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Creating Change Together

PUBLIC ADMINISTRATION REFORM ASSESSMENT OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

APRIL 2014

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ASSESSMENT OVERVIEW AND RATIONALE

In October 2013 the European Commission (EC) released its annual Progress Report and, for a fifth straight year, recommended the launch of European Union (EU) accession negotiations with the former Yugoslav Republic of Macedonia. In February 2014, the European Parliament passed a resolution stating that, according to its assessment, the Copenhagen criteria had been sufficiently fulfilled to begin negotiations for EU accession, and it called on the EU Council to confirm without delay the date for the launch of accession negotiations. The Council will consider this at its next meeting in June 2014.

The High-Level Accession Dialogue, which began in March 2012, has continued to provide an impetus to the process of reforms aimed at EU integration. It focuses on five key areas: protecting freedom of expression in the media, strengthening the rule of law and fundamental rights, reforming public administration, electoral reform, and developing the market economy. The Special Group on Public Administration Reform (PAR) held its fifth meeting on 28-29 November 2013. Municipal elections were held in March/April 2013, and general elections have been called for April 2014.

Following discussions with the EC, SIGMA gave priority in its 2014 assessment of the former Yugoslav Republic of Macedonia to areas of PAR and in particular those areas where actual reform was being implemented or planned. This report covers the period from April 2013 to March 2014.

Each assessment area is presented in a separate thematic report, which includes a brief description of the state of play and recent developments. This overall assessment is followed by a more detailed analysis with conclusions.

SIGMA's 2014 assessment of the former Yugoslav Republic of Macedonia focused on:

- [POLICY MAKING](#) – This assessment concentrated on changes in the [Co-ordination Structures](#) of the policy making system, examining in particular the involvement of citizens in policy making and the use of electronic methods to facilitate this process, on [Policy and Strategic Capacities](#) and on [Regulatory Management and Improving the Quality of Legislation](#).

SIGMA, working in co-ordination with the Directorate-General for Enlargement (DG ELARG), has developed a draft set of principles of public administration, designed to define key requirements for good public governance and to serve as a basis for measuring progress over the years. The 2014 assessments were used to pilot the draft principles concerning the above topic.

The principles of public administration are due to be released in November 2014.

POLICY MAKING

**THE FORMER YUGOSLAV REPUBLIC
OF MACEDONIA
APRIL 2014**

1. State of play and main developments since last assessment

1.1. State of play

A legislative system is in place, with roles assigned for key policy making responsibilities, and is set out in relevant guidelines and rules of procedure (RoP). However, in practice, these rules are often not followed and policy making tends to be centralised within the administration.

The structures and procedures required to perform centre of government functions such as planning and monitoring are established in rules and procedures. The role of key co-ordination bodies within the centre of government – the Legislative Secretariat, Secretariat of European Affairs and the General Secretariat – focuses on the procedural aspects rather than the content of proposals. The centre of government performs the necessary functions, with a weakness in the area of policy co-ordination where the General Secretariat and the Ministry of Information Society and Administration generally address the formal issues around oversight rather than substantive issues of quality control.

The Government has an ambitious strategy to enhance transparency and increase the participation of the public in the policy making process. Owing to the scale of the ambition to use digital technology to implement open governance, the Government has established many electronic initiatives in the last five years. However, there is an emphasis on technology (e.g. the Single National Electronic Register of Legislation, a forum for policy making and a web portal for open data) to deliver the objectives of policy making, especially public consultation. This technology alone has so far not helped adherence to important procedures that embody the value of transparency, such as minimum consultation periods.

In terms of regulatory and legislative matters, government and parliamentary procedures that were designed for exceptional cases are being used routinely; this has several implications: less time is devoted to developing policy proposals, and legislation is being developed prematurely, prior to any appraisal of impact being undertaken. There is also insufficient monitoring of the implementation of policies, such as the eight-year ongoing programme to improve the business environment through the regulatory guillotine, where there is no Government activity to evaluate the benefits of the programme.

1.2. Main developments since last assessment¹

The Regulatory Impact Assessment (RIA) process methodology was amended in 2013, and changes were made to the Government RoP to require that proposed laws submitted to the Government contain a RIA that has been completed according to the Guidelines². There was a continued focus on sustained government and citizen/NGO dialogue, including the implementation of the Second Strategy for Co-operation with the Civil Society Sector, which sets out the methods of co-operation between government and civil society.

¹ March 2012.

² Changes were made to the Government Rules of Procedure in 2013. These changes include the introduction of a requirement for the RIA to be undertaken in accordance with the guidelines (Article 20) and the exemption of specific laws such as those that implement international agreements and the proposed budget law (Article 8).

