into the category of people who are exempt from paying property taxes due to, above all, the little property that they have. Therefore, as their answers reveal, they believe that there is not much corruption at the local level. However, even though most of them are not very familiar with the process of changing detailed urban plans and the issuance of construction permits, they still perceive a high level of corruption among these local authorities (that have been particularly addressed in the SCPC Program).

The perception of corruption in the changing of urban plans is undoubtedly conditioned by the extent to which a municipality is urbanized and the size of the municipality. As a result, in Skopje and in larger towns in the country, citizens perceive a higher level of corruption in this area, compared to smaller towns and villages where the price of construction land (and properties that can be acquired by means of corrupt change of urban plans) is significantly lower.

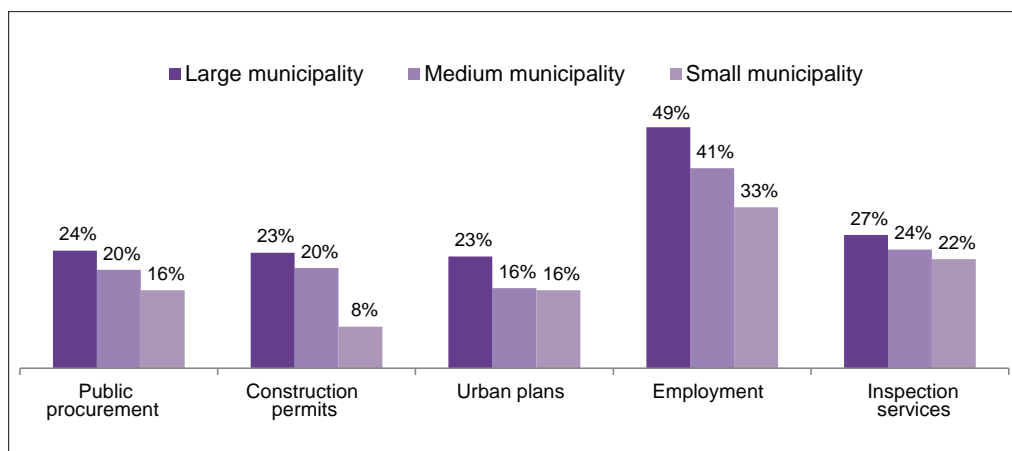
37 [http://kapital.mk/MK/makedonija/96115/opshtinite\\_troshat\\_od\\_2\\_do\\_400\\_evra\\_po\\_zhitel\\_na\\_javni\\_nabavki.asp](http://kapital.mk/MK/makedonija/96115/opshtinite_troshat_od_2_do_400_evra_po_zhitel_na_javni_nabavki.asp)



**Table 5:** To what extent do you think corruption is widespread among municipal authorities when it comes to the adoption or changing of the urban plans? (by residence)

| Column1              | Skopje | Large town | Small town | Village |
|----------------------|--------|------------|------------|---------|
| Very widespread      | 25%    | 20%        | 20%        | 18%     |
| Somewhat widespread  | 22%    | 28%        | 29%        | 21%     |
| Little widespread    | 10%    | 15%        | 8%         | 13%     |
| Not at all           | 20%    | 17%        | 24%        | 24%     |
| Don't know/No answer | 23%    | 20%        | 19%        | 24%     |

The analysis of the answers by the size of the municipality corroborates the conclusion that citizens perceive higher level of such corruption in large and medium municipalities, compared to the small ones which rarely have any attractive land at their disposal or are less susceptible to this type to corruption. This does not only apply to construction permits and related issues; it applies to the general perception of corruption, too.



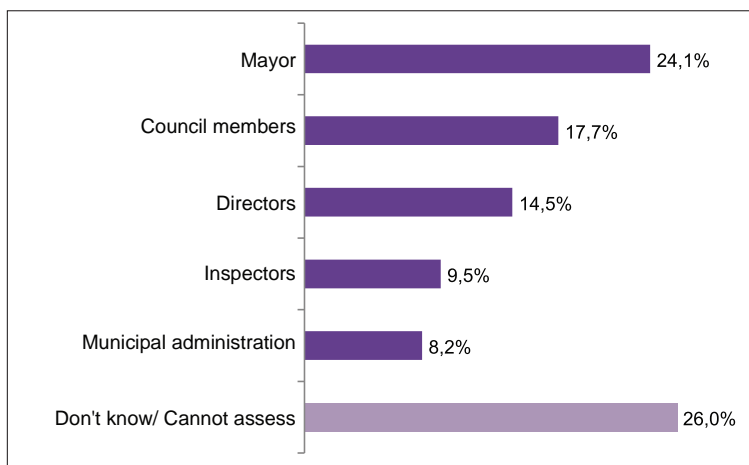
**Chart 7:** To what extent do you think corruption is widespread among the municipal authorities when implementing the following activities that are in their competence? (by municipality size)

Chart 6 leads to a very important conclusion. In smaller municipalities, where citizens have more information about the work of the municipality, personally know the public officials and where the likelihood of corruption is de facto smaller due to the low amount of resources in the municipality, the perception of corruption is also significantly lower. Even though the financial power and potential of the municipality is an important factor that affects the perception of corruption, another equally important factor is the citizens' familiarity with the work of the local public officials, their personality and the insight in their work, which is greater in smaller municipalities. This means that there is more room for suspicions of abuse of public authority in larger municipalities where the municipal authorities are not as close to the citizens and whose authority is greater. Increased transparency, citizens' informedness and citizen participation in the decision-making processes in larger municipalities can greatly contribute to improved perceptions of corruption and increased trust in local institutions.

#### 4. LOCAL SELF-GOVERNMENT OFFICIALS AND THEIR SUSCEPTIBILITY TO CORRUPTION

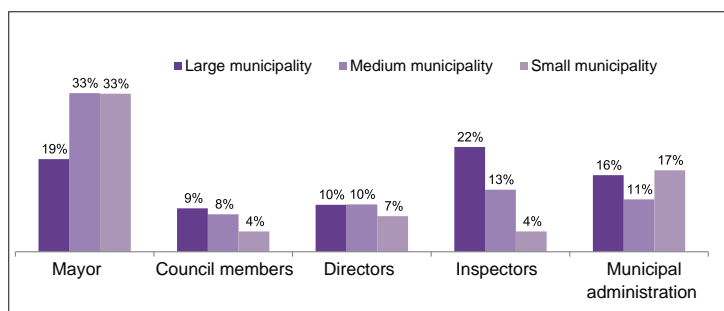
This survey has confirmed the hypothesis that local-level officials, who have been entrusted with great power, who have great discretionary authority and who, as a result of the nature of their work, can afford to perform some of their activities in a less transparent manner, are most susceptible to corruption (but also most frequently perceived as corrupt)

The results of this survey, which are presented in the following chart, further corroborate this hypothesis.



**Chart 8:** In your opinion, which of the following positions is most susceptible to corruption?

When citizens were asked to determine the public office that is most susceptible to corruption, nearly one in four citizens pointed to the mayor of the municipality. Next in line were the local inspectors, municipal administration officers and directors of local public enterprises and institutions under the authority of the local self-government. Municipal council member were the last ones in line, as they are believed not to have any individual power to decide on any issues and they pass decisions with the majority of votes in sessions open to the public.



**Chart 9:** In your opinion, which of the following positions is most susceptible to corruption? (by municipality size)

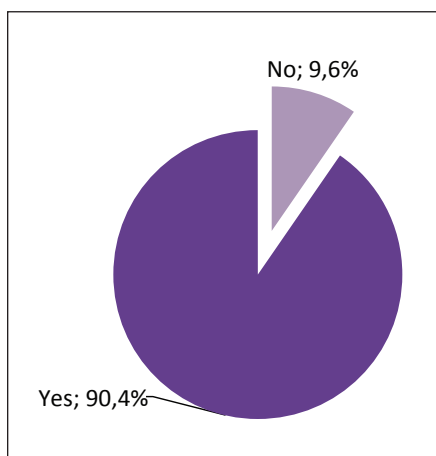
This chart presents the distribution of answers according to the municipality size and it points to several significant differences. Firstly, mayors of small and medium municipalities, who are frequently the only ones who have great discretionary and decision-making power in the municipality, are perceived as more susceptible to corruption than mayors of large municipalities. In the absence of large inspection services, strong council and highly centralised governance, mayors of smaller municipalities are the ones who have “full responsibility” in front of the citizens.

The situation is quite different when it comes to citizens' perceptions in large municipalities. Interestingly, in large municipalities citizens perceive most corruption in inspection services, which is quite different from the answers provided by citizens living in small and medium municipalities. This leads to the conclusion that in municipalities where officials are not directly and strictly controlled by the mayor and the council, i.e. where corruption is possible at multiple levels (not only at one, as in small municipalities), there is higher perception of corruption. The analysis of the answers to the following two questions further corroborates this finding.

## 5. CITIZENS' EXPOSURE TO CORRUPTION IN THE UNITS OF LOCAL SELF-GOVERNMENT

When measuring the extent of corruption in the units of the local self-government, it is not enough only to measure the perceptions of its presence and prevalence. If we want to get a more realistic image of the occurrence of this negative phenomenon, it is necessary that we analyse citizens' direct exposure to corrupt activities performed by public officials in the local self-government.

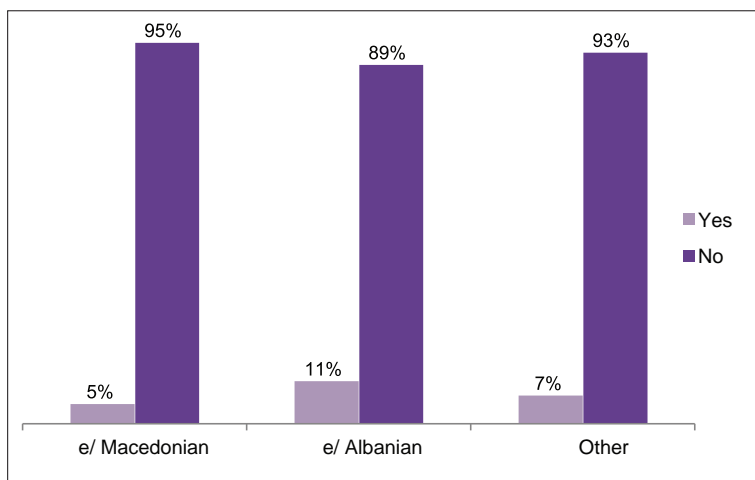
For these reasons, the participants in this survey were asked the following question: "Over the last 12 months, have you personally, or has a member of your immediate family, been asked for money, goods or services in order to do or speed up some work at the municipality?"



**Chart 10:** Over the last 12 months, have you personally, or has a member of your immediate family, been asked for money, goods or services in order to do or speed up some work at the municipality?

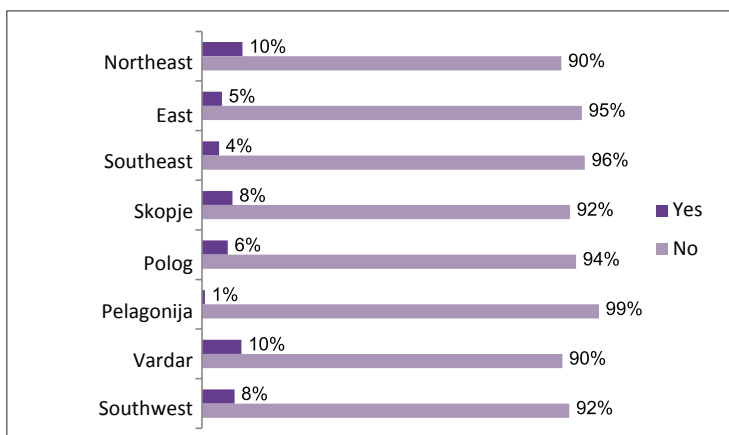
The answers presented in Chart 8 reveal that 6.5% of the respondents have given an affirmative answer to this question. Even though this percentage might seem low, it is necessary to underline that this refers to citizens' direct exposure to corrupt activities performed by public officials working in the local self-government, which means the percentage of citizens who have personally been asked for money, goods or some kind of services in return for some work that they need to do at the municipality.

The results of the analysis of the answers with respect to the respondents' ethnicity are quite interesting. It seems that ethnic Albanians are much more exposed to direct corruption in the local self-government in our country than other ethnicities, including ethnic Macedonians. As many as 11% percent of the ethnic Albanians stated that they have been asked for money, goods or some kind of services to do or speed up some work at the municipality, as opposed to 7% of the respondents from other ethnicities and 5% of the ethnic Macedonians who provided the same answer.



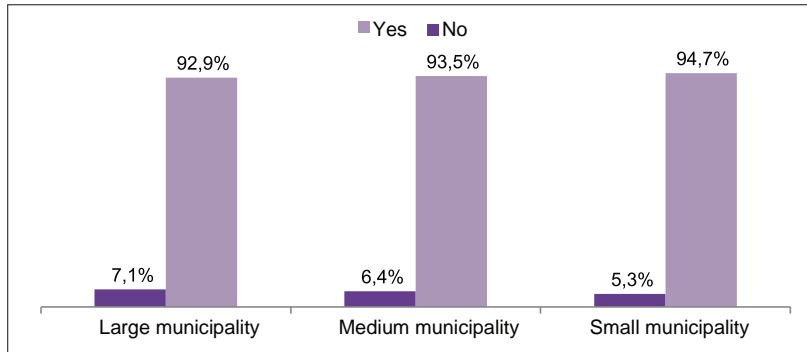
**Chart 11:** Over the last 12 months, have you personally, or has a member of your immediate family, been asked for money, goods or services in order to do or speed up some work at the municipality? (by respondents’ ethnicity)

If we also compare the respondents’ answers provided in each of the eight regions, we will come across very interesting information. As many as 10% of the respondents in the Northeast and Vardar the region reported that they have been directly exposed to local government corruption, as opposed to only 1% of the respondents in the Pelagonija region who gave an affirmative answer to this question. There is also a relatively high percentage (8%) of direct exposure to corruption at the local level in the Skopje and Southwest region in the country.



**Chart 12:** Over the last 12 months, have you personally, or has a member of your immediate family, been asked for money, goods or services in order to do or speed up some work at the municipality? (by region)

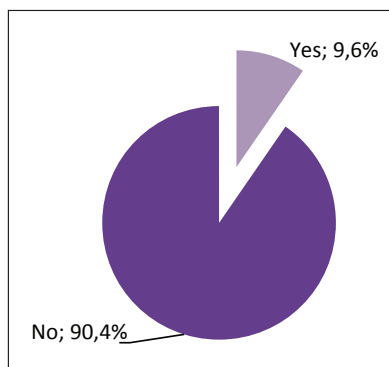
The conclusion that prevailed in the whole course of the analysis is that the perception of corruption is smaller in smaller municipalities, but so is the occurrence of this phenomenon. The answers to this question analysed in terms of the size of the municipality point to the conclusion that the larger the municipality (both in terms of inhabitants and power), the greater the chances of citizens being exposed to corruption.



**Chart 13:** Over the last 12 months, have you personally, or has a member of your immediate family, been asked for money, goods or services in order to do or speed up some work at the municipality? (by municipality size)

Once again, this is due to the fact that the likelihood of corruption in smaller municipalities is smaller because they do not have great budget funds at their disposal or a lot land and other resources. Furthermore, the likelihood of corruption is also lower in smaller areas because of the fact that the various forms of corruption can be revealed much more easily in smaller areas but it is also due to the close relations and communication between the citizens and the local authorities and the higher level of trust in smaller municipalities.

As already explained in the introduction of this analysis, corruption in the local self-government takes various forms and any citizen in the unit of the local self-government can be affected by corruption. However, the highest risk of direct exposure to corrupt behaviour can be found among people who submit requests for some kind of service from the local self-government authorities.



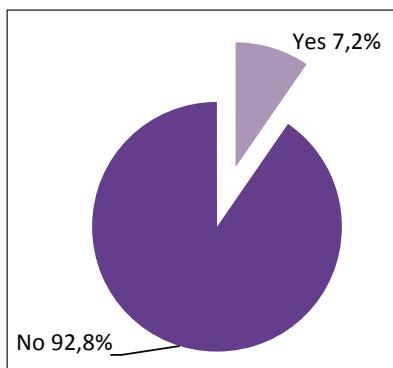
**Chart 14:** Over the last 12 months, have you personally, or has a member of your immediate family, been asked for money, goods or services in order to do or speed up some work at the municipality? (respondents who have requested some kind of service from the local self-government authorities)

As we can see from the results presented in this chart, as many as 9.6% of the respondents who have submitted some kind of request to the local self-government authorities have answered that they have been asked for money, goods or other kind of services. Having in mind these results we can confirm that the risk of corruption increases proportionally with the number of requests submitted to the local self-government authorities and citizens who submit such requests are more exposed to corruption influences and blackmail.

## 6. CITIZENS' PREPAREDNESS TO FIGHT CORRUPTION

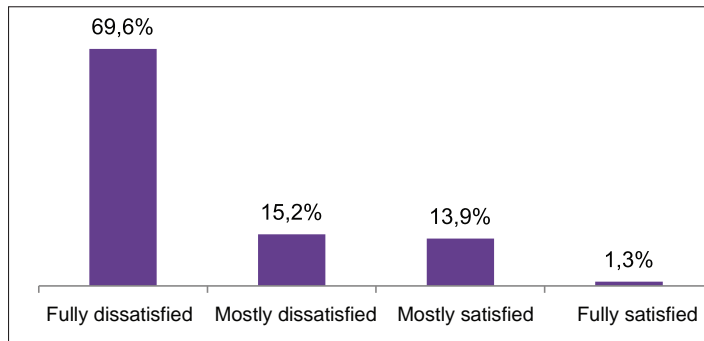
One of the main weapons to fight corruption are the very citizens who, due to their high personal ethical standards, do not only refrain from engaging in corrupt deals with public officials, but they also report this kind of behaviour. These individuals, also known as whistleblowers, are of exceptional importance in the fight against corruption, not only because they directly participate in the prevention of corruption, but also because they send a message to public officials that they can also fall "victims" to disclosure, which also contributes to reducing this phenomenon. Furthermore, the findings of all surveys that have been conducted so far point to the conclusion that citizens are aware of their importance in the process of prevention or reduction of corruption.

Respondents who participated in our survey were also asked to answer the following question: "Over the last 12 months, have you personally reported to the relevant authorities any illicit activities or irregularities that are under the competences of the municipality?", and the answers are as follows:



**Chart 15:** Over the last 12 months, have you personally reported to the relevant authorities any illicit activities or irregularities that are under the competences of the municipality?

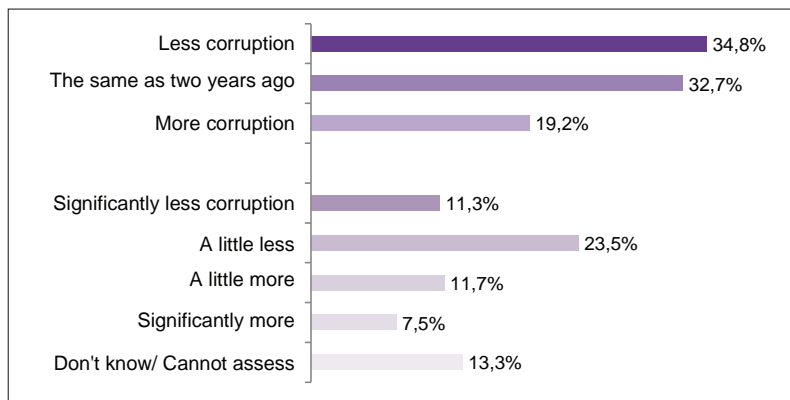
The answers reveal that only 7% of the citizens who participated in the survey have reported some kind of irregularities to the competent authorities which, on the other hand, is not at all insignificant, having in mind that 30% of the citizens have had some kind of contact or work in the municipality over the past 12 months. Still, it is important to have in mind that this question refers to reporting any kind of irregularities or misuse; it does not specifically refer to reporting corruption. Thus, we managed to measure to what extent citizens are prepared to participate in the social processes and how aware they are of the need for such cooperation with the institutions in order to control the work of the municipal bodies. The percentage of citizens who have reported irregularities is not at all low, but the percentage of citizens who are satisfied with the proceeding of the competent authorities is extremely low. Only 1.1% of those 7% of citizens who have reported some kind of irregularities stated that they are satisfied with the way the competent authorities acted upon their reporting, whereas 6.2% stated they were dissatisfied. If we calculate the percentage but only with regard to the citizens who reported irregularities (the 7.2% ), as many as 69.6% of them stated that they are fully dissatisfied, 15.2% stated that they were mostly dissatisfied, 13.9 stated that they were mostly satisfied and only 1.3% of them stated that they were fully satisfied.



**Chart 16:** Are you satisfied with the way the competent authorities acted in this case? (N=87, citizens who have reported irregularities)

## 7. CITIZENS' ASSESSMENT OF THE SUCCESS OF COMBATING LOCAL GOVERNMENT CORRUPTION

Citizens' perception of the progress in the fight against corruption but also its real decrease or increase is, above all, a result of citizens' personal experience with this phenomenon but also of the information that reach them through various information channels, most notably mass media. All surveys that have been conducted as part of this project considering nearly all areas reveal that nowadays citizens perceive less corruption, compared to two years ago. When asked "Do you think that nowadays there is more, or less corruption in your municipality, compared to two years ago?" the respondents answered as follows:



**Chart 17:** Do you think that nowadays there is more, or less corruption in your municipality, compared to two years ago?

One in three respondents think that, generally speaking, there is significantly less or a little less corruption compared to two years ago, as opposed to 19.2% of the respondents who think that there is more corruption nowadays. However, in order to measure the real progress with regard to this issue, a real statistical analysis needs to be conducted, which is difficult to do because of the sensitivity of the topic. The cross-analysis points to the conclusion that the perception of increased corruption is more common among the ethnic Albanians, compared to the ethnic Macedonians, but there are no significant differences among the other categories of citizens.

## **CONCLUSIONS:**

- The level of citizens' informedness of the work of the local self-government is relatively high in our country (46.8%). Citizens living in small municipalities are more informed than the ones living in large municipalities and the city of Skopje.
- A relatively high percentage of citizens believe that in their municipality, budget funds are not used to meet citizens' needs but for some other purpose. This perception becomes complete when we consider the relationship between the previously mentioned citizens and the level of their informedness of the use of municipal budget funds, which leads to the conclusion that more informed citizens do not primarily suspect possible corruption; they suspect improper use of municipal budget funds for other than the intended purposes.
- There is a higher percentage of ethnic Albanians who think that budget funds are not used in citizens' best interest. Citizens believe that local self-government corruption is most widespread in the employment (45.1%), followed by the work of the inspection services (25.7%) and corruption in awarding public procurement contracts by the municipality (22.0%). The perception of corruption in the employment sphere is most widespread among the ethnic Albanians (54.0%), and citizens living in large municipalities and the city of Skopje perceive more corruption in the adoption and changing of the urban plans than citizens living in villages.
- Corruption is significantly less perceived in smaller municipalities, where citizens have more information about the work of the municipality, know public officials personally and where in fact there is much less space for abuse due to the scarce funds that municipalities have at their disposal.
- Mayors are perceived as most susceptible to corruption (24.1%), followed by inspectors (17.7%) and the municipal administration (14.5%). Hence, the conclusion is that there is greater suspicion about corruption in institutions that have greater executive power and discretionary authority in the decision-making process. Members of the municipal council, who do not have any executive power, are least perceived as corrupt (8.2%).
- In small and medium municipalities mayors are perceived as more susceptible to corruption, compared to mayors in large municipalities. On the other hand, citizens from large municipalities perceive inspection services as most corrupt, which means that the perception of corruption is higher in municipalities where officials are not directly and strictly controlled by the mayor and the council and where corruption is possible at multiple levels.
- 6.5% of the respondents stated that they have been asked for money, goods or services in order to finish some work at the municipality, which means that they have been directly exposed to corruption. More precisely, 11% of the ethnic Albanians answered that they have been directly exposed to corruption, just like 7.1% of the citizens living in large municipalities who gave the same answer. Nearly one in ten citizens (9.6%) who requested some kind of service from the municipal authorities have been asked for money or some kind of service in return.
- 7.2% of the respondents have reported illicit activities or irregularities in the municipality to the competent authorities, and as many as 85% of them were dissatisfied with their response.
- The general impression among citizens is that nowadays there is less corruption compared to two years ago, and 19.2% of the citizens feel that the level of corruption has increased.



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## **II. REPORTS ON THE QUALITATIVE ANALYSIS OF THE IMPLEMENTATION OF THE ANTI-CORRUPTION MEASURES IN THE STATE PROGRAM FOR PREVENTION AND REPRESSION OF CORRUPTION AND PREVENTION AND REDUCTION OF CONFLICT OF INTERESTS 2011-2015**

1. Report on the qualitative analysis of the anti-corruption measures in the private sector
2. Report on the qualitative analysis of the anti-corruption measures in the politics
3. Report on the qualitative analysis of the anti-corruption measures in the local self-government sector
4. Report on the qualitative analysis of the anti-corruption measures in the public administration sector
5. Report on the qualitative analysis of the anti-corruption measures in the civil society sector



**1. REPORT ON THE QUALITATIVE ANALYSIS OF THE IMPLEMENTATION OF THE ANTI-CORRUPTION MEASURES IN THE STATE PROGRAM FOR PREVENTION AND REPRESSION OF CORRUPTION AND PREVENTION AND REDUCTION OF CONFLICT OF INTERESTS 2011-2015 IN THE PRIVATE SECTOR**

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September, 2013

## EXECUTIVE SUMMARY

This paper represents a report on the conducting of the qualitative analysis of anti-corruption measures and the implementation of the State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interests 2011–2015 (the State Program) in the private sector. It focuses on the needs identified in the State Program and by means of a set of indicators, it provides an assessment of the anti-corruption measures and the implementation of the State Program, it identifies the strengths and weaknesses of the work done so far and it also suggests recommendations for improving the fight against private sector corruption. The main purpose of this analysis is to help the State Commission for Prevention of Corruption (SCPC) with the monitoring of the implementation of the State Program, improvement of the indicators, identification of new issues, designing of new activities or adjusting the activities that have already been designed. The SCPC plays a crucial role in the fight against corruption as an institution that identifies the shortcomings and the risk areas where further work is required, but also as an institution that continuously improves the monitoring mechanisms for the implementation of the State Program, not only based on quantitative, but also on qualitative indicators.

The analysis addresses issues that concern the overall business sector, but it is also formally directed towards privately owned companies. The State Program addresses the following four issues related to corruption and conflict of interests in the private sector:

1. Insufficiently developed measures for prevention of corruption and strengthening of the integrity of the private sector;
2. Insufficient knowledge of private sector corruption and conflict of interests;
3. Insufficient knowledge of the Law on Protection of the Competition and lack of capacity of the Commission for Protection of the Competition (CPC) to implement the law;
4. Lack of transparency in awarding sponsorship, which entails corruption risks.

In order to tackle these issues, a total of 13 activities, 14 activity indicators and 12 performance indicators have been foreseen. The qualitative analysis has set eleven questions – indicators that are most frequently related to the activities foreseen in the State Program, but there are also cases when they identify certain aspects of the issue which need to be additionally considered by the SCPC and other private sector stakeholders.

With regard to **Problem 1** – Insufficiently developed measures for prevention of corruption and strengthening of the integrity of the private sector, the analysis determined four questions – indicators of the situation. The Law on Trade Companies contains proper provisions for preventing and addressing conflict of interests and preventing corruption. Hence, the State Program focuses on voluntary measures for prevention of corruption and conflict of interests. The Action Plan of the State Program foresees an action for adopting codes of conduct for fair, conscientious and proper execution of the business activities, prevention of conflict of interests and application of good practices in the cooperation between the private and the state-owned entities. Even though there are various types and models of codes of conduct, they do not contain any special provisions on donations, sponsorship and public procurement which all entail high risk of corruption and conflict of interest, and the provisions that promote reporting of any violations to the codes and protection of whistleblowers are not detailed enough. Another weakness of these provisions is related to their poor application and monitoring. Furthermore, there are no incentives to develop corporate programmes for observance of the laws, the pertinent regulations and the ethical conduct. Controlling the compliance with the regulations is an internal function that is obligatory only for some business entities, such as banks and investment funds.

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The Macedonian legislation prescribes mandatory possession and submission of data on their nominal owners, but not on their ultimate owners, and the data bases do not offer simple and fast verification of the ultimate ownership and the ultimate control of the enterprises. Companies engaging in particular activities that entail high money laundry risks are the only ones that are required to submit data on the ultimate ownership. Furthermore, increased transparency for the public fund beneficiaries is necessary, as well as improved informedness and oversight in the sphere of limitations in the engagement of former public officials in the private sector. The legislation on financial reporting, auditing and accounting even surpasses international standards<sup>38</sup>, but further training on the ways of preventing and detecting corruption is still needed.

With regard to **Problem 2** - Insufficient knowledge of corruption and conflict of interests in the private sector, the analysis covered three questions as indicators of the situation. In compliance with the State Program, the SCPC concluded a memorandum of understanding<sup>39</sup> with multiple representatives of the private sector (chambers of commerce, clusters and employers' organizations), which also refers to the exchange of available data and cooperation related to the conducting of training and providing of education. There is a lack of special legal provisions to encourage the reporting of suspected corruption and other illicit activities in the private sector, as well as protection for whistleblowers - the persons who report such activities - but the SCPC, in cooperation with the Ministry of Justice, is already working on the designing of a suitable system. Even though corresponding activities have been foreseen in the State Program, no special training has been conducted on preventing private sector corruption, and the cooperation in the sector is at the level of consulting and informing of the anti-corruption measures initiated by the SCPC. The anti-corruption issue is on the business sector agenda when communicating with the authorities, but in all things considered, it is not of high priority. Generally speaking, the business sector does not sufficiently encourage or support the civil society in the fight against corruption. The issue of corruption and combating private sector corruption remains insufficiently explored.

With regard to **Problem 3** - insufficient knowledge of the Law on Protection of the Competition and lack of capacity of the Commission for Protection of the Competition (CPC) to implement the law, the analysis included two questions as indicators of the situation. Human and financial capacities of the CPC require further strengthening, as identified in the State Program. The CPC has held several meetings with other bodies' representatives in order to strengthen the inter-institutional cooperation, but the improved information exchange is yet to come to life. Lack of information has also been established among the contractual authorities and the business entities regarding the prohibited contracts, the role of the competent authorities and the possibilities to prevent corruption, and in order to overcome this challenge, two sets of guidelines have been designed to be used by the contractual authorities. Even though the State Program foresees amendments to Article 283 of the Criminal Code, such amendments have still not been made. The sanctions from this article against the responsible persons in the legal entities prevent the introducing of programmes that would encourage companies to report cases of cartels and other types of forbidden agreements. It has also been established that judges are not properly covered with the training organized by the Public Procurement Bureau for the contractual authorities, and this has a negative impact on the quality of public procurement related court proceedings.

With regard to **Problem 4** - lack of transparency in awarding sponsorship, which entails corruption risks, the analysis included two questions as indicators of the situation. The State Program Action Plan foresees four activities in this sphere, and two of them, the introduction of obligatory statement of interests and obligatory publishing of sponsorships, were assessed by the business community as additional burdening to the already complicated procedure for use of

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38 E.g. Even medium sized companies are required to do the accounting in compliance with the International Financial Reporting Standards, instead of applying the more simplified International Financial Reporting Standards for Small and Medium Enterprises

39 <http://www.dsk.org.mk/images/stories/pdf/memor-pri-sek.pdf>

tax incentives offered by the state. With regard to the legal solutions, the analysis confirmed the necessity of embedding obligatory anti-corruption elements in the donation/ sponsorship awarding contracts, but it also established that special provisions are lacking in the models of private sector codes of ethics. Furthermore, it was also established that there is no legal obligation for maintaining a register of donations and sponsorship in the public activities and a data basis of donations and sponsorships that are subject to tax incentives. It was confirmed that the private sector is not sufficiently transparent in view of the donations and sponsorship it offers.

### **Recommendations:**

The following general recommendations are based on the results of the analysis and they are presented in more detail in the section containing the findings and analysis as well as the overview and prioritization of the recommendations:

- Problem 1 – Insufficiently developed measures for prevention of corruption and strengthening of the integrity of the private sector
  - Fostering development and application of relevant standards and procedures for protection of the private sector entities' integrity (priority 1)
  - Establishing updated data bases for verification of the ultimate ownership and ultimate control over the enterprises and making them accessible (priority 2)
  - Improved application of the limitations referring to the activities of former officials (priority 1)
  - Promoting and centralizing online publication of private sector individuals who have received some kind of public funds (e.g. subsidies, state assistance, public procurement), their amount and purpose
- Problem 2 - Insufficient knowledge of corruption and conflict of interests in the private sector
  - Promoting cooperation between law enforcement agencies and business entities (priority 1)
  - Encouraging private sector authorities to prevent and repress corruption (priority 2)
  - Enabling cooperation with the civil society and providing financial assistance to the civil society anti-corruption initiatives by the private sector (priority 1)
- Problem 3 - Insufficient knowledge of the Law on Protection of the Competition and lack of capacity of the Commission for Protection of the Competition (CPC) to implement the law
  - Improving the skills and the human capacities within the state bodies, as well as the mechanisms for preventing and revealing prohibited contracts that involve public procurement bidders (priority 1)
  - Further training and support to the business entities on the issue of legislation on protection of competition and its implementation (priority 2)
- Problem 4 - Lack of transparency in awarding sponsorship, which entails corruption risks
  - Improving the integrity mechanisms in order to include donations and sponsorship (priority 1)
  - Introducing record-keeping on donations and sponsorships that are subject to tax incentives (priority 2)



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## INTRODUCTION

The State commission for Prevention of Corruption (SCPC) regularly monitors the implementation of the activities from the State

Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interests 2011–2015 (the State Program). In order to achieve this, it uses a set of indicators of activity and indicators of effectiveness.

The OSCE Mission to Skopje has been implementing multi-annual activities to support the implementation of the State Program. In 2012, the Mission cooperated with the SCPC in the development of the methodology for qualitative assessment of the activities and indicators from the State Program, with a pilot qualitative analysis in the education and sports sector and assessment of the citizens' perceptions with regard to three sectors from the State Program, as well as by strengthening the capacities of the SCPC to develop the integrity concept and the electronic data base. In 2013, the cooperation between the Mission and the SCPC continued within the frames of "Promoting the Principles of Good Governance in the Implementation of Anti-Corruption Policies". This resulted in support with the drafting of the qualitative analysis and the implementation of public opinion surveys for additional three sectors from the State Program – the private, the political and the local self-government sector.

This paper represents a report on the qualitative analysis that was conducted in the private sector. Even though this analysis addresses issues related to the overall business sector, it is formally directed towards privately owned companies. However, that should not prevent state authorities and state-owned companies to use these findings for further improvement of the integrity of the companies in the public sector, in the broadest sense. Moreover, the SCPC should also assess whether it is necessary to introduce a special section in the State Program that would specifically refer to state-owned companies. Even though the legislation on privately-owned business entities also applies to the state-owned ones, the latter have broader competencies and therefore there are additional regulatory mechanisms and legal provisions<sup>40</sup> that apply to them, too.

The methodology applied in the analysis is based on the concept of Transparency International's National Integrity System, as well as on the provisions of the UN Convention against Corruption related to the private sector. The problems addressed have been taken over from the State Program. After each problem, the indicators of the conditions and the progress have been presented, as well as recommendations for improved results. The indicators assess three aspects, i.e. categories: (1) the operational capacity of the sector, divided into two sub-categories in order to assess the institutional resources and independence; (2) the sector management in terms of the existing transparency and the integrity mechanisms, which occur as two subcategories; (3) contribution to the overall integrity, expressed through the subcategories of engaging the private sector in the national anti-corruption policy and support to the civil anti-corruption initiatives. The methodology allows for an application of another subcategory in the management category – the subcategory of accountability. It is also related to the quality of corporate management and its oversight and in the future, it can also be included in the analysis in order to be more comprehensive when addressing these aspects.

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<sup>40</sup> E.g. the Law on Prevention of Corruption contains provisions valid for all trade companies but there are additional provisions that apply to public enterprises and other legal entities that have state capital at their disposal.

The following sources of data were used:

- Legal analysis – analysis of all relevant laws, by-laws and other official documents and reports;
- Interviews with key information sources, such as the Economic Chamber of Macedonia, the Business Confederation of Macedonia, the Commission for Protection of the Competition and the Ministry of Justice. Invitations were also sent to the Macedonian Chambers of Commerce and the Economic Chamber of Northwest Macedonia.

Based on the information obtained, in June 2013 draft-scores were designed for each of the indicators, from two different aspects – de jure, with respect to the legal framework, and de facto, describing the state of affairs in terms of the practice. The only exception refers to the category on the contribution to the overall integrity, where a single score is used for each of the indicators and it refers to both the legal framework and the state of affairs in practice. As for the indicators, the legal framework was assessed using scores from 1 to 3, where 1 = No (there is no relevant legal framework), 3 = Partly, 5 = Yes. In order to assess the real state of affairs in practice, a 1-5 response scale was used with the following values: 1 = To a very small extent, 2 = To a small extent, 3 = To a moderate extent, 4 = To a large extent, 5 = To a very large extent.

The results were also presented to be validated by the relevant stakeholders who discussed the findings and scores concerning the indicator questions, in order to confirm or amend the data and the results. This validation served as basis for finalizing the analysis.

In order to gain better insight, the separate scores have been added and the arithmetic mean value has been presented in the section “Index review” as an average value for each of the sub-categories, categories and the overall private-sector pillar<sup>41</sup>. In the same section, the aggregated scores are expressed as a percentage of the maximum score. However, it is important to underline that this is, above all, a qualitative analysis and the scores provided are only indicative.

The findings of the analysis have been presented immediately after the Introduction, followed by the overview and prioritization of the recommendations, review of the indexes and the references section.

## **FINDINGS OF THE QUALITATIVE ANALYSIS**

The State Program addresses the issue of corruption and conflict of interests in the private sector through the following four problems:

1. Insufficiently developed measures for prevention of corruption and strengthening of the integrity of the private sector;
2. Insufficient knowledge of private sector corruption and conflict of interests;
3. Insufficient knowledge of the Law on Protection of the Competition and lack of capacity of the Commission for Protection of the Competition (CPC) to implement the law;
4. Lack of transparency in awarding sponsorship, which entails corruption risks.

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<sup>41</sup> The Transparency International national integrity system assesses the key so-called pillars of the system of good governance in a country, the private sector being one of them.

The qualitative analysis has set eleven indicator questions that are most frequently related to the activities foreseen in the State Program, but there are also cases when they identify certain aspects of the issue which need to be additionally considered by the SCPC and the other private-sector stakeholders.

**Problem / Risk factor 1:**

Insufficiently developed measures for prevention of corruption and strengthening of the integrity of the private sector

**Explanation:**

The UN Convention against Corruption highlights the necessity of introducing measures to prevent corruption and conflict of interests

**Institution: SCPC and other relevant bodies; chambers of commerce and employers’ organizations; Macedonian Stock Exchange**

**Category: Management –Integrity Mechanisms**

**Indicator Question:** Is the development and application of the relevant standards and procedures to protect the integrity of private sector entities encouraged – including the codes of conduct for fair, honest and proper executing of business activities and the activities of all relevant professions – as well as for preventing conflict of interest and applying good commercial practices among business entities and in their contractual relations with the state?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

In accordance with Article 12.2. (b) from the UN Convention against Corruption, the State Program Action Plan foresees activities for adopting codes of conduct for fair, conscientious and proper execution of business activities, prevention of conflict of interests and application of good practices between privately and state-owned entities.

In our country there are at least three general types of *business ethics codes*<sup>42</sup>, and some of them have been designed and promoted in cooperation with the state:

- “Business Ethics Code” promoted by the Business Confederation of Macedonia and the State Commission for Prevention of Corruption;
- “Code of business ethics and conduct of shareholding companies”<sup>43</sup> and “Code of business ethics and conduct for small and medium enterprises”<sup>44</sup> drafted by Transparency International – Macedonia in cooperation with the Economic Chamber of Macedonia and the Economic Chamber of Northwest Macedonia.

42 Literature often makes a distinction between the code of conduct and code of ethics. The first is more directed to defining the rules of acceptable conduct, whereas the latter seems to be more focused on describing the general values, as well as the support to the organization in the application of these values in the everyday work. For the purpose of this paper, these two terms are used synonymously. For more information on the difference between these two tools, refer to *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, OECD, 2010, p. 34–35.

43 [http://www.transparency.org.mk/images/stories/eticki\\_kodeks\\_za\\_akcionerski\\_drustva.pdf](http://www.transparency.org.mk/images/stories/eticki_kodeks_za_akcionerski_drustva.pdf)

44 [http://www.transparency.org.mk/images/stories/eticki\\_kodeks\\_za\\_mali\\_i\\_sredni\\_pretprijatija.pdf](http://www.transparency.org.mk/images/stories/eticki_kodeks_za_mali_i_sredni_pretprijatija.pdf)

The Macedonian stock Exchange has adopted a Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange<sup>45</sup>. This code is obligatory for companies listed in the Super Listing and they are obligated to submit an annual report including a statement whether the company has applied the principles and each of the provisions from the Code, and if it has not applied all of them, then it has to state the reasons for the non-application of those provisions and principles. The non-governmental sector is also active in the promotion of anti-corruption framework programmes for business entities. For example, the Transparency International initiative *Business principles for Countering Bribery* was translated into Macedonian language and published in 2010.<sup>46</sup>

However, the general models of these codes do not contain special provisions on donations and sponsorship and on public procurement, which entail high risk of corruption and conflict of interests, and the provisions that encourage reporting of violations to the codes, laws and protection of whistleblowers are not detailed enough.

There are different *codes of ethics/conduct at the level of individual economic branches or professions*, such as:

- Code of Ethics of real-estate agents at the Real Estate Agencies Group at the Economic Chamber of Macedonia ;
- The Code of Conduct promoted by the Agency for Support to Entrepreneurship;
- Code of Ethics of PR Specialists at the Public Relations Association of Macedonia
  - Code of Ethics for the members of the Public Relations Association of Macedonia
  - Code of Professional Ethics of Lawyers, Associates and Lawyers' Apprentices of the Macedonian Bar Association

For certain categories of business entities there is also a legal obligation to draft and implement the codes of ethics and introduce *control in the compliance of operation with the regulations*. Pursuant to Article 93 from the Banking Law, the Managing Board of the bank is obliged to draft a Code of Ethics, and pursuant to Article 100, persons with special rights and obligations have to submit a written statement of conflict of interests regularly, i.e. every six months. Pursuant to Article 99 of the same law, the Management Board of the bank has to appoint a person or organize a service to control the compliance of the bank operation with the regulations, in order to identify and monitor the risks of noncompliance of the bank operation with the regulations. The risk of measures pronounced by the National Bank, the risk of financial losses and the reputation risk as a consequence of inconsistent compliance of the operation of the bank with the regulations are all considered to be risks that the bank is running by noncompliance with the regulations. In order to control the compliance of the operation of the bank with the regulations, a monthly report is submitted to the Management Board and a quarterly report to the Supervisory Board. If the bank fails to meet these obligations, a fine is prescribed for the bank, the responsible person and the person with special rights and authorities in the bank. Pursuant to Article 21 from the Law on Investment Funds, the investment fund management companies are required to adopt a code of conduct and a rulebook regulating the conflict of interests. Pursuant to Article 28, investment fund management companies are required to employ a person responsible for the control of the compliance of the company's operation with the regulations. Failure to comply with these obligations entails a fine for the legal entity and the responsible person in the legal entity, as well as temporary prohibition on the company to perform its activities.

<sup>45</sup> [http://www.mse.mk/Repository/UserFiles/File/Misev/Regulativa/Akti%20na%20berza/Kodeks\\_za\\_korporativno\\_uprvuvanje.pdf](http://www.mse.mk/Repository/UserFiles/File/Misev/Regulativa/Akti%20na%20berza/Kodeks_za_korporativno_uprvuvanje.pdf)

<sup>46</sup> [http://www.transparency.org.mk/images/stories/bpcb\\_macedonian\\_ver.pdf](http://www.transparency.org.mk/images/stories/bpcb_macedonian_ver.pdf)

Unlike best foreign practices, the Macedonian legislation does not provide for an explicitly *more favourable treatment* of companies that have adopted standards and procedures for integrity protection and conflict of interests prevention. For example, the US legislation prescribes<sup>47</sup> eight minimum criteria<sup>48</sup> in the organizational programme for compliance with the laws and other regulations and ethical conduct, based on which the company shall be entitled to reduced sanctions if sentenced.<sup>49</sup> Furthermore, these aforementioned guidelines recommend that courts should force sentenced organizations to introduce such a compliance and ethics program. These two measures encourage organizations and companies to embed such programmes. The UK Ministry of Justice<sup>50</sup> has published a Guidance which defines six guiding principles for developing and effective programme for compliance with anti-bribery regulations. The UK Bribery Act<sup>51</sup> protects companies from criminal liability if they had proper anti-bribery procedures (as the ones defined in the aforementioned Guidance) but they were violated by a staff member or another related person.<sup>52</sup>

Pursuant to Article 28-a from the Criminal Code, the legal entity is liable for the criminal act committed by its employee or representative of the legal entity that resulted in significant benefit in assets or resulted in damages for someone else, if the crime was committed due to omission of obligatory supervision by the administrative body, management body or supervisory body. This can also apply to cases of corruption (e.g. bribery) but it is an implicit and more limited formulation compared to the formulations in the US and UK legislation. It does not refer to the criteria for appropriate oversight systems for legal entities. Furthermore, the same article also prescribes that the legal entity shall also be liable for a criminal act if the administrative body, management body or supervisory body fail to prevent the criminal act. Thus, the legal incentive for legal entities to develop appropriate oversight systems is smaller because regardless of the quality of these systems, they are still liable for such a criminal offence only because of their failure to prevent it.

Article 147 from the Law on Public Procurement prescribes that economic operators have to submit a *statement that no effective court decision for participation in criminal organization, corruption, fraud or money laundry* has been pronounced to them over the last 5 years. If such a decision has been pronounced, in compliance with Article 146 from the same law, the economic operator shall be excluded from the contract award procedure. It can be considered that this provision directly influences business entities' decision to develop integrity systems.

|                         |                           |          |
|-------------------------|---------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree   | 1        |
|                         | <b>To a slight degree</b> | <b>2</b> |
|                         | To a certain degree       | 3        |
|                         | To a large degree         | 4        |
|                         | To a very large degree    | 5        |

47 Federal Sentencing Guidelines for Organizations, United States Sentencing Commission, [http://www.ussc.gov/Guidelines/2012\\_Guidelines/index.cfm](http://www.ussc.gov/Guidelines/2012_Guidelines/index.cfm).

48 Available here: [http://www.ussc.gov/Guidelines/2012\\_Guidelines/Manual\\_HTML/8b2\\_1.htm](http://www.ussc.gov/Guidelines/2012_Guidelines/Manual_HTML/8b2_1.htm).

49 Reducing the sanction on these grounds is not possible in antitrust

50 <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

51 <http://www.legislation.gov.uk/ukpga/2010/23>

52 Article 7 of the Law introduces a new illegal activity for business entities which shall fail to prevent a person from bribing them in their own benefit.

## **Explanation on the scoring:**

According to a relevant survey<sup>53</sup>, managers in our country gave a medium score of the ethical conduct of business entities in their relations with other companies, civil servants and politicians. It is worth noting that in this business climate aspect, our country ranks lower in terms of some other indicators and it takes the 100<sup>th</sup> place on a list of 144 countries.<sup>54</sup>

Despite of the many various business codes in our country, their implementation in the practice is still questionable. Introducing a code of conduct within a company is the first step towards promoting the integrity systems, but it will not yield any results unless the company focuses on training the staff and other stakeholders on the code and its application in the daily operation, unless it introduces a system of rewards and sanctions in the human resources policies for their observance or lack of observance and builds channels for giving advice and submitting complaints. Another open issue refers to the extent to which these codes are tailored and welcomed by companies. The three aforementioned general codes of business ethics and conduct are not subject to any special mechanisms to monitor their application and sanction any possible inconsistencies. Some of these codes specific for certain branches or professions also define bodies that will consider cases of possible noncompliance with the code provisions and they can also prescribe certain corrective measures. However, during the research, no data have been found on the work of these bodies and their results regarding the compliance with the code provisions, which raises issues concerning their functionality.

The inclusion of the state in the development and promotion of codes of conduct<sup>55</sup> and other similar measures contributes to their effective implementation. Some of the good practices from other European countries also include clarification on the legal responsibilities of these instruments; practical examples of issues that are covered with these instruments and that private sector employees can be faced with; providing clarification of the procedures and support for correct and appropriate conduct in cases which can stir dilemmas among private entities; referring to guidelines and rules developed by international institutions<sup>56</sup> which can serve as input in the development of domestic codes; publishing a list of companies that commit themselves to respecting the anti-corruption principles and publishing periodical reports in this sphere; encouraging cooperation, transparency and integrity in certain high risk economic branches, such as the extractive, pharmaceutical or construction industry; encouraging the implementation of codes of conduct, integrity pacts<sup>57</sup>, internet training programmes, procedures for reporting fraud and corruption among business entities that are public funds beneficiaries (e.g. business entities that have been awarded a public procurement contract).

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53 Global Competitiveness Report 2012-2013, World Economic Forum, p. 241.

54 With regard to this issue, the same research ranks Albania, Turkey, Croatia and Montenegro higher in the region of South Eastern Europe.

55 United Nations Convention against Corruption, article 12(2b).

56 For example, "Good practice guide on internal controls, ethics and compliance" and "Principles on Corporate Governance" by the OECD; the "Rules of Conduct and Recommendations on Combating extortion and bribery" by the International Chamber of Commerce; "Business Principles for Countering Bribery" by Transparency International, "Principles for Countering Bribery" by "Partnering against Corruption Initiative" (PACI) at the World Economic Forum.

57 An integrity pact is an agreement between the contractual authority and the bidder that defines certain anti-corruption rules and procedures, including a monitoring system. More on integrity pacts on the following website: [http://www.transparency.org/whatwedo/tools/resources\\_about\\_integrity\\_pacts/3/](http://www.transparency.org/whatwedo/tools/resources_about_integrity_pacts/3/)

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## Recommendations

- Prescribing minimum standards for an organizational programme for abiding by laws and other regulations and for ethical conduct, based on which companies will be entitled to reduced sanctions for the illegal activities that they have committed.
- Amending the codes of ethics and good corporate management by adding detailed provisions on:
  - Preventing corruption in donations, sponsorships and public procurement;
  - Encouraging the reporting of any suspicions of corruption and other illegal activities, establishing reporting procedures and channels, protecting the potential whistleblowers and introducing sanctions for prevention of retribution or discrimination against these people;
- A monitoring system for the implementation of the code of ethics at the level of the company, but also at the level of the economic branch, region or the overall economy
- Public campaign supported by the public authorities for increased implementation of codes of ethics and corporate management codes by the business entities by also publishing the names of the companies that have adopted certain codes. The campaign should pay great attention to the economic branches and activities that are at higher risk of corruption.
- Publishing monitoring mechanisms and activities for the implementation of the codes and the results that have been achieved.

## Institution: Ministry of Economy, Central Register, Central Securities Depository, Macedonian Stock Exchange, Securities and Exchange Commission

### Category: Management – Transparency

**Question - Indicator:** Are enterprises required to possess information about the legal and natural persons that have the ultimate ownership of enterprises and are investors and fiduciaries required to submit information about the ultimate ownership and ultimate control over enterprises?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

### Explanation on the scoring:

Article 12.2. (c) from the United Nations Convention Against Corruption underlines the necessity of developing transparency among the private sector entities, including identification of legal and natural persons involved in enterprises' ownership and management.

The risks of corruption, conflict of interests and different kinds of malpractice are higher in cases when the identity of persons that play an important role in enterprise incorporation and management is not transparent. The global practice indicates that in cases of major corruption,

corporations are used in order to hide the identity of natural persons involved in corruption.<sup>58</sup> According to the FATF recommendations from 2012,<sup>59</sup> states are required to secure data about the *ultimate ownership*<sup>60</sup> of companies, and these data are to be available either at the level of the company or within a trade companies' register.<sup>61</sup>

This issue has not been addressed in the State Program, and in this respect an overview of the situation is given hereunder for the purpose of assessing whether it would be advisable to develop a respective activity in this sphere.

In compliance with our national regulations, the Central Register keeps records of the nominal owners of trade companies and other legal persons.<sup>62</sup>

Pursuant to Article 11 from the Law on Money Laundering and other Criminal Act Benefits and Financing of Terrorism, financial institutions and specific categories of other legal persons<sup>63</sup> are required to identify and confirm the ultimate owner of the client that is a legal person. When the identity of the ultimate owner cannot be identified otherwise, clients are required to produce a statement of ultimate ownership, and further on they are obliged to verify this statement on the basis of 'impartial and reliable sources'.

Pursuant to Article 67 from the Law on Securities, on the first working day in the calendar month the Central Securities Depository is obliged to publish on its official website a list of legal and natural persons that own more than 5% of any class of securities in the joint stock companies listed in the Register of Joint Stock Companies with special obligations. Additionally, the Depository publishes archives of such lists.<sup>64</sup> Pursuant to Article 158 from the aforementioned law, the joint stock companies listed in the Register of Joint Stock Companies with special reporting obligations are obliged to present the Securities and Exchange Commission with a report on occurrence of any price sensitive information, such as acquisition or alienation of assets exceeding 5% of assets of the joint stock company, resignation, acquittal and appointment of members of management bodies, within one working day. The Commission publishes this report on its official website, and the company is obliged to publish this information in a daily newspaper within five days.

Pursuant to Article 166-b, joint stock companies and other legal entities – issuers of securities, whose securities are not listed on the stock exchange and who are not kept in the Register of Joint Stock Companies with special reporting obligations, are obliged to publish on the official website of the Stock Exchange Market, within 10 days, any changes to the ownership structure exceeding 10% and any changes to their respective management bodies. Pursuant to Article 38 from the Listing Rules of the Macedonian Stock Exchange Market, listed companies must publish announcements about any changes to ownership where certain owners have acquired 5% of the equity shares or if they have reduced their respective share. Nonetheless, all this information that is to be announced or published as an obligation determined by law refers to the *nominal*

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58 Van der Does de Willebois, Emile; Halter, Emily M.; Harrison, Robert A.; Park, Ji Won; Sharman, J. C. 2011. *The Puppet Masters : How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. © World Bank, page 17; <https://openknowledge.worldbank.org/handle/10986/2363> License: CC BY 3.0 Unported.

59 FATF Recommendations dated February 2012, [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

60 Nominal ownership refers to physical and legal entities that either own or control enterprises. Ultimate ownership also establishes natural persons that are behind a given legal entity that appears as a nominal owner of a given enterprise, or the relations between physical and legal entities that may be used to control a company.

61 See the proposal of the European Commission for a Fourth Directive on Money Laundering *Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*, COM/2013/045 final - 2013/0025 (COD).

62 The Register does not record changes to ownership of joint stock companies following their incorporation.

63 For example those involved in trade in real estate, purchase and sale of vehicles, auditing and accounting services, notary services, solicitor and other legal services; consulting services; investment and tax counsellors.

64 <http://www.cdhv.mk/default-MK.asp?ItemID=81>



*ownership* of joint stock companies, but again not necessarily do they reveal the identity of natural persons behind legal persons – owners of securities.

From the afore-stated, it may be inferred that the Macedonian legal regulation obliges companies to have at their disposal and to submit data about their nominal owners, *but not necessarily about their ultimate owners*. The Register of Trade Companies and Other Legal Persons is also limited to keeping records about nominal ownership. The only companies that are to collect data about their clients' ultimate ownership are companies of specific business fields with an increased risk of money laundering, as defined by the Law on Money Laundering and other Criminal Act Benefits and Financing of Terrorism.

Additionally, there are also established *mechanisms for strengthening the control over business entities*, which, regardless of their ownership, may be used by a given natural person, or by a natural person acting through a legal person, for the purpose of performing effective control over companies. For example, Articles 392, 392-b and 392-c from the Law on Trade Companies allow shareholders to be represented at a shareholders' assembly via a proxy. One proxy may represent several shareholders, and companies are obliged to keep records of the produced powers of attorney for the respective shareholders' assemblies. In the past, the law limited the validity of such powers of attorney to only one shareholders' assembly, but following the amendments made in 2011, one power of attorney may be valid for up to two years. Such practice increases the risk of using powers of attorney as a significant mechanism to strengthen the control over business entities. Shareholders are obliged to inform companies about such powers of attorney, but with the exception of companies listed on the stock exchange and those with special reporting obligations, no compulsory deadline has been prescribed, and therefore in practice one company may receive information about concluded powers of attorney prior to holding the shareholders' assembly.

|                             |                            |          |
|-----------------------------|----------------------------|----------|
| <b>Assessment– de facto</b> | To a very slight degree    | 1        |
|                             | To a slight degree         | 2        |
|                             | <b>To a certain degree</b> | <b>3</b> |
|                             | To a large degree          | 4        |
|                             | To a very large degree     | 5        |

#### **Explanation on the scoring:**

The existing databases which are available to state bodies enable simple and quick verification of nominal, but not ultimate ownership and ultimate control over enterprises. Data about nominal ownership are available to the public upon individual requests that are submitted to the Central Register,<sup>65</sup> and fees in the amount of 256 denars are charged for access to each individual data. Nevertheless, with regard to this sphere, the situation is not very good either in the remaining European countries. According to a recently conducted survey covering 34 European countries, including our country,<sup>66</sup> in only four of these countries<sup>67</sup> the authorities competent for registration of business entities provide public access to ultimate ownership data, whereas in other two countries competent registers have such data at their disposal, but they do not publish them.<sup>68</sup>

On the other hand, it is questionable whether and how financial institutions and other prescribed categories of legal persons<sup>69</sup> verify clients' statements about ultimate owners with over

65 The Central Securities Depository keeps updated information about nominal ownership of joint stock companies.

66 The identification of beneficial owners in the fight against money laundering, Final Report of Project BOWNET – Identifying the Beneficial Owner of legal entities in the fight against money laundering; <http://www.bownet.eu/materials/BOWNET.pdf>

67 Estonia, Italy, Romania, Slovenia.

68 Page 60 from the aforementioned Study

69 Defined by the Law on Money Laundering and other Criminal Act Benefits and Financing of Terrorism

25% of ownership or control on the basis of ‘impartial and reliable sources’. This is particularly questionable having in mind the text above which indicates that there are no such sources of verification of ultimate owners, at least not for the majority of legal persons. Hence, the implementation of this legal obligation is difficult. Additionally, this system functions based on the premise that in the future the client shall report any changes to ultimate owners, i.e. that the client shall update the previously given statement, which is stipulated as an obligation in the statements about ultimate owners that financial institutions use. It remains disputable whether financial institutions explain this obligation to clients when filling in and submitting statements about ultimate owners.

## Recommendation

Introduction of up-to-date databases for the purpose of simple, quick and reliable verification of ultimate ownership and ultimate control over enterprises, and making them available to the respective state bodies and stakeholders.

## Institution: Commission for Protection of Competition, State Commission for Preventing Corruption, Agency for Financial Support of Agriculture and Rural Development

### Category: Capacity – Independence

**Question-indicator:** Are there preventive measures for misuse of procedures regulating businesses, including procedures pertaining to subsidies and licenses issued by the state for commercial activities?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

### Explanation on the scoring:

Article 12.2. (d) from the United Nations Convention Against Corruption underlines the prevention of misuse of procedures regulating private entities, whereas 12.2 (e) underlines the prevention of conflicts of interests by limiting the engagement of former officials in the private sector. Global experiences indicate that provision of subsidies and licenses for specific commercial activities, performance of supervision and control as well as other areas where the state intervenes in both the economic and the private sector, are susceptible to corruption or other misuse. Such misuses may also be manifested by unjustified ‘more favourable treatment’ of given business entities on the part of regulators or sharing sensitive market information which is at the disposal of regulators. In return they are promised future employment, part-time employment, and acquisition of ownership of the business entity that was subject to regulation or any other kind of benefit.

This issue is not addressed in the State Program, and in this respect an overview of the situation is given hereunder for the purpose of assessing whether it is advisable to develop a respective activity in this sphere.

Article 17 from the Law on Prevention of Conflict of Interests prescribes a three-year-ban on employment in the private sector for the public sector officials, as well as a ban for acquisition of shares in the case of entities over which supervision was performed or entities that have established any kind of contractual relationship at the time of holding public office or duties. In addition to this, there is two-year-restriction for representation of legal entities if the official was previously

involved in the decision-making process concerning matters pertaining to these entities. Penalty is foreseen for the officials, legal and natural person acting contrary to these provisions.<sup>70</sup> Such a time restriction ranging from two to three years for activities of former officials seems stringent, particularly if compared to the ascertainment that in other countries worldwide a time framework of one to two years is established, but also bearing in mind that there are other countries where this restriction ranges for up to 5 years.<sup>71</sup> Pursuant to Article 20-c from the aforementioned law if an official is employed in a trade company or in any other privately owned legal entity in a period of three years, then this official is obliged to inform the State Commission for Preventing Corruption.

The Law does not impose this obligation in the event of engagement of former officials as part-time counsellors or subcontractors, but, nonetheless, this area is covered by the Code of Ethics for Civil Servants. Namely, pursuant to Article 9, paragraph 4 from the Code, civil servants may not cooperate with physical or legal persons who have or have had some economic interest from the decisions or activities of the body 'where they have been employed in the past three years'<sup>72</sup>. Article 7 from the Code of Ethics for Civil Servants and Article 10 from the Code of Ethic for Public Servants oblige officials to confidentiality and appropriate protection of information that they have obtained due to their position in administration. Article 15 from the Code of Ethics for Public Officials prohibits the use of information acquired by public servants for personal benefit. The wording from both the Code of Ethics for Civil Servants and Code of Ethics for Public Servants seems broad enough to include the refraining from use of insider information to the detriment of the former employer or to the detriment of competitors. In case of acting contrary to the provisions stipulated in the Codes, the officials are subjected to disciplinary action,<sup>73</sup> which points to a lack of mechanism for sanctioning the violation of provisions that remain valid following termination of public employment.<sup>74</sup> Additionally, the Law on Civil Servants and the Law on Public Servants prescribe that officials are to act without being guided by any financial interests and without abuse of office and status they hold.<sup>75</sup> Furthermore, civil servants are obliged to keep confidential state secrets and classified information – which remains an obligation three years following the termination of service.<sup>76</sup> A similar provision is also envisaged in the Law on Public Servants.<sup>77</sup> Legally, no compensation is foreseen for former officials if such bans and restrictions preclude them from respective earnings. Nonetheless, the Law on Salaries and Other Remunerations of the Members of Parliament and other Elected and Appointed Officials allows members of parliament, government officials and leaders to receive a salary in a period from three to eighteen months following the termination of public employment.<sup>78</sup>

Full harmonization of the regulation for national assistance control with the EU Acquis is in the pipeline.<sup>79</sup>

70 Article 31-a from the Law on Prevention of Conflicts of Interests

71 OECD (2010), Post-Public Employment: Good Practices for Preventing Conflict of Interest, OECD Publishing, pp. 68–69. <http://dx.doi.org/10.1787/9789264056701-en>.

72 The wording 'body where they have been employed in the past three years' may be interpreted in at least two ways. It may refer to all civil servants who have been employed in the respective body for the last three years, or literally interpreted it may refer only to public officials employed in the respective body for the last three years. Even though the intention of the Ministry of Information Society and Administration, which has drawn up the draft law, seems closer to the first interpretation, this inaccuracy may cause confusion, and even abuse attempts.

73 Article 1, paragraph 3 from the Code of Ethics for Civil Servants and Code of Ethics for Public Servants

74 Until establishment of a mechanism for compensation of lost earnings due to adherence to restrictions applicable to all former officials, and not only to some of them, the author does not recommend strengthening the foreseen sanctions for non-adherence. An overview of mechanisms for sanctioning officials and private sector entities that have violated restrictions can be found on pages 82–85 from OECD (2010), Post-Public Employment: Good Practices for Preventing Conflict of Interest, OECD Publishing. <http://dx.doi.org/10.1787/9789264056701-en>.

75 In Article 18 from the Law on Civil Servants and Article 24 from the Law on Public Servants

76 Article 20 from the Law on Civil Servants

77 See Article 11 from the Law on Public Servants

78 Article 19 from the Law on Salary and other Remuneration to Members of Parliament and other Elected and Appointed Persons in the Republic

79 Annual report of the Commission for Protection of Competition for the year 2012, page 26; National program for adoption of the Acquis, revision 2013, page 94.

|                              |                            |          |
|------------------------------|----------------------------|----------|
| <b>Assessment – de facto</b> | To a very slight degree    | 1        |
|                              | To a slight degree         | 2        |
|                              | <b>To a certain degree</b> | <b>3</b> |
|                              | To a large degree          | 4        |
|                              | To a very large degree     | 5        |

**Explanation on the scoring:**

According to the survey of managers conducted for the purpose of the Global Competitiveness Report<sup>80</sup> the misuse of public finances due to corruption is not particularly pronounced in our country when compared to other business climate indicators in the country, or to the results from other countries<sup>81</sup>. The same applies to the frequency of illegal payments and bribe – including payments and bribes for obtaining licenses from the state<sup>82</sup> – and to a slighter extent for favouritism in the case of decision-making regarding policies and awarding contracts on the part of the state administration bodies and regulators<sup>83</sup>.

With regard to the issuance of licenses, the awarding of international CEMT/ECMT<sup>84</sup> transport licenses is a good example. This process, which has been performed electronically for eight years now, is approved by the license holders, i.e. carriers, and it provides transparency and minimizes the possibilities of human factor influence in selecting companies that are to obtain the aforementioned licenses, as well minimizing the bribe option.

The Commission for Protection of Competition has an increased number of national assistance decisions adopted in 2011 as compared to 2010,<sup>85</sup> whereas in the year 2012 there was an increase in the number of requests for opinions and submitted notifications about national assistance on the part of ministries.<sup>86</sup> For some of the state assistance that has been awarded to the private sector the amount of the assistance is not disclosed. According to the Annual Report of the Commission for Protection of Competition for 2012, ‘it is not [always<sup>87</sup>] possible to include the amounts’ because benefits foreseen in the Law on Technological Industrial Development Zones for Investors not always include grants, but refer to tax reliefs and exemptions. The verification of the adopted national assistance decisions indicates that in most cases the scope of tax reliefs and tariff concessions is not disclosed. This was the case even when the specific assistance included grants intended for investors, but again the scope was not disclosed.

According to media reports, ‘exceptions are made from a negotiating aspect so that the Government would not have to offer equal assistance for investing in the country’<sup>88</sup>. Even though this is a valid point, this practice may create an impression of non-transparency in spending public funds and may lead to an increased risk of corruption.

80 Global Competitiveness Report 2012-2013, World Economic Forum, page 241.  
 81 According to this research only Montenegro is better ranked in the region of Southeastern Europe as far as this issue is concerned.  
 82 According to this research Macedonia is the best ranked country in the region of Southeastern Europe as far as this issue is concerned.  
 83 According to this research Bosnia and Herzegovina, Turkey and Montenegro are better ranked than our country in the region of South-eastern Europe as far as this issue is concerned.  
 84 European Conference of Ministers of Transport (ECMT)/Conférence européenne des ministres des Transports (CEMT).  
 85 European Commission 2012 Progress Report, page 33.  
 86 Annual report of the Commission for Protection of Competition for the year 2012, page 32  
 87 Author’s remark  
 88 ‘Which companies receive national assistance and to what end?!’, Kapital magazine, 20 September 2013, [http://www.kapital.mk/MK/magazin/96717/koi\\_kompanii\\_dobivaat\\_drzhavna\\_pomosh\\_i\\_za\\_shto\\_.!.aspx](http://www.kapital.mk/MK/magazin/96717/koi_kompanii_dobivaat_drzhavna_pomosh_i_za_shto_.!.aspx)

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It is positive that the Agency for Financial Support of Agriculture and Rural Development has published a list of beneficiaries that have abused the financial assistance<sup>89</sup>. Nonetheless, the names of only two natural persons are displayed on the list even though for the year 2012 only, the financial support of agriculture and rural development was programmed for approximately 120 million Euros. Some other countries, such as Slovakia, are in the process of arranging online announcement of persons who have received some form of subsidies, the amounts received and data about the selection made.<sup>90</sup> The European Union has already established an online system that enables monitoring of grant beneficiaries and other persons who have concluded contracts with the EU based on public procurement procedures.<sup>91</sup> In this respect, the introduction of a new function – announcement of notifications about realized contracts is welcomed. It presents the realized public procurement contracts and enables the contractual authority to make corrections of the initial value of the notification about the concluded contract. Nevertheless, the use of this function is optional, i.e. the submission of such notification depends on the good will of contractual authorities.

As for the implementation of provisions for employment restrictions concerning officials in a given trade company or in another legal person from the private sector, the annual reports of the State Commission for Prevention of Corruption for the years 2011 and 2012 do not indicate that the Commission has received any notification about such employment in compliance with Article 20-c from the same law, nor that it has received notification about the official's acquisition of shares in the legal entity that they have supervised. It is a fact that during the whole period when the ban is effective, no compensation is foreseen for *any* of the former officials and therefore if such bans and restrictions prevent them from achieving the respective income due to them not being employable or not being able to represent a certain legal person during the relatively long banning period, there is a high risk of violation of such bans. When such a high risk prevails and when the number of officials covered by the law remains high<sup>92</sup> – but, nonetheless, submission of such notifications is non-existent – the oversight of this respective area needs to be strengthened.

## Recommendations

- Strengthening the implementation of restrictions pertaining to the activities of former officials
  - Developing a mechanism for control of the compliance with Articles 17 and 20-c from the Law on Prevention of Conflict of Interests (for example by creating a database of bodies that regulate certain economies and their respective employees with designated regulatory authorizations and duties, as well as comparison of data with the data about newly employed persons from the records of the Employment Service Agency of the country , or with data about changes to ownership of shares from the Central Securities Depository)
  - Communication of restrictions pertaining to activities of former officials by informing about the restrictions (including formal notification of new officials regarding restrictions and reminder of restrictions of officials whose service terminates at takeover of duties or via correspondence), counselling (including counselling when requested, annual memoranda, training programs for integrity of officials and the private sector),

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89 [http://www.pa.gov.mk/Root/mak/\\_docs/Black\\_list\\_15032013.pdf](http://www.pa.gov.mk/Root/mak/_docs/Black_list_15032013.pdf) (accessed on 27.05.2013).

90 See Recent Slovak Anti-Corruption Measures, Transparency International Slovakia, 2012; [http://www.transparency.sk/wp-content/uploads/2010/01/Gov-anticorruption-measures\\_Kurian.pdf](http://www.transparency.sk/wp-content/uploads/2010/01/Gov-anticorruption-measures_Kurian.pdf) (accessed on 27.05.2013).

91 [http://ec.europa.eu/contracts\\_grants/beneficiaries\\_en.htm](http://ec.europa.eu/contracts_grants/beneficiaries_en.htm)

92 As for illustration purposes regarding deliberation of restriction exemptions that take into account the power of the former official to exert influence on the adopted decisions, as well as the options for access to sensitive information see the example from Canada on page 80 from OECD (2010), Post-Public Employment: Good Practices for Preventing Conflict of Interest, OECD Publishing. <http://dx.doi.org/10.1787/9789264056701-en>.

as well as including these restrictions in the formal documents referring to the private sector (for example in tender documentation and in public procurement contracts).

- Improvement and centralization of online announcement of private sector persons who have received certain public funds (for example subsidies, public procurement), the amount received and its purpose.

## **Institution: Ministry of Finance, relevant professional organizations, chambers of commerce and employers' organizations**

### **Category: Management – Transparency**

**Question-indicator:** Are private enterprises exposed to sufficient internal audit and do they have proper accounting, and are financial reports subject to proper external audit procedures?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

#### **Explanation on the scoring:**

Article 12.2. (f) from the United Nations Convention against Corruption underlines the necessity that private enterprises, having in mind their structure and size, are subjected to sufficient internal audit that would assist in preventing and detecting corruption, whereas the compulsory financial reports of these enterprises are to be subject to respective audit procedures.

The State Program does not envisage any specific activities pertaining to this indicator, and hence the analysis is aimed at elaborating on the necessity of expanding activities.

In conformity with Article 469 from the Law on Trade Companies, all medium and large trade companies, banks and insurance companies, companies listed on the stock exchange and companies undergoing consolidation, keep accounting in compliance with the International Financial Reporting Standards (IFRS). All other companies keep accounting in compliance with the International Financial Reporting Standards for Small and Medium Enterprises. The legal provisions on the accounting apply to legal entities that are not regarded traders if not otherwise envisaged by another law. Such provisions, which oblige medium enterprises to keep their respective accounting in conformity with the ISFR, are even more stringent than the international practice in this area.

In the year 2010 the Law on Trade Companies<sup>93</sup> was amended and it introduced an obligation for establishing a compulsory **Internal Audit Service** for the joint stock companies classified as big enterprises in conformity with the Law on Trade Companies, as well as for the companies whose shares are listed on the stock market, i.e. companies, which in compliance with the Law on Securities, have special reporting obligations. The Internal Audit Service performs continuous and comprehensive audit of legality, accuracy and diligence in company operation by: assessment of the adequacy and efficiency of internal control systems; assessment of the implementation of risk management policies; assessment of the information system structure; assessment of the accuracy and credibility of commercial books and financial reports; verification of the accuracy, credibility and timeliness of reporting in line with the regulations, as well as compliance with the

<sup>93</sup> See Articles 451-a, 451-b, 451-c and 451-d introduced with Article 10 from the Law Consolidating the Law on Trade companies, Official Gazette of RM, no. 48/2010.

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company regulations, policies and procedures. In compliance with the Banking Law<sup>94</sup> the Supervisory Board of the Bank is required to establish an Internal Audit Service, which has the aforementioned obligations, in addition to the following: observing the adherence to regulations, code of ethics, policies and procedures; assessment of anti-money laundering systems and assessment of services that the bank receives from companies performing bank auxiliary services.

The Internal Audit Service in banks and in other trade companies is obliged to draw up a semi-annual and an annual report on its operation and submit it to the supervisory body or to the management body<sup>95</sup>. The supervisory body is obliged to submit the annual report of the Service at the session of the company Assembly<sup>96</sup>. The Internal Audit Service is obliged to immediately notify the supervisory body and the management body if during the control it has ascertained any incompliance with risk management standards or if the management body does not observe the regulations and general acts or the internal procedures of the company or bank.

Pursuant to Article 28 from the Law on Investment Funds, the investment fund management companies are to appoint one independent internal auditor.

In conformity with the Law on Insurance Supervision (Articles 123-128), the supervisory body of the insurance company is obliged to establish internal audit as an independent organizational unit, with at least one chartered auditor.

Internal auditors ascertain whether the insurance company: performs the insurance operations in compliance with the law, as well as with the internal regulations of the company regulating the insurance company operations; keeps commercial books and draws up annual reports, draws up accounting documents, evaluates the items in business balances and annual balance sheet and informs the public about annual report information in conformity with this law as well as with the internal regulations of the company regulating the insurance company operations. The internal auditors draw up reports about the conducted internal audit at least twice a year. These reports are submitted to the supervisory body of the insurance company. The annual report is submitted to the Agency for Supervision of Insurance for opinion purposes. Additionally, the supervisory body is to present the report and the opinion of the Agency for Supervision of Insurance at the annual shareholders' assembly.

Pursuant to Article 39 from the Law on Audit, joint stock companies with special reporting obligations are obliged to establish an Audit Committee<sup>97</sup>. The majority of the Audit Committee members are elected from the Supervisory Board, and at least one member is independent and is 'familiar with the field of accounting or audit'. The Audit Committee performs the following functions: observes the legal auditing of financial reports; observes the operational compliance with regulations pertaining to accounting standards and financial reports; observes the auditing process and evaluates the operation of the auditing company or of the chartered auditor – sole trader; proposes an auditing company; monitors the operation and assesses the efficiency of internal audit and risk management systems.

**The independent external audit** of financial reports is competent for large and medium-sized companies organized as joint stock companies, companies the securities of which are listed on the stock exchange and big and medium enterprises organized as limited liability companies.<sup>98</sup> These companies are obliged to have an auditing opinion on the financial reports in a period of

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94 See Articles 95 to 98.

95 To the banks and to the Audit Committee of the bank

96 To the banks and to the National Bank

97 A company which has made public offering of securities or has a capital of one million Euros in denar countervalue and more than 50 shareholders, or when it is listed on the stock exchange.

98 Article 478 from the Law on Trade Companies

one month at the latest prior to holding the shareholders' assembly. The chartered auditor for the financial reports submits a report on conducted audit in compliance with the International Standards on Auditing, which are updated on an annual basis for the purpose of harmonization with the currently valid standards as amended, modified or adopted by the International Federation of Accountants. The report on the conducted audit, together with the annual balance sheet, financial reports and annual report are submitted to the Board of Directors, to the Supervisory Board, i.e. controller, and then to the shareholders' assembly.

The Law establishes special protection for minority owners, which means that shareholders that possess one tenth of the capital of the limited liability company are entitled to designate a chartered auditor to perform special audit of the last annual balance sheet and financial reports.<sup>99</sup> The auditor is obliged to present the report on the performed audit, without any delay, to the manager and supervisory board, provided that the company has a supervisory body.<sup>100</sup> A shareholder or a group of shareholders that hold at least 10% of the capital of the trade company, are entitled to request from the management body to convene a session of the assembly of the trade company at which an auditor would be appointed to perform an insight, audit, verification, assurance and other related services in the scope of business of the trade company for which suspicion of existence of potential irregularities was expressed in the request.<sup>101</sup>

|                              |                          |          |
|------------------------------|--------------------------|----------|
| <b>Assessment – de facto</b> | To a very slight degree  | 1        |
|                              | To a slight degree       | 2        |
|                              | To a certain degree      | 3        |
|                              | <b>To a large degree</b> | <b>4</b> |
|                              | To a very large degree   | 5        |

#### **Explanation on the scoring:**

Accountants bear the major burden of changes to financial reporting that have occurred by adopting the International Financial Reporting Standards. 'There is still a large number of accountants whose activities regarding their respective professional training are limited to reading periodical publications of professional organizations, which undoubtedly is necessary, but far from sufficient'.<sup>102</sup>

A positive fact is that in the year 2012 the Institute of Accountants and Chartered Accountants was established. This Institute keeps registers of accountants and chartered accountants, performs control over their operation, organizes and administers an exam for obtaining a certificate in accounting i.e. certificate in chartered accounting; issues a certificate in accounting, i.e. certificate in chartered accounting; issues and revokes operational licenses granted to sole traders – accountants, sole traders – chartered accountants and accounting companies; organizes and implements a training on continuous professional development; observes the implementation of the Code of Ethics for professional accountants of the International Federation of Accountants and it translates the International Financial Reporting Standards and the International Financial Reporting Standards for Small and Medium Enterprises.

The introduction of a compulsory internal audit shall contribute to improvement of the process of financial reporting of business entities and strengthened control and supervision of the operation of the company.

99 Article 229 from the Law on Trade Companies

100 Article 230 from the Law on Trade Companies

101 Article 460-c from the Law on Trade Companies

102 Janka Dimitrova, Responsibilities of Accountants, Managers and Auditors concerning Authenticity, Quality and Credibility of Financial Reports, page 9.



The Institute of Chartered Auditors of the country promotes the work of the independent audit. The Institute keeps a register of chartered auditors and a register of auditing companies and chartered auditors – sole traders, administers exams for qualifying as chartered auditors; submits proposals to the Minister of Finance for issuing operational licenses to auditing companies and to chartered auditors – sole traders and issuance of certificates in chartered auditing; organizes and administers continuous professional education; observes the implementation of the International Standards on Auditing (ISA) and the Code of Ethics for professional accountants of the International Federation of Accountants (IFA) with auditing companies and chartered auditors – sole traders; translates and updates the International Standards on Auditing (ISA), the International Accounting Standards (IAS), the International Financial Reporting Standards (IFRS), the Code of Ethics for Professional Accountants and the International Standards for Quality Control.

**Recommendation:**

In view of the fact that the recommendation would refer to further education of auditors (both internal and external) and accountants concerning the ways of preventing and detecting private sector corruption, it is included in a similar, but broader recommendation under the second problem described hereunder.

|  |
|--|
| <b>Problem / Risk factor 2 :</b><br>Insufficient knowledge of corruption and conflict of interests in the private sector   |
| <b>Explanation:</b><br>The insufficient familiarization with the issue of corruption and conflict of interests and their devastating effect imposes the necessity of implementing training and intensifying the cooperation between the private and public sector. |

**Institution: State Commission for Prevention of Corruption and other relevant bodies; chambers of commerce and employers’ organizations**

**Category: Management – Integrity mechanisms**

**Indicator question:** Is the cooperation between the law enforcement agencies and relevant private entities promoted in the direction of identification and detection of irregularities that may be an indicator of corruptive behaviour, or in terms of organizing trainings, preparing informative materials and providing counselling about preventive measures to business entities?

|                       |            |          |
|-----------------------|------------|----------|
| <b>Score– de jure</b> | No         | 1        |
|                       | Partly     | 3        |
|                       | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

Article 12.2. (a) from the United Nations Convention Against Corruption underlines the promotion of cooperation between the law enforcement agencies and relevant private entities. Quite frequently competitors are the ones that identify irregularities and suspicious activities and transactions during their regular financial and commercial activities. Hence, they may as-

sist state bodies in the identification and detection of irregularities that may be an indicator of corruptive behaviour.<sup>103</sup> On the other hand, state bodies may provide counselling or suggestions to business entities regarding best practices of preventing corruption or establishing preventive mechanisms. The United Nations<sup>104</sup> puts forward good practices concerning certain contractual or legal instruments implemented in other countries, such as: negotiating memoranda of understanding and sharing information with the business sector when investigating corruption cases and conflicts of interest, or an obligation imposed on financial institutions or on business entities with specific business activities to report any suspicious transactions (mainly with reference to anti-money laundering operations and financing terrorist activities).

In this sphere, there is at least one activity from the State Program that has already been implemented. In the year 2011, the State Commission for Prevention of Corruption signed a Memorandum of Understanding for Mutual Support<sup>105</sup> with several representatives of the business sector (chambers of commerce, clusters and employers' organizations), which, *inter alia*, refers to the exchange of available information and cooperation in the realization of education and trainings.

An overview of other aspects of the situation pertaining to this indicator question is presented hereunder so as to assess whether the development of additional activities within the State Program would be meaningful as far as this sphere is concerned.

Pursuant to Article 58 from the Law on Prevention of Corruption, every employee in a bank, savings house, exchange office, insurance company, stock exchange or other financial organization is obliged to immediately report any suspicious corruption-related transaction. The report is submitted to the person in charge from the respective legal entity, to the legally designated bodies and to the State Commission for Prevention of Corruption, and penalty is foreseen for failure to report. Pursuant to Article 41 from the aforementioned law, any elected or appointed official, as well as any other officer and person in charge from a public enterprise, public institution or other legal entity that own state capital, is obliged to report any punitive act pertaining to corruption, as well as any infringement of the law provisions, disclosed or identified in performing duties. Penalty is foreseen for failure to report, unless the non-reporting is a criminal act. It is rather interesting that this law limits the corruption reporting obligation in conformity Article 41 only to persons in charge from legal entities that own state capital.

Specific legal obligations for encouraging disclosure of corruption suspicions and other illegal activities in the private sector are non-existent with reference to whistleblowers. Such provisions such refer to private sector employees, temporary employees, consultants, trainees and other persons engaged in the private sector. A good example from this area is presented in the Public Interest Disclosure Act<sup>106</sup> that establishes three levels of disclosures: disclosures to employers, disclosures to regulatory bodies, wider disclosures to the police, media, members of parliament and others. Starting from the first and moving onto the third level, the stipulated conditions that are to be met become more stringent so that whistleblowers may be entitled to protection in compliance with the law. The State Commission for Prevention of Corruption in cooperation with the Ministry of Justice has realized an expert mission for the purpose of analyzing our national anti-corruption legislation with particular emphasis on standardization of the protection of 'whistleblowers' as a feasibility study, i.e. Guidelines for the implementation of the system of 'whistleblowers' in our country. According to information obtained from the State Commission for Preventing Corruption, there is a task force for amendments and modification to the Prevention of Corruption Law, which,

103 United Nations Convention against Corruption, Article 12(2a).

104 Implementation of Article 12 of the United Nations Convention against Corruption, including the use of public-private partnerships, page 10, Conference of the States Parties to the United Nations Convention against Corruption – Open-ended Intergovernmental Working Group on Prevention, 2012.

105 <http://www.dsk.org.mk/images/stories/pdf/memor-pri-sek.pdf>

106 Public Interest Disclosure Act, <http://www.legislation.gov.uk/ukpga/1998/23/contents>

*inter alia*, is to establish a system for protection of whistleblowers in the private sector. The best practices from other countries indicate that the system is to define respective disclosure channels and procedures, to define any potential retaliation or discrimination related activities aimed at whistleblowers, to identify a body in charge of receiving and investigating complaints pertaining to such activities, as well as to prescribe sanctions for such activities.<sup>107</sup>

According to the Law on Money Laundering and other Criminal Act Benefits and Financing of Terrorism, financial institutions and business entities that perform specific activities with an increased risk of money-laundering are obliged to immediately perform identification and analysis of clients and transactions and to report and retain any suspicious transactions. This is significant because money laundering may also refer to income from corruptive activities.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

#### **Explanation on the scoring:**

The United Nations<sup>108</sup> highlight good practical examples from other countries with respect to cooperation between law enforcement agencies and relevant private entities, such as designation of contact points in state bodies for sharing such information, or support to private entities in dealing with conflicts that they may encounter when they wish to share such information, and at the same time being confined by regulations pertaining to protection of privacy, confidentiality or protection of bank secrecy.

In line with the concluded Memorandum, in the course of 2012 and 2013 the State Commission for Prevention of Corruption organized at least two round tables on the topic of prevention of corruption and conflict of interests in the private sector, and private sector representatives were invited and participated as well. In addition to this, in the year 2013 representatives from the private sector also participated at the annual conference for the assessment of the implementation of the State Program, and the cooperation in the field of realization of joint project activities continued as well.<sup>109</sup> Hence, the representatives from the private sector had the opportunity to propose changes to the existing activities or to propose inclusion of new activities in the State Program.

Even though certain activities are envisaged in the State Program, no specific trainings on prevention of corruption in the private sector have been held.

The country has introduced dedicated telephone lines allowing citizens, business entities and other organizations to report corruption to several institutions (for example, the Customs Administration, Public Revenue Office, Ministry of Transport and Communications, Ministry of Interior, Ministry of Defence), and the same has been done by certain local self-government units (for example Prilep).

<sup>107</sup> Whistleblower protection: encouraging reporting, CleanGovBiz, 2012, <http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf> G20 compendium of best practices on whistleblower protection legislation: G20 Anti-Corruption Action Plan, Action Point 7: Protection of Whistleblowers, 2010, <http://www.oecd.org/general/48972967.pdf>

<sup>108</sup> Implementation of Article 12 of the United Nations Convention against Corruption, including the use of public-private partnerships, page 10, Conference of the States Parties to the United Nations Convention against Corruption – Open-ended Intergovernmental Working Group on Prevention, 2012.

<sup>109</sup> Report on implementation of the Memorandum of Understanding for Mutual Support in prevention of corruption and conflicts of interests with representatives from the private sector – period: January – June 2013, State Commission for Preventing Corruption, 2013. <http://www.dksk.org.mk/images/stories/pdf/sorabotka/izvestaj%20-%20ps.pdf>

## Recommendation

- State bodies in cooperation with the business sector representatives should continue providing further education and support to business entities regarding the regulation on the prevention of corruption and conflicts of interests and regarding the introduction of mechanisms for prevention of corruption; education of auditors (both internal and external) and accountants about the ways of preventing and detecting private sector corruption.
- Conducting surveys of the anti-corruption measures in our companies, assessment of the effectiveness of specific instruments, conducting specific local case studies by implementing the anti-corruption measures and examples of best practices.
- Introduction of reporting mechanisms and adequate legal protection for whistleblowers of corruption in the private sector.

## Institution: Chambers of commerce and employers' organizations

### Category: Contribution to the overall integrity - involvement in the national anti-corruption policy

**Indicator question:** To what extent does the private sector encourage authorities to prevent and repress corruption?

|                                     |                          |          |
|-------------------------------------|--------------------------|----------|
| <b>Score – de jure and de facto</b> | To a very small extent   | 1        |
|                                     | <b>To a small extent</b> | <b>2</b> |
|                                     | To a moderate extent     | 3        |
|                                     | To a large extent        | 4        |
|                                     | To a very large extent   | 5        |

### Explanation on the scoring:

According to a recent survey<sup>110</sup> 47% of business entities stated that they did not feel any moral obligations to fight corruption. The issue of anti-corruption is present on the agenda of the business sector when communicating with the authorities, but generally speaking, it is not considered to be of high priority. There are rare statements by the representatives from the business sector associations calling upon authorities to fight corruption. When big business associations and chambers of commerce have meetings with the authorities or with senior government officials, the business sector highlights the problems related to the insufficiently developed transport and energy infrastructure, high costs of energy resources, government debts to economies, customs duties, taxes and social insurance contributions. It is only on rare occasions that the government raises the issue of corruption, and in such cases it is mainly with reference to public procurement practices. As for any specific initiatives raised by the business community and addressed to the authorities, it is worth mentioning that there is a document titled *Anti-Corruption Needs of the Macedonian Business Community – Public Appeal to Authorities and Politicians*<sup>111</sup> which addresses the priority anti-corruption issues that authorities need to tackle, and which are crucial for creating equal conditions for competition among business entities.

Joining the United Nations Global Compact Initiative, this *inter alia*, containing a principle in the fight against corruption, on the part of the Macedonian business entities remains exceptionally

<sup>110</sup> Conducted on behalf of the State Commission for Preventing Corruption and OSCE by the Opinion Research and Communications Agency "Rejting"

<sup>111</sup> Business Confederation of Macedonia.

low. On the Initiative website<sup>112</sup> only 14 Macedonian business entities are listed, and it is further stated that two of these entities do not produce annual reports on the principle implementation progress.

One of the ways how the private sector may assist in the fight against corruption is by publishing periodical assessments on corruption-related costs on the level of economies or for the overall economy both in terms of business entities and in terms of economic development and competition. The business sector may also support independent surveys and analyses thus enabling quantification of its expenses concerning corruption. In this direction, and within the framework of the project entitled *Anti-Corruption Initiative of Entrepreneurs* conducted by the Business Confederation of Macedonia and the Business Alliance of Slovakia, a document entitled *Costs of Corruption* was published giving an overview of international approaches and attempts to measure costs of corruption and consequences on the economic development indicators.<sup>113</sup>

### Recommendations:

- More consistent publication of the registered detrimental effects of corruption on the companies, the economic development and the competition by the business sector representatives.
- Reaching a consensus within the business community regarding priority measures that would contribute to the fight against private sector corruption, and advocating with the state bodies for consistent implementation of measures that are in their competences.

## Institution: Chambers of commerce and employers' organizations

### Category: Contribution to overall integrity – support to private anti-corruption initiatives

**Indicator question:** To what extent does the private sector encourage and/or support civil society in the fight against corruption?

|                                   |                          |          |
|-----------------------------------|--------------------------|----------|
| <b>Score – de jure и de facto</b> | To a very small extent   | 1        |
|                                   | <b>To a small extent</b> | <b>2</b> |
|                                   | To a moderate extent     | 3        |
|                                   | To a large extent        | 4        |
|                                   | To a very large extent   | 5        |

### Explanation on the scoring:

Generally speaking, the business sector encourages and supports the civil society in the fight against corruption.

In the development of codes of business ethics as mentioned above, it is obvious that the private sector cooperates with civil society organizations. Even though the cooperation between the private sector and civil society organizations is periodical when it comes to reformative anti-corruption initiatives, the role of the business community is generally reactive and symbolical. It is on very rare occasions that the private sector provides financial support to civil society in the fight against corruption.

<sup>112</sup> <http://www.unglobalcompact.org/>

<sup>113</sup> Zuzana Dančíková, *Costs of Corruption*, Transparency International Slovakia, 2012.

[http://www.transparency.sk/wp-content/uploads/2010/01/Costs-of-Corruption\\_Dancikova.pdf](http://www.transparency.sk/wp-content/uploads/2010/01/Costs-of-Corruption_Dancikova.pdf)

**Recommendation:**

- Cooperation with and financial support to anti-corruption initiatives by civil society on the part of the private sector.

**Problem/ Risk factor 3:**

Insufficient knowledge of the Law on Protection of the Competition and lack of capacity of the Commission for Protection of the Competition (CPC) to implement the law

**Explanation:**

Due to the insufficient familiarization with the law provisions, the number of reports submitted to the Commission for Protection of Competition remains low, in particular concerning prohibited contracts. Additionally, the Commission for Protection of Competition does not have sufficient capacities at its disposal.

**Institution: Commission for Protection of Competition, Public Procurement Bureau and contractual authorities**

**Category: Capacity – resources**

**Indicator question:** Do the relevant state bodies possess skills, human resources and mechanisms for prevention and identification of prohibited contracts in which bidders are involved in the course of public procurement?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

Pursuant to Article 14 from the Law on Public Procurement, the Public Procurement Bureau organizes and conducts training aimed at educating officials and other competent persons with reference to public procurement, and budget resources are allocated for this purpose. Nevertheless, the bylaw that further regulates public procurement<sup>114</sup> does not explicitly indicate the possibility for organizing thematic trainings for the contractual authorities in order to conduct specific trainings aimed at prevention of corruption in the public procurement.

The Draft Strategy for development of the public procurement system 2013-2017 stipulates an introduction of a system for automatic analysis and warnings about indications of existence of corruption and conflict of interests in procurement – which is to be performed by the public procurement information system. To this date, the Public Procurement Bureau has not allocated resources for the operationalization of this concept.

Business sector representatives highlight several factors that they believe have an effect on reducing competition in public procurements, stimulating negotiation among bidders for tender distribution and mutual negotiating of prices. The following reasons were listed: acknowledgement of price as a dominant factor in public procurement decisions, statements about acceptance of deferred payment and other ways of prolonging procurement payment, as well as the

<sup>114</sup> Rulebook on program about conducting public procurement education, program about conducting trainings for public procurement trainers, form and content of the certificate of passed examination for public procurement officer and trainer, as well as the fees payable by the training attendees, Official Gazette 90/2012.

frequently practiced legal possibility of concluding annexes to public procurement contracts thus additionally increasing the value of the initially concluded public procurement contracts.

The effective implementation of concession measures foreseen in the Law on Protection of Competition is restricted due to the contradictory provisions from the Criminal Code.<sup>115</sup> This issue has already been identified in the State Program and is to be overcome by amending Article 283 from the Criminal Code. In conformity with NPAA 2013-2015 the Assembly of the country was to have considered the modification by July 30<sup>th</sup> 2013. Namely, the disputable article from the Code stipulates 1 to 10 years imprisonment for the legal entity that has been involved in a prohibited contract, thus impairing the effectiveness of Article 65 from the Law on Protection of the Competition which stipulates full exemption of penalty for enterprises that have admitted their involvement in a cartel. Such a position impairs the implementation of an applicable program that would encourage enterprises to assist identification of such cartels. In the period between 2010 and 2012, on several occasions, the Commission for Prevention of Corruption requested from the Ministry of Justice, as an authorized proposer, to prepare draft amendments to Article 283 from the Criminal Code with regard to stimulating disclosures of cases of prohibited contracts. The Ministry of Justice has acted on such indications and the work group competent for drafting the text of the Criminal Code amendments has prepared a version according to which a new paragraph 2 is added to Article 283. It is hereby stated that ‘the responsible person in the legal entity will be exempted from penalty if he/she has disclosed or made a significant contribution to disclosing the concluded contract, the decision adopted or the concerted behaviour prohibited by law...’ which led to exemption or reduction in penalty imposed on the legal entity. Despite the fact that the foreseen modification is not a constituent part of the Code yet, there are indications that its operationalization is likely.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

### Explanation on the scoring:

In the general trainings conducted by the Public Procurement Bureau for contractual authorities<sup>116</sup> there is a section dedicated to prevention of corruption and conflict of interests in the public procurement. By way of foreign assistance, guidelines for contractual authorities were drafted and published<sup>117</sup>, outlining practical examples, and *inter alia*, referring to ways of detecting cartels and price cartels in the case of public procurements. The Commission for Protection of Competition in cooperation with the Public Procurement Bureau in the year 2013 also drafted Guidelines for state authorities for the purpose of being able to recognize anti-competitive behaviour in terms of the public procurement. After the completion of the Guidelines, it is expected that they will be available on the websites of these authorities. In addition, a brief brochure outlining the key points is to be distributed during the training for the state authorities, and it is also expected that these aspects will be more comprehensively involved in the training organized by the Public Procurement Bureau for contractual authorities.

115 European Commission 2012 Progress Report, page 33.

116 Refers to five-day-trainings

117 Detection of manipulations in the awarding procedures pertaining to public procurements and consecutive verification steps, Twinning project financed by EU ‘Support to Public Procurement System’, Public Procurement Bureau

The Commission for Protection of Competition has had several meetings with representatives of other authorities aimed at strengthening the inter-institutional cooperation, but they are yet to result in enhanced exchange of information.

The budget of the Commission for Protection of Competition is still lower than the 2009 budget<sup>118</sup>, and the allocated resources for 2013 are lower by almost 30% compared to the requested ones. Moreover, the Commission does not receive any specific resources for training of state authorities and economic operators with reference to the regulation governing the protection of competition. As far as the implementation of the Law on Protection of Competition is concerned, the Commission functions with the support of seven employees, and this number is significantly lower compared to the number of positions planned with the job specification. The short-term priorities' section of the National Programme for adoption of the Acquis envisages new employments with reference to the implementation of the Law on Protection of Competition.<sup>119</sup> Nevertheless, the realization of this commitment is still uncertain.

The Draft Strategy on the development of the public procurement system 2013-2017 stipulates mandatory verification of the statements of interest by the State Commission for Prevention of Corruption when it comes to procurements with an estimated value of more than 130 000 EUR. This imposes the question whether strengthening of the existing human resources of the Commission is needed in order to train experts who would be familiar with the possibilities of corruption in the public procurement and would therefore be capable of processing such statements.

It was also established that judges are insufficiently represented in the training sessions for the contractual authorities, organized by the Public Procurement Bureau, which in turn adversely affects the quality of judicial proceedings pertaining to malpractice in public procurement. The Public Procurement Bureau has attempted to improve the involvement of judges, but the opinion that prevails in court is that such trainings are aimed exclusively at officials in charge of public procurement procedures.

## **Recommendations**

- The Public Procurement Bureau together with the State Commission for Prevention of Corruption need to assess the possibility of introducing an automatic warning system in case of indications about corruption and conflict of interests in public procurement.
- In compliance with the State Program, the Ministry of Justice needs to intensify its activities for the operationalization of the draft proposal for amending the Criminal Code which also contains amendments to Article 283.
- Strengthening of the human and financial capacities of the Commission for Protection of Competition regarding implementation of the Law on Protection of Competition.
- The State Commission for Preventing Corruption, Public Procurement Bureau and the Academy for Judges and Public Prosecutors need to cooperate and initiate training for judges regarding potential malpractice in the public procurement, with particular emphasis on the issue of prohibited contracts in procurement procedures.

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<sup>118</sup> European Commission 2012 Progress Report, page 33.

<sup>119</sup> European Commission 2012 Progress Report page 95.



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## Institution: Commission for Protection of Competition, Public Procurement Bureau and contractual authorities

### Category: Capacity – resources

**Indicator question:** Are private entities familiar with the provisions governing the protection of competition regarding the prohibited contracts, the role of the competent state authorities and the possibilities for prevention of corruption?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

#### Explanation on the scoring:

The secondary legislation which further regulates the training on public procurement<sup>120</sup> foresees training for the economic operators, but does not explicitly indicate the possibility of organizing thematic training so that specialized training on prevention of corruption would be organized, with special emphasis on prohibited contracts.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

#### Explanation on the scoring:

The Law on Protection of Competition has been in force for several years and the business community is familiar with its provisions to a moderate extent. Nevertheless, in the course of the training for the economic operators held by the Public Procurement Bureau it was ascertained that business entities are not familiar with the existence of the Commission for Protection of Competition and its role. Furthermore, complaints related to dumping prices in public procurement procedures were addressed to the Bureau, which indicates that they were not addressed to the competent authority, namely the Commission for Protection of Competition. Hence, chambers of commerce and employers' organizations in cooperation with the Commission for Protection of Competition and Public Procurement Bureau must organize informational training to familiarize the economic operators with their rights to protection and with the proceedings which may be instigated based on the legislation on protection of the competition.

#### Recommendation

- State authorities in cooperation with the business sector associations need to provide further education and support to business entities regarding the legislation on protection of competition and its implementation.

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<sup>120</sup> Rulebook on the program about conducting public procurement education, program about conducting trainings for public procurement trainers, form and content of the certificate of passed examination for public procurement officer and trainer, as well as the fees payable by the training attendees, Official Gazette 90/2012.