CO-ORDINATION STRUCTURES

2. Analysis

Centre of government institutions

1: Centre of government institutions fulfil all functions critical to well-organised and competent operation of policy making system and the responsibility of these functions is assigned to units at the centre of government.

The centre of government (CoG) consists of the following six bodies:

- 1) The General Secretariat (GS)³ is responsible for co-ordination of the preparation of Government sessions, co-ordination of the preparation of the Government's annual strategic priorities and annual work programme (AWP), policy co-ordination, co-ordination of the Government's communication activities, monitoring and reporting on the performance of the AWP and co-ordination of relations between the Government and the Parliament, non-governmental organisations (NGOs), and other public institutions. These functions of the General Secretariat are specifically assigned to Departments.
- 2) The Secretariat of Legislation (SL)⁴ provides opinions on the conformity of proposed legislation with the Constitution and other laws, opinions on the compatibility of the national legislation with the EU *acquis* and assessment of the level of harmonisation, and advice on law drafting techniques.
- 3) The Secretariat of European Affairs (SEA)⁵ is responsible for co-ordination of EU integration affairs.
- 4) The Ministry of Finance (MoF) develops the Fiscal Strategy, co-ordinates the preparation and monitoring of the annual budget, and provides an opinion on fiscal impact assessments (FIAs) developed by the ministries.
- 5) The Ministry of Information Society and Administration (MISA) is responsible for supervising the RIAs carried out by the ministries⁶, and also for the Single Electronic Register of Legislation⁷.

³ Law on Amendments of the Law on the Government (2005); RoP for Operation of the Government (Unofficial Consolidated Text, 2013). The last official consolidated text of the RoP for Operation of the Government was produced in 2006. SIGMA translated the amendments, and the version used for this assessment integrates subsequent amendments made in 2011 and 2013.

⁴ Articles 68(7), 69(1), 73-a (2), and 103, Law on the Government (2000); RoP for Operation of the Government.

⁵ Law on Amendments of the Law of Government (2005).

⁶ Articles 68(6) and 73-a (2), RoP for Operation of the Government (Consolidated Text, 2013).

⁷ The single electronic register of regulations (ENER) was introduced in 2009.

Figure 1. An overview of the functions and staffing within the centre of government

Function of CoG	Performed in practice?	CoG body	Number of staff
Prepare Government sessions and ensure proposals meet RoP requirements	Yes	General Secretariat	42
Support Ministerial Committees		General Secretariat	12
Ensure legal conformity	Yes	Legislative Secretariat	19
Prepare and monitor government's strategic priorities and work programme	Yes	General Secretariat	13
		PM Cabinet	9
Co-ordinate the policy content of proposals	Limited	General Secretariat	7
		MISA	2
Ensure policies are affordable	Yes	MoF	37
Co-ordinate government communication	Yes	General Secretariat	11
		PM Cabinet	4
Monitor government performance and preparation of priorities for AWP	Yes	General Secretariat	13
Manage relations between the President and Parliament	Yes	General Secretariat	5
Co-ordinate European integration affairs	Yes	Secretariat of EI	41

Source: Data from the questionnaire response from the General Secretariat.

Although not a formal part of the GS, the Political Cabinet of the Prime Minister⁸ plays a role in establishing the Government's medium-term priorities and short-term legislative agenda.

The CoG performs the necessary functions in accordance with the Rules of Procedure, with a weakness in the area of policy co-ordination where the GS (and MISA) generally address formal rather than substantive issues. The CoG is fragmented, especially in terms of reviewing submissions to the Government sessions, where the GS, MISA, Legislative Secretariat, SEA, and PM Cabinet are all involved.

2: Roles of institutions and institutional units and their authority to act are explicitly established; co-operation and co-ordination between them is ensured through concrete procedures.

The legal framework for decision making and policy formulation is set by the RoP for Operation of the Government. Numerous amendments were made between 2001, when the RoP were first adopted, and 2013. Some amendments have been of a technical nature, but some recent significant reforms in the work of the Government, such as the introduction of a detailed methodology and instructions on the RIA process in 2013, and *ex post* analysis of two proposals per ministry, per year which will be effective from later this year⁹.

The RoP clearly assign responsibilities for the management of the policy process to CoG bodies, and set the framework for an effective policy planning system. The RoP specify the links between the political priorities established by the Government upon its election (the Government Programme approved by Parliament), the annual process of strategic planning and budgeting, and an annual plan of specific

⁸ Articles 25 and 26, RoP for Operation of the Government.