**Problem / Risk factor 4:**

Lack of transparency in awarding sponsorship, which entails corruption risks

**Explanation:**

Sponsorships are not transparent to the general public and therefore there are perceptions that their background is suspicious. In this respect, transparency of objectives, scope, type of sponsorship and sponsors is crucial.

**Institution: Ministry of Justice, authorities governing public interest, chambers of commerce and employers’ organizations**

**Category: Management – integrity mechanisms**

**Indicator question:** Do integrity mechanisms, including codes of ethics and codes of corporate governance in the business sector, include rules about donations and sponsorship so as to ensure their transparency and secure that they are not used for concealing bribe, illegal payments and payments made to closely related people?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

In order to confirm the public interest in a specific donation or sponsorship and thus become entitled to tax exemption, the provider must draft and submit to the Ministry of Justice a donation or sponsorship contract, which has to include the purpose of the assistance. Nonetheless, there is neither a compulsory standardized template nor a provision in the relevant legislation which further regulates the content of this contract (anti-corruption elements, definition of what is received and what is delivered, penalties for non-performance etc.) even though they are foreseen as an activity in the State Program for Prevention and Repression of Corruption. For example, certain multinational corporations<sup>121</sup> in their respective anti-corruption policies prescribe compulsory clauses in their contracts thus acknowledging that the representative of the recipient is not an official, a public administration employee or a political party member, and should this situation change, then this person is obliged to immediately notify the provider of donation or sponsorship, which will consequently be terminated. Article 4 from the Law on Donations and Sponsorship in the Public Activities, which prescribes the obligation for concluding a contract for donation, may need to be amended by adding a provision that donations and sponsorship contracts have to include an anti-corruption clause, by referring to internationally recognized models. The most elaborate model is the anti-corruption clause of the International Chamber of Commerce<sup>122</sup>, which attempts to ensure that the contract does not refer to obtaining direct or indirect unjustified benefit by way of bribery, blackmail, influence peddling or money laundering with reference to corruptive practices. This particularly refers to cases involving officials, political parties and their representatives and candidates for political functions. This clause may be translated and adjusted to our legal terminology.

In conformity with the Macedonian legislation, having utilized the donation/sponsorship, the recipient has to submit to the Public Revenue Office the Report on the received donation/sponsorship (which contains in-depth information about the type of donation/sponsorship and its use),

121 For example Arcelor Mittal, see <http://www.arcelormittalsa.com/Portals/0/Anti-Corruption%20Guidelines.pdf>

122 <http://www.iccwbo.org/Data/Policies/2012/ICC-Anti-corruption-Clause/>

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the certificate of donation/sponsorship that acknowledges the receipt of assets and also proof of intended use of the assets received. However, in order to explicitly determine the responsibility and consequences of misuse after the donation/sponsorship is awarded, Article 4 from the Law on Donations and Sponsorship in the Public Activities may need to be amended by adding a provision that the contract must contain a clause that in the event of misuse of donation or sponsorship the recipient is to return the misused assets to the provider, and the utilized tax incentives to the state.

Another element foreseen in the program is the introduction of an obligation for signing a Statement of interest by all parties in the case of sponsorships. According to representatives from the business community, such a statement would further hinder the procedure for utilizing tax incentives foreseen in the Law on Donations and Sponsorship in the Public Activities, thus reducing the interest of companies in supporting socially beneficial activities. Moreover, the conclusions from the supervisory debate of the Commission for Culture within the Assembly of the country on the topic of *Implementation of the Law on Donations and Sponsorship in the Public Activities* dated 21.07.2010 highlight the necessity of simplification of the administrative procedures pertaining to the law, simplification of the procedure for realization of tax incentives and reducing the volume of required documentation. Hence, the recommendation addressed to the State Commission for Prevention of Corruption is to reduce the risk of conflict of interests in donations and sponsorships by strengthening and promoting provisions on codes of ethics for the private sector aimed at introducing self-regulation in the private sector in this sphere instead of introducing a compulsory statement on conflict of interests.

As far as voluntary codes are concerned, the *Business Code of Ethics* promoted by the Business Confederation of Macedonia, the *Code of Business Ethics and Conduct of Joint Stock Companies* and *Code of Business Ethics and Conduct of Small and Medium Enterprises* of Transparency International – Macedonia, the Economic Chamber of Macedonia and Chamber of Commerce of North-Western Macedonia, as well as the *Code of Corporate Governance of Joint Stock Companies* do not have specific provisions for donations and sponsorships, but they contain provisions for prevention of conflict of interests and avoidance of direct or indirect bribery. Furthermore, the *Business Code of Ethics* also includes anticorruption measures regarding the contractual relations with the state, which may also be relevant when the donation recipient is the public sector – which occurs quite frequently.

The fact that the majority of competent authorities have not determined or published impartial criteria about acknowledging the public interest in donations and sponsorships subject to tax incentives is an additional challenge which may lead to inconsistency and biased interpretation of public interest on the part of the persons in charge, thus raising the issue of procedure transparency.<sup>123</sup> In practice, it is particularly difficult to distinguish the public interest from commercial activities in the field of culture and sport – where most of donations and sponsorships are awarded. A positive example is provided by the Ministry of Culture which has announced that the giving of opinions about the acknowledgement of the public interest is in conformity with the codified criteria published in the Rulebook<sup>124</sup> – even though this by-law was adopted before the adoption of the Law on Donations and Sponsorship in the Public Activities. Nevertheless, even in this sphere, which has progressed most in terms of the codification of public interest, it cannot be said that there are comprehensive criteria because of the absence of codified criteria for acknowledgement of the public interest in culture at a local level, i.e. of local interest in culture. Hence, the codification of precise criteria in the acknowledgment of the public interest in this sphere would significantly reduce the risk of corruption.

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123 Analysis of the implementation of the Law on Donations and Sponsorships in Activities of Public Interest, 2007 – 2011, Association Connect and European Centre for Not-for-Profit Law (ECNL), 2012

124 Rulebook on criteria for financing programs, i.e. projects in given culture activities (Official Gazette of RM 61/2004).

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation on the scoring:**

There are rare cases when companies report the existence of specific mechanisms for preventing corruption and conflict of interests in the donations and sponsorships they provide. A small number of companies report data about the amount of donations and sponsorships they provide, their intended purpose, and occasionally about recipients and end users. This is mainly published on their websites, on the websites of their parent companies or in written reports on the operation of the company.

**Recommendations:**

- Amendments to the Law on Donations and Sponsorship in the Public Activities in order to:
  - Prescribe that the contracts for donations must include anti-corruption clauses, based on internationally recognized models;
  - Prescribe that the contracts must contain a clause that in the event of misuse of donation or sponsorship, the recipient is to return the misused assets to the provider, and the used tax incentives to the state.
- Defining and publishing impartial criteria on the part of state authorities to be used when determining the public interest in donations and sponsorships which are subject to tax incentives.
- Amendments to the models of codes of ethics and codes of good corporate governance with comprehensive provisions for prevention of corruption and conflicts of interests referring to donations and sponsorships, as well as provisions for disclosure of the amount of donations and sponsorships provided, their intended purposes and recipients.

**Institution: Public Revenue Office, Central Register, chambers of commerce and employers’ organizations**

**Category: Management – transparency**

**Indicator question:** Are there proper records about donations and sponsorships and does the business sector keep a register of donations and sponsorships which are subject to tax incentives?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

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### Explanation on the scoring:

Pursuant to Article 19 from the Law on Donations and Sponsorship in the Public Activities<sup>125</sup>, the provider and recipient of donation and sponsorship with acknowledged public interest are obliged to send a Report on the provided and received donation and sponsorship to the Public Revenue Office (forms UJP-IDS/DB and UJP-IDS/PR) in a period of 30 days at the latest following the fulfilment of the contract for donation or sponsorship.

The Law on Donations and Sponsorship in the Public Activities does not contain any provisions which regulate keeping of register of donations and sponsorships. Hence, the Ministry of Justice is not obliged to keep a database of submitted and adopted decisions about acknowledgment of public interest, or intended use of assets, thus hindering the monitoring of trends in this area and implementation of the respective Law.

Article 170 from the Law on Health Protection<sup>126</sup> stipulates that the Ministry of Health is required to keep a register of donations and sponsorship for health workers and associates, which are intended to be used for conferences, seminars, workshops and other similar events for further qualification and specialization. There is an additional rulebook<sup>127</sup> that prescribes that the register should contain information about the recipient of sponsorship/donation, the event for which it is provided, the intended purpose of the assets and the total value. By January 15<sup>th</sup> in the current year, the Ministry is obliged to publish on its website an annual report from the register providing information about the total number of health workers, i.e. health associates who have obtained an approval of the respective sponsorships and donations, the total amount of the sponsorships and donations and their intended purposes.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

### Explanation on the scoring:

The templates of reports on the provided and received donation and sponsorship (forms UJP-IDS/DB and UJP-IDS/PR) do not provide a possibility to list and separate donations and sponsorship by domestic and foreign legal and natural persons and it is not possible to monitor their intended use.

The annual financial reporting forms for legal entities do not provide the possibility to register donations separately from sponsorships awarded by the providers. As for recipients of donations and sponsorships, these forms do not provide a possibility to indicate and separate donations and sponsorships by domestic and foreign legal and natural persons, nor do they provide the possibility of observing their intended use. Consequently, the only data that the Central Register has at its disposal is the total amount of donations by business entities, which in the year 2010 amounted to over eight million Euros.<sup>128</sup>

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125 Official Gazette of RM, no. 47/06, 86/08 and 51/2011

126 Official Gazette of RM no 43/12 and 145/12

127 Rulebook on registration of approvals of sponsorships and donations to health workers, i.e. health associates, Official Gazette of RM 60/12.

128 Analysis of the implementation of the Law on Donations and Sponsorships in Activities of Public Interest, 2007 – 2011, Association Connect and European Centre for Not-for-Profit Law (ECNL), 2012

The Ministry of Justice does not publish a database of submitted and adopted decisions about acknowledgment of public interest, or intended use of assets on its website, thus hindering the monitoring of trends in this area and the implementation of the respective Law. The situation with the competent ministries is quite similar as well and frequently they do not have data about donations and sponsorships in the activities of public interest which are within their competences, and for which they have produced an opinion regarding the public interest. According to the statements made by the very institutions, some of the donations, especially in education, are not recorded at all.<sup>129</sup> The Ministry of Health is an exception to this due to the fact that it possesses information about the recipient of sponsorship/donation for further qualification and specialization of health workers and associates, the event for which it is provided, the intended purpose of the assets and the total value. Nevertheless, at the time when this analysis was being conducted, there was no annual report published for 2012 on the Ministry of Health website, despite of being legally obliged to do so. In this respect, publication of the database of donations and sponsorships which are subject to tax incentives needs to be foreseen, including at least data about the amount of provided assets, amount of tax incentives, as well as the activities of public interest that they referred to.

In view of the fact that the recommendation is aimed at realized, rather than planned donations and sponsorships, the most competent institution for its implementation would be the Public Revenue Office, and the Central Register to a certain extent, considering that they obtain data about expenditure of business entities.

### **Recommendation**

- Amendment to the Law on Donations and Sponsorship in the Public Activities in order to:
  - Introduce a provision governing the keeping of a register of donations and sponsorships in activities of public interest;
  - Prescribe publication of the database of donations and sponsorships which were subject to tax incentives including at least data about the amount of provided assets, amount of tax incentives, as well as the activities of public interest that they referred to.

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<sup>129</sup> According to the statement given by the Minister of Education and Science at the time, Mr. Nikola Todorov, at the parliamentary supervisory debate held in the year 2010 on the topic of Implementation of the Law on Donations and Sponsorships in Activities of Public Interest

## REVIEW AND PRIORITIZING OF RECOMMENDATION

| Objective   | Strategic Options <sup>1</sup>  | Challenges  | Solutions for overcoming the challenges   | Impact on achieving the objective <sup>2</sup> | Key stakeholders   | Priority |
|---|---|---|---|--|--|----------|
| <p>1. Problem / risk factor identified in the State Program: Insufficiently developed measures for prevention of corruption and strengthening of the integrity of the private sector</p> <p>Fostering development and application of relevant standards and procedures for protection of the private sector entities' integrity</p> | <p>Building up on the codes of conduct and good corporate governance codes</p>  | <p>Business entities' low level of interest in adopting the models</p> <p>Lack of implementation mechanisms</p>   | <p>Promoting the codes with state bodies' support and introducing reduced sanctions for committing illicit activities</p> <p>Embedding an obligation for prescribing minimum standards for publishing an organizational programme for compliance with the laws and regulations in the monitoring and code observation system</p>  | <p>Medium</p>                                  | <p>SCPC, chambers of commerce, employers' associations, Macedonian Stock Exchange</p>  |          |
|   | <p>Public campaign for increased acceptance of codes of conduct and good corporate governance codes by business entities</p>  | <p>High costs</p> <p>Scepticism in the business community</p>   | <p>Providing media coverage</p> <p>Introducing reduced sanctions for committing illicit activities</p>  | <p>Medium</p>                                  | <p>SCPC, chambers of commerce, employers' associations, Macedonian Stock Exchange, media, advertising agencies, celebrities as promoters</p> |          |
|   | <p>Publishing mechanisms and activities to monitor the compliance with the codes and the results achieved</p>   | <p>Lack of monitoring system and observance of codes</p>  | <p>Embedding an obligation for prescribing minimum standards for publishing an organizational programme for compliance with the laws and regulations in the monitoring and code observation system</p> <p>Embedding an obligation for prescribing minimum standards for an organizational programme for compliance with the laws and other regulations in the codes</p> | <p>Low</p>                                     | <p>SCPC, chambers of commerce, employers' associations, Macedonian Stock Exchange</p>  | 1        |
|   | <p>Prescribing minimum standards for an operational programme for compliance with the laws and other regulations and ethical conduct, based on which companies will be entitled to reduced sanctions for illicit activities</p> | <p>Lack of specific expertise</p> <p>Lengthy process of legal framework amendment</p> <p>Long and costly process of informing and training the oversight bodies, the sanctioning bodies and the business entities</p> | <p>Use of donors' technical and financial assistance and other countries' experiences and solutions</p>   | <p>High</p>                                    | <p>SCPC, Ministry of Justice, Academy for Judges and Public Prosecutors, chambers of commerce, employers' associations</p>                   |          |

| Objective  | Strategic Options <sup>1</sup>   | Challenges   | Solutions for overcoming the challenges   | Impact on achieving the objective <sup>2</sup> | Key stakeholders   | Priority |
|--|--|--|---|--|--|----------|
| Establishing up-dated data bases for verification of the ultimate ownership and ultimate control over the enterprises and making them accessible | Requesting that companies or trade entities maintain such data   | High costs and lack of specific expertise<br>Lengthy process of legal framework amendment  | Use of other European countries' experience   | Medium   | SCPC, Financial Intelligence Office, Central Registry, chambers of commerce                                      | 2        |
|  | Use and promotion of other sources of data: private data bases with legal documentation (e.g. documentation for shareholders' assembly sessions or statements on ultimate ownership submitted by legal entities); websites of oversight and regulatory bodies and other internet sources; the Public Revenue Office and financial regulators' sources  | Difficulties in analyzing and comparing data from different sources<br>Problems with the reliability and quality of such data  | Use of other European countries' experiences with software, platforms and procedures  | Medium   | SCPC, Financial Intelligence Office, Securities and Exchange Commission, Public Revenue Office                   |          |
| Improved application of the limitations referring to the activities of former officials  | Working up a control mechanism for compliance with articles 17 and 20-c from the Law on Prevention of Conflict of Interests (e.g. data base of bodies that regulate certain economic activities and the staff with relevant regulatory competences and duties; automatic comparison of data from the data base with data on newly employed people from the ESA data base, or data on change of share ownership from the Central Securities Depository) | High costs for IT solutions<br>Great number of people that these limitations apply to<br>Inability to compensate for the loss of income incurred as a result of the limitations applying to all former officials | Use of other countries' experiences with software, platforms and procedures<br>Using the experiences for introducing exceptions to the limitations that take into consideration former officials' authority to influence the decisions that have been made, as well as the access to sensitive data | High   | SCPC, Employment Service Agency, Central Securities Depository, Central registry                                 | 1        |
|  | Communicating the limitations of former officials' activities by informing, counselling and embedding the limitations in formal documents related to the private sector (e.g. tender documentation and public procurement contracts)   | Long and costly process of informing and training the officials and legal entities   | Including information in other trainings and informational materials for special categories of officials  | Medium   | SCPC, Ministry of Information Society and Administration, State Administration Agency, Public Procurement Bureau |          |



| Objective   | Strategic Options <sup>1</sup>  | Challenges   | Solutions for overcoming the challenges  | Impact on achieving the objective <sup>2</sup> | Key stakeholders  | Priority |
|---|---|--|--|--|---|----------|
| Promoting and centralizing online publication of private sector individuals who have received some kind of public funds (e.g. subsidies, state assistance, public procurement), their amount and purpose. | Developing a central online platform to perform queries   | High costs for merging various data bases<br><br>The amounts of certain forms of state assistance are not made public                          | Use of donors' technical and financial assistance<br><br>Possible aggregated publication of the value of the assistance per TIDZ   | High   | SCPC, Public Procurement Bureau, Agency for Financial Support in Agriculture and Rural Development, Ministry of Economy, Ministry of Labour and Social Policy, Ministry of Environment and Physical Planning, Agency for Foreign Investments and Export Promotion | 2        |
|   | Starting a central website with links to other websites with data bases on various public funds | Challenges related to the protection of privacy of natural persons<br><br>The amounts of certain forms of state assistance are not made public | Cooperation with the Directorate for Personal Data Protection on determining the proper framework on natural persons' privacy<br><br>Possible aggregated publication of the value of the assistance per TIDZ | Medium   |   |          |

2. Problem / risk factor identified in the State Program: Insufficient knowledge of corruption and conflict of interests in the private sector

1. The strategic options can also be complementary. Due to spatial limitation, only a short version of the options is presented. The complete text is presented as a recommendation under each of the question indicator, and also in the executive summary.

2. The scoring also takes into consideration the impact of the option on the feasibility of the other strategic options – in cases when they are complementary.

| Objective  | Strategic Options <sup>1</sup>   | Challenges   | Solutions for overcoming the challenges  | Impact on achieving the objective <sup>2</sup> | Key stakeholders  | Priority |
|--|--|--|--|--|---|----------|
| Promoting cooperation between law enforcement agencies and business entities | Organizing training for the business entities by state authorities, business sector organizations and professional organizations on the matter of legislation pertinent to prevention of corruption and conflict of interests, introducing anti-corruption mechanisms, training for auditors (both external and internal) and accountants on the manners of preventing and discovering private sector corruption | Lack of finances in the state budget, business sector organizations and professional organizations                       | Use of donors' technical and financial assistance, as well as cooperation with NGOs implementing projects in this sphere | High   | SCPC and other relevant bodies, chambers of commerce, employers' organizations, professional organizations of auditors and accountants, nongovernmental organizations | 1        |
|  | Preparing informative materials<br>Offering advice and providing answers to specific questions   | Same as above<br>Same as above   | Use of donors' technical and financial assistance<br>Use of donors' technical and financial assistance                   | Low<br>High                                    | Same as above<br>Same as above  |          |
|  | Introducing reporting mechanisms and appropriate legal protection for whistleblowers who report private sector corruption  | Long and costly process of informing and training the oversight bodies, the sanctioning bodies and the business entities | Use of donors' technical and financial assistance and other countries' experiences and solutions                         | High   | Ministry of Justice, SCPC, chambers of commerce, employers' organizations, trade unions   |          |
|  | Conducting surveys on anti-corruption measures in the domestic companies, assessing specific instruments' effectiveness, designing local case studies referring to the application of anti-corruption measures and best practices  | Lack of finances to conduct analyses   | Use of donors' technical and financial assistance, as well as cooperation with NGOs implementing projects in this sphere | Medium   | SCPC and other relevant bodies, chambers of commerce, employers' organizations  |          |

| Objective   | Strategic Options <sup>1</sup>  | Challenges   | Solutions for overcoming the challenges   | Impact on achieving the objective <sup>2</sup> | Key stakeholders  | Priority |
|---|---|--|---|--|---|----------|
| Encouraging private sector authorities to prevent and repress corruption  | <p>More consistent publication of the registered harmful effects of corruption on the companies, the economic growth and competitiveness by the business sector representatives</p> <p>Reaching consensus within the business community on the high priority measures that will contribute to combating private sector corruption, and advocating among the authorities for the application of these measures that are in the state bodies' competences</p> | <p>Lack of finances to conduct analyses</p> <p>Very limited cooperation between the business sector representatives in this sphere</p> | <p>Use of donors' technical and financial assistance, as well as cooperation with NGOs implementing projects in this sphere</p> <p>Interaction between state bodies and all business sector representatives</p> | <p>Medium</p> <p>Medium</p>                    | <p>SCPC and other relevant bodies, chambers of commerce, employers' organizations</p> <p>SCPC and other relevant bodies, chambers of commerce, employers' organizations</p> | <p>2</p> |
| Enabling cooperation with the civil society and providing financial assistance to the civil society anti-corruption initiatives by the private sector   | <p>The same as in Objective "Promoting cooperation between law enforcement agencies and business entities"</p>  |  |   |  |   | <p>1</p> |
| <p>3. Problem / risk factor identified in the State Program: Insufficient knowledge of the Law on Protection of the Competition and lack of capacity of the Commission for Protection of the Competition (CPC) to implement the law</p> |   |  |   |  |   |          |

1 The strategic options can also be complementary. Due to spatial limitation, only a short version of the options is presented. The complete text is presented as a recommendation under each of the question indicator, and also in the executive summary.

2 The scoring also takes into consideration the impact of the option on the feasibility of the other strategic options – in cases when they are complementary.

| Objective  | Strategic Options <sup>1</sup>  | Challenges                    | Solutions for overcoming the challenges   | Impact on achieving the objective <sup>2</sup> | Key stakeholders  | Priority |
|--|---|-------------------------------|---|--|---|----------|
| Improving the human skills and the capacities within the state bodies, as well as the mechanisms for preventing and revealing prohibited contracts that involve public procurement bidders | Assessing the possibility to introduce an automatic warning system in case of indications of corruption or conflict of interest in public procurement                         | Lack of finances              | Use of donors' technical and financial assistance and other countries' experiences and solutions  | High   | Public Procurement Bureau, SPC  | 1        |
|  | Intensifying the activities for the operationalization of the proposal for amending the Criminal Code that contains an amendment to Article 283                               | /                             |   | High   | Ministry of Justice   |          |
|  | Strengthening the human and financial capacities of the Commission for Protection of the Competition regarding the implementation of the Law on Protection of the Competition | Lack of finances              | Advocating the necessity of such strengthening in the public  | High   | Commission for Protection of the Competition, Ministry of Finance             |          |
|  | Initiating training for judges on possible abuse in the public procurement, with special emphasis on prohibited contracts in the procurement procedures                       | Lack of interest among judges | Explaining that the training is intended for judges working on public procurement cases, not for people who are involved in the public procurement procedures in courts | Medium   | SCPC, Public Procurement Bureau and Academy for Judges and Public Prosecutors |          |

| Objective   | Strategic Options <sup>1</sup>  | Challenges   | Solutions for overcoming the challenges  | Impact on achieving the objective <sup>2</sup> | Key stakeholders   | Priority |
|---|---|--|--|--|--|----------|
| Further training and support to the business entities on the issue of legislation on protection of competition and its implementation | Organizing training by state bodies, business sector organizations and professional organizations | Lack of finances in the state budget, business sector organizations and professional organizations | Use of donors' technical and financial assistance and cooperation with nongovernmental organizations | High   | Commission for Protection of the Competition, SCPC, business sector associations, other associations and foundations | 2        |
|   | Preparing informative materials   | Same as above  | Use of donors' technical and financial assistance  | Low  | Same as above  |          |
|   | Offering advice and providing answers to specific questions                                       | Same as above  | Use of donors' technical and financial assistance  | High   | Same as above  |          |

4. Problem / risk factor identified in the State Program: Lack of transparency in awarding sponsorship, which entails corruption risks

1 The strategic options can also be complementary. Due to spatial limitation, only a short version of the options is presented. The complete text is presented as a recommendation under each of the question indicator, and also in the executive summary.

2 The scoring also takes into consideration the impact of the option on the feasibility of the other strategic options – in cases when they are complementary.

| Objective   | Strategic Options <sup>1</sup>  | Challenges  | Solutions for overcoming the challenges   | Impact on achieving the objective <sup>2</sup> | Key stakeholders  | Priority |
|---|---|---|---|--|---|----------|
| Improving the integrity mechanisms in order to include donations and sponsorship            | Amending the Law on Donations and Sponsorships in the Public Activities by embedding anti-corruption clauses in donations contracts and also by embedding a clause prescribing that in case of misuse of a donation or sponsorship the receiver shall return the misused funds to the donor and shall also return to the state the tax incentives that have been used                                 | Lengthy process of legal framework amendment  | Use of relevant foreign experience  | High   | Ministry of Justice, SCPC, chambers of commerce, employers' organizations, associations, foundations and other institutions | 1        |
|   | Amending the codes of ethics and good corporate management by providing detailed provisions on prevention of corruption and conflict of interests in donations and sponsorships, as well as provisions on publishing the amount of donations and sponsorships awarded, their purpose and their receivers  | Business entities' low level of interest in adopting the models<br><br>Lack of implementation mechanism                       | Promoting the codes with the state bodies' support and introducing reduced sanctions for illicit activities<br><br>Introducing a monitoring and code observation system, as well as minimum standards for an organizational programme for abiding by laws and regulations | Medium   | SCPC, chambers of commerce, employers' organizations, Macedonian Stock Exchange   |          |
| Introducing record-keeping on donations and sponsorships that are subject to tax incentives | Defining and publishing objective criteria by state bodies when determining the public interest in awarding donations and sponsorship that are subject to tax incentives  | Difficulties in prescribing comprehensive criteria in all areas   | Use of foreign experiences  | High   | Ministry of Justice and other bodies  |          |
|   | Introducing a legal provision on the maintaining of a register of donations and sponsorship in the public activities<br><br>Prescribing a legal obligation to publish a data base of donations and sponsorship that have been subject to tax incentives, which will contain at least the amount of funds awarded, the amount of tax incentives and the public interest activities that they refer to. | Lengthy process of legal framework amendment<br><br>Inappropriate forms at the Public Revenue Office and the Central Registry | Changing the forms  | Medium   | Ministry of Justice<br><br>Public Revenue Office, Central Registry, Ministry of Justice                                     |          |

## INDEXES

Even though in compliance with the methodology, this analysis only provides a qualitative assessment of the situation, numerical scoring was also included in order to summarize the information and point out the key strengths and weaknesses. To that end, each of the indicator questions addressed were also scored from 1 to 5 – with 1 being the lowest, and 5 being the highest score. Based on these scores 1-5 awarded to each of the indicator questions, the scores have been aggregated at the level of sub-category, category and the whole pillar, i.e. sector from the State Program. No pondering has been made in this respect, only the arithmetic average of the aggregated scores has been presented. However, it is important to highlight that these scores should be considered only indicatively.

| Category     | Subcategory                                       | Index   |          |                      |                  |                |
|--------------|---|---------|----------|----------------------|------------------|----------------|
|              |   | De jure | De facto | Sub-category Average | Category Average | Sector Average |
| Capacity     | Resources   | 3       | 3        | 3                    | 3,5              | 2,88           |
|              | Independence                                      | 5       | 3        | 4                    |                  |                |
| Management   | Transparency                                      | 3,67    | 3        | 3,33                 | 3,15             |                |
|              | Integrity mechanisms                              | 3,67    | 2,33     | 3                    |                  |                |
| Contribution | Engagement in the national anti-corruption policy | 2       |          | 2                    | 2                |                |
|              | Support to civil anti-corruption activities       | 2       |          | 2                    |                  |                |

In order to gain a better understanding, the scores are shown as percentage (0 to 100) in the following table:

| Category     | Subcategory                                       | Index   |          |                      |                  |                |
|--------------|---|---------|----------|----------------------|------------------|----------------|
|              |   | De jure | De facto | Sub-category Average | Category Average | Sector Average |
| Capacity     | Resources   | 50%     | 50%      | 50%                  | 62,5%            | 47%            |
|              | Independence                                      | 100%    | 50%      | 75%                  |                  |                |
| Management   | Transparency                                      | 66,75%  | 50%      | 58,25%               | 53,75%           |                |
|              | Integrity mechanisms                              | 66,75%  | 33,25%   | 50%                  |                  |                |
| Contribution | Engagement in the national anti-corruption policy | 25%     |          | 25%                  | 25%              |                |
|              | Support to civil anti-corruption activities       | 25%     |          | 25%                  |                  |                |

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Law on Protection of Competition

Law on Health Protection

Law on Investment Funds

Law on Public Procurement

Law on Public

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**2. REPORT ON THE QUALITATIVE ANALYSIS OF THE IMPLEMENTATION OF THE ANTI-CORRUPTION MEASURES IN THE STATE PROGRAM FOR PREVENTION AND REPRESSION OF CORRUPTION AND PREVENTION AND REDUCTION OF CONFLICT OF INTERESTS 2011-2015 IN THE POLITICS**

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September, 2013

## EXECUTIVE SUMMARY

The purpose of the qualitative analysis implemented as part of this project, was to provide an assessment of the problems/risk factors identified in the political sector as one of the areas addressed in the State Program for Prevention and Repression of Corruption with the corresponding Action Plan for 2011-2015. All sectors, including the political sector, have been addressed and analysed both from the legislative and the institutional point of view.

Having in mind that the State Program for Prevention and Repression of Corruption with the corresponding Action Plan for 2011-2015 is a mid-term document subject to amendments, the monitoring and reviewing of the defined measures and activities is indispensable. Hence, there are two key benefits that should result from this analysis. Firstly, the extent of the current implementation needs to be determined through the prism of the categories of capacity and management followed by a more thorough analysis of the subcategories of human resources, independence, transparency and integrity mechanisms. Secondly, and more importantly, the insufficiently or inadequately defined indicators of activity and effectiveness need to be detected. Finally, the recommendations proposed need to serve as guidelines for the State Commission for Prevention of Corruption as it is the key institution in charge of proposing policies for improvement of the situation and resolving problems deriving from corruption and conflict of interest.

The State Program for Prevention and Repression of Corruption and the corresponding Action Plan for 2011-2015, adopted in December 2011 and based on the national integrity system, identifies the political sector as the first out of 11 sectors addressed.

There are 5 problems/risk factors identified in this sector and in order to overcome these problems, the Action Plan foresees a total of 9 activities, 13 indicators of activity and 8 indicators of efficiency.

The State Commission for Prevention of Corruption, the Ministry of Justice, the Ministry of Finance and the Assembly have been identified as institutions competent for the implementation of the aforementioned activities.

The political sector qualitative analysis has been conducted using the following methodological approach: the desk review of relevant legislation (laws and bylaws) and reports and other documents on the situation in specific spheres drafted by some renowned national and international organizations was combined with interviews that were conducted with representatives of the state authorities, political parties and the non-governmental sector.

Therefore, the findings and recommendations contained in this analysis result from the summarized insight and the objective and free assessment of the state of affairs regarding the anticorruption measures in the political sector.

For the purpose of this analysis, concerning **Problem 1 - Lack of transparency and supervision of the regular material and financial operation of the political parties, trade unions and civil society organizations**, 11 questions were asked. From the legislative point of view, the analysis revealed that the amendments to the Law on Financing of Political Parties from 2012 and 2013 have led to some improvement regarding the transparency and supervision of the political parties' financial operation during the electoral process, especially during the election campaign. Furthermore, it sets the foundation for strengthened cooperation between the State Election Commission, the State Audit Office and the State Commission for Prevention of Corruption for the purpose of exchanging information on the irregularities established, regarding the financial reports submitted and the measures taken on their behalf against the entity undergoing the supervision. From the practice point of view, a need was established for providing the conditions

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for the SAO to perform an effective, efficient and timely implementation of the competences related to the supervision of the financial operation of political parties, determining an institution that would perform the regular oversight of the political parties' financial operation and further development of the capacities of the SCPC to initiate supervision and control of the financial operation of the political parties, trade unions and civil society organizations, as well as providing it with proper tools for its practical proceedings.

**Problem 2. The election legislation and the remaining legislation contain weaknesses that create a risk of direct violation**, and this problem has been analysed through 12 questions. The amendments to the relevant legislation, more specifically the amendments to the Electoral Code and the Law on Financing of Political Parties, represent a step forward in overcoming the existing weaknesses, particularly in terms of introducing effective mechanisms for transparent monitoring of the financing of elections. A Rulebook on the Template, Form, Content and Manner of Keeping the Annual Financial Report for Political Parties was adopted and it also contains Guidelines for Completing the Template. Practice has shown that it is still possible to violate the legislation and therefore it would be more worthwhile to continue with the improvement of the legislation pertaining to the election campaign and its duration, the entities that are (directly or indirectly) related or controlled by a political party, the provision of reliability of donation-related data, review of the threshold of donations and determining the period for their collection, as well as to the rules on media presentation during the election campaign.

**Problem 3: High degree of discretionary rights with great differences in their intensity among separate public offices.**

**Problem 4: Lack of effects from the implementation of the Law on Lobbying**

**Problem 5:** High percentage of laws adopted in a summary or urgent procedure (even though the Rules of Procedure of the Assembly prescribe multiple stages of law drafting), which does not allow for inclusion of all socially relevant and concerned entities in the legislative process

## FINDINGS OF THE QUALITATIVE ANALYSIS

### Problem / Risk factor 1:

Lack of transparency and supervision of the regular material and financial operation of the political parties, trade unions and civil society organizations

### Explanation:

No regular supervision of the material and financial operation of the political parties, trade unions and the civil organizations is performed, despite of the public criticism that these entities provide funding by engaging in suspicious deals, that there are “politicized companies” that are privileged and used for getting access to public funds. Pursuant to the Law on Prevention of Corruption, the SCPC is authorized to raise control initiatives, but as this is not supported in any other laws, it cannot perform this competence by means of direct insight in the material and financial operation of these entities.

### Institution: State Commission for Prevention of Corruption

#### Category: Management - Integrity Mechanisms

**Indicator Question:** Do you think that the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties, trade unions and civil society organizations?

#### Score:

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

#### Explanation:

The Law on Financing of Political Parties as *lex specialis* does not contain provisions on the supervision and transparency in the material and financial operation of the trade unions and civic associations. This law prescribes supervision at an annual level only. However, according to the State Program for Prevention of Corruption and Conflict of Interests, regular and continuous supervision of the political parties is needed, as well as of business deals with and donations from legal entities that are directly or indirectly related to a political party, in order to achieve higher level of transparency and control. Knowing the operational standards of the SAO, there can be no expectations that this institution could perform this task.

### Institution: State Commission for Prevention of Corruption

#### Category: Capacity - Resources

**Indicator Question:** Do you think that the criticism regarding the lack of transparency and supervision could be avoided and the assessment of the financial operation could be improved if, in addition to the supervision of the material and financial operation of the political parties, the SCPC had an insight in the political parties’ financial reports?



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**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Article 49, paragraph (1) item 4 of the Law on Prevention of Corruption authorizes the SCPC to submit initiatives to the authorities charged with the control of the material and financial operation of political parties, trade unions and civil society associations and foundations. In order to perform this competence, the State Commission needs appropriate legal solutions and tools.

According to the Law on Financing of Political Parties, they are not required to submit their annual reports to the SCPC, but the fact that the political parties, the SAO and the PRO have a legal obligation to publish the political parties' annual reports on their websites, makes it possible for the SCPC to obtain this tool that is crucial to the fulfilment of this competence.

## **Institution: State Commission for Prevention of Corruption**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Is there regular supervision of the political parties' daily material and financial operation?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

This kind of supervision is performed at an annual level, even though it should be performed regularly, as done in many other countries.

## **Institution: State Commission for Prevention of Corruption**

**Category: Management - Transparency**

**Indicator Question:** Is there a register of donations?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

It is a positive thing that registers of donations are kept and public insight in these registers is possible. However, additional legal solutions are required concerning the possibility to verify

the sources of donations so that no third parties would be treated as donors, but also in order to detect transactions with legal entities that are indirectly related to political parties, due to the need to control suspicious and unauthorized financing of political parties. This verification option should also be made possible for natural persons who act as donors for the purpose of verifying the authenticity of the donation source. This has been prescribed in the State Program for Prevention of Corruption and Conflict of Interests.

### **Institution: State Commission for Prevention of Corruption**

#### **Category: Capacity - Independence**

**Indicator Question:** Should the SCPC have access to the political parties’ bank account statements, which has been proposed as an amendment to the Banking Law in the State Program for Prevention of Corruption?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

#### **Explanation:**

The banking Law does not indicate the SCPC as an institution that is authorized to request insight in the political parties’ bank account statements, despite of this tool being of crucial importance to the SCPC in order to be able to perform its supervision role resulting from the Law on Prevention of Corruption and to build its activities on documents and verifiable facts and circumstances.

The Banking Law is in contradiction with the Law on Prevention of Corruption which clearly stipulates in Article 13 from Chapter II – Corruption in Politics, that the verification of withdrawals and deposits at the request of the SCPC does not represent breach of the banking secrecy.

### **Institution: State Commission for Prevention of Corruption**

#### **Category: Management - Transparency**

**Indicator Question:** Do you think that the current legal provision on submitting annual financial reports to the SAO and the obligation for their publication, make it impossible to obtain funds from suspicious transactions or from “particized” companies?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

#### **Explanation:**

The lack of regular supervision leaves room for doubt.

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## Institution: Ministry of Justice

### Category: Management - Integrity Mechanisms

**Indicator Question:** Do you think that the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

#### Explanation:

The Law on Financing of Political Parties contains provisions that prescribe an obligation for the political parties to publish their annual financial reports on their websites. Political parties are required to make the register of donations available to the public, by either publishing it on their website or in another way. Failure to comply with these provisions implies application of misdemeanour provisions for the political parties. Pursuant to the Law, the State Audit Office and the Public Revenue Office are required to publish the received reports on their website.

With the amendments to the Law on Financing of Political Parties from October 2011, the leading role in the control of the political parties' reports has been given to the State Audit Office, which has to perform the supervision of the regular financial operations of the political parties pursuant to the Law. The GRECO Compliance Report on "the Former Yugoslav Republic of Macedonia" adopted on 23 March 2013 considers this to be a positive development.

## Institution: Ministry of Justice

### Category: Capacity - Resources

**Indicator Question:** Do you think that the criticism regarding the lack of transparency and supervision could be avoided and the assessment of the financial operation could be improved if, in addition to the supervision of the material and financial operation of the political parties by the SAO, the SCPC were granted insight in the political parties' financial reports?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

#### Explanation:

The only institution that possesses the required professional capacities to supervise the financial operation of the political parties in compliance with international standards is the State Audit Office.

## **Institution: Ministry of Justice**

### **Category: Management - Transparency**

**Indicator Question:** Do you think that the current legal provision on the submission of annual financial reports to the SAO is a sufficiently efficient transparency mechanism?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

#### **Explanation:**

The existing legal provisions on the submission of annual financial reports to the SAO provide a possibility for a public insight in the reports.

Part of the transparency mechanism is also embedded in the prescribed appropriate templates of the reports.

The Ministry of Finance adopted a Rulebook on the Template, Form, Content and Manner of Keeping the Annual Financial Report for Political Parties on 31.01.2013.

With the amendments to the Law from October 2011, the leading role in the control of the political parties' financial operation has been given to the State Audit Office, as the sole independent institution, which is also in line with the recommendation from the Third Round Evaluation Report on "the Former Yugoslav Republic of Macedonia" adopted by GRECO at its 46<sup>th</sup> plenary meeting (22-26 March 2012) and published on 30 August 2010, which refers to "providing a leading independent body, assisted, if appropriate, by other authorities, with a mandate and adequate powers and resources to carry out a proactive and effective supervision, investigation and enforcement of political financing regulations".

## **Institution: State Audit Office**

### **Category: Capacity - Independence**

**Indicator Question:** With regard to the competences of the SAO, do you think that the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the material and financial operation of the political parties, trade unions and civil society organizations?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

#### **Explanation:**

The financial reports of all political parties registered at the Central Registry are currently being audited and appropriate measures will be taken after the audit pursuant to the last amendments to the Law on Financing of Political Parties.

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The auditing done so far has revealed a systemic weakness regarding the prescribing of the donations register.

### **Institution: State Audit Office**

#### **Category: Capacity - Resources**

**Indicator Question:** Do you think that the criticism regarding the lack of transparency and supervision could be avoided and the assessment of the financial operation could be improved if, in addition to the supervision of the material and financial operation of the political parties by the SAO, the SCPC were granted insight in the political parties' financial reports?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

#### **Explanation:**

There are 51 political parties registered at the Central Registry and only 12 of them have submitted an annual financial report to the SAO. The reason behind the small number of political parties that have submitted financial reports will probably become known during the audits. As for the political parties that failed to submit an annual financial report, the SAO will proceed pursuant to the Law on Financing of Political Parties.

The SAO continuously underscores that being the superior audit institution, it works in compliance with a methodology that is in line with the international standards on auditing and therefore the auditing that they perform differs from the supervision which is generally performed by the inspection bodies.

### **Institution: State Audit Office**

#### **Category: Management - Integrity Mechanisms**

**Indicator Question:** Does the SAO supervise the regular material and financial operation of the political parties after the completion of each electoral cycle?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

#### **Explanation:**

The SAO audits all political parties that participate in the electoral process. The auditing process generally involves larger parties represented in the Parliament.

In Croatia, for example, the authority for implementing this activity has been granted to the State Election Commission, not the SAO.

**Institution: State Audit Office**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Are there any institutions that the authorized auditor should report to in case it is established that a misdemeanour or criminal offence has been committed by a political party?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

If during an audit, the authorized state auditor established that a political party has committed a misdemeanour or a criminal offence, then he/she should notify the State Public Prosecution Office, the Ministry of Interior and the State Commission for Prevention of Corruption.

**Institution: State Audit Office**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the present legal solution for submitting annual financial reports to the SAO is an efficient transparency mechanism?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

It is necessary to take measures to harmonize the aforementioned template which will offer a clear distinction and layout of the necessary data and information in terms of the modified accounting principles and the accruals principle.

**Institution: Public Revenue Office**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties?

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**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties.

## **Institution: Public Revenue Office**

**Category: Capacity - Resources**

**Indicator Question:** Do you think that the criticism regarding the lack of transparency and supervision could be avoided and the assessment of the financial operation could be improved if, in addition to the supervision of the material and financial operation of the political parties by the SAO, the SCPC were granted insight in the political parties' financial reports?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

The SCPC is an administrative body, not an operative body, and therefore the existing provisions should remain in force and the SCPS should perform its competences resulting from its governing laws - the Law on Prevention of Corruption and the Law on Prevention of Conflict of Interests.

## **Institution: Public Revenue Office**

**Category: Capacity - Independence**

**Indicator Question:** Should the State Commission for Prevention of Corruption have access to bank statements from the bank accounts of political parties, which has been foreseen in the State Programme for Prevention of Corruption as an amendment to the Law on Banks?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

Articles 15 and 16 of the Law on the Public Revenue Office prescribe that any entity maintaining registers and other databases is obliged to share data with the Public Revenue Office, upon their request, and that such data about the payment operations of their participants shall not be considered a business secret.

There is no need for amending the Law on Banks, since the current law does not list all operative bodies which need bank accounts data in the execution of their competences either. Such is the example of the MoI, which is not explicitly listed in this article of the Law, but which, at the order of an investigative judge, accesses data from bank accounts belonging to natural or legal entities when conducting a procedure against them.

Article 112, paragraph (3), item 3 stipulates that the responsibility for keeping banking secrets does not apply when there is a written request by the Public Revenue Office for conducting procedures within its competences. Should the State Commission for Prevention of Corruption, working on a specific corruption case, address the Public Revenue Office, there is no impediment for it to receive data related to any bank account of a political party.

## **Institution: Public Revenue Office**

### **Category: Management - Transparency**

**Indicator Question:** Do you think that the current legislative mechanism for submitting reports on received donations and annual accounts for the financial operations to the Public Revenue Office and the responsibility for its publishing, prevents the securing of financial means from suspicious deals/sources or from so-called “particized” companies?

#### **Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

#### **Explanation:**

Pursuant to the Law on Donations and Sponsorships in the Public Activities, a donation is a voluntary and unconditional assistance in finances, goods and services, which neither creates a direct benefit for the provider, nor responsibility for paying back by the receiver of the donation, which can be given for purposes within the realm of the public interest or in support of the activities of the receiver.

On the other hand, pursuant to the Profit Tax Law, any donation related expenses are subject to taxation, so the donations given for financing of political parties, as well as for financing of election campaigns by legal entities, are not exempt from the value added tax and profit tax, whereas the donations given for financing of political parties, as well as financing election campaigns by natural persons are not subject to personal income tax, but the amount of such a donation is limited with the Law on Financing of Political Parties and the Electoral Code.

Apart from publishing the reports on the received donations on the webpage of the Public Revenue Office, in accordance with the Tax Procedure Law, the Public Revenue Office is authorized to determine if the donors – legal entities have settled their tax liabilities, and regarding other donors – natural persons, the Public Revenue Office verifies if the donated funds originate from their taxable income.

For each of the services rendered, including the services provided to a political party, the legal entity is bound to issue an invoice, to register the payment upon an issued invoice and to calculate the value added tax. Since the service is free of charge, the outstanding receivable from the political party represents an unacknowledged expenditure and it is subject to income tax, which



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is reflected in the annual statement. The annual financial statements of a political party comprise of: an Income statement; Structure of revenues by activity; Note on profit distribution; Specific data for the state records of non-profit organizations and a Balance sheet.

## **Institution: Political Parties**

### **Category: Management - Integrity Mechanisms**

**Indicator Question:** Do you think that the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The Law on Financing of Political Parties contains solid provisions that provide for transparency and supervision of the regular material and financial operation of the political parties, especially after the last amendments from 2013.

The positive assessment in the OSCE and ODIHR reports are yet another confirmation of this viewpoint.

## **Institution: Political Parties**

### **Category: Capacity - Resources**

**Indicator Question:** Do you think that the criticism regarding the lack of transparency and supervision could be avoided and the assessment of the financial operation could be improved if, in addition to the supervision of the material and financial operation of the political parties by the SAO, the SCPC were granted insight in the political parties' financial reports?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

The State Audit Office as a state authority has the necessary independence in the supervision of the regular material and financial operation of the political parties, and as a result, this institution has a high reputation.

At the same time, because of the Institutional layout and capacity, the legal solution that supervision is to be performed by a single centralized body is a good solution.

On the other hand, the main task of the State Commission for Prevention of Corruption should be to perform the competences stipulated in the Law on Prevention of Corruption.

## **Institution: Political Parties**

### **Category: Management - Integrity Mechanisms**

**Indicator Question:** Is there regular supervision of the material and financial operation of political parties in practice?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

There is regular supervision of the material and financial operation of political parties in practice.

## **Institution: Political Parties**

### **Category: Management - Transparency**

**Indicator Question:** Do political parties keep a register of donations?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Political parties have a legal obligation to keep a register of donations and this obligation is respected.

## **Institution: Political Parties**

### **Category: Capacity - Independence**

**Indicator Question:** Should the State Commission for Prevention of Corruption have access to bank statements from the bank accounts of political parties, which has been foreseen in the State Programme for Prevention of Corruption as an amendment to the Law on Banks?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

Even now there is no obstacle for the SCPC to ask for access to bank accounts of political parties and to be granted one.

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If, on the contrary, the SCPC is prevented from fulfilling this right, it is entitled to address the Assembly, where the issue would be discussed so as to overcome the problem.

## **Institution: Political Parties**

### **Category: Management - Transparency**

**Indicator Question:** Do you think that the current legislative mechanism for submitting reports on received donations and annual accounts for the financial operations to the Public Revenue Office and the responsibility for its publishing, prevents the securing of financial means from suspicious deals/sources or from so-called “particized” companies?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The Law on the Public Revenue Office and the Law on the Real Estate Cadastre limit or hinder the possibility for political parties to be funded by suspicious deals or the so-called “particized” companies to a great extent.

## **Institution: Political Parties**

### **Category: Management - Integrity Mechanisms**

**Indicator Question:** Do you think that the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

From the normative point of view, the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties. Another equally important issue is the implementation of the Law.

Generally speaking, the non-transparency of the political parties is a social phenomenon that results from the concentration of power inside the very parties concerning the sources of financing, as well as the allocation and use of funds.

## Institution: Political Parties

### Category: Capacity - Resources

**Indicator Question:** Do you think that the criticism regarding the lack of transparency and supervision could be avoided and the assessment of the financial operation could be improved if, in addition to the supervision of the material and financial operation of the political parties by the SAO, the SCPC were granted insight in the political parties' financial reports?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

The State Audit Office should be the main institution performing the supervision of the material and financial operation of the political parties and therefore its position and its capacities require further strengthening.

## Institution: Political Parties

### Category: Management - Integrity Mechanisms

**Indicator Question:** Is there regular supervision of the material and financial operation of political parties in practice?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

In practice, there is permanent supervision of the regular material and financial operation of the four leading political parties.

## Institution: Political Parties

### Category: Management - Transparency

**Indicator Question:** Do political parties keep a register of donations?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

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**Explanation:**

The political parties respect their legal obligation to keep a register of donations.

**Institution: Political Parties****Category: Capacity - Independence**

**Indicator Question:** Should the State Commission for Prevention of Corruption have access to bank statements from the bank accounts of political parties, which has been foreseen in the State Programme for Prevention of Corruption as an amendment to the Law on Banks?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Having in mind that the State Commission for Prevention of Corruption has a leading role in the fight for prevention and repression of corruption as a negative social phenomenon, it should be provided with access to bank statements from the bank accounts of political parties.

**Institution: Political Parties****Category: Management - Transparency**

**Indicator Question:** Do you think that the current legislative mechanism for submitting reports on received donations and annual accounts for the financial operations to the Public Revenue Office and the responsibility for its publishing prevents the securing of financial means from suspicious deals/sources or from so-called “particized” companies?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The obligation for publication of the annual financial report does not fully prevent the securing of finances from suspicious deals/sources or from the so-called “particized” companies.

There is another prevalent phenomenon of financing political parties by the very politicians and public officials.

## Institution: Political Parties

### Category: Management - Integrity Mechanisms

**Indicator Question:** Do you think that the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

The amendments to the Law on Financing of Political Parties but also the amendments to the banking laws have significantly raised the level of transparency of political parties' sources of financing and there is less room for "black money".

The first factor that influences the transparency or non-transparency in the operation of a political party is whether the political party possesses any property.

Political parties are mainly financed by membership fees or donations during election campaigns, which are registered in the political parties' financial reports that are available to the public.

## Institution: Political Parties

### Category: Capacity - Resources

**Indicator Question:** Do you think that the criticism regarding the lack of transparency and supervision could be avoided and the assessment of the financial operation could be improved if, in addition to the supervision of the material and financial operation of the political parties by the SAO, the SCPC were granted insight in the political parties' financial reports?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

The State Commission for Prevention of Corruption does not have the required administrative capacity in order to extend its competences to this sphere.

On the other hand, having in mind that the financial operation reports are public documents which are available on the websites of the political parties and the SAO, even now there is nothing to prevent the SCPC from having insight in the political parties' financial operation reports.

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## Institution: Political Parties

### Category: Management - Integrity Mechanisms

**Indicator Question:** Is there regular supervision of the material and financial operation of political parties in practice?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The State Audit Office performs regular supervision of the material and financial operation of political parties.

## Institution: Political Parties

### Category: Management - Transparency

**Indicator Question:** Do political parties keep a register of donations?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Political parties keep a register of donations and within the party bodies (e.g. the Supervisory Board) there are people specialized in the financial operation of the political party.

## Institution: Political Parties

### Category: Capacity - Independence

**Indicator Question:** Should the State Commission for Prevention of Corruption have access to bank statements from the bank accounts of political parties, which has been foreseen in the State Programme for Prevention of Corruption as an amendment to the Law on Banks?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The State Commission for Prevention of Corruption should have access to bank statements from the bank accounts of political parties, but only over a very restricted regime. This kind of access should be granted only in specific serious cases of corruption.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the current legislative mechanism for submitting reports on received donations and annual accounts for the financial operations to the Public Revenue Office and the responsibility for its publishing, prevents the securing of financial means from suspicious deals/sources or from so-called “particized” companies?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The legal mechanism of publishing financial reports and the access provided to the general public represents a positive step forward.

The securing of financial means from suspicious deals/sources or from the so-called “particized” companies depends on the approach of or the ethical conduct within the political party.

**Institution: Political Parties**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Do you think that the Law on Financing of Political Parties contains provisions that provide for transparency and supervision of the regular material and financial operation of the political parties?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

In our country, the key question is not related to the existence of laws but to their implementation. The reform of the electoral legislation which started in 2005/2006 has led to some progress and legal regulation of certain deficiencies in this sphere. There is still room to improve the political culture, reduce the concentration of power and promote the control function of the Assembly over the work of the Government.

In conclusion, some progress has been made but it is of formal character.



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## Institution: Political Parties

### Category: Capacity - Resources

**Indicator Question:** Do you think that the criticism regarding the lack of transparency and supervision could be avoided and the assessment of the financial operation could be improved if, in addition to the supervision of the material and financial operation of the political parties by the SAO, the SCPC were granted insight in the political parties' financial reports?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

Any additional control and supervision is welcome, thus also the insight in the political parties' financial operation reports, if done objectively, professionally and transparently.

## Institution: Political Parties

### Category: Management - Integrity Mechanisms

**Indicator Question:** Is there regular supervision of the material and financial operation of political parties in practice?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The Public Revenue Office and the State Audit Office perform supervision of the material and financial operation of the political parties immediately upon completion of the elections.

## Institution: Political Parties

### Category: Management - Transparency

**Indicator Question:** Do political parties keep a register of donations?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Political parties have a legal obligation to keep a register of donations. However, due to the high extent of formalism, these registers do not reflect the real situation regarding the type, manner of awarding and real amount of the donations.

The funds collected from membership fees are the main source of donations.

There is room for improvement of the model of financing of political parties, especially with respect to the transparent use of funds provided from the state budget.

**Institution: Political Parties**

**Category: Capacity - Independence**

**Indicator Question:** Should the State Commission for Prevention of Corruption have access to bank statements from the bank accounts of political parties, which has been foreseen in the State Programme for Prevention of Corruption as an amendment to the Law on Banks?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

The State Commission for Prevention of Corruption should be concerned with the impartial and efficient implementation of its present competences.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the current legislative mechanism for submitting the annual financial report to the SAO and the responsibility for its publishing prevents the securing of financial means from suspicious deals/sources or from so-called “particized” companies?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

One of the more efficient ways to prevent the provision of financial means from suspicious deals/sources or from so-called “particized” companies is to improve or change the model of financing of political parties, especially in terms of the use of funds provided from the state budget for election purposes.

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## Institution: Non-Governmental Sector

### Category: Management - Integrity Mechanisms

**Indicator Question:** Do you think that the Electoral Code and the Law on Financing of Political Parties contain provisions that provide for transparency and supervision of the regular material and financial operation of political parties, trade unions and civil society organizations?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

There has been certain improvement with the amendments from 2012, but still, further improvement of the legislation is required, for example, in terms of specifying the day of closing the election campaign bank account or the difference in the threshold of donations allowed from natural persons and legal entities.

## Institution: Non-Governmental Sector

### Category: Capacity - Resources

**Indicator Question:** Do you think that the SCPC should be authorised to perform supervision of the regular material and financial operation of political parties and have an insight in the political parties' financial reports?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The State Commission for Prevention of Corruption should perform this competence in relation to the political parties, trade unions and civil society organizations classified as organizations of public interest, but its capacities need to be further strengthened.

## Institution: Non-Governmental Sector

### Category: Management - Integrity Mechanisms

**Indicator Question:** Do you think that the regular material and financial operation of the political parties is audited during all stages of the electoral process?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

The regular material and financial operation of the political parties is not audited during all stages of the electoral process, because the different stages need to be more specifically defined too. For example, it is not known how political parties provide funds for the advertising activities that they engage in from the calling of the elections until the confirmation of the candidates' lists.

Another issue that has not been addressed is related to the closing of the election campaign bank accounts.

**Institution: Non-Governmental Sector**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the register of donations contains data that are detailed enough to reveal the relations of the campaign organizers with the donors?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

Some of the donors and donations can be seen in the register of donations. However, political parties often end up the elections with a negative balance on their election campaign bank account and the public has no information regarding the funds used to cover such deficits.

**Institution: Non-Governmental Sector**

**Category: Capacity - Independence**

**Indicator Question:** Should the State Commission for Prevention of Corruption have access to bank statements from the bank accounts of political parties, which has been foreseen in the State Programme for Prevention of Corruption as an amendment to the Law on Banks?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

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**Explanation:**

The State Commission for Prevention of Corruption should have access to bank statements from the bank accounts of political parties.

**Institution: Non-Governmental Sector****Category: Management - Transparency**

**Indicator Question:** Do you think that the introduction of the obligation for political parties to submit their annual financial reports to the SAO and the responsibility for their publishing prevents the securing of financial means from suspicious deals/sources or from so-called “particized” companies?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

The submission of the annual financial reports to the SAO and the responsibility for their publishing does not prevent the securing of financial means from suspicious deals/sources or from so-called “particized” companies.

**Explanation - de jure:**

The Law on Financing of Political Parties (Official Gazette No.76/04, 86/08, 161/08, 96/09, 148/11, 142/12 and 23/13) contains provisions that ensure transparency and supervision of the material and financial operation of the political parties.

Pursuant to Article 17 of the Law, a political party is obliged to keep a register of donations which contains data on the name, i.e. appellation of each donor individually, the type and value of the donation and the date of receiving the donation. Every political party is obliged to publish the register of donations publicly on its web site every six months for the last six-month period, within 15 days from the expiration of the six-month period, or to make it available to the public in another appropriate manner.

Article 25 stipulates that political parties are required to prepare a report on the received donations containing the data from the register of donations. Political parties have to submit the report for the previous year to the State Audit Office, not later than 31 March, altogether with the annual financial statements. Political parties have to submit the report for the previous year to the Public Revenue Office, not later than 31 March. The State Audit Office and the Public Revenue Office are obliged to publish the obtained reports on their websites.

Furthermore, Article 27 prescribes that political parties have to prepare their annual financial statements for the previous year in accordance with the law, not later than 31 March. The statements should contain the financial operation of the bank account of the political party, as well as the sub-accounts of the local branches and the sub-account for the party analytical and research centre, as well as data on the total income, including data on the total amount of donations, gifts, contributions, donations, money, material assets, equipment, services, personal incomes,

membership fee, legates and other and the total expenditures. The annual financial statement has to be submitted to the State Audit Office for the purpose of auditing. If the State Audit Office establishes irregularities in the annual financial statements of the political party, which are contrary to the provisions of the law, it shall file a motion for initiation of a misdemeanour procedure or shall file a report to the competent public prosecutor within 30 days from the day of the establishment of the irregularities.

Pursuant to Article 27-a, the political party is obliged to publish on its website the annual financial statements for the previous year, not later than 30 April of the current year.

The law also contains misdemeanour provisions pursuant to which failure to publish the register of donations publicly on the political parties' website every six months for the last six-month period, within 15 days from the expiration of the six-month period, or to make it available to the public in another appropriate manner shall result in a fine in the amount of EUR 1,000 to 2,000 in MKD equivalent. A fine in the amount of EUR 5,000 to 10,000 in MKD equivalent shall be imposed for acting contrary to the obligation to prepare, submit and publish the report on the received donations; submit and publish the annual financial statement of financial operations; and prepare, submit and publish the annual financial report.

Pursuant to Article 26 of the Law, the supervision of the material and financial operation of the political parties is to be performed by the State Audit Office every calendar year, for the previous year, and in compliance with the law. With the amendments to the Law from October 2011, the leading role in the control of the political parties' financial operation has been given to the State Audit Office, as the sole independent institution, which is also in line with Recommendation V from the Third Round Evaluation Report on "the Former Yugoslav Republic of Macedonia" adopted by GRECO at its 46<sup>th</sup> plenary meeting (22-26 March 2012) and published on 30 August 2010, which refers to "providing a leading independent body, assisted, if appropriate, by other authorities, with a mandate and adequate powers and resources to carry out a proactive and effective supervision, investigation and enforcement of political financing regulations".

Political parties can have only one bank account, and their local branches and the party's analytical and research centre can have sub-accounts, but in such cases they are required to submit consolidated financial statements. In accordance with the legal provisions, the political parties have to submit their annual financial report to the Public Revenue Office, the Central Registry and the State Audit Office, and they are also obliged to publish them on their websites.

Pursuant to Article 85 of the Electoral Code, the State Audit Office has to perform the audit within 60 days of the submission of the report. The audit has to include all transactions conducted as of the day of the opening of the election account until its closure.

The submission of the annual financial reports to the SAO, their publication and availability for public insight, the prescribing of appropriate templates for the reports and the defining of the competences of the institutions regarding the supervision, i.e. filing motions to the control authorities and initiating misdemeanour proceedings for noncompliance with the obligation to publish the reports, are all mechanisms for transparency and supervision of the regular material and financial operation of the political parties.

Pursuant to Article 13 paragraphs (2) and (3) of the Law on Prevention of Corruption, if there is a suspicion that a political party or a candidate has used means from illegal sources during elections, the State Commission shall request the competent bodies to check the inflows and use of funds. Any checks of inflows of funds from abroad or other payments through banks, upon request of the State Commission shall not be considered as violation of bank secrecy.

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Pursuant to Article 49 of the Law on Prevention of Corruption, the State Commission is also competent, among else, to raise initiatives before competent bodies for conducting control over the material and financial operations of political parties.

Pursuant to Article 112 paragraph (2) of the Law on Banks, banking secrets (i.e. the obligation for keeping and not disclosing data and information acquired through banking and other financial activities for individual persons and transactions with individual persons and on deposits of individual persons) shall not apply and be considered as such if:

- if the data and information disclosure is prescribed by the law, and
- if the person has given a written consent to data disclosure.

As stipulated in paragraph (3) of the same article, for the persons with special rights and responsibilities, shareholders and bank employees, the requirement to keep and protect banking secrets shall not apply also in the following instances:

- upon written request of a competent court for conducting procedures within its competencies,
- for the needs of the National Bank or another supervisory body authorized by law,
- upon written request of the Public Revenue Office for conducting procedures within its competencies,
- if the data are disclosed to the Financial Police Office, in accordance with the law,
- upon written request of the State Foreign Exchange Inspectorate for foreign exchange operations control,
- upon written request of the Deposits Insurance Fund, in accordance with the law,
- if the data are disclosed for the needs of operating the National Bank Credit Registry
- upon written requests by enforcement agents in accordance with the law.

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation de facto:**

The amendments to the Electoral Code and the Law on Financing of Political Parties from 2012 and 2013 have led to some progress in terms of the transparency and supervision of the financial operation of political parties in the electoral process, especially during the election campaign.

Thus, additional obligations have been prescribed for the participants in the electoral process (political parties, coalitions and independent candidates) during the election campaign, such as the opening of an election campaign bank account.

Furthermore, precise deadlines have also been prescribed for the supervision performed by the SAO, which has been recognized both by the state authorities and by the relevant international community as the only central body, competent to supervise financial operations in general, but also the financial operation of political parties, during and after the electoral processes.

The basis for cooperation between the State Election commission, the State Audit Office and the State Commission for Prevention of Corruption has also been established through the legal obligation to sign a Memorandum of Understanding, regarding the implementation of the provisions on election campaign funding and the exchange of information on the irregularities established in the submitted financial reports and the measures taken against the entity undergoing supervision.

Political parties mainly observe their obligation for transparent keeping of registers of donations and their publication on their websites. However, it seems that the template of the Register does not contain sufficiently detailed data on the expenditures during the election campaign, but also during the period prior to and following the election process.

The provisions of the Protocol for cooperation in the prevention and repression of corruption and conflict of interests dated 25.12.2007 prescribe the manner of cooperation, coordination and implementation of joint activities for increased efficiency in the prevention and repression of corruption and prevention of conflicts of interests in the country, signed by the SCPC, the Public Revenue Office, the Public Prosecution Office, the State Attorneys Office, the Judicial Council, the Ministry of Interior, the State Audit Office, the Customs Administration, the Financial Police Office, Financial Intelligence Administration and the State Authority for Geodetic Works. By signing the protocol, in addition to fulfilling their competences prescribed by the legislation, the signatories agreed to cooperate by exchanging data and information, offering mutual assistance in detecting cases and taking the necessary measures and activities and coordinating the activities both at the national and international level, for the purpose of more effective prevention and repression of corruption and conflicts of interest.

This means that even now, based on the Law on Prevention of Corruption and the aforementioned Protocol, there is no obstacle for the SCPC to obtain access to bank account statements of the political parties, trade unions and civil society organizations, founded for the purpose of fulfilling public interests.

Despite the fact that the SCPC is an administrative, and not an operative body, having in mind its leading role in the prevention of corruption, including corruption in politics and performing activities in the public interest and other activities performed by the legal entities (Chapter II and Chapter VI from the Law on Prevention of Corruption), there is an impression that its capacities need to be strengthened by increasing the human capacities of the SCPC Professional Service with specialized professionals in the financial operations field.

**Score:**

|                             |          |
|-----------------------------|----------|
| To a very small extent      | 1        |
| To a small extent           | 2        |
| <b>To a moderate extent</b> | <b>3</b> |
| To a large extent           | 4        |
| To a very large extent      | 5        |

**Recommendations:**

- Creating the required legal and institutional conditions to enable the SAO to perform an effective, efficient and timely supervision of the political parties' financial operation;



- In addition to the SAO, which performs the competences related to the annual supervision of political parties' financial operation, another institution should be charged with performing the regular supervision, and
- Further development of the capacities of the SCPC to be able to perform its competences concerning the initiating of supervision and control of the financial operation of the political parties, trade unions and civic organizations, and improved legal solutions in other relevant laws to provide the necessary tools for the SCPC to act in practice.

**Problem / Risk factor 2:**

The election legislation and the remaining legislation contain weaknesses that create the risk of direct violation.

**Explanation:**

The reporting involved in the electoral process entails a high level of formalism without providing the necessary insight in the real financial means, their sources and purpose, which has an impact on the efficient and competent sanctioning of violations.

**Institution: State Commission for Prevention of Corruption**

**Category: Management - Transparency**

**Indicator Question:** Do the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The laws contain transparency mechanisms.

However, the SCPC believes that the final financial report should fully and realistically reflect the financing of the elections and therefore the election campaign bank account opened solely for the purpose of financing of the election campaign should be closed on the day of submission of the final financial report by the election campaign organizer.

**Institution: State Commission for Prevention of Corruption**

**Category: Management - Transparency**

**Indicator Question:** Do the reports submitted by the political parties reflect the situation with the finances, sources of financing and their use throughout the election process?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The reports are submitted on a template in which the items on the revenues and the expenditures do not correspond to the financial regime that results from the Electoral Code, which is much more precise in terms of the funds that can or cannot be used for financing of the elections.

Since the current template reflects the overall financing of the political parties, both in terms of the revenues and the expenditures as stipulated in the Law on Financing of the Political Parties and the scope of possible revenues and expenditures is much wider than the one prescribed in the Electoral Code, the SCPC requests that the financial reports template be strictly harmonized with the Electoral Code.

**Institution: State Commission for Prevention of Corruption**

**Category: Capacity - Resources**

**Indicator Question:** Is training by the MoF needed for the political parties regarding the consistent application of the Guidelines for Completing the Template that are an integral part of the Rulebook on the Changes of the Template of the Financial Reports on the Election Campaign Revenues and Expenditures?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The answer is a result of the differences in the professional capacity of the political parties in this field and therefore this type of training, like any other training, can be useful.

**Institution: State Commission for Prevention of Corruption**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Does the current legislation contain any provisions that ensure efficient sanctioning of violations committed by the political parties with regard to the financing of the elections?

---

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The provisions on the overall sanctioning are appropriate, but the same amount of prospective penalties are of different intensity and consequences for different political entities and election campaign organizers, depending on their financial standing.

## **Institution: Ministry of Justice**

**Category: Management - Transparency**

**Indicator Question:** Do the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Pursuant to the Electoral Code, election campaign organizers are required to submit financial reports on the revenues and expenditures on the election campaign bank accounts in the legally prescribed deadlines (a report for the first ten days of the election campaign, report on the second half of the election campaign and a final report, when the election campaign has ended). Broadcasters and printed media are also required to submit to the SEC, the SAO and the SCPC, in a legally prescribed deadline and using the prescribed template, a report on the advertising space used by each of the election campaign organizers and the accounts payable and accounts receivable on that basis.

The reports are to be submitted to the SEC, the SAO and the SCPC, who are then required to publish them on their websites.

The audit reports on the review of the financial reports submitted by the election campaign organizers have to be published by the SAO on its website and within the legally stipulated deadline.

## **Institution: Ministry of Justice**

**Category: Management - Transparency**

**Indicator Question:** Do the reports submitted by the political parties reflect the situation with the finances, sources of financing and their use throughout the election process?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The Electoral Code contains a provision on mandatory opening of a bank account labelled “for the election campaign”.

The financial reports on the income and expenditure transactions using the election campaign bank account have to be made public.

The template on the form and content of the financial statements and the advertising space has already been determined.

Hence, the reports submitted by the political parties reflect the situation with the finances, sources of financing and their use throughout the election process

**Institution: Ministry of Justice**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Does the current legislation contain any provisions that ensure efficient sanctioning of violations committed by the political parties with regard to the financing of the elections and, if not, what is lacking, in your opinion?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Chapter XIV of the Electoral Code contains penal and misdemeanour provisions and regardless of the misdemeanour liability, it prescribes partial loss of compensation of expenses for the election campaign, complete loss of compensation of expenses for the election campaign or suspension of compensation payment of expenses for the election campaign.

The Criminal Code contains provisions on imposing a prohibition to use funds for financing political parties, as well as an additional, secondary sanction on obligatory execution of the prohibition to use budget funds for financing political parties.

If the State Audit Office establishes irregularities in the annual financial statements of the election campaign organizer, which are contrary to the provisions of the Electoral Code, it has the legal authority to file a motion for initiation of a misdemeanour procedure or to file a report to the competent public prosecutor.

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## Institution: State Audit Office

### Category: Capacity - Independence

**Indicator Question:** With regard to the competences of the SAO, do the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

#### Explanation:

With regard to the Electoral Code, the audits have revealed a great number of systemic weaknesses that the authorities need to address by taking appropriate measures.

The systemic weaknesses make it difficult to establish the real situation in the political parties' financial reports, which affects the audit reports, too.

## Institution: State Audit Office

### Category: Management - Transparency

**Indicator Question:** Do the reports submitted by the political parties reflect the situation with the finances, sources of financing and their use throughout the election process?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

#### Explanation:

It is necessary to take measures to harmonize the aforementioned template, which will offer a clear distinction and layout of the necessary data and information in terms of the modified accounting principles and the accruals principle.

## Institution: State Audit Office

### Category: Capacity - Resources

**Indicator Question:** Since you as an organization have insight in the quality of the reports on the political parties' financial operation, do you think that political parties need training by the MoF regarding the consistent application of the Guidelines for Completing the Template from the Rulebook on the Changes of the Template of the Financial Reports on the Election Campaign Revenues and Expenditures?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Training is needed with regard to the appropriate and harmonized application of the legislation.

**Institution: State Audit Office**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Does the current legislation contain any provisions that ensure efficient sanctioning of violations committed by the political parties with regard to the financing of the elections and, if not, what is lacking, in your opinion?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

Partly it does, but it also has to be applied by the competent authorities.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Both the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding, especially with the amendments made in 2012 and 2013.

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## Institution: Political Parties

### Category: Management - Transparency

**Indicator Question:** Does the report i.e. the template of the report submitted by the political parties reflect the situation with the finances, sources of financing and their use throughout the election process?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The reports are publicly available on the political parties' websites and any citizen and anyone in general can have an insight in the financial means obtained and used by political parties during the election campaign.

## Institution: Political Parties

### Category: Capacity - Resources

**Indicator Question:** Is training by the MoF needed for the political parties regarding the consistent application of the Guidelines for Completing the Template that are an integral part of the Rulebook on the Changes of the Template of the Financial Reports on the Election Campaign Revenues and Expenditures?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Larger political parties might not need any training, but due to the novelties introduced to the Guidelines and the template, the training provided by the MoF would surely be of use.

## Institution: Political Parties

### Category: Management - Integrity Mechanisms

**Indicator Question:** Does the current legislation contain any provisions that ensure efficient sanctioning of violations committed by the political parties with regard to the financing of the elections?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The legislation is continuously amended and improved in order to provide as many sanctions as possible for the political parties that breach the rules of transparent financial operation.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the discounts offered by media during the election campaign should be forbidden or at least equal for all election campaign organizers?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

Being profit making organizations, media, especially privately owned ones, have the right to decide on the discount that they will offer to political parties in compliance with their own convictions and editorial policies.

This is not the case only in our country but also in other developed democracies where it is very obvious to spot when media have connections with or favour certain right-wing or left-wing party.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The quality of the Electoral Code and the Law on Financing of Political Parties has been improved with the latest amendments. However, there is still the impression that the solutions proposed are rather bureaucratic, instead of ethical solutions that would increase the transparency of the political parties' operation.



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## Institution: Political Parties

### Category: Management - Transparency

**Indicator Question:** Does the report i.e. the template of the report submitted by the political parties reflect the situation with the finances, sources of financing and their use throughout the election campaign?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The report is a public document, published on the political parties' websites and it contains data on the finances and the sources of financing.

## Institution: Political Parties

### Category: Capacity - Resources

**Indicator Question:** Is training by the MoF needed for the political parties regarding the consistent application of the Guidelines for Completing the Template that are an integral part of the Rulebook on the Changes of the Template of the Financial Reports on the Election Campaign Revenues and Expenditures?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Even though there are guidelines for completing the template of the financial reports on the election campaign revenues and expenditures, it would be useful if the MoF conducted training for representatives of all political parties, in order to achieve appropriate completion of the template and presentation of the true situation in the reports.

## Institution: Political Parties

### Category: Management - Integrity Mechanisms

**Indicator Question:** Does the current legislation contain any provisions that ensure efficient sanctioning of violations committed by the political parties with regard to the financing of the elections?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The Electoral Code, the Law on Financing of Political Parties and the Criminal Code, all contain sufficient penalties for the violations related to the political parties' financing of the elections. However, it is more important that these provisions have to be applied non-selectively and for any entity that might violate the rules for election financing.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the discounts offered by media during the election campaign should be forbidden or at least equal for all election campaign organizers?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

For the purpose of equal treatment and representation of political parties during the election campaign, it would be advisable to either equally distribute the discounts offered by media to the election campaign organizers, or to prohibit them entirely.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The election legislation is regularly amended for the purpose of harmonization with the recommendations provided by the international organizations that monitor the issue of elections and it does contain effective mechanisms for transparent monitoring of elections funding.

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## Institution: Political Parties

### Category: Management - Transparency

**Indicator Question:** Does the report i.e. the template of the report submitted by the political parties reflect the situation with the finances, sources of financing and their use throughout the election campaign?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The reports reflect the situation with the finances, but from the accounting point of view, there is a need for methodological uniformity in terms of the manner in which they are completed.

## Institution: Political Parties

### Category: Capacity - Resources

**Indicator Question:** Is training by the MoF needed for the political parties regarding the consistent application of the Guidelines for Completing the Template that are an integral part of the Rulebook on the Changes of the Template of the Financial Reports on the Election Campaign Revenues and Expenditures?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

There is a need for training by the MoF regarding the completion of the financial reports, but only for those political parties that lack specialists in the financial operations field and accounting in their party bodies.

## Institution: Political Parties

### Category: Management - Integrity Mechanisms

**Indicator Question:** Does the current legislation contain any provisions that ensure efficient sanctioning of violations committed by the political parties with regard to the financing of the elections?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The existing legislation contains penal and misdemeanour provisions and fines for any violations of the election process.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the discounts offered by media during the election campaign should be forbidden or at least equal for all election campaign organizers?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

Legal entities have the right and freedom to decide how they will use their own finances to gain the expected profit. Hence, printed and electronic media should be able to decide on the discount that they might want to offer for the presentation of a certain political party, in compliance with their editorial policy of the media outlet. Similarly, all natural persons and legal entities have the right to decide whether they will give money to charity and who they will give it to.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

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**Explanation:**

The Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding.

There is room for improvement of the legislation pertaining to the financing and transparent monitoring of financing, especially in local elections, because of the possibility to have several rounds of voting for electing a mayor.

Another thing that could be considered is the possible change of the model for financing political parties regarding the allocation and use of budget funds.

**Institution: Political Parties****Category: Management - Transparency**

**Indicator Question:** Does the report i.e. the template of the report submitted by the political parties reflect the situation with the finances, sources of financing and their use throughout the election campaign?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

From the formal point of view, the reports show the sources of financing and the expenditures during the election campaign, but it is not a true reflection of the type, manner and real amount of finances that have been used in the election campaign.

With regard to the accounting standards, there is still room for improvement of the template.

**Institution: Political Parties****Category: Capacity - Resources**

**Indicator Question:** Is training by the MoF needed for the political parties regarding the consistent application of the Guidelines for Completing the Template that are an integral part of the Rulebook on the Changes of the Template of the Financial Reports on the Election Campaign Revenues and Expenditures?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

In principle, any training is welcome and might contribute to improvement of the political parties' capacities. In this case, it should be delivered in continuity but not by the MoF, but by the SAO as the central body competent to supervise the financial operation of the state authorities in our country.

**Institution: Political Parties**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Does the current legislation contain any provisions that ensure efficient sanctioning of violations committed by the political parties with regard to the financing of the elections?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

This is not a matter of the current legislation and the effective mechanisms to penalize violations committed by political parties, but rather a matter of the weak capacity of the institutions (the public prosecution office and the courts) and their position in the system.

Furthermore, there is also another issue that affects this situation - the issue of the selective application of penal policies.

**Institution: Political Parties**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the discounts offered by media during the election campaign should be forbidden or at least equal for all election campaign organizers?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Media are considered to be a public activity, or a public interest activity, which means that regardless of whether they are in state or in private ownership, they all have certain responsibility towards the public.

Therefore, in order to avoid favouring and unequal representation of election campaign organizers, the best solution would be to have all media discounts forbidden during the election campaigns, but also the decision for equal and fair representation of all political parties has to be respected by everyone, with no exception.

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## Institution: Non-Governmental Sector

### Category: Management - Transparency

**Indicator Question:** Do the Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for transparent monitoring of elections funding?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The Electoral Code and the Law on Financing of Political Parties contain effective mechanisms for monitoring of elections funding, but there is still room for introducing new, improved provisions.

## Institution: Non-Governmental Sector

### Category: Capacity - Resources

**Indicator Question:** Is training by the MoF needed for the political parties regarding the consistent application of the Guidelines for Completing the Template that are an integral part of the Rulebook on the Changes of the Template of the Financial Reports on the Election Campaign Revenues and Expenditures?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

We do not feel that there is need for training by the MoF.

## Institution: Non-Governmental Sector

### Category: Management - Integrity Mechanisms

**Indicator Question:** Does the current legislation contain any provisions on the efficient sanctioning of violations committed by the political parties?

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

The current legislation does not contain appropriate provisions for efficient sanctioning of violations committed by political parties.

**Institution: Non-Governmental Sector**

**Category: Management - Transparency**

**Indicator Question:** Do you think that discounts given by media during the election campaigns should be forbidden or at least equal for all election campaign organizers?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The offering of discounts by media outlets in the paid political advertising leads to circumventing the right of the participants in the electoral process to equal representation in the paid political advertising.

**Explanation de jure:**

Pursuant to Article 84-b of the Electoral Code (Official Gazette No. 40/06, 136/08, 148/08,155/08,163/08, 44/11, 51/11, 142/12, 31/13 and 34/13), the organiser of an election campaign is required, on the eleventh day from the commencement of the election campaign to submit a financial report on the revenues and expenditures via the election campaign bank account from the day it was opened until the end of the tenth day of the election campaign. The organiser of the election campaign is required, one day after the end of the election campaign, to submit a financial report on all revenues and expenditures via the election campaign bank account for the second half of the election campaign. The reports are to be submitted on a template adopted by the Minister of Finance, which includes information on the name or designation of the donor, the type and amount of donations, dates when donations were received and expenditures for each donation, as well as data on the revenues and expenditures throughout the election campaign. The reports are submitted to the State Election Commission, State Audit Office and the State Commission for Preventing Corruption, which are required to publish them on their web sites.

Article 85 prescribes that the organiser of the election campaign is required, immediately and no later than 30 days after the end of the election campaign, to submit a comprehensive financial report on the election campaign. The financial report on the election campaign is to be submitted on a template adopted by the Minister of Finance. The financial report is submitted to the State Election Commission, State Audit Office, State Commission for Preventing Corruption and the Assembly, and for the local elections also to the Municipal Council and the Council of the City of Skopje. The financial reports are to be published by the State Election Commission, State Audit Office and the State Commission for Preventing Corruption on their websites.

As for the broadcasters and printed media in the country, pursuant to Article 85-a, they are obliged to submit a report for the advertising space that has been used by each organiser of the



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election campaign and the finances that have been paid or are invoiced to be paid. This report is to be submitted on a template adopted by the Minister of Finance no later than 15 days following the day of the completion of the election campaign and it has to be submitted to the State Election Commission, the State Audit Office and State Commission for the Prevention of Corruption, which are consequently obliged to publish them on their web sites.

Article 85-b prescribes that the audit reports on the auditing of the reports of the campaign organisers shall be published by the State Audit Office on its website, within the deadline prescribed by law.

Pursuant to Article 144 of the Code, the organiser of the election campaign shall open a bank account designated “for election campaign”, on the basis of the issued confirmation from the State Election Commission for having submitted a candidate list for President of the Republic. The financial report on the revenues and expenditures via the election campaign bank account shall be made public and shall be submitted to institutions that are authorized, in cases of suspected use of illicit and anonymous finances, to request data and verify the correctness of the reports, and in cases when irregularities are established, they shall instigate a procedure or raise an initiative for sanctioning. The template of the form, the content of the financial reports on the revenues and expenditures of the election campaign and the template of the report on the advertising space used by each of the organizers of election campaigns and the finances that have been paid or are invoiced for payment on that basis have all been determined, and they contain the elements necessary to reflect the financial situation, their sources and their purpose during the election process.

As for the existence of provisions for efficient sanctioning of misdemeanours committed by political parties, Chapter XIV of the Electoral Code prescribes fines for misdemeanours committed by political parties, coalitions, or the head of an independent list of a group of voters and campaign organizers as follows:

A fine in the amount of EUR 4,000 to 5,000 (in MKD equivalent) shall be imposed to the political party, coalition, representative of an independent list of candidates or potential nominees, should they fail to return to the donors the full amount of funds that were not spent in the prescribed deadline, in case when the list of candidates has not been submitted or verified (Article 188).

A fine in the amount of EUR 4,000 up to 5,000 (in MKD equivalent) shall be imposed to an organiser of a political campaign who fails to submit the financial report in the legally prescribed deadline (Article 188-a).

A fine for a misdemeanour in the amount of EUR 4,000 up to 5,000 (in MKD equivalent) shall be imposed to an organiser of a political campaign who fails to submit a report on the financing of the election campaign, i.e. when financial means have been used for financing of an election campaign, which are not in accordance with article 83 of the Electoral Code. A fine in the amount of EUR 4,000 up to 5,000 (in MKD equivalent) shall be imposed to a political party, coalition or a representative of an independent list of candidates, for spending more funds during an election campaign than the amount defined in the Electoral Code.

A fine in the amount of MKD 4,000 up to 5,000 EUR (in MKD equivalent) shall be imposed to the responsible person of a political party that fails to submit a report on the financing of the election campaign, i.e. when financial means have been used for financing of an election campaign which are not in accordance with article 83 of the Electoral Code, or when the amount of funds spent during the election campaign is higher than the amount defined in the Electoral Code (Article 189).

Pursuant to Article 85 paragraph (7) of the Electoral Code, if the State Audit Office (SAO) detects any irregularities in the financial report of the election campaign organiser which are contrary to the provisions of the Code, it shall initiate a misdemeanour procedure or it shall report the irregularities to the respective public prosecutor within 30 days of the day when the irregularities were detected.

Sanctions related to the financing of political parties are to be found in the Criminal Code (Official Gazette No. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13 and 82/13) and the Law on Financing of Political Parties.

Article 165-c from the Criminal Code prescribes that for the crimes referred to in Articles 158 through 165-a<sup>130</sup> of this Code, the court shall prohibit the offender to use funds for financing political parties under the conditions referred to in Article 96-c paragraph (1) of this Code.<sup>131</sup> Article 96-b from the Criminal Code also contains an additional, secondary sanction on obligatory execution of the prohibition to use budget funds for financing political parties.

Article 27 of the Law on Financing of Political Parties stipulates the authority of the State Audit Office to submit a request for initiating a misdemeanour procedure or to report to the competent public prosecutor should they come across irregularities in the annual financial report submitted by some political party, within 30 days of the discovery.

A suspension of the payment of funds for regular annual financing from the Budget of the political party which shall not submit an annual report to the State Audit Office in the prescribed timeframe and of the political party which shall not publish data about donations received during the year has been introduced in the Law on Financing of Political Parties.

Independently from the violation liability, the payment of funds for regular annual financing from the Budget of the political party which shall not submit an annual report to the State Audit Office in the prescribed timeframe shall be stopped (suspended). The payment of funds for regular annual financing from the Budget shall also be stopped (suspended) for the political party which shall not publish data about donations received during the year. The stopping (suspension) of the payment shall last until the responsibilities of the political parties, stipulated in the Law on Financing of Political Parties, are met in an orderly manner. The decision to stop (suspend) the payment of funds for regular annual financing from the Budget shall be reached by the Minister of Justice, at the proposal of the State Audit Office. The decision is final; it shall be published in the "Official Gazette" and it may be challenged via an administrative dispute.

Independently from the violation liability, the political party which shall not publish its annual report in the prescribed timeframe shall lose the right to regular annual financing from the Budget for the period of three months. The decision to lose the right to regular annual financing from the Budget shall be reached by the Minister of Justice, at the proposal of the State Audit Office. The decision is final; it shall be published in the "Official Gazette" and it may be challenged via an administrative dispute.

The suspension of the payment of funds for the organisers of an election campaign is also stipulated in the amendments to the Electoral Code, which state:

Independently from the violation liability for non-adherence to the provisions of this Code, which refer to the limitation of expenditures of the election campaign and the submission of financial reports for financing of an election campaign, the organiser of the election campaign

<sup>130</sup> Criminal offences against elections and voting

<sup>131</sup> Article 96-c –Conditions on pronouncing secondary sanctions

shall be subject to: partial loss of the compensation of the expenditures for the election campaign; complete loss of the compensation of the expenditures for the election campaign; or ban on payment of the compensation of the expenditures for the election campaign. The organisers of election campaigns shall be subject to partial loss of the compensation of the expenditures for the election campaign in case they exceed the allowed amount of expenditures for the election campaign. The partial loss of the compensation of the expenditures for the election campaign consists of decreasing the amount of compensation of the expenditures for the election campaign for as much as the allowed limit for spending in an election campaign has been exceeded. Should the amount of funds with which the allowed limit for spending in an election campaign has been exceeded be greater than the amount of the compensation of the expenditures for the election campaign, complete loss of the compensation of the expenditures for the election campaign shall be determined. The organisers of an election campaign shall be deprived of the payment of the compensation of the expenditures for the election campaign in case they fail to submit the financial reports in accordance with the Electoral Code in the prescribed time-frame and containing the stipulated content. The ban on the payment of the compensation of the expenditures for the election campaign shall last until the requirement is met in an orderly manner. The decision for partial or complete loss of the compensation of the expenditures for the election campaign, as well as the decision for stopping the payment shall be reached by the State Election Commission, at the proposal of the State Audit Office. The decision is final; it shall be published in the "Official Gazette" and it may be challenged via an administrative dispute.

The Law Amending the Law on Financing of Political Parties (Official Gazette of R.M. No. 142/2012), with the purpose of raising the awareness of the political parties regarding their responsibilities resulting from the applicable regulations for political financing, has determined that the manner of filling out of the content in the financial report sheet shall be regulated with Guidelines, which will be an integral part of the template, and the Ministry of Finance shall conduct training of political parties on material and financial operation and financial report management at least once per year.

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation de facto:**

The amendments to the Electoral Code and the Law on Financing of Political Parties represent a step forward in overcoming the existing weaknesses, particularly in terms of introducing effective mechanisms for transparent monitoring of the financing of elections.

On 31.01.2013 the Minister of Finance adopted a Rulebook on the Template, Form, Content and Manner of Keeping the Annual Financial Report for Political Parties (Official Gazette No. 21/2013). This Rulebook also contains Guidelines for Completing the Template. Even though the template for the financial report on the revenues and expenditures via the election campaign bank account from the day of its opening to the end of the tenth day of the election campaign is standardized and prescribed by the Minister of Finance (by listing the elements that it contains), the insight in these reports suggests that the manner of their completion differs among the political parties.

In practice, it is possible to verify the connection between the donations for election campaigns and the legal entities' expenditures, but that is not the case with donations for election campaigns and natural persons' expenditures.

Article 83 of the Electoral Code prescribes the sources of and limitations on financing election campaigns, but provisions are lacking for proceeding upon other outstanding obligations upon the closing of the election campaign bank account.

Article 83, paragraph (2), line 3 of the Electoral Code stipulates that the election campaign can be financed by legal entities in the amount of up to 5% of their total income for the previous year. This provision does not make it clear whether this limit refers to the total amount of donations from legal entities for the election campaigns of political parties or whether it refers only to individual participants in the election campaign.

With the Law amending the Electoral Code, the maximum amount that the election campaign organiser may spend when financing the election campaign was increased from 60 to 180 denars per registered voter in the electoral district i.e. municipality for which they have submitted list of candidates. There is a difference between the amount of resources provided for the election campaign and the outstanding obligations during the election campaign, which leaves room for reviewing the maximum threshold of 180 denars per registered voter and lowering it. Article 84 of the Electoral Code leaves room for doubt, whether the maximum amount for financing of election campaigns also includes any discounts from legal entities.

The provisions referring to the duration of the election campaign (especially in cases when the voting is annulled and repeated in some polling stations) are difficult to apply in practice. Therefore a precise timeframe needs to be defined in terms of the exact beginning and end of the election campaign, depending on the duration of the election process.

In practice, the election campaign bank account is sometimes closed after the submission of the report and as a result, the annual financial report of the political party does not always include the transactions made in the period from the day of the drafting of the report to the day when the election campaign bank account was closed.

**Score:**

|                             |          |
|-----------------------------|----------|
| To a very small extent      | 1        |
| To a small extent           | 2        |
| <b>To a moderate extent</b> | <b>3</b> |
| To a large extent           | 4        |
| To a very large extent      | 5        |

**Recommendations:**

Further improvement of the electoral and other relevant legislation is required, in order to reduce the possibility for its violation, by implementing the following measures and activities:

- Reformulation of the definition and the duration of the election campaign;
- Avoiding ambiguities related to the entities that are (directly or indirectly) related to a political party or are under the control of a party;
- Designing a template for detailed specification of costs incurred during the election campaign;
- Specifying the day when the election campaign bank account shall be closed;
- Providing a possibility to verify data on donations;

- Reviewing the limitation on donations, in order to prevent inequality among donors;
- Precise determination of the period for collecting donations;
- Further legal regulation to obtain precise rules on media coverage during the election campaign;
- Further clarification of the term “equitable access to media presentation”
- When financing media presentation, offering discounts that cannot be controlled and which surpass the legal limitations on donations should not be made possible.

**Problem / Risk factor 3:**

High degree of discretionary rights with great differences in their intensity among separate public offices.

**Explanation:**

There is a high degree of discretionary rights provided for certain positions and individuals that are difficult to control in practice, which influences the efficient taking of action by the competent supervisory bodies

**Institution: State Commission for Prevention of Corruption**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Has the State Commission for Prevention of Corruption established a concept for the Analysis of discretionary rights in all segments of government?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The State Commission for Prevention of Corruption has drafted elements of such analysis, which result from the current observations made when dealing with concrete cases and subjects. It should be emphasised that this activity from the State Programme should be realised in 2014.

**Institution: State Commission for Prevention of Corruption**

**Category: Capacity - Independence**

**Indicator Question:** Do you consider discretionary rights to be most characteristic for public office holders in the executive government?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

Equally important are the discretionary rights of government officials at the local level, which have become strongly emphasised with the process of decentralisation, and the discretionary rights in public enterprises and institutions, as well as in other types of government, are also important.

**Institution: State Commission for Prevention of Corruption**

**Category: Capacity - Independence**

**Indicator Question:**

Would the discretionary rights be reduced if the number of bylaws adopted by the public office holders decreases, despite the perception of too much regulation in the laws?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

From the aspect of corruption, the problem with the high degree of discretionary rights is expressed through the by-laws and other mechanisms which are not synchronised or are even in conflict with the text and the spirit of the laws, with the by-laws being possible to be used as an excuse for the personal arbitrariness in the execution of public authorisations.

**Explanation de jure:**

Discretionary rights of public office holders trace their roots in the laws and by-laws. The decreasing of the scope of discretionary rights or the prevention of their overstepping depends above all on the objective and responsible approach in their execution. On the other hand, the achievement of the public interest solely, by public office holders, should result in a real and optimal implementation of discretionary rights.

The role of a corrector of the high degree of discretionary rights is performed by the inspection bodies, and, of course, the Constitutional Court.

The implementation of discretionary rights, as a legal formulation, is solely specified in the Law on Prevention of Corruption (Official Gazette of R.M. No 28/2002, 46/2004, 126/2006, 10/2008, 161/2008 and 145/2010).

Namely, Article 43 of this Law stipulates that each and every elected or appointed functionary and official has an obligation to render decisions with due diligence, taking into account all facts and circumstances in a given case, and has to observe the principles of legality and equity. The protection of citizens or legal entities in the case of overstepped discretionary rights by public office

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holders is also regulated in this provision, so that each citizen or legal entity dissatisfied with the decision rendered based on discretionary right and who considers that it has been made due to corruptive behaviour may complain to the State Commission. On the other hand, the State Commission has an obligation to take into consideration any complaint and to inform the natural or legal person about the actions undertaken thereupon within a period of 30 days from its receipt.

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation *de facto*:**

There have been past attempts in the country to restrict discretionary rights of ministers and other public office holders.

In that respect, on December 26<sup>th</sup>, 2004, the Government established a working body consisting of experts, ministers and representatives of the Office of the President of the Government, with the task to prepare a government project about the discretionary rights of ministers. At the session held on April 11<sup>th</sup>, 2005, the Government reviewed and adopted the Information prepared by the expert group, which contains: a Glossary that explains and defines general management acts, concrete management acts and discretionary rights; Guidelines for Overstepping the Discretionary Rights and Dynamics of Activities. The activities were supposed to take place in three phases, which included:

1. Providing general comments about discretionary rights, as well as guidelines for their reduction;
2. Reviewing of possible solutions for overcoming of identified discretionary rights, and
3. Concrete amendments to the laws and by-laws, which shall provide for reduction of discretionary rights and their transparency.

According to the guidelines for overcoming of discretionary rights contained in the material and the identified areas where urgent action is necessary, the following activities have been undertaken, among others:

- A Proposal to pass a Law on Foreign Affairs has been prepared in order to regulate this sphere with a piece of legislation.
- The amendments to the Law on General Administrative Procedure proposed by the expert team have been fully accepted.
- The proposals of the expert group for the amendments to the Law on Civil Construction have been accepted.
- Proposals for amendments to the Law on Wine, which is in preparation, have been given.
- The Regulation on the manner and procedure of disposal, leasing, and the amount of the specific costs of the procedures for disposal and leasing of construction land has been amended.<sup>132</sup>
- It is a fact that, until now, in the country, a complete and all-encompassing Analysis of discretionary rights in all segments of government has not been produced.

**Score:**

|                               |          |
|-------------------------------|----------|
| <b>To a very small extent</b> | <b>1</b> |
| To a small extent             | 2        |
| To a moderate extent          | 3        |
| To a large extent             | 4        |
| To a very large extent        | 5        |

**Recommendations:**

- Taking into consideration the existence of a “sea” of regulations which may produce discretionary rights, it is especially important to initiate the preparation of, above all, a list of the legal regulations which provide grounds for reaching of decisions on the basis of discretionary rights, as well as of the chances for possible corruption, and then an analysis of discretionary rights; and
- Knowing that the greatest number of laws are passed at the proposal of the Government, and that the majority of by-laws are prescribed by ministers, it would be good if, in the first phase, the List and the Analysis of discretionary rights would be compiled for the holders of public offices from the executive government, and then, in the second phase for the holders of local government functions, and the third phase should cover the holders of public office from the legislative and judiciary authorities.

**Problem / Risk factor 4:**

Lack of effects from the implementation of the Law on Lobbying

**Explanation:**

Shortcomings and insufficient understanding of the term and the content, both in the political and in other societal spheres, as opposed to the widely dispersed lobbying outside the legal framework. The risk of corruption exists due to non-reporting of lobbying and illegal lobbying and its use for hidden, illegitimate and unidentified interests, financed through unknown and uncontrolled sources, thus disabling effective supervision.

**Institution: State Commission for Prevention of Corruption**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Does the State Commission for Prevention of Corruption have information about the reasons for the insufficient application of the Law on Lobbying?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |



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**Explanation:**

The State Commission for Prevention of Corruption has organised international lobbying workshops with the relevant participants and as a result, certain comparative experiences have been gained.

The reasons for the insufficient application of the domestic law are that the law is weak and incomplete, lobbying is not defined appropriately, the procedures for registration and supervision are inappropriate, hence the law as a whole cannot be used for the necessary sensitisation, both of the institutions and of the public, in differentiating lobbying as a justifiable and useful activity from its improper use and possibly corruptive dimension.

**Institution: State Commission for Prevention of Corruption****Category: Capacity - Independence**

**Indicator Question:** Do you think that the current definition is sufficiently clear and reflects all aspects of lobbying?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

Lobbying should be redefined as an action, and not merely as an “activity”. Although the problem also includes ethical dimensions, and consequently the provision for legal regulation is not completely reasonable for some, however, a clear definition of what lobbying represents shall enable its much wider and lawful application.

**Institution: State Commission for Prevention of Corruption****Category: Capacity - Resources**

**Indicator Question:** Does the State Commission for Prevention of Corruption plan to conduct a public awareness raising campaign about the meaning of lobbying?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

Such an activity has been planned in the State Programme for Prevention of Corruption and Conflict of Interests, after the amendments to the Law on Lobbying are passed.

## Institution: State Commission for Prevention of Corruption

### Category: Management - Integrity Mechanisms

**Indicator Question:** Do the provisions from the Law on Lobbying enable the effective and practicable supervision?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The submission of reports only by registered lobbyists has been stipulated, but the fact that there are many illegal lobbyists that perform this activity hiding behind other capacities and positions they have, does not render it possible to conduct real supervision over lobbying. It is exactly why the law should be improved in the part concerning supervision.

## Institution: Ministry of Justice

### Category: Management - Integrity Mechanisms

**Indicator Question:** Has the MoJ conducted an analysis of the current application of the Law on Lobbying?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The activities related to the analysis of the current application of the Law on Lobbying are on-going.

## Institution: Ministry of Justice

### Category: Capacity - Independence

**Indicator Question:** Do you think that the current definition of *lobbying* is clear enough and reflects all of its aspects?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

---

**Explanation:**

The assessment of the Law on Lobbying and the analysis of its implementation have still not been completed. The activities are ongoing.

**Institution: Ministry of Justice****Category: Management - Integrity Mechanisms**

**Indicator Question:** Do the legal provisions provide an efficient and feasible supervision?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The assessment of the Law on Lobbying and the analysis of its implementation have still not been completed. The activities are ongoing.

**Institution: Ministry of Justice****Category: Management - Integrity Mechanisms**

**Indicator Question:** Has the MoJ drafted or planned to design a Code of Conduct for lobbyists?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The assessment of the Law on Lobbying and the analysis of its implementation have still not been completed. The Code of Conduct for lobbyists is planned to be drafted after the completion of this activity.

**Institution: Lobbyist****Category: Capacity - Independence**

**Indicator Question:** Do you consider that substantive amendments to the Law on Lobbying are necessary?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The current Law on Lobbying in R.M. was adopted on August 16<sup>th</sup> 2008. Based on the fact that five years have passed since then, on the one hand, and on the specific experience acquired through practising lawful lobbying in our country during this period, on the other, there is definitely a need for substantive amendments to this law. Firstly, from the aspect of the definition of the term “lobbying”. Secondly, from the aspect of the parties involved in the process of lawful lobbying. Thirdly, from the aspect of the competences of the involved state institutions and bodies. Fourthly, from the aspect of the harmonisation with the EU legislation in this sphere. The fifth is the aspect of the secondary legislation followed by the aspect of the record-keeping, notification, prevention, protection of the very lobbyists, control and sanctioning of (un)regulated developments in the context of lobbying. Finally, this is all needed from the aspect of expanding the objectives, methods, principles and the manner of lobbying, in terms of including the state (as a beneficiary, intermediary and a lobbyist in the process of lawful lobbying) by implementing the so-called categorisation scale of subjects.