⁹ Amendments to the RoP of the Government in 2013 introduced this requirement. *Ex post* is a commonly used term about impact assessment. It refers to evaluation after completion of the intervention such as the introduction of a law. The ministries will decide which laws to evaluate and will examine whether the laws have achieved the intended impact.

legislation and other initiatives presented in the AWP. The relevant strategic planning process requirements of the RoP are echoed in the Organic Budget Law, which links the preparation of the budget to the Government's strategic priorities. The weekly meetings of state secretaries (the "General Collegium") and the meetings of standing government commissions are the mechanisms for deliberation and resolution of outstanding issues related to ministry proposals prior to consideration at Government sessions.

Government Services (in the case of CoG the GS, SL and SEA) have a lower hierarchical status than ministries. The "Government Services" have no right to adopt secondary legislation. Requirements related to methodology and procedures within the policy process need to be adopted by the Government to give them legal force¹⁰. In practice, the GS role is primarily restricted to procedural review and co-ordination of processes. In the preparation of the agenda and material for Government sessions, as in the preparation of the annual priorities and work programme, the GS role is mainly to check formal conformity of ministries' proposals with the requirements set out in the RoP. It does not play an important role with respect to the substance of the ministries' submissions. The role of MISA with respect to RIA is also primarily on the formal conformity with the RIA methodology, not the quality of the analysis, as this is the role of the Legislative Secretariat in conducting a legal review.

Overall, the policy making and co-ordination system has the design characteristics and much of the human capacity required to produce policies that meet the standards required by the rules and procedures¹¹.

Co-operation and co-ordination between the GS and the Ministry of Finance is foreseen through the close linkage between the budget and the policy planning processes, as established by both the RoP and the Organic Budget Law. For example, the first step in the annual policy planning process is the preparation by the GS, for Government approval, of a document specifying the strategic priorities of the Government. In addition, the requirement for a FIA to be prepared by ministries submitting proposals, and the mandatory review of the FIA by the Ministry of Finance, also underpin this ongoing co-operation¹².

The Secretary General of the Government chairs a weekly meeting of the state secretaries (the "General Collegium"). This body plays a central role in ensuring co-operation and co-ordination among ministries and other bodies, and is in fact the body responsible for deciding if items submitted by ministries are ready to proceed to the Government session. The General Collegium is served by the General Secretariat (five staff are assigned to this task) and acts on the advice of the Secretary General. In preparation for the weekly meeting of the General Collegium, the Secretary General holds a meeting of the GS "Expert Collegium", composed of the heads of the units responsible for reviewing proposals submitted by ministries for the upcoming Government session, it includes only departments from the General Secretariat, and not from other bodies that have a role in reviewing proposals (MISA, Legislative Secretariat, PM Cabinet). While the GS itself can return items to ministries only when there is missing documentation, the General Collegium and the ministerial committees, based on advice from the GS, do so quite often when there are questions on the content¹³.

¹⁰ The Government Services can issue guidance, but not legally binding documents.

¹¹ A revised Methodology on Strategic Planning and Preparation of the AWP of the Government and the Strategic Planning Handbook (February 2007) support the ministries and other state administration bodies in their planning process. The Methodology on Policy Analysis and Co-ordination, adopted in 2006, was followed by the Policy Development Handbook (January 2007), and the Manual on Situation Analysis in the Policy Development Process (November 2008). The requirement for a Regulatory Impact Assessment and its supporting forms was adopted by the Government in March 2008, and implemented as of January 2009.

¹² Article 27-a, RoP for Operation of the Government; Articles 14 and 26, Budget Law.

¹³ The GS returned items on 22 occasions in 2012, owing to the fact that ministries provided incomplete information.

The roles and responsibilities of CoG are explicitly set out in regulations, and establish the structures and procedures required to perform the CoG functions. The authority of the General Secretariat to perform the policy co-ordination function is limited to procedural reviews. Co-operation between the General Secretariat and the Ministry of Finance is underpinned by legal requirements, and operates as envisaged in the RoP. Within the General Secretariat, the Expert Collegium, which includes the heads of the relevant departments, meets weekly to discuss the formal readiness of submissions and prepare advice to the General Collegium of State Secretaries.

Policy planning at the centre of government

3: Processes and documents for planning the work of the Government are harmonised and enable medium-term planning and setting whole of the government priorities.

The steps of the strategic integrated planning process, as well as their timing and responsible institutions, are set out in Figure 2¹⁴. The establishment of the strategic priorities of the Government is based primarily on the Government's four-year programme adopted by the Parliament at the time of the formation of the Government and on the National Programme for Adoption of the Acquis Communautaire (NPAA). Initiatives for the AWP are submitted by the ministries, and a workshop is organised by the GS, normally in May, to discuss priorities and objectives. In addition, NGOs are specifically consulted by the GS and are encouraged to propose initiatives for inclusion in the work programme. The General Secretariat is responsible for ensuring the submissions are in line with the priorities and with other planning documents, especially the NPAA (the latest one was adopted in 2013, covering 2014-16).