**Institution: Lobbyist**

**Category: Capacity - Independence**

**Indicator Question:** Is the current definition of lobbying sufficiently clear and does it reflect all the aspects of this activity?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

What is understood as a definition of lobbying in our current Law on Lobbying is only one segment of the definition of lobbying in the developed countries (EU, the United Kingdom, USA, Australia, etc.).

The Law on Lobbying in our country is not precise in the part of communication “towards and from” trade associations, trade unions, associations, NGOs, etc., especially having in mind the manner of preparation of certain formal “draft laws”, in a situation in which a certain ministry emerges as the drafter of a law.

Such a situation leads to dissatisfaction on the part of the stakeholders, i.e. inability to completely meet the requests of the citizens in certain spheres, and a countermeasure does not exist, since too much time, energy, resources and means are needed to implement amendments to the current law.

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## Institution: Lobbyist

### Category: Capacity - Independence

**Indicator Question:** Should lobbying be managed at the Central Register under a separate code of activity?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

#### Explanation:

Our country is already late with the implementation of a separate code of activity – “lobbying”, which has been specified as such in the National classification of activities.

The competence over this issue lies within the Ministry of Economy, but there has been a lack of interest and/or knowledge about their responsibility for whole three years.

## Institution: Lobbyist

### Category: Capacity - Independence

**Indicator Question:** Is the Assembly the right place where the Register of lobbyists should be maintained?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

#### Explanation:

The Assembly is an appropriate place only with respect to committee sessions and plenary sessions and/or in the relations of the lobbyist with the Members of Parliament individually or with parliamentary groups.

Regarding the other categories of interest, the register of lobbyists in the Member States of the EU is maintained by the state anti-corruption agencies, ministries of interior, ministries of foreign affairs, ministries of local self-government (regarding lobbying subjects of local importance), etc.

## Institution: Lobbyist

### Category: Management - Transparency

**Indicator Question:** How much does unauthorised or the so-called “underhand lobbying” influence the appearance of risk of corruption?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

The term “underhand lobbying” is used when there is an unregistered lobbyist or lobby company. However, that is not lobbying in the true sense of this expression, which, on the other hand, is very often used incorrectly and unnecessarily.

Definitely, in a situation when there is only one lobbyist and there is no formal legal lobbying case everything is possible, and even the occurrence of an “association of citizens”, such as a non-profit organisation, representing itself as a lobbyist.

Certainly, such and similar occurrences allow for corruptive behaviour.

**Explanation de jure:**

Pursuant to the Law on Lobbying (Official Gazette No. 106/08 and 135/11), lobbying is an activity aimed at the legislative and executive governments at the central level, as well as at the local authorities, in order to realize certain interests in the process of passing laws and other regulations, whereas a lobbyist is an individual who performs lobbying for certain monetary compensation, who is registered for lobbying according to this Law, or who is employed with a legal entity registered for lobbying and who has signed a lobbying contract.

A lobbyist can be a national who meets the requirements determined in this Law and who is registered in the Register or employed with a legal entity which has signed a lobbying contract, which is public and maintained by the Secretary General of the Assembly. The procedure for registration, renewal of the registration or removal from the Register of lobbyists is initiated at the Assembly and is conducted in the following manner: the Secretary General of the Assembly is bound within five working days from the day of the receipt of an application to reach a decision with which the application for issuing of a certificate for registration, renewal of the registration or removal from the Register of lobbyists is approved or declined. Should the Secretary General of the Assembly fail to reach a decision within the deadline stipulated previously, the applicant can inform the State Administrative Inspectorate within five working days, and the State Administrative Inspectorate is bound within ten working days from the day of the receipt of the notification to conduct inspection of the work of the Secretary General of the Assembly and to verify if the procedure has been conducted in accordance with the law, and then, within three working days from the day of the inspection to inform the applicant about the undertaken measures. After the completed inspection, the inspector from the State Administrative Inspectorate shall reach a decision which obligates the Secretary General of the Assembly to approve or decline the application within ten days and to inform the inspector about the undertaken measures and submit a copy of the act at the same time. Should the Secretary General of the Assembly fail to decide within the deadline, the inspector shall submit a request for initiating a misdemeanour procedure for a misdemeanour stipulated in the Law on Administrative Inspection and shall determine an additional period of five working days in which the Secretary General of the Assembly shall reach a decision regarding the submitted application, notify the inspector about the decision and submit a copy of the act within the same time period. The inspector shall inform the applicant about the undertaken measures within a period of three working days. Provided

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the Secretary General of the Assembly fails to reach a decision within the additional timeframe as well, the inspector shall file a complaint to the competent public prosecutor within three working days, and in that period of time, they shall inform the applicant about the undertaken measures. Should the inspector fail to act upon the notification, the applicant has the right within five working days to file a complaint to the registry office of the Director of the State Administrative Inspectorate. The Director of the State Administrative Inspectorate is obliged within three working days to review the complaint and should they determine that the inspector has not acted upon the notification from the applicant and/or failed to report it, the director of the State Administrative Inspectorate shall file a request for initiating a misdemeanour procedure for a misdemeanour stipulated in the Law on Administrative Inspection for the inspector and shall set an additional deadline of five working days. Should the inspector fail to act within the additional deadline as well, the director of the State Administrative Inspectorate shall report him or her to the competent public prosecutor, and within three working days, shall inform the submitter of the request about the undertaken measures. If the inspector fails to also act in the additional deadline, the director of the State Administrative Inspectorate shall immediately, and the latest in one working day, authorise another inspector to conduct the inspection immediately. In both cases, the director of the State Administrative Inspectorate shall inform the applicant within three working days. Should the director of the State Administrative Inspectorate fail to act, the applicant can file a complaint to the competent public prosecutor, within a deadline of eight working days. Should the Secretary General of the Assembly fail to decide within the stipulated period, the applicant may initiate an administrative lawsuit at the Administrative Court, and that procedure shall be deemed urgent. Should the application for registration in the Register of lobbyists not contain the data stipulated in the application template, the Secretary General of the Assembly shall summon the applicant for registration within three days to remove the deficiencies from the application, after which, should the applicants do so, they shall be registered in the Register and an identification document shall be issued to them, or if they fail to do so, the Secretary General of the Assembly shall reach a decision declining the submitted application for registration in the Register.

Against this decision, the applicant has the right to initiate an administrative lawsuit before the competent court. After the registration in the Register, the lobbyist is issued an identification document. Should the lobbyist be removed from the Register, regardless of the reason for the removal, they are obliged, within three working days, to return the identification document. The registration of a lobbyist is valid for a year, with the possibility for a renewal. Before the expiry date of this registration validity period, the lobbyist may request to be removed from the Register.

This Law also stipulates competencies for the Ministry of Justice. Thus, the Minister of Justice shall stipulate: the form and the content of the form for registration in the Register and the manner in which it shall be maintained; the form and the content of the application form for registration, renewal of the registration or removal from the Register, and the form and content of the identification document which is issued to the lobbyist, as well as the manner of its issuance.

Regarding the rights and responsibilities of the lobbyist, they are stipulated in the following manner:

The lobbyist has the right to receive information and documents regarding the subject of lobbying from the authorities with whom they lobby, in a procedure and in scope prescribed with the Law on Free Access to Information of Public Character. The lobbyist may: organize direct meetings with officials in the authorities of the legislative and executive branch, as well as with officials from the local government, according to the rules for operation of those authorities, for which the lobbyist is obligated to share any data important to the lobbying with the official,

especially for whom he/she is lobbying and what the goal and intention of the lobbying are, and the lobbyist should indicate all meetings held with officials from the legislative, executive and local authorities in the report on their work.

Lobbyists may request to present their positions and opinions about the subject they are lobbying for in the working bodies of the legislative and executive government at the central level, as well as in front of the working bodies within the authorities of the local government they are lobbying with. On the other hand, the working bodies of the legislative and executive branch on the central level and the working bodies of the local government authorities, too, may, at their own initiative, invite lobbyists to present their opinion regarding the lobbied subject.

The lobbyist is obligated to submit correct data to the official, representative of the legislative or executive branch of government at the central level, as well as to the official, representative of the local government. The lobbyist's request for a meeting with an official of the legislative, executive or local government may be rejected with an appropriate explanation.

Any lobbyist may organize and participate in public debates concerning the lobbied subject and may give statements in the media and publish articles on the lobbied subject.

During the lobbying, the lobbyist is obligated to act according to the regulations regarding prevention of conflicts of interests and prevention of corruption.

Any registered lobbyist is obligated to submit a written report on their work to the Secretary General of the Assembly and to the State Commission for Prevention of Corruption, not later than 31st of January in the current year for the previous year, or not later than 30 days from the day of the removal from the Register, regardless of the reasons for the removal. The Report of the lobbyist shall include: evidence/certificate that he/she is registered as a lobbyist pursuant to this Law, data for whom, what and when he/she has lobbied, data about to whom and through which activities he/she has lobbied, and data on the financial compensation he/she has received for the lobbying. Pursuant to the Law, the supervision of the lobbying shall be performed by the State Commission for Prevention of Corruption, which, acting upon a report from an official in which it is stated that the lobbyist has acted contrary to the Law, shall first request from the lobbyist and the legal entity where the lobbyist is employed, to respond to the claims in the report. The lobbyist and the legal entity where the lobbyist is employed shall provide their response within five working days. If, after the verification of the claims it is determined that they are correct, the lobbyist and the legal entity where the lobbyist is employed may be imposed by the SCPC: a warning or an initiative to the Secretary General of the Assembly to remove the lobbyist from the Register (if the lobbyist has been warned twice in a row). The State Commission for Prevention of Corruption shall submit an initiative to the Central Register to delete the lobbying activity for the legal entity. The State Commission for Prevention of Corruption shall notify the Secretary General of the Assembly of the measures imposed.

**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation de facto:**

Although the Law on Lobbying was adopted five years ago, it is reckoned that the Law has not been implemented at all.



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The basic reason for such a situation should be sought in the insufficient and untimely presentation of the concept and the benefits from the Law, both among the general and among the specific public. Having in mind that lobbying is a novelty in our legal system, the usually expected resistance to changes and the scepticism towards introducing and implementing hitherto unknown institutions should not be ignored.

Furthermore, key problems for the lack of implementation are the insufficiently comprehensible terms and the complicated and incompletely developed procedures, covered by the Law on Lobbying.

In first place, the definitions of lobbying and lobbyist are problematic, which results in the fact that to date, there has been only one lobbyist registered in our country.

Namely, the definition of lobbying is too wide and imprecise: lobbying covers any activity directed towards the central and the local government in the process of passing laws and other regulations. Furthermore, apart from a natural person registered for lobbying, a lobbyist can also be a person employed with a legal entity which is registered for lobbying and which has a signed contract for lobbying. Consequently, in the case of a legal entity, which has to be registered at the Central Register anyhow, the need for its registration in the Assembly, as a body of state authority, is inappropriate (much more if it is the case of lobbying activities directed towards the local government).

By repealing some of the provisions contained in Article 7 paragraph (2), it seems that the requirements for acquiring the status of a lobbyist are overly general and that they need to be amended in terms of: age; present and past working experience; limitations in terms of doing the occupation or activity etc.

The procedure for registration, renewal of the registration or removal from the Register of lobbyists is overly complex and involves numerous acts and bodies from different branches of government, which is not in accordance with our country's legal system, or with the international standards and experiences in other European countries (Hungary, Poland and Lithuania). Namely, in the current law, there is no appropriate distribution of the roles and responsibilities of the state bodies referred to in the Law – the Assembly, the State Administrative Inspectorate (since January 1<sup>st</sup> 2011, the latter has not been considered a body within the composition of the Ministry of Justice, but within the Ministry of Information Society and Administration) and the State Commission for Prevention of Corruption.

Regarding the rights and responsibilities of the lobbyist, there are also shortcomings, especially with regard to the right to protection of the lobbyist and disproportionate regulation (in general, mainly the responsibilities of the lobbyist are defined).

At the end, the issue of the procedure for investigative activities against lobbyists who work contrary to the law remains open as well.

**Score:**

|                               |          |
|-------------------------------|----------|
| <b>To a very small extent</b> | <b>1</b> |
| To a small extent             | 2        |
| To a moderate extent          | 3        |
| To a large extent             | 4        |
| To a very large extent        | 5        |

## Recommendations:

- The Ministry of Justice needs to continue preparing the Analysis of the Law on Lobbying, in accordance with the Methodology for assessment of the implementation of the regulation;  
133
- On the basis of the findings from the ex post Analysis, a working group chaired by the Ministry of Justice should start drafting amendments to the Law on Lobbying, in accordance with the Regulatory Impact Assessment Methodology and the Guidelines for the manner of operation in the work of the ministries in the process of implementation of the Regulatory Impact Assessment;
- In the amendments or in the new Law on Lobbying, efforts should be made to overcome the weaknesses in the existing text of the Law, which refer to the following issues: concise definition of the term “lobbyist”, but also of the persons who cannot be lobbyists; clear distinction between activities which are considered as lobbying and those which are not; determining the scope of natural and legal entities which (with or without compensation) would perform lobbying activities; differentiation between lobbying with bodies of the central government and lobbying with bodies of the local government, and consequently specifying different institutions responsible for lobbying; development and simplification of the procedure for registration and removal from the Register of lobbyists; detailed regulation of the procedure for conducting effective supervision of the work of the lobbyists, in accordance with the provisions of the Law on Inspection Supervision;
- Upon the adoption of the Law, a Code of Ethics for lobbyists should be adopted; and
- In order to raise public awareness and the perception of lobbying, the State Commission for Prevention of Corruption should start organising promotional events on the topic of lobbying, where the importance of lobbying, as well as the difference between lobbying and involving stakeholders in the procedure for adoption of regulations, shall be explained in a simple and comprehensible manner.

### **Problem / Risk factor 5:**

High percentage of laws adopted in a summary or urgent procedure (even though the Rules of Procedure of the Assembly prescribe multiple stages of drafting laws), which does not allow for inclusion of all socially relevant and concerned entities in the legal process.

### **Explanation:**

Inability to include all socially relevant and concerned entities.

## **Institution: The Assembly**

### **Category: Management - Integrity Mechanisms**

**Indicator Question:** Do you think that the Rules of Procedure of the Assembly need to be amended, in order to lower the percentage of laws adopted in a summary or urgent procedure?

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**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

The Rules of Procedure of the Assembly and the Law on the Assembly (whose adoption has been evaluated as a rare and good example) represent a solid legal framework for the process of adopting laws with regard to the competences of the highest legislative authority.

Having in mind that the Government coordinates the inclusion of all concerned parties, there is no need for amending the Rules of Procedure of the Assembly but for taking the adequate measures and activities by the executive branch of government, of course in coordination with the legislative power.

## **Institution: The Assembly**

**Category: Capacity - Resources**

**Indicator Question:** Does the Assembly take measures and activities for an increased participation of the concerned parties in the law drafting and adoption procedure?

**Score:**

|            |          |
|------------|----------|
| No         | 1        |
| Partly     | 3        |
| <b>Yes</b> | <b>5</b> |

**Explanation:**

Pursuant to the Rules of Procedure of the Assembly, public debates are held in the Assembly concerning any law proposals and the chair of the relevant working body can invite representatives of the concerned parties.

The establishment of the Parliamentary Institute and its appropriate staffing are also expected to contribute to the improvement of the overall situation.

## **Institution: State Commission for Prevention of Corruption**

**Category: Management - Integrity Mechanisms**

**Indicator Question:** Do you think that the Assembly should propose amendments to the Rules of Procedure of the Assembly in order to lower the percentage of laws adopted in a summary or urgent procedure?

**Score:**

|               |          |
|---------------|----------|
| No            | 1        |
| <b>Partly</b> | <b>3</b> |
| Yes           | 5        |

**Explanation:**

The Rules of Procedure of the Assembly need to be more precise regarding the use of the summary procedure, which is most frequently applied with the explanation that the law is “not complex or extensive”. The inclusion of representative entities interested in the work of the bodies of the Assembly, of course without the right to vote, should be a rule, not only an option. This will lead to an improved quality and application of the laws.

**Institution: State Commission for Prevention of Corruption**

**Category: Management - Transparency**

**Indicator Question:** Do you think that the obligation to publish law proposals on the SNERR will lead to an improved situation and a lower percentage of laws adopted in a summary and urgent procedure?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

Despite of the improvement, laws adopted in an urgent procedure should also be published on the SNERR and on the internet. The amendments to the legal documents should also be published prior to their adoption and they should be updated on a daily basis.

**Institution: State Commission for Prevention of Corruption**

**Category: Management - Transparency**

**Indicator Question:** Is the minimum deadline of 10 days for publishing the law proposals drafted by the ministries on the SNERR sufficient for inclusion of the public?

**Score:**

|        |   |
|--------|---|
| No     | 1 |
| Partly | 3 |
| Yes    | 5 |

**Explanation:**

Even though this depends on the content and scope of the law, in order to have good quality organization and inclusion of stakeholders and the public, the deadline needs to be doubled in time.

**Explanation de jure:**

The procedure for adoption of laws is prescribed in Chapter IX ADOPTION OF LAWS AND OTHER REGULATIONS of the Rules of Procedure of the Assembly(Official Gazette No. 91/2008, 119/20110 and 23/2013).

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The summary procedure for adoption of laws is prescribed in Articles 170 and 171. These articles refer to the cases when the initiator of a law proposal may suggest to the Assembly to examine the law proposal in a summary procedure in case when the law is not complex or extensive, termination of validity of a certain law or particular provisions of a law, or less complex laws or extensive harmonisation of a law with the European Union legislation. If the Assembly decides to examine the law proposal in a summary procedure, the President of the Assembly shall immediately assign the relevant working body and the Legislative Committee to examine the law proposal and the Assembly holds a general debate. The second and the third reading shall be held on a single session. In such case, the second reading shall start with a debate on the law proposal in accordance with the provisions of these Rules of Procedure for the second reading, and amendments may be submitted at the session, until the beginning of the third reading on the law proposal.

The urgent procedure for adoption of a law is regulated in Articles 167, 168 and 169. By exception, a law may also be adopted in an urgent procedure when this is necessary, in order to prevent and avoid major disturbances in the economy or when that is in the interest of the security and defence of the Republic, or in cases of major natural disasters, epidemics or other extraordinary or urgent needs. In order to adopt a law in an urgent procedure, the actual draft law to be adopted shall also be submitted. The Assembly shall decide on the justification of the proposal to adopt a law in an urgent procedure without a debate. If the Assembly decides to examine the law proposal in an urgent procedure, it shall assign the relevant working body and the Legislative Committee to hold debates on the law proposal. When a law proposal is examined in an urgent procedure, there shall be no general debate. The second and the third reading shall be held on a single session and the second reading shall start with a debate on the law proposal in accordance with the provisions of these Rules of Procedure for the second reading. When a law proposal is examined in an urgent procedure, the time limitations contained in the Rules of Procedure shall not apply.

Article 122 paragraph (2) of the Rules of Procedure stipulates that at its session, the working body may invite scientists, professionals and public figures and representatives of the municipalities, the City of Skopje, public companies, trade unions and other organisations, institutions and associations, in order to present their opinions on issues discussed at the session of the body.

Having in mind that most of the laws adopted by the Assembly have been proposed by the Government, it is of no lesser importance to regulate the inclusion of the concerned authorities in the acts pertaining to the work of the state administration bodies and the Government.

When it comes to the legislative branch of government, the legal framework covers the following legislation related to this issue: Law on the Organization and Operation of State Administration Bodies (Official Gazette No. 58/00, 44/02, 82/08, 167/10 and 51/11); Rules of Procedure of the Assembly No. 8/01, 98/02, 9/03, 47/03, 64/03, 67/03, 51/06, 5/07, 15/07, 26/07,30/07, 58/07, 105/07, 116/07, 129/07, 157/07, 29/08, 51/08, 86/08, 114/08, 42/09, 62/09, 141/09,162/09, 40/10, 83/10, 166/10, 172/10, 95/11, 151/11, 170/11 and 67/13); Regulatory Impact Assessment Methodology (Official Gazette No. 107/2013) and the Guidelines on the Manner of Proceeding in the Operation of the Ministries in the Regulatory Impact Assessment Implementation Process (Official Gazette No. 106/2013).

Article 10 of the Law on the Organization and Operation of State Administration Bodies prescribes that state administration bodies, when drafting laws and other regulations in their competence, shall provide consultations with citizens by public announcement of the type, content and deadlines for the adoption of the laws and other regulations; by organizing public debates and by acquiring the opinion of concerned citizens' associations and other legal entities.

Article 68-a from the Rules of Procedure of the Government prescribes that the proposals for adoption of a law, the draft laws and the law proposals shall be published by the competent ministry on its website and in the single national electronic register of regulations (SNERR) where they shall remain published for one year from the day of the entry into force of the law. When the law proposal amends at least one fifth of the provisions of the existing law, the competent ministry shall also publish a consolidated text of the law containing the amendments proposed. The laws adopted in an urgent procedure are an exception to this rule and the competent ministry does not publish them on its website and on the SNERR. Stakeholders can submit their opinions, notes and proposals related to the announced proposals for adoption of a law, the draft laws and law proposals on the SNERR within 10 days from the day of their publication.

The regulatory impact assessment methodology contains a special Chapter IV dedicated to the purpose and the consultations with the parties concerned. According to the methodology, the consultations with the parties concerned are an important mechanism for improvement of the quality of the legislation and the efficacy and effectiveness of the implemented measures and they contribute to increased transparency of the Government's work and the decision-making process.

Ministries need to ensure involvement of the parties concerned throughout the whole regulatory impact assessment process, and specifically in the phase of analysis of the state of affairs, defining the problem and establishing the need for introducing regulation; the phase involving the definition of possible solutions (options) and their application and in the phase involving assessment of the potential impact by the proposed solutions (options). The methodology distinguishes two groups of parties concerned: „internal“ parties concerned, involving the ministries and other statutory bodies, governing institutions and other state bodies that may have shared responsibility or interest in the proposed regulation, and „external“ parties involving the businesses, syndicates, NGOs, associations and foundations, civic groups, as well as citizens concerned directly with the proposed regulation. Depending on the type of group involved in the consultation and depending on the stage of the RIA process, various methods of involvement and collection of views and suggestions by parties concerned can be applied.

Chapter IV from the Guidelines on the Manner of Proceeding of the Ministries in the Process of Regulatory Impact Assessment refers to the consultations with the parties concerned. Depending on the content of the law proposal and its possible (economic, social and environmental) impact, the ministries define the parties concerned that need to be included or consulted in the process of the regulatory impact assessment and the preparation of the law proposal, and depending on the expected impact of the law proposal, they determine one or more ways to include and consult the concerned parties. These Guidelines determine the following ways to hold consultations with the parties concerned: public review of the proposed legislation; public hearing; written requests for views, suggestions and comments by concerned parties; participation in working groups set up by a ministry or the Government; meetings with parties concerned and public debates on certain issues via electronic interactive tools available on the SNERR and the E-democracy portal.

After the consultation process with the parties concerned, the following data shall be outlined in the RIA report: information on the methods of involvement of parties concerned; information on the parties concerned that participated in the process; views aired during the public debate, i.e. the suggestions and comments received in writing or published on the SNERR and on the E-democracy portal; the views, suggestions and comments that were embedded in the proposed legislation, and the views, suggestions and comments that were not accepted by the ministry and the reasons for the decline.

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**Score:**

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation de facto:**

The 2011 report on the operation of the Assembly<sup>134</sup> states that out of a total of 130 laws that have been adopted, 46 have been adopted in a summary procedure. In 2012 the situation has improved and out of a total of 186 laws, 43 laws have been adopted in a summary procedure.<sup>135</sup> Having in mind that more than 97% of the laws adopted by the Assembly have been proposed by the Government, the measures that it undertakes to overcome this problem are of great importance.

One of the tools to include all stakeholders in the process of adopting the laws by submitting comments and proposals directly to the ministries (entities that are in charge of drafting laws on behalf of the Government as an initiator of the law proposals) is the Single national electronic register of regulations ([www.ener.gov.mk](http://www.ener.gov.mk)) - an electronic system that contains both the existing legislation and the law proposals that are being drafted by the ministries.

“This system has been envisaged as a tool for electronic information of citizens in the country, nongovernmental organizations, chambers of commerce, business associations and legal entities on the existing legislation, law proposals that are being drafted by ministries and the corresponding regulatory impact assessment pertaining to these laws. Therefore, within the frames of the PVR process, the SNERR serves and assists the implementation of corresponding and timely coordinated consultations with the public, which increases the transparency of the overall process and allows the use of modern ICT technologies that are at our disposal.”<sup>136</sup>

Despite the numerous efforts put in by the Government, both in terms of the adoption of relevant legislation, where special emphasis is placed on stakeholder participation, and in terms of the introduction of a corresponding institutional framework to support the regulatory reform process, there is still room for improvement of the transparency and participation in the law adoption procedure in the country and reduction of the number of laws that are passed in summary, i.e. emergency proceedings.

In order to overcome this problem, the efforts and responsibility lie both with the executive and legislative bodies and with the stakeholders’ representatives (natural persons, trade unions, chambers, citizens’ associations and other legal entities).

**Score:**

|                             |          |
|-----------------------------|----------|
| To a very small extent      | 1        |
| To a small extent           | 2        |
| <b>To a moderate extent</b> | <b>3</b> |
| To a large extent           | 4        |
| To a very large extent      | 5        |

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134 <http://www.sobranie.mk/WBStorage/Files/IZVESTAJ25062011311220110.pdf>

135 <http://www.sobranie.mk/WBStorage/Files/IZVESTAJ2012.pdf>

136 <http://kapital.mk/mk/magazin.aspx?ild=2969&pdf=1>.

## Recommendations

- Transparent and timely publication of the Annual Programme for the Operation of the Government;
- Consistent compliance with the rules for consultations and inclusion of all stakeholders, both by executive and legislative bodies, and introducing monitoring mechanisms;
- Promoting the possibilities and benefits of the SNERR and the E-democracy portal, their continuous improvement by making them as simple and as practical as possible, for the use of all stakeholders;
- Adopting a code on public participation in the process of adopting laws by the Assembly;
- Conducting activities for increased public participation through various forms of participation (dialogue, debates, analysis etc.) regarding all law proposals and at all stages (from the beginning of the drafting, through the adoption, to the very monitoring of its implementation) and recording of the consultation process;
- Obligatory, instead of optional inclusion of stakeholders in the work of the operational bodies of the Assembly, according to the content of the law on the one hand, and the representativeness of the stakeholders on the other hand.
- Introducing a register of stakeholders, systematized by various social life spheres, which will be regularly updated.
- Strengthening the capacities and competences of the stakeholders' representatives (trade unions, chambers, civil associations etc.), which will contribute to organizing constructive, instead of criticizing debates and proposing sound legal solutions;
- Using other forms of participation by means of cooperation and partner relations.

## INDEXES

| Category   | Sub-category         | Index   |          |                      |                  |
|------------|----------------------|---------|----------|----------------------|------------------|
|            |                      | De jure | De facto | Sub-category Average | Category Average |
| Capacity   | Resources            | 3,5     | 2,8      | 3,1                  | 3,0              |
|            | Independence         | 3,3     | 2,7      | 3,0                  |                  |
| Management | Transparency         | 4,0     | 3,3      | 3,6                  | 3,4              |
|            | Integrity Mechanisms | 3,7     | 3,0      | 3,3                  |                  |
| Total      |                      | 3,6     | 2,9      | 3,2                  | 3,2              |

| Sub-category         | De jure    |  | De facto   |  | Total      |   |
|----------------------|------------|--|------------|--|------------|---|
|                      | Index      | The extent to which the standard is met<br>-Law- | Index      | The extent to which the standard is met<br>-Practice - | Index      | The extent to which the standard is met |
| Resources            | 3,5        | 70%  | 2,8        | 56%  | 3,1        | 62%                                     |
| Independence         | 3,3        | 66%  | 2,7        | 54%  | 3,0        | 60%                                     |
| Transparency         | 4,0        | 80%  | 3,3        | 66%  | 3,6        | 72%                                     |
| Integrity Mechanisms | 3,7        | 74%  | 3,0        | 60%  | 3,3        | 66%                                     |
| <b>Total</b>         | <b>3,6</b> | <b>72,5%</b>                                     | <b>2,9</b> | <b>59%</b>   | <b>3,2</b> | <b>65%</b>                              |



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## LITERATURE:

- ✓ Electoral Code
- ✓ Law on Financing of Political Parties
- ✓ Rulebook on the Template, Form, Content and Manner of Keeping Annual Financial Reports for Political Parties
- ✓ Criminal Code
- ✓ Law on Prevention of Corruption
- ✓ Law on Prevention of Conflict of Interests
- ✓ Law on Lobbying
- ✓ Law on Banking
- ✓ Law on the Public Revenue Office
- ✓ Rules of Procedure of the Assembly
- ✓ Law on the Organization and Operation of State Administration Bodies
- ✓ Rules of Procedure of the Government
- ✓ Regulatory Impact Assessment Methodology
- ✓ Guidelines on the Manner of Proceeding in the Operation of the Ministries in the Regulatory Impact Assessment Implementation Process
- ✓ Joint Opinion No.700/2012 on the Electoral Code adopted by the European Commission for Democracy through Law (the Venice Commission) and the Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 17 June 2013
- ✓ Joint Opinion No. 640 / 2011 on the Revised Electoral Code adopted by the European Commission for Democracy through Law (the Venice Commission) and the Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 17 October 2011
- ✓ 2012 Progress Report on the Former Yugoslav Republic of Macedonia
- ✓ Report from the Commission to the European Parliament and the Council: The Former Yugoslav Republic of Macedonia: Implementation of Reforms within the Framework of the High Level accession Dialogue and Promotion of Good Neighbourly Relations
- ✓ Conclusions from the High Level Accession Dialogue
- ✓ The GRECO Third Round Evaluation Report, adopted on the 46<sup>th</sup> GRECO Plenary Session (22-26 March 2010) and published on 30 August 2010
- ✓ SAO 2011 Annual Operation Report
- ✓ FOSM Notes to the Law on Lobbying

## **APPENDIX 1 – LIST OF INTERLOCUTORS WHO PARTICIPATED IN THE RESEARCH**

Ms. Mirjana Dimovska, SEC member

Mr. Ilija Ristovski, MoJ State Secretary

Ms. Snezana Mojsova, Head of Sector for International Legal Cooperation at the MoJ

Ms. Elena Dimovska, Junior Associate for Coordination of Anti-corruption Activities at the MoJ

Ms. Biljana Tanovska, Head of Auditing at the SAO

Ms. Desa Atanasova, Assistant General Inspector for Prevention of Corruption, PRO

Mr. Darko Aleksov, Civil Association MOST

Mr. Zlatko Dimitrioski, Civil Association MOST

Mr. Marjan Madzoski, Chief of Cabinet of the President of the Assembly of the RoM

Mr. Aleksandar Drakulevski, Lobbyist

Ms. Silvana Boneva, Coordinator of the Parliamentary Group of VMRO-DPMNE

Ms. Suzana Saliu, Vice President of the Assembly of the RoM, from DUI

Ms. Vladanka Avirovikj, President of the Committee on Economy, from SPM

Mr. Igor Ivanovski, Coordinator of the Parliamentary Group of SDSM

## **APPENDIX 2 – LIST OF ACRONYMS**

SCPC – State commission for Prevention of Corruption

SEC – State Election Commission

MoJ – Ministry of Justice

SAO – State Audit Office

PRO – Public Revenue Office

MoF – Ministry of Finance

**3. REPORT ON THE QUALITATIVE ANALYSIS OF THE IMPLEMENTATION OF THE ANTI-CORRUPTION MEASURES IN THE STATE PROGRAM FOR PREVENTION AND REPRESSION OF CORRUPTION AND PREVENTION AND REDUCTION OF CONFLICT OF INTERESTS 2011-2015 IN THE LOCAL SELF-GOVERNMENT SECTOR**

Prepared by: Maksim Acevski, CFE

November, 2013

## INTRODUCTION

The OSCE Mission to Skopje has been implementing a series of multi-annual activities to support the implementation of the State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interests 2011-2015 (the State Program). In 2012, the Mission assisted with the development of the methodology for qualitative assessment of the activities and indicators included in the State Program, the pilot qualitative analysis of the education and sports sector, the assessment of the public perception with regard to three of the sectors established in the State Program, but also with the strengthening of the capacities of the State Commission for Prevention of Corruption (SCPC) to develop the integrity concept and the electronic data base.

In 2013, the OSCE Mission to Skopje continued its cooperation with the SEC by supporting the design of the qualitative analysis and conducting of a survey of citizens' perceptions regarding additional three sectors from the State Program – the private, political and local self-government sector. This paper presents the analysis of the local self-government sector. It focuses on the problems identified within the State Program and uses a set of indicators to assess the anti-corruption measures and the implementation of the State Program. It also identifies the strengths and weaknesses of the current efforts and it gives recommendations for improved combating of corruption in the local self-government. The main purpose of this analysis is to assist the SCPC with the monitoring and implementation of the State Program, the improvement of the indicators and the innovation of the foreseen activities.

## METHODOLOGY

The methodology is based on Transparency International's National Integrity System approach. The problems reviewed in this paper result from the State Program. Each of the problems is accompanied by indicators of the situation and progress, as well as recommendations for improved results.

The following sources of data were used:

- Legal analysis – analysis of all relevant laws, by-laws and other official documents and reports;
- Interviews with key information sources, such as the Ministry of Finance, Ministry of Transport and Communications and the following units of the local self-government (ULSG): Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.

Based on the information obtained, draft-scores were designed by the surveyor for each of the indicators, from two different aspects – *de jure*, with respect to the legal framework, and *de facto*, describing the state of affairs in terms of the practice. When assessing the legal framework, a three-score scale was used from 1 to 5, where 1 = No, 3 = Partly, 5 = Yes.

In order to assess the real state of affairs in practice, a 1-5 response scale was used with the following values: 1 = To a very slight degree, 2 = To a slight degree, 3 = To a certain degree, 4 = To a large degree, 5 = To a very large degree.

The separate scores are then added and presented as an average value for each of the subcategories and categories. For improved overview, the aggregated scores are expressed as a percentage of the maximum score at the end of this paper.

The results were also presented to be validated by the relevant stakeholders, who discussed the findings and scores concerning the indicator questions, in order to confirm or amend the data and the results. This validation served as a basis for finalizing the analysis.

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## EXECUTIVE SUMMARY

The qualitative analysis implemented as part of this project was aimed at assessing the main risk factors/problems identified by the State Commission for Prevention of Corruption (SCPC) in the **local self-government** sector. The main problems indicated by the SCPC were reviewed with reference to the legislation and its practical implementation, in order to point to the main weaknesses of this sector in the country with regard to the control, transparency, integrity, accountability, resources and capacity.

The purpose of this survey is to contribute to the overall efforts for combating local self-government corruption, by identifying the main shortcomings and proposing any corresponding measures for improvement. It is important to highlight that the risk factors/problems identified in the State Program by the SCPC are an accurate representation of the most affected areas where further action is required. Therefore, it is important to acknowledge that the State Commission plays a crucial role in combating corruption, as an institution which accurately identifies the shortcomings and risk areas where further efforts are required.

With regard to Problem 1 - Complex and unclear procedures and serious problems with their conducting in the sphere of urbanism – there is pertinent legislation but it would be good to take certain activities for reviewing the current legislation on the adoption of the local spatial planning documentation for construction of facilities for the purpose of light, non-polluting industries.

However, the practical implementation reveals certain weaknesses that point to the need for adopting policies and taking activities to provide increased participation of the citizens in the review of the planning documentation; facilitating the manner of obtaining construction permits (through the e-construction permit system); recruiting sufficient human resources and providing continuous supervision of the constructions under the competences of the units of local self-government (ULSG).

With regard to Problem 2 - Deviations in the management of finances and local self-government property, despite the existence of some laws and bylaws regulating this matter, in practice, there are some deviations that need to be addressed in the forthcoming period by taking specific activities, but also by initiating amendments to the Budget Law and the Law on the Financing of ULSG in the section referring to the requirements for realistic budget planning. It is necessary to provide increased control and monitoring of the development program plan of the ULSG, realistic and objective planning of the budget of the ULSG, licensed software application for preparing the ULSG budget, increased number of staff in the internal audit unit, proper publishing of the public procurement plan on the website of the ULSG and adopting a corresponding annual training programme for the ULSG staff.

However, at the same time, the State Commission for Prevention of Corruption needs to take measures in the forthcoming period in order to **ensure monitoring of a number of blocked accounts of the ULSG and consistent application of the provisions of the Law on the Financing of ULSG and timely declaration of financial instability of the municipality.**

With regard to Problem 3 – Lack of guarantees for strict implementation of the operating procedures, the current legal provisions do not provide the required assurance that internal audit units (IAU) have been established in all the ULSG, which points to the need for reviewing the legal provisions on the requirements set for establishing IAU in the ULSG. The practical implementation of the provisions of the Law on Public Internal Financial Control (LPIFC) related to the internal audit is followed by a larger number of exceptions that need to be addressed in the forthcoming

period. More precisely, the number of internal auditors is not satisfactory and it is important to continue with the activities for providing proper training and certification of internal auditors.

With regard to Problem 4 – Lack of corruption-related risk assessment in the municipalities, even though the current legislation prescribes an obligation for the private sector entities, including the ULSG, to design and adopt a risk management strategy, this obligation is not fulfilled in the most part and yet there are no sanctions prescribed in case of failure to fulfil this obligation. This state of affairs leads to the conclusion that proper measures and activities need to be taken to amend the existing LPIFC. The implementation of the risk management section from the LPIFC points to the conclusion that no proper action and adoption of risk management strategies is ensured with the law and no adequate financial management and control system has been established, to ensure regular monitoring and update of the control mechanisms for minimizing the risks.

This analysis offers multiple recommendations in order to help address the identified weaknesses in the units of local self-government.

## FINDINGS OF THE QUALITATIVE ANALYSIS

### **Problem/ Risk factor 1:**

Complex and unclear procedures and serious problems with their conducting

### **Explanation:**

One of the most common procedures conducted by the local self-government are the urbanism-related procedures, which entail high risk of corruption due to their importance to the citizens and the manner in which they are conducted. In addition, these procedures are not simple enough for citizens with an average educational background, which leaves enough room for bribery or provision of other services in exchange for an arbitrary conducting of the procedure and flexible interpretation and manipulation of regulations on part of the administration.

**Institution: ULSG surveyed: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category:** Transparency

**Indicator question:** Do you think that the current legal solution pertaining to the design, adoption and additions to the detailed urban development plans is adequate and provides for transparency and inclusiveness in the procedure?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

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### Explanation on the scoring:

The design, adoption and additions to the detailed urban development plans are regulated with the provisions of the Law on Physical and Urban Planning. The provisions of Article 11 of this Law prescribe the content of the detailed urban plan, whereas the procedure for the design and adoption of the plans is regulated in Item 2 of the aforementioned Law. The provisions of Article 17, paragraph 6 of this Law prescribe the municipalities' obligation to ensure competence and publicity in the process of physical and urban planning. To that end, the municipal council and the Council of the City of Skopje have established a participative body with the task of conveying the views, opinions and needs of the citizens and the legal entities, and monitoring the planning by providing initiatives, directions and suggestions for designing plans for the corresponding municipality and the City of Skopje. This participative body consists of representatives of the council, an expert from the municipal administration, renowned professionals from the urban planning sphere, representatives of citizens' associations and citizens living in the municipality. The number of representatives is determined based on the Statute of the municipality and the Statute of the City of Skopje and cannot exceed ten members.

On the other hand, the provisions of Article 24 of this Law regulate the procedure for conducting a public presentation and public survey on the detailed urban development plan. The organization of the public presentation and the public survey regarding the plans is conducted by the mayor of the municipality, following the design of the plan by the municipal council. These provisions also prescribe the manner of reporting and the timeframe for the public survey.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree  | 1        |
|                         | To a slight degree       | 2        |
|                         | To a certain degree      | 3        |
|                         | <b>To a large degree</b> | <b>4</b> |
|                         | To a very large degree   | 5        |

### Explanation on the scoring:

Pursuant to the Law on Physical and Urban Planning, the procedure for adoption of the urban development plans foresees a public survey and public presentation of the draft plans. The public survey shall last for not less than ten working days, during which period the entities from Article 29 of the Law, as well as all citizens and legal entities concerned can submit remarks and proposals concerning the draft plan, using questionnaires. The public presentation and the public survey are conducted by presenting the plan in public on the territory of the municipality. The time and place of the presentation of the plan and the conducting of the public survey and presentation have to be published using an announcement in not less than two public newspapers, and the announcement must contain the data, location and surface covered with the plan.

The answers obtained in the surveyed units of local self-government reveal no significant deviations with respect to the adoption of urban development plans.

The aforementioned legislation is subject to frequent amendments, which gives rise to the need for drafting a consolidated version of this Law.

### Recommendations:

The Legal Commission within the Assembly should proceed to drafting a consolidated version of the Law on Physical and Urban Planning.

**Institution: Participants in the survey: ULSG of Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category:** Transparency

**Indicator question:** Are there any policies in place within the municipality that promote transparency and participation in the procedure for the adoption/amendment of detailed urban development plans?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The provisions of Article 24, paragraph 4 of this Law stipulate that the municipality shall notify the relevant entities of the organization of the public presentation and the public survey in written. The public survey shall last for not less than ten workdays and during this period the competent authorities and all concerned citizens and legal entities can put forward remarks and suggestions regarding the proposed plan, using questionnaires.

Paragraph 11 of this Law prescribes the obligation for publishing the place and time of the public presentation and public survey in not less than two public newspapers, i.e. “the time and place where the plan will be exhibited and the conducting of the public presentation and public survey shall be published using an announcement in at least two public newspapers. The announcement shall contain the data, location and territory covered with the plan”.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree  | 1        |
|                         | To a slight degree       | 2        |
|                         | To a certain degree      | 3        |
|                         | <b>To a large degree</b> | <b>4</b> |
|                         | To a very large degree   | 5        |

**Explanation on the scoring:**

Despite the existence of clear provisions on the manner of proceeding in the ULSG regarding the public presentation and the public survey for the adoption of detailed urban development plans and the existence of some guidelines published by the municipalities facilitating understanding of the stakeholders’ rights, there is still a need for the adoption of such policies and guidelines by those municipalities that have still not drafted such documents.

**Recommendations:**

The municipalities need to adopt and implement policies and guidelines that will facilitate the understanding of stakeholders’ rights regarding the consideration of the proposed plans and will encourage increased participation in the public debates and surveys.



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**Institution: Units of the Local Self-Government of Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category:** Transparency / Accountability

**Question - Indicator:** Do the amendments to the Law on Physical and Urban Planning specify the possibilities for the use of local urban planning documentation and the limitation for an obligatory public presentation and survey related to this documentation?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

The local urban planning documentation is a planning documentation that can be used to manage and use the space by determining the land plot out of the planning scope for constructions assessed within the laws as second category constructions. The provisions of Article 50 of the aforementioned law prescribe that the local urban planning documentation can be used to manage the space by determining the construction land plot out of the planning scope for constructions assessed as second category constructions with the Law on Construction. Paragraphs 6 and 7 of the same article of this Law prescribe the procedure for conducting public surveys and public presentations, including the conditions when no public survey or presentation is conducted, namely “if the municipality needs to have a local urban planning documentation designed, the decision for the designing of this local urban planning documentation is passed by the municipal council. The citizens and legal entities concerned can submit local urban planning documentation to the municipality. The municipality shall conduct a public presentation and public survey in the manner and procedure prescribed in the provisions of Article 24 of this Law, and the public survey shall last for not less than five workdays. Upon exception, the public presentation and public survey shall not be conducted if the local urban planning documentation foresees the construction of facilities for the purpose of light and non-polluting industry”. The activities taken in this respect, which are mostly economically motivated, cannot be contested, but frequently, when adopting local urban planning documentation that foresees the construction of facilities for the purpose of light and non-polluting industry, the absence of a public presentation and public survey can lead to corrupt behaviour.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree  | 1        |
|                         | To a slight degree       | 2        |
|                         | To a certain degree      | 3        |
|                         | <b>To a large degree</b> | <b>4</b> |
|                         | To a very large degree   | 5        |

**Explanation on the scoring:**

The local urban planning documentation is a planning documentation that can be used to manage and use the space by determining the land plot out of the planning scope for constructions assessed within the laws as second category constructions, with a precisely defined possibility to use this documentation in the process of urban planning.

The provisions of the aforementioned law clearly refer to the conditions when the transparency of the procedure for adoption of urban planning documentation is limited, in conditions referring

only to the construction of facilities for the purposes of the light and non-polluting industry. Some of the ULSG that participated in the survey, pointed to the need for increased participation of the ULSG in the process of adopting and amending the relevant legislation.

**Recommendations:**

Despite the clear definition of the conditions for limitation of the public presentation and public survey for the adoption of local urban planning documentation for the construction of facilities for the purposes of the light and non-polluting industry, the current legislation needs to be reviewed and public participation and transparency have to provided for this procedure, too.

It is necessary to enable increased transparency and participation of all relevant stakeholders in the procedure for amending and adopting the relevant legislation regulating this matter.

**Institution: Units of the Local Self-Government of Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category:** Transparency

**Question - Indicator:** Do you think that the amendments to the Law on Construction which refer to the introduction of the obligation for submitting requests through the electronic construction permitting system provide an easy and fast way of obtaining a permit?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

The procedure for issuing a construction permit is regulated with the provisions of the Law on Construction and the Rulebook on the Manner of Conducting the Procedure for Obtaining an Electronic Construction Permit. The provisions of Article 59 of this Law prescribe that the procedure for the issuance of construction permits is conducted pursuant to the provisions of the Law on General Administrative Procedure, unless otherwise regulated. Furthermore, the aforementioned article prescribes that in order to obtain a construction permit, it is necessary to submit an online application to the competent authority. The provisions of the aforementioned Rulebook prescribe the procedure for obtaining the permit in detail.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree  | 1        |
|                         | To a slight degree       | 2        |
|                         | To a certain degree      | 3        |
|                         | <b>To a large degree</b> | <b>4</b> |
|                         | To a very large degree   | 5        |

**Explanation on the scoring:**

With the introduction of the e-construction permitting system, the overall procedure for the issuance of construction permits is conducted electronically. The investor submits the complete documentation in an electronic format and the communication between the competent authorities, investors and other stakeholders involved in the procedure who provide their opinion

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on the project documentation is done electronically, using the online system. All governing acts, including the construction permit, are issued in an electronic format. According to the data and information published by the competent ministry, the deadline for the issuance of construction permits is becoming shorter.

Without denying the activities and progress achieved with the introduction of this system, and having in mind the fact that the country is the first one in the region to implement such a system, the ULSG that participated in the survey still point to certain issues related to its functionality and the users' familiarity of the system, as well as the involvement of the municipal administration in the amendment of the pertinent laws and bylaws.

It is also worth bringing to light that some stakeholders do not possess digital signature certificates, which prevents them from using the system.

Promoting the electronic signature (digital signature certificate), as a possibility for an uninterrupted access to the internet and unlimited practice by all stakeholders will provide for an unlimited use of the aforementioned software solution and submitting requests for construction permits using the electronic construction permitting system.

**Recommendations:**

The competent authorities should survey all stakeholders and detect the conditions that require taking corrective measures and continuous upgrade of the system.

The competent authorities should investigate the situation with regard to the use of the system and the mandatory use of a digital/electronic signature certificate.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category:** Capacity

**Question - Indicator:** Have the relevant municipal authorities taken any activities to design additional educational materials on the use of the electronic construction permitting system?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

The provisions of the Rulebook on the Manner of Conducting the Procedure for Obtaining an Electronic Construction Permit contain the necessary explanation on the manner of using this system.

Even though the Ministry of Transport and Communications and the Association of the Units of Local Self-Government have published some educational materials on the manner of using this software solution on their websites, it is still necessary to take additional measures to bring this system closer to the end users.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

The websites of the Ministry of Transport and Communications and the Association of the Units of Local Self-Government contain specific guidelines on the way in which this electronic system should be used by the relevant stakeholders.

However, despite of this state of affairs, the answers received by the ULSG that participated in the survey point to the fact that they do not possess any written guidelines on the manner of using the electronic system and that the complete orientation is done orally.

**Recommendations:**

The ULSGs, in cooperation with the competent authorities and the AULSG, should publish educational materials that would facilitate the application of this electronic system.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category: Supervision / control**

**Question - Indicator:** Does the municipality have policies and procedures in place for a continuous and timely supervision of construction sites for every construction permit that has been issued and for taking minutes regarding the supervision performed?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The inspection supervision related to the second category of buildings is regulated with the provisions of the Law on Construction. The competences pertaining to the proceedings of the construction inspectors from the municipalities are stipulated in items 1 to 7 from Chapter X. **SUPERVISION** from the relevant Law.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

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**Explanation on the scoring:**

When performing inspection supervision pursuant to the provisions of Article 146 from the law on Construction, the construction inspectors are obligated to verify whether the governing acts adopted based on this law are in compliance with the law and should they establish that the governing acts are contrary to this law, they are required to submit a written proposal for the annulling of these governing acts alongside the minutes on the established findings.

The data received from the ULSG that participated in this survey and the competent ministry reveal that on the most part, construction inspectors perform the control over the already issued decision upon their own initiative or upon a report that has been filed, without having any policies or procedures for performing continuous supervision on the construction site for each of the construction permits that have been issued and taking minutes regarding the supervision performed.

Some of the ULSG that participated in the survey also reported insufficient human resources.

**Recommendations:**

Measures and activities need to be taken in order to hire the sufficient human resources in the ULSG.

Measures and activities need to be taken in order to design policies and procedures that would enable performing a continuous supervision on the construction sites for each of the construction permits that have been issued and taking minutes regarding the supervision performed.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category: Supervision / control**

**Question - Indicator:** Does the municipality have policies and procedures in place for acting upon any reports that have been filed, performing supervision on construction sites for each of these reports, taking minutes related to the supervision performed and notifying the party that had filed the report?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The proceedings of the construction inspector regarding the filed reports by the concerned parties are prescribed in the provisions of the Law on Construction and the Law on the General Administrative Procedure.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

The ULSG that participated in the survey report that taking action upon such reports is done at a slow pace and the main reasons for such a state of affairs are related to the limited human resources and the great number of cases that need to be processed pertaining to the legalization of illegal constructions.

The information obtained from the competent ministry is in the same line and points to the fact that the number of complaints and reports submitted to the ministry and pertaining to the improper conduct of the relevant municipal administration has decreased, but not greatly.

**Recommendations:**

The competent municipal bodies need to take measures for prescribing and implementing policies and procedures for acting upon each of the reports that have been filed, performing supervision at the construction site upon each of the reports, taking minutes related to the supervision performed and notifying the party that had filed the report.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category: Supervision / control**

**Question - Indicator:** Has the municipality hired and trained sufficient human resources on the continuous and timely supervision at the construction sites for each of the construction permits that have been issued, which enables all constructions to be performed in compliance with the required conditions?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The proceeding of the construction inspector with regard to the continuous and timely performance of supervision at the construction site for all construction permits that have been issued is regulated in the provisions of the Law on Construction and the Law on the General Administrative Procedure.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

The information obtained from the ULSG that participated in the survey points to the fact that the ULSG do not possess sufficient human resources for continuous and timely supervision at construction sites for all the construction permits that have been issued. Two out of the five units of local self-government that participated in the survey stated that they do not possess sufficient human resources for consistent application of these provisions.

**Recommendations:**

The units of the local self-government need to take some measures and activities in order to ensure sufficient human resources.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje and the Ministry of Transport and Communications.**

**Category: Supervision / control**

**Question - Indicator:** Do the available human resources perform timely supervision at construction sites for all the construction permits that have been issued so that there would be no conditions for the issuance of decisions for demolishing or remediating the constructions in the municipality?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The proceedings of the construction inspectors for the purpose of continuous and timely supervision of all construction permits that have been issued are prescribed in the provisions of the Law on Construction and the Law on the General Administrative Procedure.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

The information obtained from the units of local self-government that participated in the survey points to the fact that the ULSG do not possess the sufficient human resources that are needed for continuous and timely supervision at construction sites for all the construction permits that have been issued, and as a result, within the municipality there are no conditions for the issuance of decisions for demolishing or remediating constructions.

**Recommendations:**

The units of the local self-government need to take measures and activities to provide the human resources required.

|   |
|---|
| <p><b>Problem / Risk factor 2:</b><br/>Deviations in the management of finances and local self-government property</p>  |
| <p><b>Explanation:</b><br/>Similarly like in the case of public administration, the managing of finances and local self-government property entails a high risk of corruption, due to the possibility of abuse of budget resources or the property of the municipality. If the management of the finances and property of the municipality is not sufficiently regulated and protected, it gives room for misuse by the officials and local administration staff.</p> |

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Transparency

**Indicator question:** Do you think that the current legislation pertaining to the design of the Development Program Plan as an integral part of the draft municipal budget yields the expected results?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The provisions of Article 21-b of the Budget Law prescribe the manner of drafting the development program plans, their harmonization with the guidelines from the Circular sent by the Minister of Finance and their submission for approval by the Municipal Council. The Mayor of the municipality drafts the development program plan, harmonized with the guidelines from the Circular and it is then submitted for an approval by the Municipal Council not later than 20 October of the current year.

The Municipal Council approves the draft development program plan not later than 15 November of the current year.

The approved development program plan is an integral part of the draft municipal budget. The provisions of Article 23 from the Law on the Financing of the Units of Local Self-Government also prescribe the content of the municipal budget, which prescribes that the municipal budget shall also contain a development section consisting of a development program plan and the municipality is required to review this plan every year.



|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree       | 1        |
|                         | To a slight degree            | 2        |
|                         | To a certain degree           | 3        |
|                         | To a large degree             | 4        |
|                         | <b>To a very large degree</b> | <b>5</b> |

**Explanation on the scoring:**

The answers received as part of the survey lead to the finding that the current legislation gives the expected results. The current legal provisions and instructions contained in the Circular submitted to the units of local self-government by the Minister of Finance often provide the main guidelines on the drafting of the development program plan. However, in practice, there are certain exceptions that refer to the quality and the timely adoption of the development program plan, as well as the absence of proper supervision.

**Recommendations:**

Proper supervision of the quality of the drafted development program plans and monitoring the implementation of these plans need to be provided by the municipal administration and the Municipal Council.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Transparency

**Indicator question:** Do the municipalities have a well-established practice of having the development program plan regularly proposed by the mayor of the municipality and it being adopted by the Municipal Council not later than 15 November of the current year?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The Mayor of the municipality is required to submit the draft development program plan to the Municipal Council for adoption not later than 20 October of the current year, and the Municipal Council is required to adopt the development program plan not later than 15 November of the current year.

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree       | 1        |
|                         | To a slight degree            | 2        |
|                         | To a certain degree           | 3        |
|                         | To a large degree             | 4        |
|                         | <b>To a very large degree</b> | <b>5</b> |

**Explanation on the scoring:**

The answers received from the municipalities that participated in the survey reveal that the prescribed legal obligation for timely submission and adoption of the development program plan is fulfilled in the surveyed ULSG. However, the information on the general situation with regard to the adoption of the development program plan, points to the finding that there are some exceptions concerning the timely adoption of the municipalities’ development program plans.

**Recommendations:**

It is necessary to ensure timely adoption of the ULSG development program plan as a main pre-condition for timely adoption of the budget of the ULSG.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Transparency / accountability

**Question - Indicator:** Is the budget of the municipality harmonized with the development program plan?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The provisions of Article 23 from the Law on Financing of the Units of Local Self-Government, paragraph 6, prescribe that the development program plan shall contain the mid-term projections of appropriations by:

- different budget programs and sub-programs;
- years when they will be implemented and
- sources of financing, i.e. budgets.

This provision is a clear indicator that the development program plan is an integral part of the budget of the ULSG.

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree       | 1        |
|                         | To a slight degree            | 2        |
|                         | To a certain degree           | 3        |
|                         | To a large degree             | 4        |
|                         | <b>To a very large degree</b> | <b>5</b> |

**Explanation on the scoring:**

The answers obtained from the surveyed ULSG point to the conclusion that the budget of the ULSGs is harmonized with the development program plan. Despite the answers obtained on the harmonization of the development program plan and the budget of ULSGs, the information on the extent of achievement of the incomes of the ULSG and the constantly increasing number of ULSG with blocked accounts, point to the need for future monitoring of the regular and objective planning of ULSG budgets and their development program plans. Over the past period there

have been multiple examples of unrealistic planning of ULSG budgets, which in turn provides for spending (incurring liabilities) for which no funds have been reserved in the budgets.

**Recommendations:**

Over the next period, it is necessary for the ULSG to take activities to monitor the realistic and objective planning of ULSG budgets, the extent of achievement of the incomes and to initiate amendments to the Budget Law and the Law on the Financing of ULGS with respect to the section on the establishing of requirements for realistic planning of ULSG budgets.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Supervision / Control

**Question - Indicator:** Have the municipalities implemented an application software solution that ensures a continuous monitoring of the implementation of the municipal budget?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The recording of transactions in the business books is regulated with the provisions of the Law for Accounting on the Budgets and Budget Users and the Rulebook for Accounting on the Budgets and Budget Users. The provisions of Article 11 of the aforementioned Law stipulate that the input and processing of data can be performed using a computer, half-automated data processing and manual data processing.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree  | 1        |
|                         | To a slight degree       | 2        |
|                         | To a certain degree      | 3        |
|                         | <b>To a large degree</b> | <b>4</b> |
|                         | To a very large degree   | 5        |

**Explanation on the scoring:**

Business books are maintained using computers that use various software applications. So far, certain donors and NGOs have put in efforts to provide various software applications for maintaining business records, preparing the municipalities’ budget and monitoring the realization of the budget. Some research has been made in this sphere and it reveals that some ULSG have procured the required application solution that ensures proper monitoring of the realization of the municipal budget, but there are other ULSG that are in need of such an application.

As established, there are various software applications for monitoring the realization of the municipal budget which are not always entirely integrated. In most cases, the process of planning the budget is being done using a software application designed by a private legal entity. There are no provisions that would refer to the need for issuing licenses for these applications.

**Recommendations:**

The design of a unified and licensed software application (approved by the Ministry of Finance) should be initiated and it should unite multiple sub-programmes, including the monitoring of the realization of the budget.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Supervision / Control

**Question - Indicator:** Has the annual financial statement of the budget of the municipality been audited by the State Audit Office, i.e. internal auditor, in the period of 2011-2013 and have any deviations been established regarding the manner of using the funds and transferred competences (fiscal decentralization)?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The obligation for auditing the annual financial statements of the ULSGs is prescribed in the provisions of Article 38 from the Law on the Financing of the ULSG. Article 22 from the Law on State Audit stipulates that the budget of the ULSG shall also be subject to state auditing based on the annual programme adopted by the Chief State Auditor (Article 23).

The internal audit of the ULSG is regulated with the provisions of the Law on Internal Financial Control. The provisions of this law prescribe the criteria about the entities and the number of internal auditors that are required for the establishment of an internal audit unit.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

So far, state audits have only been performed on some of the ULSG – 10% of the total number of ULSG have been subject to state auditing on an annual level. However, despite the small number of ULSG subject to state audits, the auditing of the financial reports of the ULSG and the auditors’ reports submitted point to the conclusion that a number of irregularities have been established.

The internal auditing in the ULSG is not performed at the desired level. The data received from the Ministry of Finance pertaining to the internal auditing at the local level point to the conclusion that 43% of the ULSG do not have internal auditors and that 44% of the internal audit units have only one internal auditor. It is also important to highlight that the internal auditors are not always independent when performing internal audits at the local level and their work is not always free from interference by the head of the entity.

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**Recommendations:**

Increased comprehensiveness of the financial reports of the ULSG needs to be ensured for the benefit of state auditing.

The number of established internal audit units at the ULSG needs to be increased.

The number of internal auditors at the internal audit units at the local level needs to be increased.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Transparency

**Question - Indicator:** Does the municipality have policies and procedures in place for participatory budgeting and providing citizen and stakeholder participation in the phase of the drafting and adoption of the development program plan and the public procurement plan?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

Transparency is one of the budgeting principles related to the manner of preparing, adopting and executing the budget of the ULSG, which also raises public awareness and availability of data during all the phases of preparation and execution of the budget. The overall set of budget principles is presented in Article 3 of the Budget Law.

The procedure for the adoption of the public procurement plan is prescribed in the provisions of the Law on Public Procurement. Pursuant to the current provisions, the ULSGs are required to adopt a public procurement plan by the end of January.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

One of the main priorities of the ULSGs is providing a high level of transparency in the process of preparation and adoption of the municipal budget, thus also development of a program plan and a public procurement plan. In order to ensure that proper action is taken in this respect, this procedure has to be properly regulated, both in the standard provisions of the ULSG and in other written procedures.

Even though we can rightly say that the adequate level of transparency is ensured in the preparation and adoption of the municipal budget, including the development program plan, when it comes to the public procurement plan it is necessary to ensure a higher level of transparency and the plan needs to be published on the website of the unit of local self-government.

**Recommendations:**

The ULSGs need to take activities for adopting policies and procedures that would ensure increased citizen and stakeholder participation in the preparation and adoption of public procurement plans.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Transparency

**Question - Indicator:** Does the municipality have prescribed policies and procedures for publishing the development program plan and the public procurement plan on the website of the municipality, prior to their adoption?

|                        |           |          |
|------------------------|-----------|----------|
| <b>Score – de jure</b> | <b>No</b> | <b>1</b> |
|                        | Partly    | 3        |
|                        | Yes       | 5        |

**Explanation on the scoring:**

As previously explained, the adoption of the development program plan and the public procurement plan is regulated with the Budget Law, the Law on the Financing of the Units of Local Self-Government and the Law on Public Procurement. However, these laws do not prescribe the obligation for their mandatory publishing on the website of the municipality.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation on the scoring:**

The information obtained from the surveyed ULSGs and their assessment point to a worrying state of affairs in this sphere. There seems to be no legal obligation prescribed in this sense, with the exception of one of the budgeting principles that calls for transparency in this process, where the overall activity depends on the internal acts, policies and practices.

**Recommendation**

Taking action to ensure that policies and procedures will be prescribed regarding the manner of preparing, adopting and publishing of the development program plan and the public procurement plan on the website of the ULSG, prior to and upon their adoption.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Integrity

**Question - Indicator:** Have the municipalities adopted an annual programme for professional development of the municipal administration and have they received an adequate opinion by the competent ministry?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

#### Explanation on the scoring:

The provisions of Article 24 of the Law on Civil Servants prescribe that the ULSGs, amongst other, are also required to adopt an annual programme for professional development and training of civil servants in the current year, referring to the following year. The adoption of the programme is conditioned with the receipt of an opinion from the competent ministry (MIS).

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

#### Explanation on the scoring:

Most of the surveyed ULSGs point out that their ULSG has adopted an annual training programme and has obtained the relevant opinion of the competent ministry. However, there are also some ULSGs that do not proceed in accordance with their legal obligation and do not draft the required programme for professional development and training of civil servants.

#### Recommendation

Measures and activities need to be taken for the designing, the obtaining of the opinion from the competent ministry and the adoption of the annual programme for professional development and training of the municipal administration.

### **Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Integrity

**Question - Indicator:** Does the municipality take continuous measures and activities to train the staff on the successful implementation of the competences with regard to fiscal decentralization?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

#### Explanation on the scoring:

The professional development of the municipal administration is stipulated in the provisions of the Law on Civil Servants and the annual programme adopted within each ULSG. One of the obligations of the civil servants is related to their continuous development and training. If a civil servant rejects the referral to professional development and training, that would be considered as improper disciplinary conduct.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree  | 1        |
|                         | To a slight degree       | 2        |
|                         | To a certain degree      | 3        |
|                         | <b>To a large degree</b> | <b>4</b> |
|                         | To a very large degree   | 5        |

**Explanation on the scoring:**

So far, there have been a number of training sessions organized for the civil servants from the ULSGs. However, having in mind the country’s obligation to harmonize its legislation with the Acquis, but also the phenomenon of frequent, even constant amendments to the primary and secondary legislation pertaining to the performing of the competences of the ULSGs, there is a permanent need for professional development of the municipal administration.

**Recommendation**

Measures and activities need to be taken to ensure continuous education for the municipal administration.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Supervision and control

**Question - Indicator:** Has the municipality received any remarks or observations by the Ministry of Finance, about inappropriate action during the implementation of the fiscal decentralization competencies?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

Pursuant to the provisions of the Law on the Financing of Units of Local Self-Government, the Ministry of Finance and the Government are the competent authorities required to monitor the fiscal decentralization.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very slight degree  | 1        |
|                         | To a slight degree       | 2        |
|                         | To a certain degree      | 3        |
|                         | <b>To a large degree</b> | <b>4</b> |
|                         | To a very large degree   | 5        |

**Explanation on the scoring:**

Only one of the surveyed ULSGs reported that they have been subject to observation by the Ministry of Finance with regard to the transferred funds by means of block donations for performing the transferred competences. The competent ministry did not provide any information regarding this issue. Even though there are no data about serious deviations or impediments in



the execution of the transferred competences, the State Commission for Prevention of Corruption should analyse and monitor the observance of the provisions of the Law on the Financing of Units of Local Self-Government concerning the declaration of financial instability of municipalities.

Despite the continued blockage of numerous ULSGs, no measures have been taken to declare financial instability. As a result of this condition, in some of the municipalities, the payment for their operation is based on concessions, compensations and assignments etc., which gives room for corrupt behaviour.

### Recommendation

The State commission for Prevention of Corruption should introduce policies to monitor the number of blocked ULSGs and the consistent application of the provisions of the Law on the Financing of Units of Local Self-Government and the timely declaration of financial instability of municipalities.

|  |
|--|
| <b>Problem / Risk factor 3:</b><br>Lack of guarantees for strict implementation of operating procedures  |
| <b>Explanation:</b><br>The observance and strict implementation of the operating procedures depends on the professional assistance that will be given to officials and local administration staff. The internal audit in the municipalities has a crucial role to play in this process and therefore it has to be strengthened. At the same time, any resistance expressed against internal auditing has to be eliminated and a licensed internal auditor needs to be appointed. |

### Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.

**Category:** Capacity - Resources

**Indicator question:** Do you think that the current legal solution regarding the criteria<sup>137</sup> on the establishing and staffing of the internal auditing within the units of local self-government yields the desired results?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

#### Explanation on the scoring:

The criteria for establishing and staffing the internal auditing in the ULSGs are prescribed in the provisions of the Law on Public Internal Financial Control. Article 30 of this law prescribes, among else, that an Internal Audit Unit has to be established by all public sector entities whose average annual budget/financial plan has exceeded the amount of 50 million denars over the last three years.

Public sector entities whose average annual budget/financial plan has not exceeded the amount of 50 million denars in the last three years shall organise the internal audit by engaging:

<sup>137</sup> Article 29, 30 and 31 of the Law on Public Internal Financial Control.

- Internal auditor/s from the Internal Audit Unit from another public sector entity, based on an agreement concluded between the heads of both public sector entities, or Auditor/s listed in the internal auditors’ registry.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

The general state of affairs concerning the established internal audit units and the appointed internal auditors at the ULSGs is not satisfactory. Despite certain remarks regarding the criteria for the need to establish an internal audit unit, it is also necessary to take measures and activities to promote the obligation and benefit of the internal audit unit.

**Recommendation**

The competent authorities need to conduct activities to review the existing provisions of the Law on Public Internal Financial Control and start to promote the obligation and benefit of internal audit units and appoint internal auditors.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Capacity - Resources

**Indicator question:** Is there an internal audit function established (organized) within the municipality and is there a sufficient number of internal auditors in compliance with the criteria defined in the LPIFC<sup>138</sup>?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

The provisions of Article 31 of the Law on Public Internal Financial Control define the criteria for the number of internal auditors that should make up the internal audit unit in a public sector entity as follows:

- at least one internal auditor and Internal Audit Unit Head if the average budget/financial plan of the respective public sector entity was at least 50 million denars in the last three years, including EU –financed Funds and Programmes.
- at least three internal auditors and Internal Audit Unit Head if the average budget /financial plan of the respective public sector entity was at least 500 million denars in the last three years, including EU-financed Funds and Programmes
- at least four internal auditors and Internal Audit Unit Head if the average budget /financial

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plan of the respective public sector entity was at least 2 billion denars, including EU-financed Funds and Programmes.

- at least one internal auditor for every five budget users.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

#### Explanation on the scoring:

Unfortunately, the state of affairs regarding the appointed internal auditors in the ULSGs is far from meeting the prescribed criteria. The internal auditing in the ULSGs is not performed at the desired level. The data received from the Ministry of Finance pertaining to internal auditing at the local level point to the conclusion that 43% of the ULSGs do not have internal auditors and that 44% of the internal audit units have only one internal auditor. This state of affairs does not provide enough guarantees for proper, independent and reasonable audit assurance and advice for the mayor of the municipality in order to improve the operation of the entity and increase the efficiency of the internal control systems.

#### Recommendation

Measures and activities need to be taken in order to increase the number of internal auditors in the ULSGs.

### **Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Capacity - Resources

**Question - Indicator:** Does the current manner of acquiring a certificate for an authorised internal auditor correspond to the abilities and needs of the internal auditors in the municipalities?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

#### Explanation on the scoring:

The need for training and certification of internal auditors in the public sector in this country is regulated with the provisions of Article 36 of the Law on Public Internal Financial Control and the Rulebook on the Programme and Manner of Taking the Exam for a Certified Internal Auditor in the Public Sector (Official Gazette n.136/10). The provisions of the aforementioned Law stipulate that authorised internal auditors in the public sector can be appointed individuals who, in addition to other requirements, also meet the requirement for “training and passing the exam for certified internal auditors in the public sector according to the Programme for Taking the Exam for Certified Internal Auditors or possession of internationally recognized audit certificate”. So far, no proceeding has been implemented for acquiring a certificate / taking the exam for a certified internal auditor.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

Despite the fact that pursuant to the provisions of this Law, a relevant bylaw was adopted, which regulates the manner of taking the exam and acquiring a certificate for a passed exam for a certified internal auditor in the public sector, so far no such exam has been scheduled.

On the other hand, in June 2012, the Ministry of Finance of this country, in cooperation with the CEF from Slovenia and CIPFA from Great Britain, started implementing the project “Training of Internal Auditors in the Public Sector”. This project marked the commencement of the very first international certification of internal auditors in the public sector in our country.

The project involved 65 internal auditors from the public sector (50 auditors on the central and 15 auditors on the local level) who attended the training divided into two groups. In order to overcome the aforementioned situation<sup>139</sup>, a working group was established to execute the localization (the training to be implemented by local trainers from the country and the overall process to be implemented by the Ministry of Finance) of the training for certifying accountants and internal auditors in the public sector of the country, registered under n.03-28823/1.

During October 2013, the Law Amending the Law on Public Internal Financial Control was submitted to the Assembly.

The proposed amendments prescribe the requirements and manner of conducting the training and taking the exam for a certified internal auditor in the public sector.

**Recommendations:**

The activities regarding the localization of the training for certification of internal auditors in the public sector should continue.

The proposed amendments to the Law on Public Internal Financial Control should be further regulated in order to ensure continuous certification and training of internal auditors, but also obtaining an internationally recognized certificate.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Capacity - Resources

**Question - Indicator:** In your opinion, is the proposed manner of taking the exam<sup>140</sup> for a certified internal auditor in the public sector applicable?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

<sup>139</sup> Decision passed by the Vice Prime Minister of the Government and Minister of Finance Mr. Zoran Stavreski, on 13.09.2013.

<sup>140</sup> Rulebook on the Programme and Manner of Taking the Exam for a certified Internal Auditor in the Public Sector.

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### Explanation on the scoring:

The manner of certification for internal auditors in the public sector in the country is regulated with the provisions of Article 36 from the Law on Public Internal Financial Control and the Rulebook on the Programme and Manner of Taking the Exam for a Certified Internal Auditor in the Public Sector (Official Gazette n.136/10).

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

### Explanation on the scoring:

Even though there is a prescribed manner of taking the exam for a certified internal auditor, so far no exam has been scheduled for becoming a certified internal auditor and obtaining a certification.

### Recommendation

The activities regarding the localization of the training for certification of internal auditors in the public sector should continue. The existing legislation needs to be amended and an internationally recognized certificate needs to be provided.

## Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.

**Category:** Capacity - Resources

**Question - Indicator:** Do you think that the requirements<sup>141</sup> for appointing internal auditors who possess a certificate or have passed the exam for a certified internal auditor are adequate?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

### Explanation on the scoring:

The provisions of Articles 35 and 36 of the Law on Public Internal Financial Control prescribe the procedure for appointing the head of the internal audit unit, the certified internal auditors and internal auditors, as well as the requirements that they need to meet.

**The Head of an Internal Audit Unit** has to be a certified internal auditor with at least three years of working experience in external or internal audit. The legal limitations refer to the inability to appoint a person whose spouse, relative in a direct line without limitation, in a collateral line up to the fourth degree or by marriage up to the fourth degree is or has been employed in a managing position in the public sector entity in the last two years.

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141 Article 36 of the Law on Public Internal Financial Control.

Individuals, who, in addition to the general requirements determined by law also meet the following specific requirements, may be appointed as **certified internal auditors**:

- higher education
- training and passed exam for certified internal auditor in the public sector according to the Programme for Taking the Exam for a Certified Internal Auditor or possession of an internationally recognized audit certificate;
- at least 2 years working experience in internal or external audits; and
- no measures, by means of a court decision, for prohibition to perform an activity or profession during the period of prohibition, should have been imposed against that person.

Individuals, who, in addition to the general requirements determined by law also meet the following specific requirements, may be appointed as **internal auditors**:

- completed higher education;
- at least 2 years of working experience in the field of internal and external audit; and
- no measures, by means of a court decision, for prohibition to perform an activity or profession during the period of prohibition, should have been imposed against that person.

Individuals, who, in addition to the general requirements determined by law also meet the following specific requirements may be appointed as **trainee auditors**:

- completed higher education, and
- no measures, by means of a court decision, for prohibition to perform an activity or profession during the period of prohibition, should have been imposed against that person.

After a period of two years, the trainee auditor shall be appointed as an internal auditor.

**Overview of the requirements for the Head of an IAU, Certified Internal Auditor, Internal Auditor and Trainee auditor**

|  | <b>Head of an IAU</b> | <b>Certified Internal Auditor</b> | <b>Internal Auditor</b> | <b>Trainee Auditor</b> |
|--|-----------------------|-----------------------------------|-------------------------|------------------------|
| 1. Completed higher education  | <b>X</b>              | <b>X</b>                          | <b>X</b>                | <b>X</b>               |
| 2. No measures, by means of a court decision, for prohibition to perform an activity or profession during the period of prohibition, imposed against him or her  | <b>X</b>              | <b>X</b>                          | <b>X</b>                | <b>X</b>               |
| 3. Training and passed exam for certified internal auditor in the public sector according to the Programme for Taking the Exam for a Certified Internal Auditor or possession of an internationally recognized audit certificate | <b>X</b>              | <b>X</b>                          |                         |                        |
| 4. At least 3 years of working experience in the field of internal and external audit  | <b>X</b>              |                                   |                         |                        |
| 5. At least 2 years of working experience in the field of internal and external audit  |                       | <b>X</b>                          | <b>X</b>                |                        |

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

Having in mind that so far, no exam has been organized for obtaining a certificate for a certified internal auditor, this provision of the law is not applicable, and that has an impact on the skills and professionalism of the internal auditors in the ULSGs.

**Recommendation**

The harmonization unit within the Ministry of Finance and the Audit Committee need to prepare a circular and send it out to notify the ULSGs and other public sector entities of the need for certification of internal auditors and their proper distribution / appointment.

**Problem / Risk factor 4:**

Lack of corruption-related risk assessment in the municipalities

**Explanation:**

The possibilities to prevent corruption in the municipalities significantly increase if prior assessment and identification has been made of the points and procedures where corruption is most likely to occur. The previous assessment of this kind ensured focused prevention and detection of corruption in the areas that are most prone to corruption, but it also provided for additional strengthening of the procedures regarding the prevention of corruption.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Integrity

**Indicator question:** Do you think that the current legal solution related to the risk management and the obligation to design a risk management strategy in the units of local self-government yields the expected results?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The provisions of Article 15 of the Law on Public Internal Financial Control prescribe the manner of managing risks. Pursuant to the aforementioned provisions, private sector entities, including the ULSGs, are required to adopt a risk management strategy that needs to be adopted once in three years, whereas the risk management controls need to be analysed and updated at least once a year.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation on the scoring:**

The adoption of a risk management strategy is a very complex, but very useful activity for the ULSGs. However, despite the fact that it refers to a matter of great importance, this activity has not been implemented in most of the ULSGs. The lack of penal provisions and wider social activity for raising the awareness of the need for such a document, leads to the current situation where such a strategy is frequently not adopted.

**Recommendation**

Measures and activities need to be taken to promote the need for adopting a risk management strategy. Measures and activities need to be taken to introduce a fine in the Law on Public Internal Financial Control for not fulfilling the aforementioned obligation.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Integrity

**Indicator question:** Is there a risk management strategy within the municipality, designed in compliance with the provisions of the LPIFC<sup>142</sup> and the Rulebook on Financial Management and Control<sup>143</sup>?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation on the scoring:**

The obligation to design a risk management strategy and regularly update it is prescribed in the provisions of the Law on Public Internal Financial Control, and the procedure and manner of designing this strategy is described in the Guidelines on Financial Management and Control. However, despite this legal solution and despite the Guidelines on Financial Management and Control, further measures need to be taken regarding the manner of designing the strategy.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

142 Law on Public Internal Financial Control.

143 Ministry of Finance of the country, December 2010.



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### Explanation on the scoring:

Most of the ULSGs in the country have still not adopted a risk management strategy. Only a small number of the ULSGs in the country, such as the City of Skopje, Strumica, Centar, Karpos, Gazi Baba and Ilinden have adopted a risk management strategy. However, it seems that even in these ULSGs not enough consideration is given to the updating of these strategies and taking proper action in compliance with the strategies.

### Recommendation

The harmonization unit within the Ministry of Finance and the Committee for Financial Management and Control need to prepare a circular and send it out to public sector entities, including the ULSGs, which will highlight the need for and importance of adopting such a strategy and its consistent application.

### Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.

Category: Integrity

Question - Indicator: Has a risk register been established within the municipality?

|                 |        |   |
|-----------------|--------|---|
| Score – de jure | No     | 1 |
|                 | Partly | 3 |
|                 | Yes    | 5 |

### Explanation on the scoring:

The methodological guidelines within the risk management strategy point to the need for establishing a risk register.

|                  |                          |          |
|------------------|--------------------------|----------|
| Score – de facto | To a very small extent   | 1        |
|                  | <b>To a small extent</b> | <b>2</b> |
|                  | To a moderate extent     | 3        |
|                  | To a large extent        | 4        |
|                  | To a very large extent   | 5        |

### Explanation on the scoring:

As previously mentioned, only a small number of ULSGs in the country have drafted risk management strategies, thus also a small number of them have established risk registers.

### Recommendation

Measures and activities need to be taken to monitor the level of drafting risk management strategies and to regularly monitor and update the risks.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Integrity

**Question - Indicator:** Is the risk management strategy updated once in three years i.e. continuously in cases when risks significantly change?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The obligation to update the Risk Management Strategy is prescribed in Article 15 of the Law on Public Internal Financial Control. The provisions of this Law point to the obligation for the already adopted strategy to be updated once in every three years, and the controls aimed at minimizing the risks to be analyzed and adopted at least once a year.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation on the scoring:**

The fact that there is a small number of risk management strategies that have been adopted and the answers received from the participants in the survey, both point to the conclusion that not much consideration is given to the updating of risk management strategies.

**Recommendation**

Measures and activities need to be taken to monitor the level of drafting risk management strategies and regular monitoring and updating of the strategies.

**Institution: Units of Local Self-Government: Aerodrom, Gevgelija, Kumanovo, Struga, Sveti Nikole, Strumica, Veles and the City of Skopje.**

**Category:** Integrity

**Question - Indicator:** Is there a continuous monitoring and analysis of the controls pertaining to the minimization of risks?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation on the scoring:**

The provisions of Article 15 from the Law on Public Internal Control prescribe the obligation for analyzing and updating the controls pertaining to the minimization of risks at least once a year.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation on the scoring:**

Some of the ULSGs design certain policies and procedures for establishing a financial management and control system or for standardizing their operation by means of obtaining ISO standards, but the state of affairs in this respect is still not satisfactory. This state of affairs was also confirmed during the surveying of the ULSGs. With respect to the implementation of the ISO standards, it is important to highlight that the Government has adopted multiple conclusions, which impose an obligation for the public entities to implement the ISO standards with a certain dynamics, as well as the provisions of the Law on Implementing a Quality Management System and a Common Framework for Assessing the Operation and Provision of Services in the Civil Service.

**Recommendation**

The ULSGs need to be advised on how important it is for the management to have a positive attitude concerning the role and importance of the FMC and the adoption of policies and procedures for implementing a proper financial management and control system and providing a continuous monitoring and updating of the controls pertaining to the minimization of risks.

## INDEXES

Even though in compliance with the methodology, this analysis only provides a qualitative assessment of the situation, and numerical scoring was also included in order to summarize the information and point out the key strengths and weaknesses. To that end, each of the indicator questions addressed were also scored from 1 to 5 – with 1 being the lowest, and 5 being the highest score.

Based on these scores (1-5) awarded to each of the indicator questions, the scores have been aggregated at the level of sub-category, category and the whole pillar, i.e. sector from the State Program. No pondering has been made in this respect and only the arithmetic average of the aggregated scores has been presented.

| Problem          | Subcategory    | Index   |          |                       |                    |                  |
|------------------|----------------|---------|----------|-----------------------|--------------------|------------------|
|                  |                | De jure | De facto | Average – subcategory | Average - category | Average – sector |
| <i>Problem 1</i> | Transparency   | 4       | 4        | 4                     | 3,67               | 3,63             |
|                  | Capacity       | 3       | 3        | 3                     |                    |                  |
|                  | Supervision    | 5       | 3        | 4                     |                    |                  |
| <i>Problem 2</i> | Transparency   | 3,5     | 3,75     | 3,62                  | 4,17               |                  |
|                  | Supervision    | 5       | 3,66     | 4,33                  |                    |                  |
|                  | Accountability | 5       | 5        | 5                     |                    |                  |
|                  | Integrity      | 4       | 3,5      | 3,75                  |                    |                  |
| <i>Problem 3</i> | Capacity       | 3,8     | 2,8      | 3,3                   | 3,3                |                  |
| <i>Problem 4</i> | Integrity      | 4,6     | 2,2      | 3,4                   | 3,4                |                  |

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## **LITERATURE:**

Law on Prevention of Corruption

Criminal Code

Law on Construction

Law on Spatial and Urban Planning

Law on Public Internal Financial Control

Law on Accounting for Budgets and Budget Users

Law on the Financing of the Units of Local Self-Government

Budget Law

Law on Labour Relations

Law on Civil Servants

Law on Public Servants

Law on Prevention of Conflict of Interests

[www.finance.gov.mk](http://www.finance.gov.mk)

[www.mtc.gov.mk](http://www.mtc.gov.mk)

[www.zels.org.mk](http://www.zels.org.mk)



**4.REPORT ON THE QUALITATIVE ANALYSIS OF THE IMPLEMENTATION OF THE ANTI-CORRUPTION MEASURES IN THE STATE PROGRAM FOR PREVENTION AND REPRESSION OF CORRUPTION AND PREVENTION AND REDUCTION OF CONFLICT OF INTERESTS 2011-2015 IN THE PUBLIC ADMINISTRATION SECTOR**

Prepared by: Gorica Atanasova Gjorevska

September, 2014

## **INTRODUCTION**

The OSCE Mission to Skopje implements multi-annual activities for support of the implementation of the “State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interests 2011-2015” ( the State Program). In 2012, the Mission assisted with the development of a methodology for qualitative evaluation of the activities and indicators of the State program, with a pilot qualitative analysis of the education and sports sector, with assessment of the public perception in three sectors of the State program as well as by strengthening the capacity of the State Commission for Prevention of Corruption (SCPC) for developing the concept of integrity and the electronic recording of data for Asset Declarations and Statements of Interests. The OSCE Mission to Skopje continued the cooperation with the SCPC in 2013 and 2014 by supporting the preparation of a qualitative analysis and conducting of research of the public opinion for five new sectors of the State program – Private Sector, Political Sector, Local Self- Government, Public Administration and Civil Society.

This document contains the qualitative analysis in the Public Administration Sector.

The analysis is directed towards the identified problems in the State Program, wherein through a series of indicators it assesses the anti-corruption measures and the implementation of the State program, it determines the strengths and weaknesses of the accomplishments made thusfar and it provides recommendations. The main goal of this analysis is to assist the SCPC in monitoring the implementation of the State Program, in improving the indicators and innovating the anticipated activities.

## **METHODOLOGY**

The methodology is based on the concept of the National Integrity System developed by Transparency International. The problems that are reviewed are identified in the State Program. Certain indicators on the status and progress, as well as recommendations for improving of results are determined under each problem.

The following were used as sources of data:

- Qualitative analysis - analysis of primary literature - relevant laws, bylaws, and other official documents and reports as well as analysis of secondary literature - articles, papers, etc.
- Interviews with key informants, i.e. the Ministry of Finance, the Ministry of Information Society and Administration, the State Audit Office, the State Commission for Prevention of Corruption.

Based on the collected data, the expert prepared draft grades for each of the indicators, from two aspects - de jure, as regards the legal framework, and de facto, i.e. the situation in practice. In the assessment process, a three-degree scale of 1 to 5 was used for the legal framework - wherein: 1 = No, 3 = Partially, 5 = Yes.

For assessment of the situation in practice a five levels scale of 1 to 5 was used - where 1 = To a very small extent, 2 = To a small extent, 3 = To a moderate extent, 4 = To a large extent, 5 = To a very large extent.

The individual scores, are then collected and presented as average overall grade for each subcategory and category. To simplify the presentation, at the end of this document the scores are shown summarized and expressed as a percentage of the maximum possible score.



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The results were subjected to presentation and validation to the relevant stakeholders, in order to check, to verify or supplement the data and results. Following this validation, the analysis was finalized.

## EXECUTIVE SUMMARY

The qualitative analysis that was conducted in the framework of this project was aimed to assess the main risk factors/problems identified by the State Commission for Prevention of Corruption (SCPC) in the field Public Administration, noted in the 2011-2015 State Programme for . The basic problems listed by the SCPC were reviewed from the point of view of the legal framework and their practical implementation, in order to provide an overview of achievements made and to highlight major weaknesses in this sector in the Country with respect to supervision and control, transparency, integrity, accountability, resources and capacity. The analysis is focused and should serve the overall efforts to combat corruption in the field of the Public Administration in the Country and to provide recommendations for overcoming the identified weaknesses.

The SCPC determined five problems related to corruption in the Public Administration sector within which further progress is needed for prevention and repression of corruption. They include - 1) Incompletely established decentralized system of public funds management and insufficiently harmonized procedures for financial management and control; 2) Lack of guarantees for strict implementation of the procedures for work; 3) Lack of risk assessment of corruption in public administration institutions; 4) Absence of systematized measures for prevention of corruption (concept of integrity) and 5) Lack of public control over the performance of the public administration.

In the recently prepared Review of Implementation of the Activities for the period December 2011-November 2013, the SCPC noted that 12 activities or 80% are ongoing, while 3 or 20% are unrealized activities of the projected total of 15 activities.<sup>144</sup>

The general conclusion is that there has been significant progress in the adoption of legislation – in terms of drafted laws, a significant number of adopted bylaws, as well as strategies and documents according to which additional activities in this area are regulated and planned. Nevertheless, the regulation itself and/or strategies that should be adopted are missing with regard to some of the problems/risks, and they should precede the practical implementation of the activities. Therefore, the issue of implementation represents a bigger challenge across all detected problems and activities and there is space and need for further action in this respect.

In view of **Problem 1 - Incompletely established decentralized system of public funds management and insufficiently harmonized procedures for financial management and control**, the general conclusion is that the establishment of a fully decentralized system for management of finances is well on track although there are identified weaknesses that should be overcome in future. In terms of legal norms, the essence of establishing a decentralized system of public funds management is the introduction of managerial accountability, which has been introduced to some extent. The Units for Financial Issues (UFI) are established and are operational in a significant number of institutions. The institutions have to a large extent adopted decisions for internal distribution of the total approved budget. On the other hand, a lack of staffing of the UFIs is noted along with the insufficient training of the staff. In practice, it can be assessed that the decentralized system of financial management is not yet fully implemented. However, according to the framework set out in the Law on Public Internal Financial Control (PIFC), the key responsibility for financial management of the institutions is set out with the head of the entity.

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<sup>144</sup> Sector III – Public Administration, Review the implementation of the activities of the National Programme for Prevention and Repression of Corruption and the State Program for Prevention and Reduction of Conflict of Interests with Action Plan 2011-2015, December 2011-November 2013

With regard to **Problem 2 - Lack of guarantees for strict implementation of the procedures for work**, it can be concluded that significant progress has been made in terms of the regulation through the adoption of the appropriate legislative provisions which regulate the issue within this domain. At the same time, the practice shows that a number of activities related to the establishment and staffing of the Internal Audit Units are ongoing, international certification of certified auditors is carried out, as well as amendments are introduced according to which localization of certification of internal auditors is envisaged and shall enter into force in January 2015. The following could be listed as identified weaknesses in this segment i.e. the lack of competence of auditors, the need for further training and licensing as well as the lack of organization of the exam for certified auditors, although it was previously provided, and the locating of specific deficiencies in the newly prescribed system for training and certification. With regard to the Units of Financial Issues, they are established and are in the process of staffing, but legislative amendments are required according to which the obligation of their mandatory establishment in the smallest municipalities will be revised (and shall be replaced only with the designation of authorized persons appropriate to the size of the municipality).

In the section **Problem 3 - Lack of risk assessment of corruption in public administration institutions**, it can be concluded that little progress has been made in terms of preparation of the necessary documentation - Strategy for Risk Management, Register for risks – as well as from the point of view of practical application and implementation of the activities. The conduct of annual self-assessments on the part of the institutions is lacking although it is prescribed according to the regulation.

As for the **Problem 4 - Absence of systematized measures for prevention of corruption (concept of integrity)**, the activities envisaged for its address, are still not realized. Namely, the draft Law on Amending the Law on Prevention of Corruption is prepared, according to which a system of integrity in the public and private sector should be introduced, and thus to subsequently determine the further action in the area. The carrying out of trainings and preparation of the elements of the integrity system would follow and would be determined after the adoption of the envisaged amendments to the Law on Prevention of Corruption..

Finally, the activities envisaged in the frames of **Problem 5 - Lack of public control over the performance of the public administration**, envisage the strengthening of the system of prevention, detection, reporting and acting upon irregularities as well as for undertaking measures to prevent irregularities and fraud, and for protection of the financial interests of the EU in the Country. The activities provided within the framework of this section are in progress, but having in mind that the preparation and adoption of the initial documents or regulations (National Strategy for Taking Measures to Prevent Irregularities and Fraud for Protection of the EU Financial Interests in the Country, amendments to the Law on Prevention of Corruption by introducing provisions for persons who reporting corruption - whistleblowers), are still underway, it leads to delays in the practical implementation – carrying out of training, strengthening the system for reporting of irregularities and ensuring the protection of those who report, etc.

## **RECOMMENDATIONS**

- Introduction of a fully decentralized system of management of public resources by delegating greater responsibility to the management structures
- Amending of the existing legislation in order to allow for greater delegation of competencies for financial management
- Further staffing and training of the staff that work on financial issues in the UFIs

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- Completion of the process for forming and staffing of IAUs on the national and particularly the local level, within all budget users
  - Taking into account the identified weaknesses in the legislative amendments on the part of the working group established by the Ministry of Finance, which introduced provisions for localized certification of the certified auditors prior to the entry into force of these provisions
  - Preparation of a model Risks Strategy with specific directions for its preparation by all parties concerned, along with the Risks Registry
  - Introduction of a regular annual obligation to conduct self-assessments of the system of financial management and control
  - Adoption and implementation of the amendments to the Law on Prevention of Corruption, which introduce the system of integrity
  - Development of a methodology for a system of integrity in order for it to be used as a guideline to all institutions Introduction of trainings on integrity as part of the generic trainings for the fight against corruption, that are implemented by MISA in cooperation with the SCPC, for the public administration
  - Introduction of trainings on financial management and control within the system of generic trainings for the public administration
  - Increasing the range of activities in the field of public administration in the course of reviewing the State Program to increase
  - Adaptation of the new State Program to the revised system of administrative servants and employees in the private sector
  - Adoption of specific guidelines for implementation of the system of integrity, for the public administration, according to the legislative amendments
  - Providing of real protection to the reporters of corruption (whistleblowers) through the implementation of the new legal provisions

## FINDINGS OF THE QUALITATIVE ANALYSIS

### Problem/ Risk factor 1:

Incompletely established decentralized system of public funds management and insufficiently harmonized procedures for financial management and control

### Explanation:

The centralized system of managing public funds whereby the head of the entity is an authorized person for assuming obligations and at the same time is an authorized person for payment, allows misuse of funds and leaves space for corruption. At the same time, the system prevents the delegation of managerial responsibility to all of the managers in the spending of public funds. The procedures for undertaking of financial obligations and the payment procedures are undefined, which also allows for various forms of abuse of funds.

**Activity 1:** Establishment of a fully decentralized system of financial management

**Institution :** Ministry of Finance

**Category :** Oversight and control

**Indicator question:** Does the existing legal framework provide for the establishment of a fully decentralized system of financial management and to what extent is it introduced?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

### Explanation:

One of the key areas of the system of PIFC is the managerial responsibility. It is defined in the Law on PIFC, which explains in detail the responsibility and the granting of authorization in its Article 8. In order to strengthen the managerial responsibility, the *Rulebook for the Way of implementation of the General Financial Processes* was adopted and entered into force in September 2011. It regulates the decentralized system of management of public funds. According to this Rulebook, as outlined in the Strategy of PIFC, the head of the entity performs internal distribution of the total approved budget for the current year. The managers to whom the budget is allocated, are responsible for its execution in front of the head of the entity. They are the people responsible for undertaking financial commitments and for regular, efficient, effective and economic spending of their budgets.”<sup>145</sup>

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

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## Explanation:

The establishment of a fully decentralized system of financial management is well on track. At the central level, 59% of the direct budget users adopted decisions for general authorizations, while on the local level this percentage is 40%, which can be considered as an indicator of the level of establishment of the decentralized system.<sup>146</sup>

On the other hand, the 2013 EC Progress Report notes that “ Overall, there is insufficient delegation of responsibilities, which hinders moves towards genuine managerial accountability.”<sup>147</sup> At the same time, the 2013 SIGMA Report for the country, states in the section on PIFC that the financial management and control is performed through controlling that the spending is in accordance with the legal provisions and within the allocated budget, but managers are still not in position to have control over the results or effectiveness and efficiency.<sup>148</sup>

In the strategy of PIFC the need for improving and strengthening of the system of decentralized budget management in the institution is identified through the providing of general authority for undertaking financial commitments to the managers for the use of public funds in order for them to achieve the determined goals.<sup>149</sup>

Concomitantly, in order to further strengthen the managerial accountability and to raise the awareness of the concept of PIFC, The Ministry of Finance, the Sector for PIFC, shall inform the Government, through the preparation of an Information on the Progress in Strengthening the Managerial Accountability by establishing a decentralized system of management of public funds in budget users from the central government, the funds and the local self-governments.<sup>150</sup>

## Institution : Ministry of Finance

### Category : Oversight and control

**Indicator question: Have decisions for internal distribution of the total approved budget been prescribed and prepared?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

## Explanation:

The Law on PIFC, under the article 8 Responsibility and Awarding Mandate, prescribes the managerial responsibility and delegation of responsibilities as one of its key elements.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

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146 Interview with a representative from the Ministry of Finance, carried out in May 2014.

147 2013 EC Progress Report on the country, Chapter 32: Financial Control, pg. 58

148 SIGMA Assessment on the country , 2013, Public Internal Financial Control, pg. 28

149 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg. 12

150 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg.. 18-19

**Explanation:**

This information changes every year, but in 2014, starting from 01/01/2014 onwards, 65 budget users or 85.5% adopted decisions for internal distribution of the total approved budget, and 59% adopted decisions for general authorizations. At the local level, 75% of direct budget users adopted decisions for internal distribution of the total approved budget, while 40% adopted decisions for general authorizations.

The Strategy of PIFC identifies the weakness that in the existing system there is an insufficient level of understanding of the concept of a decentralized system of management of the public funds on the part of the heads of the entities. Therefore, the Strategy provides activities for improving the system and overcoming of this weakness in the future.

**Institution : Ministry of Finance, State institutions, Local self-government units ,**

**Category : Accountability**

**Indicator question: In practice, to what extent are the internal audits carried out over the financial performance?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The internal audit function was established in almost all ministries, funds and major budgetary users of the first line, as well as the local self-government units. The internal audit is conducted through the internal audit units (departments/sectors) which are directly accountable for their work to the head of the entity.

Pursuant to the Law on PIFC, the entities which in the last 3 years had an average budget of more than 50 million denars, have an obligation to establish internal audit units. Smaller entities or entities whose average budget in the last three years is less than 50 million, have the possibility to establish the internal audit function by hiring an internal auditor/s from the internal audit unit of another entity from the public sector, on the basis of an agreement made between the heads of the two entities from the public sector.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation:**

In practice, the internal audits over the financial performance are carried out in accordance to the strategic and annual plans for internal audit and in line with the adopted auditors’ plans of each individual institution<sup>151</sup>, as it is stipulated in accordance to the legal provisions as well.

<sup>151</sup> Law on Public Internal Financial Control, (“Official Gazette” No. 90/09, 12/11, 188/13), article 24

The 2013 EC Progress Report stipulates that the central Harmonization Unit at the Ministry of Finance has completed the necessary activities for publishing of the updated international standards for professional performance of the internal auditing. In continuation, the relevant trainings and working meetings for their implementation by the Units for Internal Audit shall be organized, as noted in the 2013 EC Progress Report.

## **Institution : Ministry of Finance, State institutions, Local self-government units**

### **Category: Resources and capacity**

**Indicator question: Are trainings conducted for the competent personnel for implementation of the decentralized system for financial management?**

#### **Explanation:**

**According to the Law on PIFC, specified in article 48 – the Central Harmonization Unit - CHU is responsible for** “Coordination of the trainings for the heads and employees involved in the financial management and control and the internal audit.”<sup>152</sup> The strategy for PIFC states that in the period covered by the Strategy, 2013-2016, the CHU will mainly be as well focused on organizing trainings for the entities in order to better implement the system of PIFC in practice.<sup>153</sup> The Strategy states that the CHU should participate in the preparation of the Strategy for training of civil servants of the highest managerial level with a deadline of 31.12.2013<sup>154</sup>. However, there is no data whether this activity is implemented.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

#### **Explanation:**

The strategy for PIFC notes that there are insufficient practical skills of the EFP employees for preparation of written procedures for the general financial processes (preparation of decisions for internal distribution of the total approved budget, undertaking financial commitments and payments).

Activity 1.2: Development of procedures for undertaking financial commitments and payment procedures

152 Law on Public Internal Financial Control, (“Official Gazette” No. 90/09, 12/11, 188/13), article 48

153 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg.. 23

154 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg.. 51

## Institution : Ministry of Finance

### Category : Oversight and control

**Indicator question: To what extent are the delegated competences for undertaking financial commitments and payments leading to a strengthened system of PIFC?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

#### Explanation:

At the moment, according to the regulation, there are two aspects of the decentralized system of managing finances – one aspect are the manners for delegating budgets and the other are the manners for delegating competence for decision-making on the part of the managers.

The manner for delegating the budgets is defined under the Rulebook for the Way of Implementation of the General Financial Processes, which was adopted and applied in 2011. In accordance with this Rulebook, “ The internal distribution of the total approved budget covers: unallocated part of budget, budget that is intended for the common expenditures of the entity (salaries, electric energy, heating, water, current and investment maintenance, common goods and services and other) and budget that is intended for realization of the policies and projects.”<sup>155</sup> With regard to the delegation of decision-making, article 8 of the Law on PIFC stipulates the authorisation and the manner of its delegation. However, the Law limits the head of the unit that he/she can not make decisions “with an important political or financial impact shall not be reached without prior approval by the Head of the entity.”<sup>156</sup>

The decision for internal distribution - determines the budget of each sector/unit.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

#### Explanation:

In practice it can be assessed that the decentralized system for financial management is not yet fully implemented. If the procedures are established as they are prescribed in accordance with the law, then the system will be strengthened in the reality as well.<sup>157</sup> On the other hand, it must be noted that in accordance with the framework set out in the Law on PIFC of the decentralized system of governance, the responsibility is still located with the head of the entity despite the delegation of competencies to the heads of units, which demotivates the head of the entity to engage in delegating competencies to the other heads of units.