There is no formal hierarchy of central planning documents although the Government political programme is considered the document with the highest status. A National Development Plan was first adopted in 2007, and later updated in 2009, but the Government no longer updates this document and considers the Pre-accession Economic Programme as the national development plan¹⁵.

¹⁴ In 2009, a planning methodology was approved by the Government "Decision for Adoption of the Methodology for Strategic Planning and Preparation of an Annual Work Plan of the Government". Articles 27-a and 27-b, see also the Government RoP. The Decision also notes that in order to implement this planning system successfully, "it is critical that the General Secretariat and the Ministry of Finance together with the line ministries work together in the course of its implementation".

¹⁵ Pre-Accession Economic Programme 2012-14, Macroeconomic policy, public finances and structural reforms, Ministry of Finance, Skopje, January 2012. The NPAA is also a planning document of high importance, and it is regularly updated and harmonised with the Government's AWP.

Figure 2. Responsibility and timelines for strategic planning at the centre of government

Key element	Lead responsibility*	Timing
Establishing the Government's strategic priorities	General Secretariat	January - February
Setting a fiscal framework that includes an allocation for priority initiatives	Ministry of Finance	March - April
Developing specific strategies and initiatives to deliver the Government's strategic priorities	Line ministries (co-ordination by General Secretariat)	May - June
Developing ministry strategic plans and budgets that incorporate government's priority initiatives (prior to submission to Parliament) ¹⁶	Line ministries (co-ordination by General Secretariat/ Ministry of Finance)	June - September
Preparing the Draft Budget Statement, including a description of strategic priorities and initiatives	Ministry of Finance with General Secretariat	October
Developing the Government's annual work plan	General Secretariat/ line ministries	October - November
Monitoring the implementation of the Government's strategic priorities	General Secretariat	Quarterly (through the year)
Reviewing the achievement of results and incorporating them into next year's planning cycle	General Secretariat	Following year-end
* Refers to the institutional lead in preparing or co-ordinating materials; the first six elements also represent approval points for the Government.		

Source: Data from the questionnaire responses from the General Secretariat.

The Organic Budget Law creates a linked system with the planning methodology. It specifies that the budget is prepared on the basis of the Government's strategic priorities, the Fiscal Strategy and the strategic plans of budget users; that the Government should adopt its strategic priorities for the next year by 15 April in the current year¹⁷. It highlights that strategic plans have an integral role within the budget submission, and if budget users fail to submit their strategic plans the Ministry of Finance shall not review the submission¹⁸.

The process as described in the laws and the regulations is generally followed on an annual basis, but often with delay. For example, while the strategic priorities should be established by 15 April in the current year, in order to start the planning process for the next year, the strategic priorities decision for 2013 was adopted on 24 April 2012, and the decision for 2014 was adopted on 1 May 2013. Similarly, the AWP of the Government should be adopted by 31 December. Considering that the budget for 2014 came into force on 23 December 2013, the AWP should have been adopted by the time this assessment was taking place. A final draft is apparently ready and is being checked against the approved 2014 budget to make sure there is full harmonisation. The planning process is fully managed by the GS, in co-operation with the Ministry of Finance and the Secretariat for European Affairs (SEA). There is close working co-operation with both the MoF and the SEA, and also with the ministries who now understand the process quite well and are accustomed to it.

The planning system established by the RoP and the Budget Law provides an effective link among the setting of strategic priorities, the budget process and the development of an AWP. However, the adoption of strategic priorities in 2013 and 2014 was delayed, which impacts on the ability to enable medium-term planning and setting whole of the government priorities. The rules are supplemented

¹⁶ There is also a government instruction on how to prepare the Ministries' Strategic Plan. See "Instructions for the Manner, Content and Form for Preparing Strategic Plans in Ministries and other State Administration Bodies" (2005).

¹⁷ Other requirements are that budget users should develop their mid-term strategic plans, which include programmes and sub-programmes designed to support the implementation of the Government strategic priorities; that strategic plans should include quantified programmes, activities, goals and priorities that should not exceed the ceilings defined for the next three-year period.

¹⁸ Articles 14 and 15, the Organic Budget Law.

with specific methodologies, developed by the General Secretariat to guide policy development and planning in the ministries.

4: Policy planning is linked with the annual and medium term financial planning and is in accordance with financial opportunities of the Government.