<sup>155</sup> Rulebook for the Way of Implementation of the General Financial Processes, article 3

<sup>156</sup> Law on Public Internal Financial Control, article 8, paragraph 4

<sup>157</sup> Interview with a representative from the State Audit Office, carried out in April 2014



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**Institution : Ministry of Finance, State institutions, Local self-government units****Category : Oversight and control****Indicator question: Are procedures for financial regulation and control well defined and fully harmonized?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

The Financial Management and Control Manual states that the entity should have prescribed procedures for each activity and/or important event and all those to be available to all employees.<sup>158</sup>

The procedure describes the steps for what is done, how it is done, who does it and how he/she does it, but in practice there are different situations of implementation of the procedure. Very few institutions have prescribed procedures in accordance with the recommendations prescribed by the Ministry of Finance because . It is most important to accurately describe the steps in order to be able to implement the procedures.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation:**

At the same time, the budgetary users from the central government, funds and municipalities, will adopt written procedures for the general financial processes (preparation of a decision for internal distribution of the total approved budget, undertaking financial commitments and payments). The Central Harmonization Unit, as responsible for coordinating the development of the system of PIFC, will promote institutions that are a good example of implementation of this system by organizing meetings and workshops on the “best practices” principle, for which it will prepare an action plan which will include institutions from the central and local level as well as examples of “leaders” in this area that will present their practices and benefits of the implementation of this system on the workshops, in order to raise awareness of the management for the necessity of this system. In any case, despite all the reforms and efforts, the procedures could never be fully harmonized due to the specificities of the separate budgetary users.<sup>159</sup>

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158 Manual for Financial Management and Control, Ministry of Finance, Skopje, December 2010, pg. 23

159 Interview with a representative from the Ministry of Finance, carried out in May 2014.

**Problem /Risk factor 2:**

Lack of guarantees for strict implementation of the procedures for work

**Explanation:**

The respect and strict implementation of the procedures for work directly depends on the expert assistance that will be provided to the officials and employees of the public administration. In that process, the role of the internal audit in the public administration institutions is key and it needs to be strengthened. Moreover, it is necessary to eliminate the resistance to internal audit and establish a licensed internal auditor.

Activity 1. Establishment and staffing of Internal Audit Units (IAUs) in all budget users from the legislative, executive and judicial branch as well as the funds

**Institution : Ministry of Finance, State institutions, Local self-government units,**

**Catgery : Oversight and control**

**Indicator question: Does the current regulation which is related to the criteria for establishment and staffing of the IAUs in all budget users, give the desired results?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The provisions of the article 30 of the Law on Public Internal Financial Control regulate which entities of the public sector have compulsory/mandatory obligation for the establishment of internal audit units. The provisions of the mentioned article determine the basic criteria for the need of establishment of the internal audit unit in the entities form the public sector, including the possibility of the Government of the country, on the proposal of the Minister of Finance, to be able to also determine an obligation for the establishment of internal audit units at other entities in the public sector.

Namely, all the subjects of the public sector whose average annual budget/financial plan for the last three years is more than 50 million Denars have compulsory obligation for the establishment of internal audit unit. On the other hand, the public sector entities whose average annual budget/financial plan for the last three years did not exceed 50 million Denars, the internal audit can be organized through: signing of a contract with another entity of the public sector; signing a contract for engaging of auditors from the register of auditors from the public sector.... the Registry is run by the Central Harmonization Unit at the Ministry of Finance.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

---

**Explanation:**

Sometimes the management in some institutions sees the audit as “providing security” and it accepts insufficiently the benefits that internal auditors can provide by giving recommendations for removing of irregularities in the work process. As a result, part of the audit function is not fully utilized. There are also institutions, especially at the local level, with weaker staffing of the systematized positions in the internal audit units, which does not provide for teamwork and adequate quality in the performance of audits.<sup>160</sup>

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category: Oversight and control**

**Indicator question: How many IAUs are established at the public administration level and whether this number correlates to the criteria established by the Law on PIFC?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

The entities which according to the Law on PIFC, in the last 3 years have an average budget of more than 50 million Denars, have an obligation to establish an internal audit unit. Smaller entities or entities whose average budget in the last three years is less than 50 million denars, have the opportunity to establish the internal audit function by hiring an internal auditor/s from an internal audit unit of another entity in the public sector, based on an agreement between the heads of the two public sector entities.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

**Explanation:**

**The status of internal audit at the central level**

|   | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | January 2013 | May 2013 | August 2013 | September 2013 | December 2013 | January 2014 | February 2014 |
|---|------|------|------|------|------|------|------|--------------|----------|-------------|----------------|---------------|--------------|---------------|
| Established internal audit units          | 24   | 35   | 46   | 58   | 64   | 71   | 73   | 74           | 74       | 75          | 75             | 76            | 76           | 76            |
| Internal auditors                         | 52   | 68   | 81   | 90   | 111  | 120  | 133  | 135          | 136      | 135         | 137            | 137           | 136          | 135           |
| Heads of the Internal Audit Units         | /    | /    | 27   | 34   | 34   | 35   | 44   | 45           | 46       | 47          | 47             | 47            | 47           | 47            |
| Reports of the internal audit             | 142  | 204  | 222  | 252  | 245  | 241  | 242  |              |          |             |                |               |              |               |
| Recommendations                           | 1472 | 1502 | 1262 | 1672 | 1688 | 1534 | 2011 |              |          |             |                |               |              |               |
| Percentage of implemented recommendations | 39   | 44   | 47   | 54   | 56   | 53   | 56   |              |          |             |                |               |              |               |

**The status of internal audit at the local level**

|   | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | January 2013 | May 2013 | August 2013 | September 2013 | December 2013 | January 2014 | February 2014 |
|---|------|------|------|------|------|------|------|--------------|----------|-------------|----------------|---------------|--------------|---------------|
| Established internal audit units          | 0    | 17   | 32   | 40   | 49   | 59   | 64   | 64           | 63       | 64          | 64             | 65            | 65           | 66            |
| Internal auditors                         | 15   | 27   | 33   | 35   | 44   | 52   | 60   | 59           | 61       | 62          | 62             | 64            | 64           | 64            |
| Heads of the Internal Audit Units         | /    | /    | 15   | 18   | 19   | 18   | 22   | 21           | 21       | 21          | 21             | 21            | 21           | 22            |
| Reports of the internal audit             | 88   | 107  | 134  | 132  | 172  | 176  | 147  |              |          |             |                |               |              |               |
| Recommendations                           | 455  | 626  | 707  | 815  | 1033 | 1355 | 905  |              |          |             |                |               |              |               |
| Percentage of implemented recommendations | 60   | 68   | 69   | 58   | 72   | 49   | 61   |              |          |             |                |               |              |               |

According to the established criteria in the Law for the establishment of Internal Audit Units (IAUs), by April 2013 - 96% of the direct budget users have established their own IAUs at a central level, and 61% of established IAUs has appointed heads. At the local level, 79% of municipalities have established their own IAUs, and only one third of them have appointed heads. At the same time, 5 local governments and 7 subjects at the central level in the practice perform the internal audit function on the basis of an agreement with other Local self-government units i.e. institutions. A possibility for establishment of a common administration is also provided by the Law on Local Self –Government<sup>161</sup>. Thus, we can conclude that there is a significant progress made in terms of establishing the IAUs at central and local level in accordance with the criteria established by the Law on PIFC.

161 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg. 20

**Institution : Ministry of Finance, State institutions, Local self-government units,**

**Category : Resources and capacity**

**Indicator question: Are the IAUs adequately organized and staffed in accordance with the legally prescribed obligations in the Law on PIFC?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

According to the article 29, paragraph 2 of the Law on PIFC - Internal Audit Unit shall be established as a Unit with at least two internal auditors, also including the Head of Internal Audit Unit i.e. as a Department with at least five internal auditors, also including the Head of Internal Audit Department.

According to the article 31 of the Law on PIFC, the Head of the entity of the public sector shall establish an internal audit unit in accordance with the following criteria:

With at least one internal auditor and Head of Internal Audit Unit if the average budget/financial plan of the respective public sector entity was at least Denar 50 million in the last three years also including the EU –financed Funds and Programmes.

with at least three internal auditors and Head of Internal Audit Unit if the average budget/financial plan of the respective public sector entity was at least Denar 500 million in the last three years, also including ; EU –financed Funds and Programmes

with at least four internal auditors and Head of Internal Audit Unit if the average budget/financial plan of the respective public sector entity was at least Denar 2 billion also including EU –financed Funds and Programmes.

With at least one internal auditor of every five budget users

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

**Explanation:**

At the central level 96% of direct budget users have established their own Internal Audit Units (IAUs). In these IAUs there is an average of 2 employed person (head and/or auditor). 61% of the established IAUs have Heads. At the local level 79% of the municipalities have established their own Internal Audit Units (IAUs). In these IAUs one person is employed on average (head and/or auditor). 30% of the established IAUs have Heads.<sup>162</sup>

Activity 2. Amendments to the Law on Public Internal Financial Control in order to introduce a license for internal auditors

**Institution : Ministry of Finance, state institutions, Local self-government units,**

**Category : Oversight and control**

**Indicator question: Does the existing legal solution in the Law on PIFC introduce an applicable licensing procedure for internal auditors?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The need for training and certification of the internal auditors in the public sector in the country is regulated by the provisions of article 36 of the Law on Public Internal Financial Control and the Rulebook for the Program and the Manner of Taking the Exam for Certified Internal Auditor in the Public Sector, (“Official Gazette” No. 136/10). Namely, the provisions of the mentioned law stipulate that persons could be appointed for certified internal auditors in the public sector but that they must, among other conditions, “have undergone training and passed the exam for Certified Internal Auditor for the Public Sector according to the Program for taking the exam for certified internal auditor or to possess internationally recognized audit certificate”.<sup>163</sup>

In 2013 the Law on Amendments and Addenda to the Law on Public Internal Financial Control was adopted. The adopted amendments regulate the conditions and the manner of conducting the training and passing the exam for certified internal auditor in the public sector as stipulated in the article 35 and 36 of the Law on PIFC. The amended articles describe in detail the terms and the manner of conducting the training and examination for certified internal auditor in the public sector.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation:**

In practice, despite the fact that according to the existing provisions of the Law on PIFC, a bylaw was adopted that regulated the manner of taking and obtaining a certificate for passing the exam for Certified Internal Auditor in the Public Sector, in the present and prior to the adoption of the recent amendments to the law in 2013, there was no examination organized for the passing of this exam.

The newly prescribed procedure that localized the certification will apply one year after the entry into force of the amendments to the Law on PIFC (01/08/2015).

Although the newly introduced procedure is prescribed in detail, the Report prepared by the

<sup>163</sup> The Law on Public Internal Financial Control and the Rulebook for the Program and the Manner of Taking the Exam for Certified Internal Auditor in the Public Sector, (“Official Gazette” No. 136/10)

Group for Localization of Trainings for Certification of Accountants and Auditors in the Public Sector, established by a decision of the Minister of Finance, in the SWOT workshop held on March 1, 2014 identifies certain weaknesses and threats for the newly defined system of training and certification.<sup>164</sup>

**Institution : Ministry of Finance, State institutions, Local self-government units,**

**Category : Oversight and control**

**Indicator question: Are the modalities for international licensing of the internal auditors adequate to the needs of internal auditors in the public sector?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The internal audit in the public sector is performed by the internal auditors, in accordance with the accepted professional standards which are based on the international standards of professional performance of internal auditing.<sup>165</sup>

The 1210 standard of the International Standards for Professional Practice of Internal Audits regulates the need that the internal auditors in the public sector have knowledge, skills and other qualifications necessary for performing of their duties.

According to the article 36 and paragraph 6 of the Law on PIFC, i.e. the 2013 amendments to Law on PIFC, the candidates who successfully passed the training and passed part of the modules within the internationally recognized exam CIPFA Audit Certificate for Certified Internal Auditor in the Public Sector, are recognized to have passed those exams, and they will be examined for the unpassed modules within this examination. Following the passing of the remaining exams, a certificate is issued to them in accordance to article 36 of the Law.

The articles<sup>166</sup> that describe in detail the procedure for the training and the exam for certified internal auditor, will be enforced one year after the entry into force of this law (08/01/2015 year.)

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

<sup>164</sup> Report for the SWOT workshop on the Localization of Trainings for Certification of Accountants and Auditors in the Public Sector, held on March 5, 2014

<sup>165</sup> International standards for professional performance of the internal audit, “Official Gazette of the RM” no. 136/10

<sup>166</sup> The articles 36-a, 36-b, 36-c, 36-d, 36-e, 36-f, 36-g, 36-h, 36-i, 36-j, 36-k, 36-l, 36-m, 36-n, 36-o, 36-p, 36-q, 36-r, 36-s and 36-t

**Explanation:**

In the absence of a localized system of certification, in 2012 the Ministry of Finance in cooperation with the CEF Slovenia and CIPFA from the UK, started the realization of the project “Training of Internal Auditors in the Public Sector”.<sup>167</sup> Hence, this project allowed for the implementation of an international certification of internal auditors in the public sector for the first time in the country.

The project includes 65 internal auditors of the public sector (50 auditors from a central level and 15 from a local level) who attend the training divided into two groups and who completed the certification procedure.

The strategy for PIFC envisages activities that should in the coming period (2014/2015) allow for the continuation of implementation of activities and for implementation of the new training cycle for acquiring the international certification as well as to continue the CIPFA training in the public sector.<sup>168</sup>

**Institution: Ministry of Finance**

**Category: Resources and capacity**

**Indicator question: Does the system of PIFC envisage localization of training for certification of the internal auditors in the public sector in the country?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

In 2013 the Law Amending to the Law on Public Internal Financial Control was adopted. With the adopted amendments the terms and manner of the local implementation of training and taking of the exam for Certified Internal Auditor in the Public Sector as carried out by the Ministry of Finance, are regulated in the article 35 and 36 of the Law on PIFC. The amended articles describe in detail the terms and manner of implementation of the training and examination for certified internal auditor in the public sector.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

**Explanation:**

In practice, there was previously no system of localized trainings for licensed internal auditors that was introduced. The trainings were conducted through projects such as the Twinning project “Training of Internal Auditors in the Public Sector” carried out in 2012 by the Ministry of Finance in cooperation with CEF Slovenia and the UK CIPFA.

<sup>167</sup> Ministry of Finance, Public internal financial control < <http://finance.gov.mk/node/92>>

<sup>168</sup> 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg.44



The Deputy President of the Government and Minister of Finance Mr. Zoran Stavreski, on 13.09.2013 adopted a Decision of forming a *working group to perform the tasks* for localization of the trainings for certification of accountants and internal auditors in the public sector in the country.<sup>169</sup> The members of the working group have an obligation/task: to perform SWOT analysis for localization of the trainings for certification of accountants and internal auditors in the public sector in the country; to prepare a strategic plan for the same and review the existing national legislation as well as to make suggestions for its possible amendment in order to localize the trainings.

Regarding the manner of localization of the programs for training and certification - areas of decision, several conclusions were adopted including the one that the Ministry of Finance need to make a decision in the forthcoming period on:<sup>170</sup>:

- The institution – responsible for the trainings;
- The recognition of exams within the two training programs for internal auditors and accountants in the public sector, and the taking of differential exams;
- Limiting the obligation for compulsory possession of a certificate from the point of view of the number of years remaining until the retirement of the internal auditor or accountant;
- The names of the internal auditors i.e. accountants to be appropriate to the acquired certificates;
- Selection of one of the three models for implementation of the program for training and certification:
  - National model, which means self-organization and implementation of the entire process of training and certification;
  - Membership in CIPFA, which means paying an annual fee, annual updating of learning materials, providing lecturers or
  - cooperation with CEF (which is connected to CIPFA) – a combined model.

## Institution: Ministry of Finance

### Category: Resources and capacity

**Indicator question: Do you think that the prescribed manner and conditions for certification of internal auditors are adequate?**

|                 |               |          |
|-----------------|---------------|----------|
| Score – de jure | No            | 1        |
|                 | <b>Partly</b> | <b>3</b> |
|                 | Yes           | 5        |

<sup>169</sup> Decision of forming a *working group to perform the tasks* for localization of the trainings for certification of accountants and internal auditors in the public sector adopted on 13.09.2013

<sup>170</sup> Decision of forming a *working group to perform the tasks* for localization of the trainings for certification of accountants and internal auditors in the public sector adopted on 13.09.2013

**Explanation:**

In accordance to the provisions of the Law on PIFC of 2009, the Rulebook for the Program and the Manner of Taking the Exam for Certified Internal Auditor in the Public Sector was adopted. Furthermore, the articles 35 and 36 of the Amendments to the Law on PIFC adopted in 2013, stipulate in detail the procedures for the appointment of heads of Internal Audit Units, certified internal auditors, internal auditors and internal auditor of training.

For a **Head of Internal Audit Unit** the following could be appointed: a certified internal auditor which meets the requirements of the article 36 paragraph (2), lines 1, 2 and 4 of this Law and \* has at least three years experience in internal or external audit .

The article 36, paragraph 2 states that as **certified internal auditors** may be appointed persons who besides the general conditions laid down by law, meet the the following special conditions:  
 - to have a university education, to have undergone training and passed the exam for Certified Internal Auditor in the public sector according to the Programme for Taking exam for certified internal auditor or to possess an internationally recognized audit certificate; to have at least two years experience in internal or external audit and to not have pronounced by a court decision prohibition to perform activity or profession during the prohibition;

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

In practice, although with the amendments to the Law on PIFC in 2013 (whose implementation will start in 2015) a bylaw that regulates the manner of taking an exam and obtaining a certificate for passing the exam for Certified Internal Auditor in the public sector was adopted previously, until now no examination has been organized, which makes this provision of the law inapplicable. Thus, it can be concluded that the non-applicability of these provisions in practice affect the professionalism and expertise of the internal auditors in the public sector in the country.

**Institution : Ministry of Finance**

**Category : Resources and capacity**

**Indicator question: How many and what types of trainings for internal auditors were carried out?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

In accordance to article 36-b paragraph 1 the Government on the proposal of the Ministry of Finance for each fiscal year adopted program for training and examination for certified internal auditors in the public sector in which are defining the basic elements of the program including:

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the number of candidates, the funding from the budget of the country, financing of candidates participants and more.

The manner of implementation of the training takes place through the engaging of certified internal auditors in the public sector - educators and a Verification Commission and the exam is conducted by the Ministry of Finance in a transparent way (live recording and broadcast on the website of the Ministry of Finance, article 36-i, paragraph 3.)

The article 36-d states that the Training and exam are implemented according to program for module content and deadlines within which the trainings and exams are conducted. The article 36-e prescribes the modules and the manner of taking the exams. The article 36-a, paragraph 6 states that the candidates who passed modules of the internationally recognized CIPFA audit certificate, are recognized to have passed these modules.

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

**Explanation:**

In the past period, following the introduction of the system of public internal financial control, a number of trainings for strengthening of the internal auditor function were conducted. In this respect, the training, conducted in cooperation with the CEF Slovenia, the project under which 65 internal auditors were certified is particularly significant.

The strategy for PIFC states that in the period 2008-2011, 25 civil servants have gained an international certificate, while 23 of them also completed the second part of the training and gained an international diploma issued by CIPFA. In the first year of the two-year international program for certification of accountants in the public sector for the period March 2012 to March 2013, 24 civil servants completed it and gained an international certificate issued by CIPFA. Out of 49 civil servants who have received certification, only a small number of them are working in the position of responsible accountant.

The Strategy detects the need for organizing (continuous) training for the auditors, specialized by type of audit, for organizing exams for certified internal auditor in the public sector, for implementing vertical and horizontal audits as well as carrying out of analysis of experiences from other countries for the acceptance of a model for performance of internal and external assessment of the quality of the internal audit function. Thus, the Strategy for PIFC envisages an activity - Integration of the trainings in the field of public finance in the current Tax Academy, which will conduct the trainings in the area of public finances, including the financial management and control, internal audit, accounting and tax policy, under the jurisdiction of the Ministry of Finance, with 2014 as the deadline.<sup>171</sup> At the same time, the Strategy for Public Administration Reform in the 2011-2015 period, envisages the implementation of training and certification of 80 new internal auditors, in the Action Plan with 2013 as a deadline. This period has been moved and refers to 2014.<sup>172</sup>

Activity 3. Establishment and equipment of the Financial Affairs Unit (FAUs) in all budgetary users of the legislative, executive and judicial branch as well as the funds

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171 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg. 45

172 Interview with a representative from the Ministry of Finance, carried out in May 2014

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category:** Oversight and control

**Indicator question:** Do you think that the existing legal provision for the establishment of the FAU in all budgetary users of the public administration gives the expected results?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

According to the article 9 of the Law on PIFC, the head of the entity is obliged to establish a separate organizational unit for financial affairs, whose manager is directly accountable to the head of the entity and to the highest managing civil servant.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

**Explanation:**

As of April 2013, 64% of the institutions of the central government and the funds and 48% of municipalities, have established special units for financial affairs, and 49% of the institutions of the central government and the funds and 42% of municipalities, have appointed heads of these units.

The smaller direct budget users and municipalities, due to lack of staff i.e. the small number of staff and limited financial resources as a result of the small budget, are faced with difficulties in establishing special organizational units for financial affairs. This imposes the need for establishing a system under which the units for financial affairs will be allowed to work more efficiently and effectively.

Recent data found on the website of the Ministry of Finance, show the following situation:

|   | 2009 | 2010 | 2011 | 2012 | April 2013 | June 2013 | Sept. 2013 | Dec. 2013 | April 2014 |
|---|------|------|------|------|------------|-----------|------------|-----------|------------|
| Number of institutions that established <b>Financial Affairs Unit</b> | 14   | 32   | 39   | 46   | 49         | 49        | 66         | 66        | 66         |
| Number of appointed <b>managers</b> of the Financial Affairs Units    | 0    | 20   | 30   | 36   | 37         | 36        | 42         | 42        | 42         |

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**Institution: Ministry of Finance, State institutions, Local self-government units,****Category :** Resources and capacity**Indicator question:** Are the established FAUs sufficiently staffed in accordance to the the legally prescribed provisions in the Law on PIFC?

|                        |           |          |
|------------------------|-----------|----------|
| <b>Score – de jure</b> | <b>No</b> | <b>1</b> |
|                        | Partly    | 3        |
|                        | Yes       | 5        |

**Explanation:**

The Law on PIFC sets out an obligation for establishment of FAU in all budget users but at the same time does not specify criteria for staffing of the Financial Affairs Unit. The issue of staffing of the FAU is not treated even in the Roolebook of the Manner of Performing the Tasks under the competence of the Financial Affairs Unit.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

Although the legislation does not contain criteria for staffing the FAU, we can conclude that they are neither established within all budget users, according to the legal obligation, nor they are adequately staffed.

The strategy for PIFC detects that the smaller direct budget users and municipalities, due to lack of staff i.e. the small number of staff and the limited financial resources due to the small budget, are faced with difficulties in establishing the special organizational Financial Affairs Units.<sup>173</sup> In order to overcome the difficulties in the functioning of FAU in the small subjects, the National Programme for the Adoption of the EU Acquis - NPPA in the Chapter 23 - Financial Control, envisages adoption of amendments and supplements to the Law on PIFC in 2014 November)<sup>174</sup>, according to which the smaller municipalities shall be released from the obligation to form the FAU.<sup>175</sup>

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173 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg. 29

174 National Programme for the Adoption of the Acquis -NPPA Narrative part, Chapter 3.32 Financial Control

175 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg. 30 and SIGMA Assessment on the country , 2013, Public Internal Financial Control, pg. 30

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category:** Oversight and control

**Indicator question:** Does the introduction of new institutional forms in the system of PIFC, contribute to its real strengthening?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The process of strengthening the system of public internal financial control in the country started in 2000<sup>176</sup> and it includes the introduction of the system of internal financial control in the country through the Law on PIFC, the different secondary legislation, manuals, methodologies and other documents. The goal is precisely to build a system, in compliance with the requirements from the *acquis*, which guarantees reasonable use of the public funds by applying the principles of decentralised accountability of the management and establishing functionally independent internal audit.<sup>177</sup> The Financial Affairs Units are a central part of the system of PIFC, whose competences are defined in the Rulebook for the Way of Implementing of the Competences of the Finance Affairs Unit. (“Official Gazette” No. 147/10, 34/11). The Public Administration Reform Strategy states that the main function of the FAU is “implementing the financial processes for planning, performing, monitoring and reporting on: collection of the revenues determined in the budget; management and control for execution of the expenditures approved in the budget; and protection of assets and liabilities whose value is recorded in the balance sheet.”<sup>178</sup>

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation:**

In practice, there are problems about the establishment, staffing and functioning of the Financial Affairs Units. If they are established, staffed and operate as required – YES, they should contribute to strengthening of the system.<sup>179</sup>

176 Sector for Public Internal Financial Control, <<http://www.finance.gov.mk/node/92>>

177 Sector for Public Internal Financial Control, <<http://www.finance.gov.mk/node/92>>

178 2010-2015 Public Administration Strategy in the country, December 2010, pg. 58

179 Interview with a representative from the State Audit Office, carried out in April 2014.

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**Institution: Ministry of Finance, State institutions, Local self-government units, Public Administration****Category:** Resources and capacity**Indicator question:** Is the staff engaged in these units adequately trained?

|                        |           |          |
|------------------------|-----------|----------|
| <b>Score – de jure</b> | <b>No</b> | <b>1</b> |
|                        | Partly    | 3        |
|                        | Yes       | 5        |

**Explanation:**

The 2013 -2016 Strategy for PIFC envisages the introduction of generic trainings for financial management and control by MISA in coordination with the Ministry of Finance, according to the activities planned for the upcoming period, on the level of public administration.<sup>180</sup> The 2011-2015 Public Administration Reform Strategy, envisages the Realisation of Activities for Strengthening the Capacity of Internal Audit in the Municipalities for 2013, as an activity in accordance to its Action Plan.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation:**

In the past years, the managers and employees in the Financial Affairs Units, were trained in key areas of the system of PIFC, as well as for the benefits of implementing this system. The trainings were organised by the CHU and the twinning partners. This practice of promoting and developing the system of PIFC will continue in the future through coordination and cooperation of the CHU and the Ministry of Information Society and Administration (MISA).<sup>181</sup>

However, although there was previously a practice of conducting trainings on financial performance by the MISA, this is not the case at present, because the Ministry of Information Society and Administration did not accept the request of the Ministry of Finance to include trainings of financial performance and risk management in the section generic trainings.<sup>182</sup>

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180 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg.. 50

181 2013-2016 Strategy for Development of Public Internal Financial Control, draft. pg.. 29

182 Interview with a representative from MISA, carried out in 2014

**Problem / Risk factor 3:**

Lack of risk assessment of corruption in public administration institutions

**Explanation:**

The possibilities for prevention of corruption in the public administration are significantly increased when a previous estimation and identification is performed of the places and the procedures where her appearance is certain. The previous estimation of this type allows concentration of the prevention and detection of corruption in the so-called bottlenecks, as well as further strengthening of procedures towards the protection of corruption.

Activity 1. Developing a Strategy for Risk Management and Registry of Risks for the direct budget users and the funds

**Institution : Ministry of Finance**

**Category :** Oversight and control

**Indicator question:** Is the Strategy for Risk Management prepared for direct budget users and the funds, which represents a legal obligation in accordance with the regulation?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The Law on PIFC determines the obligation in article 15, paragraph 2 for obligatory adoption of a Strategy for Risk Management by the head of the entity, which should be updated every three years.<sup>183</sup> The procedure and the manner of preparation of the Strategy are described in details in the Manual on Financial Management and Control. The National Programme for the Adoption of the Acquis - NPAA, in the Chapter 3.23 Financially Control, indicates, the adoption of Guidelines for the Implementation of the Process of Risk Management and Manual for the preparation of a Strategy for Risk Management, as a measure planned for 2014.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

In January 2014 the Central Harmonisation Unit in the Ministry of Finance, developed Guidelines for Implementation of the Risk Management as well as a Manual for the preparation of a Strategy for Risk Management, both of which are directed towards the establishment of a systematic way of risks' management. However, in practice, very few institutions have prepared a Strategy

<sup>183</sup> Law on Public Internal Financial Control , (“Official Gazette” No. 90/09, 12/11, 188/13), член 15, став 2.



for Risk Management or have updated it.<sup>184</sup> The document *Guidelines for the Implementation of the Risk Management Process* states that “following the establishment of the risk management process and raising of awareness on the importance of risk management, the head of the budget user can adopt a Strategy for risk management, which is also its legal obligation”<sup>185</sup> without specifying the timeframe for its adoption. The Guidelines should be subject to public hearing in the future, and following their alignment, they should be used as the basis for preparing one’s own Strategy for risk management, on the part of all competent authorities.<sup>186</sup> At the same time, the SCPC is currently collaborating with the UNDP and OSCE on a project according to which it should design a concept for a methodological approach to risk assessment on the level of local self-government, while taking into account the Manual of the Ministry of Finance.<sup>187</sup>

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category:** Transparency/ Accountability

**Indicator question:** Is the Registry of risks prepared and applied in the direct budget users and the funds?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The Manual for Financial Management and Control prescribes the establishment of ‘Registry of Risks’ on the level of organizational unit and it also contains a form about what should be included the register of risks. Namely, the Register of Risks should “contain the name of the organizational unit, name of the risk, assessment of the effects and probabilities, responsible persons - the owner of the risk, actions that should be taken due to minimize the risk, people who will carry out these activities and the deadline for implementation, as well as the date for the next review of that risk.”<sup>188</sup> The Guidelines for the preparation of the Strategy for Risk Management determines the need of having the register of risks in every competent institution. More concrete guidelines for the establishment of the Register of Risks are set out in the Guidelines for the Implementation of the Process of Risks, according to which the adoption of the decision for establishing the Register is envisaged and which also explains the levels of which the same would be established.<sup>189</sup>

184 Acevski, Maksim. Qualitative Analysis of the anticorruption measures and the implementation of the State Programme for Prevention and Repression of Corruption/prevention and decrease of conflict of interests in the local self-government, pg. 38

185 Guidelines for implementation of the process of risk management, Ministry of Finance, Skopje 2014, pg. 34

186 Interview with a representative from the Ministry of Finance, carried out in May 2014 and Contribution to the EC Progress Report, from 02.05.2014, pg. 289

187 Interview with representatives from the State Commission for Prevention of Corruption, carryout out in April 2014

188 Manual of Financial Management and Control, Ministry of Finance , December 2010, pg. 73

189 Guidelines for implementation of the process of risks, Ministry of Finance, January 2014, pg. 12

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

**Explanation:**

According to the above determined absence of Strategies for Risk Management at the level of public administration, it can be concluded that the Registers of Risks are also absent.

**Institution : Ministry of Finance, State institutions, Local self-government units ,**

**Category : Accountability**

**Indicator question: Is risk assesment performed in practice and are defficiencies which need to be targeted in the Strategy detected?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

The Manual for Strategic Planning issued by the General Secretariat of the Government in 2007 creates an obligation for budget users for adoption of strategic plans for work, which should contain in themselves information for addressing the risks that may affect the realisation of the goals. On the local level, the municipal strategies contain the risk management, while the institutions that implement EU programs should integrate the risk management of the implementation of EU funds into the strategies for risk management. Thus, the Guidelines for preparation of the Strategy for Risk Management was prepared, in which all the above mentioned composite parts are identified. The Strategy shall represent a “systemic framework and structured approach to determining and management of the risks in the organisations.”<sup>190</sup>

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

**Explanation:**

Although both the Law on PIFC and the Manual for Financial Management and Control envisage and prescribe the processes for risk assessment on the level of organisaional units, in practice there is an absence of a realistic assessment of the risks as well as their tackling. A more sistematised approach for the assesment and management of risks should result from the adoption of the Strategy for Risk Management and the Registries of Risks, which are delayed from the

<sup>190</sup> Manual for preparation of the Stategy for Risk Management, Ministry of Finance, January 2014, pg. 4

envisaged timeframes in the NPAA, chapter Financial Control. "It is both expected that these activities shall be enhanced and the effects of their implementation shall become more visible in the future."<sup>191</sup>

Activity 2. Conduct annual self-assessments of certain high-risk processes in the system of financial management and control

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category : Accountability**

**Indicator question: Does the legislation envisage annual self-assessments<sup>192</sup> of certain high-risk processes in the system of financial management and control?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The Law on PIFC provides in the article 18, paragraph 3 that the “ Head of the Entity shall, through the Financial Affairs Unit during the year, perform self-assessments of the separate processes of the financial management and control system in the entity managed by him, and once in five years he shall implement self-assessment of the structure and the functioning of the whole financial management and control system.”<sup>193</sup> Furthermore, paragraph 8 of the same article, states that the “ Head of entity shall give opinion on the financial management and control in the Annual Financial Report referred to in Article 47 of this Law.”<sup>194</sup> The Manual of Financial Management and Control states that the annual financial report contains a report on conducted self-assessments under the article 18 paragraph (3) and (8) of this law (self-assessments results that are not entirely positive, comments of the head of the subject relating to the recommendations about the self-assessments and opinions on the financial management and control).<sup>195</sup>

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

**Explanation:**

In practice, although the implementation of self-assessments is the responsibility of the internal audit at the end of the year to assess the risk areas or processes and to see how the controls function and to make recommendations for improvement, it is absent in most budget users.<sup>196</sup>

191 2013 EC Progress Report, Chapter 32: Financial Control, pg. 289

192 Manual on Financial Management and Control, Ministry of Finance, Skopje, December 2010, pg. 84 and Law on Public Internal Financial Control, (“Official Gazette” No. 90/09, 12/11, 188/13), art.18 prg (3) and (8))

193 Law on Public Internal Financial Control, (“Official Gazette” No. 90/09, 12/11, 188/13), article 18, prg 3.

194 Law on Public Internal Financial Control , (“Official Gazette” No. 90/09, 12/11, 188/13), article 18, prg 8.

195 Manual on Financial Management and Control , Ministry of Finance, Skopje, Decemeber 2010, pg. Ministry of Finance, Skopje, December 2010, pg. 84

196 Interview with a representative from the State Audit Office, carried out in April, 2014.

On the other hand, the Ministry of Finance considers that such assessments are made only by a number of institutions and are apart from the reports that are made by the Internal Audit and the audit which is conducted by the State Audit Office.

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category: Accountability**

**Indicator question: Is there a prescribed procedure for conducting the self-assessments?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

There is no prescribed procedure or methodology for conducting self-assessments. There is only a determined need and obligation for conduct of self-assessments, according to the article 18 of the Law on PIFC.

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

**Explanation:**

The institution itself picks a topic or an area and the assessment includes an evaluation of the elaboration of the process or procedure, and assessment whether the process or procedure is OK or not.

|   |
|---|
| <p><b>Problem /Risk factor 4:</b><br/>Absence of systematized measures for prevention of corruption (concept of integrity)</p>  |
| <p><b>Explanation:</b><br/>Preventing corruption in the public administration institutions would be far more effective if a system of measures for its prevention is prepared in advance, based on the assessment of the vulnerability and the risk of its occurrence. Such “integrity plans” should be prepared by each public administration institution and each institutions should envisage specific measures to prevent corruption in each of the identified bottlenecks.</p> |

Activity 1. Amendment of the Law on Prevention of Corruption through the introduction of a legal obligation to adopt plans for integrity

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**Institution: State Commission for Prevention of Corruption, Ministry of Justice****Category : Integrity**

**Indicator question: Are draft amendments to the Law on Prevention of Corruption prepared in the direction of introducing a legal requirement for introduction of the system of integrity?**

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

Amendments to the Law on Prevention of Corruption were prepared in December 2013 and a segment on the System of integrity is introduced. The introduction of the system of integrity derives as an obligation in accordance to the 2010-2015 Strategy for Public Administration Reform, the 2011-2015 National Programme for Prevention and Repression of Corruption, the NPAA and the 2013 Annual Work Program of the Government. The purpose of the amendments to the Law is the introduction of the system of integrity in the public and private sector and the introduction of a systemic protection of the persons – whistleblowers, that have alarmed about criminal acts against official duty which has been committed or shall be committed, or other unlawful or unpermissible behaviour. The overall goal of the amendment to the law is to achieve a more effective fight against corruption and protection of the persons who are willing to help the general interest in this fight.

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

**Explanation:**

In practice, the preparation of the envisaged amendments to the Law on Prevention of Corruption is underway, The preparation of the amendments to the Law, shall allow for the introduction and implementation of the system of integrity which will contribute to strengthening of the overall fight against corruption.

**Institution: State Commission for Prevention Corruption****Category: Integrity**

**Indicator question: Is there a concept of integrity that would be developed by the SCPC and would be applied at the level of the public administration?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

The State Commission for Prevention of Corruption drafted in 2013 a Manual of Integrity and Conflict of Interest, supported by UNDP Macedonia. The purpose of this Manual is to explain exactly the need for introduction of the concept of integrity at the level of all stakeholders in the public and private sector. “The concept of integrity is an integral part of the system of good governance, [... which] is intended for building and fostering the spirit of integrity on a personal and institutional level, in order to encourage and ensure independence, professionalism and accountability in the performance of the competencies defined by the law and other regulations.”<sup>197</sup> Furthermore, the key elements that the system of integrity should contain are listed in the Manual, as follows: 1. Clear and accessible anti-corruption policy 2. Standards and procedures for the separate areas 3. Methodology for Risk Assessment, 4. Update and adaptation 5. Strengthening of existing internal controls, 6. Training, 7. Internal channels for reporting and protection the whistleblowers of corruption; 8. Disciplinary procedures, 9. Regular review and revision of the system of integrity.<sup>198</sup>

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

In practice, the Manual is a valuable tool which would contribute to strengthening the system of integrity and the fight against corruption if it is applied. However, this Manual does not have a legally binding nature and thus it is difficult to assess how it is implemented in practice, especially the rules related to the conflict of interests, is a Manual for the policies and procedures prepared, and to determine the appropriate disciplinary measures, etc.. in the absence of a legislation which regulates the issue. This Manual is now distributed on the municipal level and has to be distributed on the level of state institutions in future.<sup>199</sup> In terms of the implementation, especially in the area of prescribed procedures for reporting corruption and conflict of interests in the municipality (internal reporting), it is already implemented in 9 pilot municipalities.

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category: Integrity**

**Indicator question: Are measures to prevent the corruption prescribed within the system of PIFC?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

<sup>197</sup> Manual on Integrity and Conflict of Interests , State Commission for Prevention of Corruption, Skopje 2013, pg. 7

<sup>198</sup> Manual on Integrity and Conflict of Interests , State Commission for Prevention of Corruption, Skopje 2013, pg. 11-13

<sup>199</sup> Interview with representatives from the State Commission for Prevention of Corruption, carried out in April 2014.

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**Explanation:**

The Manual for Financial Management and Control indicates the Integrity as a helpful advice for the components of financial management and control. Moreover, these advices also contain guidelines on what the integrity should contain for example a Code of Conduct, rules relating to conflict of interest, manual of the policies and procedures, prescription of the appropriate disciplinary procedures, etc...<sup>200</sup> At the same time, a Manual of Integrity and Conflict of Interest in defining the key elements of the system of integrity, also cites the Public Internal Financial Control.<sup>201</sup> In addition, in accordance to the Law on Public Servants which was previously in force, a Code of Conduct for public officials is adopted and it is enforced. The Manual, regulates the measures that should contribute to the system of integrity to a moderate extent.

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation:**

In practice, the development of the system of public internal control on the one hand, and the progress of the reform process of public administration on the other hand, are becoming more connected, which is also shown from practice and not only from what is put on paper.<sup>202</sup>

## Activity 2. Training for preparation of integrity plans

**Institution : State Commission for Prevention Corruption, Public Administration****Category :** Integrity

**Indicator question:** Are programs for carrying out of trainings for preparation of integrity plans in the public administration?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

The preparation of the Law Amending the Law on Prevention of Corruption, under which the system of integrity would be introduced, in addition to which the programs for implementation of trainings for the preparation of integrity plans in the public administration shall be prepared.<sup>203</sup>

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200 Manual on Financial Management and Control , Ministry of Finance , Skopje, декември 2010 г, pg. 107,

201 Manual on Integrity and Conflict of Interests , State Commission for Prevention of Corruption, Skopje 2013, pg. 11

202 SIGMA Assessment, 2013, Public Internal Financial Control, pg. 32.

203 Interview conducted with representatives from the State Commission for Prevention of Corruption, carried out in April 2014

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

**Explanation:**

The Manual on Integrity and Conflict of Interests prepared by SCPC with support of UNDP, cites the Training as one of the key elements of the policy for integrity. The training, according to what is stated in the Manual, should: contribute to raising awareness among the employees about the specific risks and about the approaches for avoidance and reduction of the risk of corruption; to focus more on compliance with the existing policies of the organization rather than the law itself, and to be cautious of the approach to the training on ethics, i.e. a training on competencies, to ensure that the staff know how to react to a certain situation.<sup>204</sup>

**Institution: State Commission for Prevention of Corruption**

**Category: Resources and capacity**

**Indicator question: Are trainings for implementation of the system of integrity envisaged and carried out?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

The Law on Prevention of Corruption envisages “taking measures for education of the authorities, responsible for the detection and prosecution of corruption and other forms of crime” according to which it envisages trainings in accordance with Article 49 of the law.<sup>205</sup>

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

Currently, the training programs in the field of fight against the corruption are part of the generic trainings that are conducted by the MISA, in which the SCPC also takes part. They are also envisaged in the revised Strategy for Public Administration Reform, and should be implemented in course of 2014.

In the *Review of the Implementation of Activities of the National Programme for Prevention and Repression of Corruption 2011-2015*, for the period December 2011 - November 2013, it is

204 Manual on Integrity and Conflict of Interests, State Commission for Prevention of Corruption, Skopje 2013, pg. 11  
 205 Law on Prevention of Corruption (Official Gazette, No. 28/2002), article 49.



stated that if the trainings are envisaged in the guidelines for the introduction of the system of integrity in the public and private sector which are to be adopted by the SCPC in accordance to the legislative changes, the realization of the training will be planned for the period 2014-2015.<sup>206</sup> “After the specifying of the training and its determination whether it is generic or special, if it is confirmed that the training is generic, the MISA will take into account the planned training and will predict it in the annual program of generic training for civil servants.”<sup>207</sup>

### Activity 3. Preparation and adoption of integrity plans

#### Institution : State Commission for Prevention Corruption, Ministry of Justice

#### Category : Integrity

Indicator question: Does the existing regulation prescribe preparation and adoption of integrity plans?<sup>208</sup>

| Score – de jure | No     | 1 |
|-----------------|--------|---|
|                 | Partly | 3 |
|                 | Yes    | 5 |

#### Explanation:

Currently, the existing regulation does not prescribe it. The draft amendments to the Law on Prevention of Corruption the adoption of Guidelines for implementation of the system of integrity are envisaged.

| Score – de facto | To a very small extent | 1 |
|------------------|------------------------|---|
|                  | To a small extent      | 2 |
|                  | To a moderate extent   | 3 |
|                  | To a large extent      | 4 |
|                  | To a very large extent | 5 |

#### Explanation:

The experience from some of the countries in the region which have introduced integrity plans, suggests that this is quite a bureaucratic solution.<sup>209</sup>

In the 2012-2014 period, diverse models of the system of integrity which are implemented in some of the countries in the region, such as Serbia, Slovenia, Moldavia, Romania and Bulgaria<sup>210</sup> were examined. On the basis of these models, the SCPC started to develop a concept based on the positive regional experiences which would be, at the same time, in accordance to the nation-

<sup>206</sup> Review of the Implementation of Activities of the National Programme for Prevention and Repression of Corruption and the State Programme for reduction of conflict of interests with an Action Plan 2011-2015. This Review is an excerpt from the Report on the implementation of the 2011-2015 State Programme, for the December 2011-November 2013 period, prepared by the State Commission for Prevention of Corruption.

<sup>207</sup> Review of the Implementation of Activities of the National Programme for Prevention and Repression of Corruption and the State Programme for reduction of conflict of interests with an Action Plan 2011-2015. This Review is an excerpt from the Report on the implementation of the 2011-2015 State Programme, for the December 2011-November 2013 period, prepared by the State Commission for Prevention of Corruption.

<sup>208</sup> EU Progress report, National Programme for the Adoption of the Acquis – NPAA, narrative segment, Chapter 3.32 Financial Control.

<sup>209</sup> Interview with representatives from the State Commission for Prevention of Corruption, carried out in 2014.

<sup>210</sup> “Promotion of transparency and accountability of public institutions,” December 2012, <<http://www.dsk.org.mk/images/kniga%20mkd-final%20%283%29.pdf>> ctp.9-44

al conditions in the country. In accordance to the proposed model, the institutions themselves would strengthen their capacities to deal with risks and implement the system of integrity, for which they would be obliged in accordance with the legislative amendments, with the support from the SCPC.<sup>211</sup>

|   |
|---|
| <p><b>Problem /Risk factor 5:</b><br/>Lack of control over the work of the administration</p>   |
| <p><b>Explanation:</b><br/>The control over the work of the administration on the part of the internal audit is limited and it can not be freed from subjective weaknesses. The ensuring of conditions for additional public control over the public administration institutions shall significantly increase the opportunities for prevention and detection of corruption in them.</p> |

Activity 1: Preparation of guidelines for prevention, revealing, reporting and treatment of irregularities

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category :** Supervision and control

**Indicator question:** Does the legal framework of the PIFC system contain guidelines for prevention, revealing, reporting and treatment of the irregularities?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The process of strengthening financial control in the country has started and is implemented through development and applying of the principles of decentralized managerial accountability and establishment of a functionally independent internal audit. The purpose of this process is to build a system that will ensure reasonable use of public funds as well as prevention of irregularities, suspicions for frauds and corruption.<sup>212</sup>

The Law on PIFC regulates the way of taking measures against irregularities and frauds in the same chapter VII, article 50. According to the Law on PIFC, a Decree for the procedure for preventing irregularities, the manner of mutual cooperation, the form, the content, the deadline and the manner of reporting on the irregularities was adopted, published in the “Official Gazette” No. 63/11 from 09.05.2011.<sup>213</sup> The Law and the Decree regulate the obligation of heads of entities in the public sector to take an action against the irregularities and frauds and to appoint a person responsible for the irregularities, which will receive the reports of the irregularities and frauds and will independently undertake actions to prevent them.

<sup>211</sup> Interview with representatives from the State Commission for Prevention of Corruption, carried out in 2014.

<sup>212</sup> 2013- 2016 Strategy for development of Public Internal Financial Control, draft. pg. 5

<sup>213</sup> 2013- 2016 Strategy for development of Public Internal Financial Control, draft. pg. 15

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

**Explanation:**

The obligation for appointment of a person responsible for irregularities was fulfilled by 61 institutions on the central level (80%) and 60 local self-government units (74%).<sup>214</sup>

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category:** Oversight and control

**Indicator question:** In practice, have the irregularities by the competent authorities in the system of PIFC been identified and acted upon?

|                        |            |          |
|------------------------|------------|----------|
| <b>Score – de jure</b> | No         | 1        |
|                        | Partly     | 3        |
|                        | <b>Yes</b> | <b>5</b> |

**Explanation:**

The Law on PIFC and the Decree for the procedure for preventing irregularities, the manner of mutual cooperation, the form, the content, the deadline and the manner of reporting on the irregularities, regulate the prevention of the irregularities.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

**Explanation:**

In practice, the National Authorising Officer in the Ministry of Finance submitted in 2013, 9 reports of irregularities to the Financial Police, about the use of funds from the EU pre-accession assistance in the fifth component, which is intended for support of the agriculture and rural development in the country.<sup>215</sup>

Activity 2: Conducting trainings for professional training of the persons responsible for reporting irregularities according the AFKOS Training Program

<sup>214</sup> National Programme for the Adoption of the Acquis –NPAA, narrative segment, Chapter 3.32 Financial Control.

<sup>215</sup> National Programme for the Adoption of the Acquis –NPAA, narrative segment, Chapter 3.32 Financial Control.

## Institution: Ministry of Finance, Financial Police

### Category: Resources and capacity

**Indicator question: Is there a plan/program of trainings for professional training of the persons responsible for reporting irregularities?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

#### Explanation:

The competences of the Central Harmonization Unit at the Ministry of Finance are defined in the Law on PIFC, according to which, the CHU is responsible for coordinating the trainings for managers and staff involved in the financial management and control and the internal audit, to maintain the database of the internal audit units and units for financial issues and to collaborate with institutions responsible for issues about the PIFC from the country and abroad, in order to exchange the best practices and implementation of the system of PIFC in the country.<sup>216</sup>

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

#### Explanation:

In practice, the National Strategy of Prevention of Frauds and Protection of the Financial Interests of the European Union in the country, whose preparation is at an advanced stage, prescribes that the trainings for the people responsible for irregularities, for prevention of irregularities in the course of using of European funds, for acting on received reports of irregularities and the manner of reporting, with the use of the TAEX instrument shall begin by the end of 2014.<sup>217</sup> At the moment, despite the obligation of the institutions to determine persons responsible for reporting irregularities, there are no indicators on how this modality is functioning in practice.

Activity 3: Preparation of the National Strategy for Prevention of Irregularities and Frauds and Protection of the Financial Interests of the European Union in the country

<sup>216</sup> Law on Public Internal Financial Control, article 48 and 2013-2016 Strategy for Development of the Public Internal Financial Control, draft. pg. 13

<sup>217</sup> Review the implementation of the activities of the National Programme for Prevention and Repression of Corruption and the State Program for Prevention and Reduction of Conflict of Interests with Action Plan 2011-2015, pg. 7

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## Institution: Ministry of Finance

### Category: Accountability

#### Indicator question: Is the National Strategy prepared?

|                 |        |   |
|-----------------|--------|---|
| Score – de jure | No     | 1 |
|                 | Partly | 3 |
|                 | Yes    | 5 |

#### Explanation:

The National Strategy for Prevention of Irregularities and Frauds and Protection of the Financial Interests of the European Union in the country, is envisaged to be adopted in the course of 2014 and will refer to the period from 2014 to 2016, according to the National Program for the Adoption of the Acquis - NPAA<sup>218</sup>,

|                  |                        |   |
|------------------|------------------------|---|
| Score – de facto | To a very small extent | 1 |
|                  | To a small extent      | 2 |
|                  | To a moderate extent   | 3 |
|                  | To a large extent      | 4 |
|                  | To a very large extent | 5 |

#### Explanation:

In practice, the preparation of the National Strategy for Prevention of Irregularities and Frauds and Protection of the Financial Interests of the European Union in the country is at an advanced stage and its adoption is envisaged by the end of 2014.

## Institution: Ministry of Finance, State institutions, Local self-government units,

### Category: Oversight and control

**Indicator question:** Does the existing legislation contain regulations and to what extent is the prevention of irregularities and frauds for the protection of the financial interests of the EU in the country provided in practice?

|                 |        |   |
|-----------------|--------|---|
| Score – de jure | No     | 1 |
|                 | Partly | 3 |
|                 | Yes    | 5 |

#### Explanation:

The Law on PIFC in Chapter IX - Control of usage of resources from the EU Funds, provides in article 52 that “The Entities using resources from the European Union Funds, shall [...] to apply the special requirements for financial management, internal controls and internal audit, determined by the European Commission..” In paragraph 2 of the same article it is stated that “ All beneficiaries of the resources from the European Union Funds should enable the authorised

officials from the Ministry of Finance, the inspectors from the European Commission and the European Court of Auditors free access to the whole documentation, the offices, the funds and the staff, taking into account the rules for security and good behavior.”

The new Law on Financial Police was envisaged to come into force by the end of 2013 as prescribed in the NPAA, according to which the protection of EU financial interests is also regulated as a competence of the Financial Police.<sup>219</sup> At the beginning of 2014 the new Law on Financial Police was adopted, according to which it is noted article 2 that “protection of the European Union financial interests is as well provided, through the discovering and exploration of criminal acts, related to the use of funds from the EU programs that the country receives from the budget of the European Union.”<sup>220</sup>

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | To a small extent        | 2        |
|                         | To a moderate extent     | 3        |
|                         | <b>To a large extent</b> | <b>4</b> |
|                         | To a very large extent   | 5        |

**Explanation:**

In practice, the National Authorising Officer in the Ministry of Finance submitted in 2013, 9 reports of irregularities to the Financial Police, about the use of funds from the EU pre-accession assistance in the fifth component, which is intended for support of the agriculture and rural development in the country.<sup>221</sup>

At the same time, an Agreement for cooperation between the Audit Authority and the Financial Police in the Ministry of Finance was concluded in March 2013, in order to ensure a stable system for managing and controlling in the implementation of the IPA, as well as to prevent and detect irregularities, frauds or other illegal activities detrimental to the financial interests of the EU and the country.<sup>222</sup>

**Activity 4: Setting up legal provision for providing a systematic and institutional protection of the persons who report corruption (whistle blowers)**

**Institution: Public Administration**

**Category: Integrity**

**Indicator question: Does the Law on PC provide legal protection for public servants who report corruption to the managerial structures or the judicial authorities?**

|                        |           |          |
|------------------------|-----------|----------|
| <b>Score – de jure</b> | <b>No</b> | <b>1</b> |
|                        | Partly    | 3        |
|                        | Yes       | 5        |

219 National Programme for the Adoption of the Acquis -NPAA Narrative part, Chapter 3.32 Financial Control

220 Law on the Financial Police, Official Gazette, no.12 од 22.01.2014

221 National Programme for the Adoption of the Acquis -NPAA Narrative part, Chapter 3.32 Financial Control

222 National Programme for the Adoption of the Acquis -NPAA Narrative part, Chapter 3.32 Financial Control

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**Explanation:**

According to the prepared draft Law Amending the Law on Prevention of Corruption an introduction of a system of integrity and protection of the persons who report cases of corruption and other unlawful and unacceptable conduct is planned. Article 3 of the draft Law, introduces a new chapter System of Integrity within which the system of integrity is regulated as well as the system of reporting by the whistleblower and his/her protection. Article 54-b defines the whistleblower, and the article 54-c determines the ways of reporting both internally and externally, and the institutions in which it is performed. Article 54-d determines the actions taken by the competent authority which supervises the implementation of the law upon the notification of the SCPC for reported unlawful or unpermissible dealing. Article 54-d determines the providing of protection to the whistleblower and members of his family from any kind of violation of rights for an undertaken reporting.

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

**Explanation:**

The Law has not been adopted yet and it is therefore too early to speak about the effects of its practical implementation.

**Institution: Ministry of Finance, State institutions, Local self-government units,**

**Category: Oversight and control**

**Indicator question: In practice, have cases of corruption by whistle blowers been reported and to what extent are they protected?**

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

In our country a system of reporting corruption is established according to which any person or Institution may openly or anonymously report a suspicion or a corruption case to the SCPC or to the other competent bodies. At the same time, some institutions, as well as civil society organizations have established a system of reporting through the activated phone lines (hotlines) for reporting suspicions of corruptive actions. However, it is important to understand that it is necessary to make a differentiation between the system of reporting and the system of anti-corruption reporting.<sup>223</sup> "It is necessary to understand that the system for reporting, although it has similar characteristics with the system of anticorruption reporting, it still contains a large number of other aspects. This is particularly related to the fact that the reporting is focused on cases related to one organization (i.e.it is implemented by its employees) as well to the fact that the framework is not limited to criminal activities only but also to areas of a wider public interest."<sup>224</sup>

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223 Roadmap for implementation of the system of whistle blowers in the country, pg. 3

224 Roadmap for implementation of the system of whistle blowers in the country, pg. 3

|                         |                             |          |
|-------------------------|-----------------------------|----------|
| <b>Score – de facto</b> | To a very small extent      | 1        |
|                         | To a small extent           | 2        |
|                         | <b>To a moderate extent</b> | <b>3</b> |
|                         | To a large extent           | 4        |
|                         | To a very large extent      | 5        |

**Explanation:**

According to the above mentioned, at the moment, the reporting is done through the submitters of complaints which may be anonymous. The SCPC acts upon all of the submissions which have been submitted. Thus, it can be concluded that the external reporting already works, but the amendment to the Law should contribute towards the regulation of internal reporting as well as the ensuring of protection for the whistleblowers.<sup>225</sup>

Activity 5: Conduct of trainings for the administration and the private sector on the application of the Law on Protection of People who Report Corruption

**Institution: Public Administration, private sector**

**Category :** Resources and capacity

**Indicator question:** Are the plans/programs for training of the administration and private sector for enforcement of the provisions of the Law amending the Law on Prevention of Corruption with regard to providing protection to people who report corruption prepared and implemented?

|                        |           |          |
|------------------------|-----------|----------|
| <b>Score – de jure</b> | <b>No</b> | <b>1</b> |
|                        | Partly    | 3        |
|                        | Yes       | 5        |

**Explanation:**

Since the adoption of the State Program for Prevention and Repression of Corruption in 2011, up until today, there is no realization of this activity. The review on the realization of the activities of the State Program states that with the adoption of the Law on Amendments to the Law on Prevention of Corruption the plan and the dynamics of implementation of planned trainings is expected to be determined.<sup>226</sup>

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

225 Interview with representatives from the State Commission for Prevention of Corruption, carried out in April 2014

226 Review the implementation of the activities of the National Programme for Prevention and Repression of Corruption and the State Program for Prevention and Reduction of Conflict of Interests with Action Plan 2011-2015. This Review is an excerpt from the Report on the implementation of the 2011-2015 State Programme, for the December 2011-November 2013 period, prepared by the State Commission for Prevention of Corruption.



## Explanation:

If such trainings are envisaged in the guidelines that should be adopted by the SCPC in accordance to the amendments to the Law, the trainings can be conducted in the course of 2014-2015.<sup>227</sup> Following the specification of the training and its determination whether it is generic or special, if it is concluded that the training is generic, the MISA will take into account the planned training and will predict it in the annual program of generic training of the civil servants.<sup>228</sup>

## INDEXES

Although the methodology carries out a qualitative analysis of the state of play, numerical grading was also performed in order to summarize the information and to pinpoint the key weaknesses and strong sides. Hence, the text above contains a grade from 1-5, of which 1 is the lowest, 5 is the highest grade for each of the questions-indicators.

On the basis of the grades, from 1 to 5, provided for each of the questions-indicators – an aggregation is performed on the level of sub-category, on the level of category, and on the level of the entire area. At the same time, all the aggregated grades are determined as an arithmetical mean and no pondering is done.

| Problem          | Subcategory            | Index   |          |                       |                    |                  |
|------------------|------------------------|---------|----------|-----------------------|--------------------|------------------|
|                  |                        | De jure | De facto | Avarage – subcategory | Avarage – category | Avarage – sector |
| <i>Problem 1</i> | Oversight and control  | 3,5     | 3,25     | 3, 37                 | 3, 29              | 2,87             |
|                  | Accountability         | 5       | 3        | 4                     |                    |                  |
|                  | Resources and capacity | 3       | 2        | 2,5                   |                    |                  |
|                  | Oversight and Control  | 4,67    | 3,5      | 4,08                  |                    |                  |
|                  | Resources and capacity | 3,33    | 3,16     | 3,24                  |                    |                  |
| <i>Problem 3</i> | Oversight and control  | 5       | 3        | 4                     | 3,1                |                  |
|                  | Transparency/          | 5       | 1        | 3                     |                    |                  |
|                  | Accountability         | 3,67    | 1        | 2,3                   |                    |                  |
| <i>Problem 4</i> | Integrity              | 3       | 1,6      | 2,3                   | 2,4                |                  |
|                  | Resources and capacity | 3       | 2        | 2,5                   |                    |                  |
| <i>Problem 5</i> | Oversight and control  | 4,5     | 3,75     | 4,12                  | 1,90               |                  |
|                  | Accountability         | 1       | 1        | 1                     |                    |                  |
|                  | Integrity              | 1       | 1        | 1                     |                    |                  |
|                  | Resources and capacity | 2       | 1        | 1,5                   |                    |                  |

227 Review the implementation of the activities of the National Programme for Prevention and Repression of Corruption and the State Program for Prevention and Reduction of Conflict of Interests with Action Plan 2011-2015. This Review is an excerpt from the Report on the implementation of the 2011-2015 State Programme, for the December 2011-November 2013 period, prepared by the State Commission for Prevention of Corruption.

228 Review the implementation of the activities of the National Programme for Prevention and Repression of Corruption and the State Program for Prevention and Reduction of Conflict of Interests with Action Plan 2011-2015. This Review is an excerpt from the Report on the implementation of the 2011-2015 State Programme, for the December 2011-November 2013 period, prepared by the State Commission for Prevention of Corruption.

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Report of the SWOT workshop for localization of the trainings for certification of accountants and auditors in the public sector in the country, held on March 5, 2014

Rulebook for the manner of Implementation of the General Financial Processes

Rulebook for the program and the manner of the examination for Certified Internal Auditor in the public sector («Official Gazette» No. 136/10)

Review of the implementation of the activities of the National Programme for Prevention and Repression of Corruption and the State Program for Prevention and Reduction of Conflict of Interests with an Action Plan 2011-2015

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**5. REPORT ON THE QUALITATIVE ANALYSIS OF THE IMPLEMENTATION OF THE ANTI-CORRUPTION MEASURES IN THE STATE PROGRAM FOR PREVENTION AND REPRESSION OF CORRUPTION AND PREVENTION AND REDUCTION OF CONFLICT OF INTERESTS 2011-2015 IN THE CIVIL SOCIETY SECTOR**

Prepared by: Maksim Acevski, CFE

October, 2014

## **INTRODUCTION**

The OSCE Mission in Skopje conducts multiannual activities to support the implementation of the “State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interests 2011-2015” (the State Program). In 2012 the Mission assisted the development of a methodology for qualitative evaluation of the activities and indicators of the State Programme, with a pilot qualitative analysis in the sector education and sports, with an assessment of the public perception in three sectors of the State Program as well as with the strengthening the capacity of the State Commission for Prevention of Corruption (SCPC) for development of the concept of integrity and electronic recording of data. The OSCE Mission in Skopje continued the cooperation with SCPC also in 2013 and 2014 by supporting the preparation of a qualitative analysis and conducting of the public opinion research for five new sectors of the State Program - private sector, political sector, local self-government, public administration and civil society.

This document contains the qualitative analysis in the Civil Society.

The analysis is directed towards the identified problems in the State Programme, where by, through a series of indicators assesses the anti-corruption measures and the implementation of the State program, determines the strengths and weaknesses of the accomplishments and provides recommendations for improvement of the fight against corruption, which appear in the media and civil society. The main purpose of this analysis is to assist the SCPC in monitoring the implementation of the State Program, in the improvement of the indicators and in the innovation of the planned activities.

## **METHODOLOGY**

The methodology is based on the concept of the Transparency International National System for Integrity. The problems that are taken into consideration are undertaken from the State program. Indicators on the status and progress are determined under each problem along with recommendations for improvement of the results.

The following were used as data sources:

- Qualitative analysis - analysis of primary literature - relevant laws, bylaws and other official documents and reports as well as analysis of secondary literature – articles, etc...
- Interviews with key sources of information, including
  - the State Commission for Prevention of Corruption,
  - the Government – General Secretariat;
  - the Local Self-Government Unit – Veles;
  - the Local Self- Government Unit – Gostivar;
  - the Local Self- Government Unit – Ohrid;
  - the Local Self- Government Unit – Strumica;
  - the Local Self- Government Unit – Prilep;
  - the Local Self- Government Unit – Stip;
  - Macedonian Association of Journalists – MAJ

- 
- the Civic Organization - Macedonian Center for International Cooperation – MCIC
  - the Center for Civil Communications.

On the basis of collected data, the researcher prepared draft scores for each of the indicators from two aspects - de jure, relating to the legal framework, and de facto, i.e. the state of play in practice. In the course of scoring, a three-level scale was used for the legal framework from ranging from 1 to 5, wherein: 1 = no, 3 = partially and 5 = yes.

For the assessment of the situation in practice, a five-level scale was used ranging from 1 to 5, wherein: 1 = to a very small extent, 2 = to a small extent, 3 = to a moderate extent, 4 = to a large extent, 5 = to a very large extent.

The individual scores are afterwards collected and presented as average in a overall score for each category and subcategory. To simplify the presentation, at the end of this document the scores are shown as summarized and expressed as percentage of the maximum possible score.

The results were subject to presentation and validation before the relevant stakeholders, who discussed the findings and assessments related to the indicators, in order to check, to verify or supplement the data and the results. After this validation, finalization of the analysis was performed.

#### **Referent documents:**

Law on Prevention of Corruption;

Law on Citizens' Associations and Foundations;

Law on Donations and Sponsorships in the Public Sectors;

Law on Media;

Law on Audio and Audiovisual Media Services;

Law on the Execution of the Budget of the country for 2013;

Law on the Execution of the Budget of the country for 2014;

Code of Good Practices for Financial Support of Citizens' Associations and Foundations;

Program for Financing of the Program Activities of the Associations and Foundations for 2014;

Program for Financing of the Program Activities of the Associations and Foundations for 2013;

Rulebook for Amending of the Rulebook on the Manner and Procedure for Granting Funds to Citizens' Associations to Perform Certain Activities in the Area of Social Protection;

Decisions on the Criteria and Procedure for Allocation of Funds for Financing the Program Activities of Citizens' Associations and Foundations from the Budget;

Decision on Allocation of Funds from the Budget in 2013, Intended for Financing the Program Activities of Associations and Foundations.

## EXECUTIVE SUMMARY

The qualitative analysis that was conducted in the framework of this project aimed to assess the main risk factors/problems identified by the State Commission for Prevention of Corruption (SCPC) in the area of **civil society**, noted in the National Programme for Prevention and Repression of Corruption 2011 - 2015. The basic problems listed by SCPC were reviewed from the point of view of the legal framework and the practical implementation, in order to review the achievements as well as to highlight the major weaknesses in this sector in the country, in terms of the supervision and control, transparency, integrity, accountability, resources and capacity. The analysis is focused and should serve the overall efforts to combat the corruption in the area of media and civil society in the country and to provide recommendations to overcome them, through the detection of the weaknesses.

In the sector Media and Civil Society, **six** problems i.e. risk factors have been identified, in the framework of which 14 activities for prevention and repression of the corruption and conflict of interest have been specified. They include - 1) Non-transparency when allocating public funds to the associations and foundations; 2) Acquiring status of an organization of public interest; 3) Allocating public funds to intentionally established associations, that creates doubt for corrupt and unproductive spending of public funds; 4) Spending public and budget funds in the media; 5) Concentration of the media ownership and concealing of the media ownership, and 6) Interrelation of the media with the political centers of power.

The area of media within the Media and Civil Society Sector was not part of this qualitative analysis, related to the fact that in the period of preparation of this analysis, the legislative regulations including the outlined risks and problems were in the phase of amendment.

In the recently prepared review of realization of the activities for the period December 2011-November 2013, out of the envisaged 14 activities in total, the SCPC noted that 2 are in process or 14% while 12 or 86% are unrealized activities.<sup>229</sup>

The general conclusion is that in relation to the problems/risk factors 1, 2 and 3 that refer to the civil society area there are still bottlenecks, i.e. the control setting and the actions by the authorities is not at the desired level.

In view of the **Problem 1 Lack of transparency when allocating public funds to the associations and foundations**, the general conclusion is that there is a lack of activities that are aimed at determining the criteria for allocation of public finances in the Law on Associations and Foundations and providing of their proper application. Although the area is regulated by the increasing number of bylaws, in practice there is no consistent implementation provided.

In relation to the **Problem 2 Acquiring a status of an organization of public interest**, no movements are noticed within this risk factor and at the same time there are no specific actions which are undertaken to determine the legal criteria adequate for the goals, the action, the capacity and the integrity of the citizens' organization, whereby the status of an organization of public interest would be acquired with the implementation of the legal criteria and as such would be registered in the Central Registry. At present, the overall activity is within the competence of the government commission which creates the possibility for politization, insufficient justification and insufficient transparency regarding this vital question.

In the part **Problem 3 Allocating public funds to intentionally established associations, that creates doubt for corrupt and unproductive spending of public funds**, the information which are obtained through the survey conducted indicate the fact that in the country the concept of

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functional partnerships with the relevant authorities has not come to life almost at all except in certain segments where the carrying out of activities which fall within the area of public competencies is entrusted.

## RECOMMENDATIONS

- Within the framework of the current manner of financing, the Government should ensure timely adoption of the act for allocation of the means from the Budget, which would ensure and create conditions for the timely realization of the project activities and the submission of the report for the same in the determined deadline.
- The Government should carry out activities according to which clear, transparent and enforceable criteria shall be determined for the goals and the manner of distribution of the finances from the Budget, the municipal budgets, the municipal budgets in the City of Skopje and the budget of City of Skopje in the Law on Associations and Foundations. This would ensure equal access to all of the NGOs and foundations to the finances in the Budget, the municipal budgets, the municipal budgets in the City of Skopje and the budget of City of Skopje, as well as justification for the spending, transparency, impartiality and accountability.
- The Government and the Local self-Government Units to undertake measures and activities within their competences, by which they will amend the acts (the Law on Associations and Foundations and the bylaws that regulate this area) that will ensure:
  - Possibility for the unsatisfied NGOs and foundations to submit an objection/appeal,
  - Ensuring a second instance in the procedure of taking into consideration of the objections/appeals.
- The competent authorities to undertake activities according to which they will ensure consistent meeting of deadlines for submission of reports for the manner of using the funds on the part of the NGOs and foundations.
- The Government should determine an obligation in the Law on Associations and Foundations according to which the providers of finances (The Government, the municipalities, the municipalities in the City of Skopje and the City of Skopje) shall make the completed report for the manner of using of allocated funds and the realized project activities and results achieved publicly available on the web pages of the providers of the finances.
- It is necessary for the Government to carry out activities according to which the criteria for determining of the status organization of public interest shall be conferred in the Law on Associations and Foundations, while the act of acquiring of the mentioned status shall be realized with the meeting of the determined criteria, which is determined in the phase of registering in the competent registry.
- The Government should carry out activities for amending of the legal acts (the Law on Associations and Foundations, the Law on the Government and other laws) which regulate the manner and the possibility for allocation of funds from the Budget and the budgets of the municipalities with the introduction of a possibility the associations to appear as functional partners of the state and other bodies and to reflect the budget support for the performance of public projects through activities which are inherent to them, by definition, such as campaigns, trainings, surveys, debates, etc.

## FINDINGS OF THE QUALITATIVE ANALYSIS

### CIVIL SOCIETY SECTOR

**Problem / Risk factor 1:**

Lack of transparency in the allocation of public funds to the associations and foundations

**Explanation:**

The criteria for funding associations and foundations by the Government with funds from the Budget of the country, the budget of municipalities, public companies and public funds, as well as assets from foreign funds, are not clearly defined, while the procedure for financing is not transparent enough.

**Institution:** the Government – General Secretariat;

the Local Self-Government Unit – Veles;

the Local Self-Government Unit – Gostivar;

the Local Self-Government Unit – Ohrid;

the Local Self-Government Unit – Strumica;

the Local Self-Government Unit – Prilep;

the Local Self-Government Unit – Stip;

Macedonian Association of Journalists – MAJ

the Civic Organization - Macedonian Center for International Cooperation – MCIC

the Center for Civil Communications.

**Category:** Transparency

**Question - indicator:** Do you think that the existing laws and bylaws (Law on Associations and Foundations “Official Gazette of the country” No. 52/10 and 135/11, the Programs for Financing the Program Activities of the Associations and Foundations and the Decision on the Criteria and Procedure for Allocation of Funds for Funding the Program Activities of Citizens’ Associations and Foundations from the Budget of the country “Official Gazette” No. 23/2009), regarding the determining of clear and transparent criteria, rules, procedures and a second instance in the procedure, are adequate and provide transparency, non-selectivity and equal position of all NGOs and foundations?

Score:

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

The funding of NGOs and allocation of funds to them from the Budget of the country, the Budgets of the Local Self-Government Units, public companies and public funds, are regulated by several laws, bylaws and internal regulations adopted by the Parliament of the country, the Government of the country, the heads of the entities which donate certain funds, municipal councils and other authorities. Among the key laws and bylaws that regulate the financing of NGOs and the criteria for allocation of the funds, for this purpose are the provisions of:



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- Law on Associations and Foundations (“Official Gazette of the country ” No. 52/10 and 135/11);
  - Law on Donations and Sponsorships in Public Activities (“Official Gazette of the country ” No. 47/06, 86/08, 51/11, 28/14);
  - Law on Execution of the Budget (“Official Gazette of the country ” number 180/2013);
  - Code of Good Practice for Financial Support of Citizens’ Associations and Foundations (“Official Gazette of the country ” No. 130/2007);
  - Decision on the Criteria and Procedure for Allocation of Funds for Financing the Program Activities of Citizens’ Associations and Foundations from the Budget (“Official Gazette of the country ” No. 23/2009);
  - Program for Financing the Program Activities of the Associations and Foundations for 2013 (“Official Gazette of the country ” No. 4/2013);
  - Program for Financing the Program Activities of Associations and Foundations for 2014 (“Official Gazette of the country ” No. 8/2014);
  - Rulebook on the Manner and Procedure for Allocation of Funds to a Citizens Associations to perform certain activities in the area of social protection (“Official Gazette of the country ” No. 24/2005 and 38/2007).

The provisions of article 49 from the Law on Associations and Foundations provide only a general reference to the manner of allocation of the funds from the Budget, the municipal budgets, the municipalities in the City of Skopje and the City of Skopje, i.e. it refers to and provides a possibility:

- “The Government and the municipal councils, the municipal councils in the City of Skopje and the Council of the City of Skopje, to closely regulate the conditions for allocation and use of the funds for financing the program activities of the associations and foundations.
- The Government i.e. the competent state and municipality bodies, the municipalities in the City Skopje and the City of Skopje, adopt annual plans and programs for allocation of the funds for financing the program activities of the associations and foundations“.

Such kind of general competencies (discretionary right of the Government and Councils of the municipalities, the municipalities in the City Skopje and the City of Skopje) in the law itself, without at the same time having determined criteria and conditions for the manner of allocation of finances in the law which creates a situation of favoritism of certain NGOs and foundations and creation of conditions for a non transparent and selective approach in the course of allocation of the finances from the Budget, the municipal budgets, the budgets in the City of Skopje and the City of Skopje.

The provisions from the Law on Execution of the Budget for a certain year, point to the fact that the finances for this intention are used on the basis of the Decision adopted by the Government on a proposal from the Committee formed by the Government.

The Decision on the criteria and the procedure for allocation of the finances for financing of the programme activities of the citizens’ associations and foundations from the Budget which is adopted by the Government, determines the criteria and the procedure for allocation of finances from the Budget for financing of the programme activities of the citizens’ associations and foundations. Namely, the mentioned decision determines:

- The basic organizational criteria which should be fulfilled by the NGOs (4 criteria);
- The Programme criteria according to which the quality of offered projects is evaluated (3 criteria, under everyone of which there is a subcriterion).
- Manner of evaluating;
- Documents which are to be submitted on the part of interested NGOs;
- Submission of the report for the manner of use of finances.

The Programme for financing of the Programme activities of the Associations and Foundations for 2013 confers:

- The amount of the finances necessary for financing of the programme activities of the NGOs and foundations;
- The Priority goals which would be the object of financing;
- The manner of allocation (calling upon the implementation of the Code of Good Practices for financial support of the citizens' associations and foundations), and
- The manner of submitting of the report for the used finances.

The Rulebook on the manner and procedure for allocation of finances to the citizens' associations and foundations for performance of certain tasks in the area of social protection determines:

- The manner of allocation of finances to the NGOs registered for performance of tasks from the area of social protection;
- The necessary data and documentation for which the request/the project/the application are submitted;
- Criteria for assessment of applications, and
- Content of the provisions of the Agreement which is concluded for acquiring of finances

The above-mentioned secondary legal acts to a certain respect represent progress in the regulation of the listed area and an adequate frame for the manner in which the competent bodies act in the course of reviewing and approving the finances from the Budget, the municipal budgets, the budgets from the City of Skopje and the City of Skopje for financing of the programme activities of the associations and foundations. However, without their inclusion in the Law on Citizens' Associations and Foundations, a possibility is left for political partiality, instrumentalization and lack of securing of equal position of all the NGOs and foundations.

Adequate implementation and practicing of the abovementioned secondary legal acts in practice on the part of the evaluating participants in this qualitative analysis is assessed with an average Score of 3,40 i.e. "partially" due to the fact that for the Score "partially" opted six of the surveyed legal entities, without taking into account the exception in which for this area a Score "No" is given (on the part of one legal entity) and Score „Yes“ (with Score „Yes“ an assessment is provided from three surveyed legal subjects), which clearly indicates that in the forthcoming period it is necessary to undertake certain activities in order to overcome the weaknesses which are detected.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

The above-mentioned secondary legal acts are a certain framework for the manner in which the Government, the municipalities, the municipalities in the City of Skopje and the City of Skopje act. Certain weaknesses and deviations have been found in their practical implementation, which cast a shadow over the overall performance and distribution of funds from the Budget, the municipal budgets, the budgets from the municipalities in the City of Skopje and the Budget of the City of Skopje.

Apart from the provided comment on the part of the Government – the General Secretariat “In addition to the listed acts, in the procedure for distribution of finances from the Budget which are aimed for financing of programme activities of the associations and foundations the Code of Good Practices for financial support of citizens’ associations and foundations (“Official Gazette” No. 130/2007) is as well implemented and is aimed to ensure transparency, determination of basic organizational criteria and effective monitoring of the financial assistance to the associations and foundations on the part of the Government and the state administrative bodies as well as increased accountability in the use of the allocated finances on the part of the associations and foundations.” With this it is demonstrated that the overall procedure is transparent and it ensures equal access and position to all the interested NGOs and foundations, the data received from the other surveys which prove the detected weaknesses.

Namely, almost all the interviewed persons provided remarks for the transparency in the manner of which finances are allocated, thus stressing that in the overall procedure only the public call for allocation of finances and the decision for the received grants are transparent. In order to ensure a clear picture of the manner of thinking of the surveyed legal subjects, we shall cite hereinafter certain remarks made on their part, as follows:

„ The size itself of the fund aimed for financial assistance of the associations and foundations which is secured on the part of the Government for 2014 and is in the amount of only 12 million Denars along with the goals which are set for the financing (economic development, integration in the NATO and EU, etc.) speaks well enough that there is no serious intention to support the NGO sector. It seems so, in the overall process, that only the publication of the Public Add for allocation of finances and the publication of the list of grant receivers is public. In this sense, the criteria for selection of best projects (the manner in which points are distributed) are problematic as well as the intentional absence of control and accountability in the spending of finances from the allocated grants which brings in question the goal of financing.”

„The above-mentioned acts do not treat in its entirety the issues concerning the criteria, transparency and accountability of the procedure. The Law on Citizens’ Associations and Foundations almost does not contain any provisions on the criteria and on the procedure for distribution of finances for the civil organizations. At the same time, in the programmes and decisions which are adopted on an annual basis, there are insufficient provisions on the criteria and the procedure. More concrete rules are prescribed in the Code of Good Practices for financial support of the associations and foundations in 2007, but they are no implemented by the institutions due to their non binding character.”

According to the completed overview of the answers and the other posed questions with the aim of receiving a clear picture for this area, it can be rightly concluded that remarks are made for the manner of usage of the finances, for the criteria, for the selection of NGO receivers of finances, the amount of the ensured finances, the possibility to review the performed distribution of points for the project activities/projects from the NGOs as well as for the inability to have a second instance in the procedure.

It could be concluded from the performed analysis of the primary and secondary legislature, the Code of Good Practices for financial support of citizens' associations and foundations as well as the performed interviews with more representatives from the surveyed legal entities that there is a lack of concrete criteria in **the Law on Citizens' Associations and Foundations for the manner of distribution of finances from the Budget, the municipal budgets, the budgets of the municipalities in the City of Skopje and the budget of the City of Skopje, i.e. the overall manner and criteria for distribution of these finances is regulated in the bylaws.**

### **Recommendation**

The Government to undertake activities according to which clear, transparent and enforceable criteria for the manner of distribution of the finances from the Budget, the municipal budgets, the budgets of the municipalities in the City of Skopje and the budget of the City of Skopje shall be conferred in the Law on Citizens' Associations and Foundations. This shall ensure equal access in all the NGOs to the finances from the Budget, the municipal budgets, the budgets of the municipalities in the City of Skopje and the budget of the City of Skopje, justification of the spending, transparency, impartiality and accountability.

## **Institution: Government – General Secretariat**

**Category:** Transparency

**Question - indicator:** Is there an establish practice of publically announcing on the Government web-page the Decision for allocation/financing of the programme activities of the citizens' associations and foundations from the Budget, which is published in the Official Gazette?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

### **Explanation:**

the Decision for allocation of finances from the Budget for 2013 which are aimed for financing of programme activities of the citizens' associations and foundations is published in („Official Gazette“ number 185/2013).

The Decision mentioned above allows for publication of the NGOs and foundations which are the recipients of the financial means as well as of the deadline for submission of the report for use of the finances.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

It could be concluded from the performed overview of the Decision for allocation of finances from the Budget for 2013 aimed for financing of programme activities of the citizens' associations and foundations that the same was adopted on 17.12.2013 and that it was published in the Official Gazette on 25.12.2013 as well as published on the web page [www.nvosorabotka.gov.mk](http://www.nvosorabotka.gov.mk) on 27.12.2013.

The situation which is detailed above pinpoints to the fact that the procedure for taking a decision on which NGOs and foundations shall be recipients of finances and their publication is performed at the end of the calendar year which primarily influences:

- The possibility for allocation of finances to preferred and previously selected NGOs and foundations
- The period of implementation of the project activities;
- The reporting of the realized activities (honoring of deadlines), etc.

The decision which is mentioned points to the fact that the overall finances in the amount of 12.000.000 Denars are allocated to 40 separate NGOs and foundation without enlisting the amount which is allocated to every NGO or foundation separately as well as without providing data in which programme/priority goal does the approved grant belong to or data on the number of the approved application in a certain priority.

At the same time, in the decision itself it is noted that the deadline for the submission of the report for the used finances is 30 days following the completion of the project activities or 30.06.2014 at the latest, without concomitantly having in mind:

- The provisions from Article 7 from the Decision on the criteria and the procedure for allocation of the finances for financing of the programme activities of the citizens' associations and the foundations from the Budget, which regulates that the report for the use of the finances should be submitted to the competent authorities at the latest by 31 January 2014 and
- The provisions from Point 5 from the Programme on financing of the programme activities of the associations and foundations from 2013, which regulates that the report for the use of the finances shall be submitted at the latest by 31.01.2014

The above-mentioned situation points to the fact that with such a Decision, as the one adopted, influence is made on the possibility for allocation of finances in the planned reporting period to preferred and previously chosen NGOs and foundations, as well as on the period for implementation of the project activities and on the reporting for the realized activities (honoring of deadlines) i.e. the situation explained points to the lack of abiding of the secondary legal acts and the established deadlines for implementation of the envisaged project activities.

## Recommendation

The Government should ensure timely adoption of the act for allocation of the finances from the Budget, which would allow for alignment of the acts and conditions would be created for timely realization of the project activities and the submission of the report in the deadline determined.

### Institution: Government – General Secretariat

**Category:** Transparency

**Question - indicator:** Is there a possibility established, in the current practice for allocation/approval of finances for programme activities of the NGOs and foundations with finances from the budget, for objections/appeals with regard to the adopted decision, and is there a second instance in the procedure and are there any objections/appeals submitted?

|                        |           |          |
|------------------------|-----------|----------|
| <b>Score – de jure</b> | <b>No</b> | <b>1</b> |
|                        | Partly    | 3        |
|                        | Yes       | 5        |

#### Explanation:

The procedure for allocation of finances for financing of the programme activities of the associations and foundations is regulated with the Code of Good Practices for financial support of the citizens’ association and foundations, the Decision for criteria and procedure for allocation of the finances for financing of the programme activities of the citizens’ associations and foundations from the Budget and the Programme for financing of the programme activities of the citizens’ associations and foundations which is published on annual basis on the part of the Government.

**The possibility for submission of an objection or an appeal of the adopted act for allocation of finances is not listed in neither of the above-mentioned acts.**

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>to a very small extent</b> | <b>1</b> |
|                         | to a small extent             | 2        |
|                         | to a moderate extent          | 3        |
|                         | to a large extent             | 4        |
|                         | to a very large extent        | 5        |

#### Explanation:

The previously listed acts which are related to the regulation of the manner of allocation of the finances for financing of the programme activities of the associations and foundations as well as the Decision for the allocation of the finances from the Budget for 2013 aimed for financing of the programme activities of the associations and foundations do not provide a possibility for the unsatisfied associations and foundations to submit an objection/appeal or a request for reviewing of the projects they have submitted.

The abovementioned situation is also confirmed with the secured answer from the Government – the General Secretariat to the submitted questionnaire in which it is clearly stated that:

„There is no right to an appeal/objection prescribed against the Decision of the Government for the allocation of the finances from the Budget aimed for financing of the programme activities of the associations and foundations“.

In order to discover the above-mentioned situation in the Local-Self Government Units an adequate question was posed to the surveyed Local-Self Government Units. From the received answers it could be concluded that the abovementioned situation is also identical in the Local-Self Government Units, i.e. that there is no possibility for an appeal/objection of the adopted act.

Therefore, from the above-mentioned state of play it could be concluded that there are no conditions created for second-instance of the procedure for reviewing of the submitted objections/appeals by the unsatisfactory organizations.

### Recommendation

The Government and the local self-government should undertake measures and activities within the framework of its competencies according to which amendments and addenda of the acts would be performed (Law on Citizens' Associations and Foundations and secondary legal acts which regulate this area) and which would ensure:

- A possibility for the unsatisfactory NGOs and foundations to submit an objection/ appeal, and
- Second instance in the procedure for allocation of the budgetary means.

## Institution: Government - General Secretariat

**Category:** Transparency/accountability

**Question - indicator:** Whether the non-governmental organizations and foundations, users of the finances from the Budget for the aim of financing of programme activities, submit financial reports for the use of the finances and for the realization of the planned activities in the determined deadlines and whether these reports are published by the Government on the web-page in order for them to be available for the wider public?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

### Explanation:

The manners for reporting and the deadlines for reporting are determined in the Code of Good Practices for financial support of the citizens associations and foundations, the Decision for the criteria and the procedure for allocation of the finances for financing of the programme activities of the citizens associations and foundations from the Budget and the Programme for financing of the programme activities of the citizens associations and foundations which is published on the web site of the Government on an annual basis.

The above-mentioned acts do not contain the obligation of the Government and Municipalities, the municipalities of the City of Skopje and the City of Skopje have an obligation to publish the individual reports submitted by the NGOs and the Foundations which are users of the finances.

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

In order to discern the actual situation in this part and with the aim of ensuring a high degree of transparency, publicity and accountability in the manner of the use of finances allocated from the Budget, the municipal budgets, the budgets from the municipalities in the City of Skopje and the City of Skopje, an adequate questionnaire was prepared which was submitted to the Government – the General Secretariat, the surveyed Local-Self Government Units and certain NGOs. The received answers point to the fact that the NGOs and foundations which are users from the Budget, the municipal budgets, the budgets from the municipalities in the City of Skopje and the City of Skopje have an obligation to submit adequate reports for the used finances but they are not published on the web sites of the Government, i.e. the websites of the municipalities.

As a confirmation for the above-mentioned state of play is the comment provided by the Government – the General Secretariat:

„The Associations and foundations which are financially supported by the Government submit a final report on a previously determined form which contains a narrative and financial segment, within 30 following the completion of the project. The final reports are not published on the website of the Government. On the basis of these reports, the Unit for cooperation with the non-governmental organizations of the General Secretariat submits to the Government a Report for the realization of the Programme for financing of the programme activities of the associations and foundations with financial indicators and an explanation of the achieved results. The Report is not published on the web site.“

All the previously states points to the fact that the process lacks transparency and is risky for deviations, hence, in the forthcoming period, the Government should undertake measures according to which amendments of the provisions to the Law on associations and foundations shall be made and an obligation shall be established for the received reports from the users of the finances to be published on the web site of the Government i.e. the web site of the Local Self-Government Units i.e. on the web site of the provider of the finances.

**Recommendation**

It is necessary for the Government to undertake measures according to which it shall perform amendments to the provisions of the Law on Citizens’ Associations and Foundations which shall establish the obligation for publication of the received reports from the users of the finances on the web site of the Government i.e. the web sites of the Local Self-Government Units i.e. on the web site of the provider of the finances.



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## Institution: Government - General Secretariat

**Category:** Transparency/accountability

**Question - indicator:** Does the General Secretariat have an established practice of preparing a report on the realization of the Programme for financing of the programme activities of the associations and foundations, does it submit this report to the Government in the designated deadline and whether the Government publishes on the web site in order for them to be available to the wider public?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

### Explanation:

Point 5 of the Programme for financing of the programme activities of the associations and foundations for 2013 confirms that the General Secretariat of the Government shall submit a Report on the realization of the Programme of the Government with financial indicators and an explanation of the achieved results, until 28.02.2014.

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>To a very small extent</b> | <b>1</b> |
|                         | To a small extent             | 2        |
|                         | To a moderate extent          | 3        |
|                         | To a large extent             | 4        |
|                         | To a very large extent        | 5        |

### Explanation:

Having in mind that with the Decision for allocation of finances from the 2013 Budget which are aimed for financing of the programme activities of the associations and foundations, the deadline for submission of the reports for the manner of usage of the finances is determined for 30.06.2014 at the latest, this activity cannot be implemented in the prescribed deadline. Whether it would be implemented at all, it should be checked in the forthcoming period.

At the same time, from the acquired feedback from the part of the Government – the General Secretariat and the surveyed Units for Local-Self Government, it could be concluded that from the obtained reports submitted by the users of the funds, one final report is prepared for the manner of using of the finances and the implemented programme activities but there is lack of a practice for this report to be publicly available i.e. to be published on the web-site of the provider of the finances.

Hereinafter, the provided comment on the part of the Government– the General Secretariat is provided:

„On the basis of performed reports from the Citizens’ associations and foundations which are financially supported by the Government, the Unit for cooperation with the non governmental organizations of the General Secretariat prepares a Report on the realization of the Programme for financing of the programme activities of the Citizens’ associations and foundations with financial indicators and an explanation of the achieved results. The Report is submitted for reviewing to the Government in the deadline which is confirmed with the Decisions on the Criteria and Procedure for Allocation of Funds for Financing the Program Activities of Citizens’ Associations and Foundations from the Budget. The Report is not published on the web site. “

This kind of state of play points to the fact that in the forthcoming period the Government should introduce in the Law on Citizens' Associations and Foundations an obligation according to which the provider of the finances (the Government, the municipalities, the municipalities in the City of Skopje and the City of Skopje) shall make publicly available the prepared report for the manner of using of the allocated finances and for the implemented project activities and the realized results for the wider public through their publication on the web sites of the providers of the finances.

### **Recommendation**

The competent bodies in the forthcoming period should undertake activities according to which they shall secure the adequate respect of the deadlines for submission of the reports for the manner of using of the finances on the part of the NGOs and the foundations.

The Government should ensure the establishment of an obligation in the the Law on Citizens' Associations and Foundations according to which the providers of the finances (the Government, the municipalities, the municipalities in the City of Skopje and the City of Skopje) shall make publicly available the prepared report for the manner of using of the allocated finances and for the implemented project activities and the realized results for the wider public through their publication on the web sites of the providers of the finances.

#### **Problem/Risk factor 2:**

Acquiring of a status of an organization of public interest

#### **Explanation:**

The existing law, on a proposal from a Government Commission, confirms that the Government shall adopt a decision for providing the status of an association of public interest to certain associations which are priveleged in the financing with public finances. Having in mind that the public interest is expressed in the targets, the target groups and the activities of the associations according to which the associations of public, group or personal interest could be differentiated, it is necessary for the criteria of the association of public interest to be confirmed by a law and the status to be acquired with the act of registration.

### **Institution: Government – General Secretariat;**

Centar for Civil Communications;

Macedonian Center for International Cooperation – MCIC;

Macedonian Association of Journalists - MAJ

**Category:** Transparency

**Question - indicator:** Do you consider that the existing legal provisions from the Law on Citizens' Associations and Foundations („Official Gazette“ number 52/10 and 135/11) in terms of determining the criteria and the procedures of acquiring a status of public interest of the NGOs, ensure for a transparent and equal status, adequate to the goals of the NGOs and foundations?

|                        |               |          |
|------------------------|---------------|----------|
| <b>Score – de jure</b> | No            | 1        |
|                        | <b>Partly</b> | <b>3</b> |
|                        | Yes           | 5        |

**Explanation:**

The acquiring of the status of an organization of public interest is determined with the provisions of the articles 73 – 89 from the Law on Citizens’ Associations and Foundations („Official Gazette“ number 52/10 and 135/11). Namely, in accordance to the existing provisions of the law, the status of an organization of public interest is determined<sup>230</sup> by the Government on a proposal from the Committee for organizations with a public interest status, This committee is formed on the part of the Government and it is comprised of the President and ten member of which 8 members are from the competent ministries, one representative from the Agency for Youth and Sport and only two representatives of organizations registered in accordance to this law.

The manner and the criteria for selection along with the reasons for termination of the performance of the work of the President and the members of the Committee are determined with a secondary legal act adopted by the Minister of Justice “Rulebook on the manner and the criteria for selection as well as the reasons for termination of the performance of the work of the President and the members of the Committee for organizations with a status of public interest,” published in the „Official Gazette“ number 142/2010.”

|                         |                          |          |
|-------------------------|--------------------------|----------|
| <b>Score – de facto</b> | To a very small extent   | 1        |
|                         | <b>To a small extent</b> | <b>2</b> |
|                         | To a moderate extent     | 3        |
|                         | To a large extent        | 4        |
|                         | To a very large extent   | 5        |

**Explanation:**

The criteria for acquiring of a status of an organization of public interest are determined in a formally legal manner as well as the bodies and agencies which are involved in the procedure for performance of the administrative-technical tasks and the adoption of the act for determining of the status of public interest.

Apart from the statement made on the part o the Government – the General Secretariat that

“the conditions and the procedure for acquiring of a status of an organization of public interes are clearly defined in the Law on Citizens’ Associations and Foundations and are equally available for the interested associations and foundations” and that there is no need for altering of the state of play in this area, it is obvious that in practice there are situations which adversely affect the overall surrounding and the performance of the non-governmental sector as well as over the acquiring of the status of an organization of the public interest which is directly related to the possibility for usage of budgetary means.

Part of the surveyed NGOs expressed themselves positively for the point of view of the SCPC according to which the status of an organization of public interest shall be acquired with the act itself for registering with the competent registry, which shall exclude the possibility for partiality, selectiveness and arbitrariness.

230 Article 79 of the Law on Citizens’ Associations and Foundations

Apart from the concept which is offered by the SCPC which confers that the status of an organization of public interest to be acquired with the act of registration in the Central Registry itself, on the basis of clearly defined criteria, aims and activities which would be possessed by the NGOs as their reference capacity and integrity.

Regardless of the negative approach on the part of the Government – the General Secretariat for the proposal made by the SCPC for acquiring of a status of an organization of public interest, with the very act of registering in the competent registry, it is necessary for the Government to undertake activities according to which the criteria for the status of an organization of public interest shall be determined in the Law on Citizens’ Associations and Foundations, while the act of acquiring of the mentioned status stems from the fulfillment of the determined criteria which shall be established in the course of registering at the competent registry.

### **Recommendation**

It is necessary for the Government to undertake activities according to which the criteria for determining of an organization of public interest shall be determined in the Law on Citizens’ Associations and Foundations while the act of acquiring of the mentioned status stems from the fulfillment of the determined criteria which shall be established in the course of registering at the competent registry.

#### **Problem /Risk factor 3:**

Allocating public funds to intentionally established associations that creates doubt for corrupt and unproductive spending of public funds

#### **Explanation:**

Despite giving public funds to support the overall operation of certain associations, which does not solve their material needs, and the method of allocation creates negative effects of bias, there is no possibility for the capable GOs to apply on the principle of functional partnership, with their own projects, to realise activities for which they are established and registered - polls, training, media campaigns, campaigns for building of awareness among citizens, encouraging the motivation of the citizens for a particular purpose, public debates, research. The fact that in the current government projects and other projects of state authorities there is a space for exercising of activities which by definition belong to GOs and that the country needs to develop the domestic civil sector, requires the creating of an opportunity to perform public works by the GOs on the principle of transparent competition in front of the state authorities with targeted projects. This would also allow for the domestic GOs not to depend solely on the financial support from foreign donors.

### **Institution:**

**Category:** Transparency

**Question - indicator:** Do you think that the existing legal provisions of the Law on Associations and Foundations (“Official Gazette” number 52/10 and 135/11) regarding the establishment of clear and transparent criteria, rules and procedures for application of NGOs with their own projects (the principle of functional partnership) to the competent national bodies are adequate and provide transparency, non-selectivity and equal position of all NGOs and foundations?

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Score:

|           |          |
|-----------|----------|
| <b>No</b> | <b>1</b> |
| Partly    | 3        |
| Yes       | 5        |

**Explanation:**

With the provisions of Article 90 of the Law on Citizens' Associations and Foundations, the manner of entrusting the performance of public authority is determined, by transferring the competences from a state government body, from a body of the municipalities, the municipalities in Skopje and the City of Skopje as well as other bodies that have public authority, but without the manner of a functioning partnership between those bodies and non-governmental organizations and foundations.

|                         |                               |          |
|-------------------------|-------------------------------|----------|
| <b>Score – de facto</b> | <b>to a very small extent</b> | <b>1</b> |
|                         | to a small extent             | 2        |
|                         | to a moderate extent          | 3        |
|                         | to a large extent             | 4        |
|                         | to a very large extent        | 5        |

**Explanation:**

From the conducted study of the laws and bylaws as well as the interviews conducted in the country, it could be concluded that the concept of a functional partnership with the authorities has not come into life, except in certain segments where tasks are being performed in the sphere of public competencies.

Currently, the Government and the other competent bodies undertake activities / campaigns that are aimed to:

- - Build awareness of the citizens;
- - Stimulate the motivation of citizens towards a particular purpose;
- - Increase the birthrate in the country;
- - Organizing of public debates;
- - Research;
- - Promotion of certain achievements etc., and

All these are realized in their own capacity and planning or with an economic operator.

These activities alone may be granted to the NGOs in a transparent and impartial manner following a public call for submitting appropriate targeted projects, with which the NGO sector would be given the right place in the system along with giving it a real boost to its survival and development.

**Recommendation:**

The Government should take activities to amend the legislation (Law on Citizens' Associations and Foundations, Law on the Government and other laws) which govern the manner and possibility of granting of funds from the Budget and municipal budgets for activities based on the principle of functional partnership.

## INDEXES

Although the methodology does a qualitative assessment of the state of play, it also makes a numerical evaluation with the aim of summarizing the information and identifying the key weaknesses and strengths. Hence, in the text above for each of the questions-indicators score is provided from 1 to 5 - where 1 is the lowest and 5 the highest.

On the basis of the scores from 1 to 5, for each of the questions-indicators aggregation of the scores is performed on a subcategory level, category level, and on the level of the entire pillar. At the same time, pondering is not performed, but all aggregated grades are determined as the arithmetic mean.

(The table will be prepared after receiving comments of the initial assessments)

| Problem   | SubCategory    | Index   |          |                       |                    |                  |
|-----------|----------------|---------|----------|-----------------------|--------------------|------------------|
|           |                | De jure | De facto | Average – Subcategory | Average – Category | Average – sector |
| Problem 1 | Transparency   | 2,33    | 1,66     | 1,995                 | 2,12               | <b>1,873</b>     |
|           | Accountability | 3       | 1,5      | 2,25                  |                    |                  |
| Problem 2 |                |         |          |                       | 2,5                |                  |
|           | Transparency   | 3       | 2        | 2,5                   |                    |                  |
| Problem 3 | Transparency   | 1       | 1        | 1                     | 1                  |                  |

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## LITERATURE:

- Law on Citizens' Associations and Foundations („Official Gazette“ number 52/10 and 135/11);
- Law on donations and sponsorships in the public activities („Official Gazette“ number 47/06, 86/08, 51/11, 28/14);
- Law on execution of the Budget („Official Gazette number 180/2013);
- Code of Good Practices for financial support of the citizens' associations and foundations (Official Gazette“ number 130/2007);
- Decisions on the Criteria and Procedure for Allocation of Funds for Financing the Program Activities of Citizens' Associations and Foundations from the Budget („Official Gazette“ number 23/2009);
- Programme for financing of the Programme activities of the Associations and Foundations for 2013 („Official Gazette“ number 4/2013);
- Programme for financing of the Programme activities of the Associations and Foundations for 2014 („Official Gazette“ number 8/2014);
- Rulebook on the Manner and Procedure for Granting Funds to Citizens' Associations to Perform Certain Activities in the Area of Social Protection („Official Gazette“ number 24/2005 and 38/2007);
- Law on the Media („Official Gazette“ number 184/13 и 13/14);
- Law on the audio and audio visual media services (Official Gazette бр.184/13, 13/14 and 44/14);
- Law on Broadcasting („Official Gazette“ number 100/2005, 19/2007, 103/2008, 152/2008, 6/2010, 145/2010, 97/2011, 13/2012 and 72/2013).