Legally, the planning and budgeting processes are well linked. The Organic Budget Law requires that budget users complete a FIA form for all proposed legislation and other regulations, and the Ministry of Finance is responsible for preparing an opinion based on the FIA form. These requirements are checked by the General Secretariat when deciding on the readiness of items to proceed to the Government session¹⁹.

The linkage between policy and financial planning is less clear with sectoral and horizontal strategies. Often, strategies are considered as declarative documents and are not accompanied by action plans or FIAs. About 24 such strategies were prepared for each of 2012 and 2013²⁰. The data returned by the GS show that they do not monitor how these sectoral priorities were included in the AWP, or how they may have been related to specific laws or concrete commitments. The SIGMA assessment looked at a small sample of sectoral strategies: i) the strategy for Public Administration Reform (PAR) and ii) the programme for implementation of the strategy for energy development in Macedonia for the period 2012-16. The PAR Strategy for 2010-15 was adopted by the Government in 2010. It is well presented and addresses objectives and priorities in all the horizontal administrative systems. It includes a very detailed action plan with specific measures, time frames and indicators, but no estimates of the cost of implementation²¹. The energy development strategy contains detailed information about the fiscal impact and budgetary needs of the Government (central and local government) and external funders such as the energy companies. It does not, however, specify how the strategy is linked to the budget process.

Capacities for sound development of FIAs in ministries are insufficient. There is consistent implementation of the formal requirement, especially for proposed legislation, but the quality of estimations and data is variable²². This is especially true for estimations required for the second and third years of implementation.

In terms of procedures, policy planning is linked to the budget, and there are requirements for linkages both at the planning stage and the policy development stage, through FIAs and RIAs. The requirement to assess cost is generally not applied to strategies. In practice, the capacity of ministries to assess costs is insufficient, and the Ministry of Finance is overloaded with a large number of materials to provide opinions on.

¹⁹ Articles 8(6), 68(1) and 73, Government RoP.

²⁰ Based on response to the questionnaire from the General Secretariat, but excluding internal strategies of subordinated bodies that in our judgement cannot be considered sectoral strategies. There are no rules or guidance related to the standardised form or content of the sectoral strategies. Sectoral and horizontal strategies are either reviewed or adopted by the Assembly. The timeline of these strategies varies from three years (e.g. the strategy on intensifying social inclusion of Roma in the social protection systems 2012-14) to 10 years (strategy for development of defence 2014-23).

²¹ The [strategy](#) was published in 2010 and revised in 2012. It is available from The Secretariat for European Affairs is responsible for implementing the strategy, and the European Union uses it as the basis for monitoring progress against the strategy in the Public Administration Reform Special Group. A review of different strategies published on the ministries' webpages showed that many of the published strategies were not accompanied by a FIA.

²² A sample of FIAs were considered: the draft Law on Protection of Soil, the Bill on amending the law on material raw materials, November 2013 and the Bill on amending the law on environment, January 2014 – none of them contained an estimation of impact – for example, one proposal entailing the creation of a public fee for concessionaires for the exploitation of raw materials (thereby creating a source of income for government) yet the FIA asserted there would be no fiscal impact.

5: Regular monitoring of government performance enables public scrutiny and ensures that the Government is able to achieve its objectives.

The Law on Government obligates the Government to inform the public on its work and on the implementation of the AWP²³. The RoP establish in detail the obligation to monitor the work of the Government, to prepare periodic reports on the achievement of the AWP and to inform the public on the decisions of the Government²⁴.

The Methodology on Strategic Planning and Preparation of the AWP assigns to the GS responsibility for preparing:

- 1) A progress report on implementation of the Government strategic priorities;
- 2) Quarterly early warning reports on the implementation of the Government AWP;
- 3) Semi-annual and annual reporting on the implementation of the AWP according to pre-defined monitoring indicators.

These requirements constitute an important element of monitoring of government performance. They are not always fulfilled in a timely manner. Only a report covering work completed in 2011-2012 is published²⁵. The annual report of the Government for 2011-12 is published on the Government's website. It includes an overview of activities implemented on a ministry-by-ministry basis related to different projects, laws that have been adopted, funds allocated for different capital projects, etc. The focus is on outputs, not outcomes. Not all ministries publish their annual reports - the Ministry of Interior publishes an annual work programme and an annual report on achieved results and detailed information on crime rates. The Ministry of Defence does not publish an annual programme or report on its website. The white paper on defence and information about the army is published²⁶. The Government also publishes a Quarterly Economic Report with data on unemployment, salary rates etc²⁷.

The Instructions for Strategic Planning oblige ministries to include a progress report on the implementation of the previous year's plan in their annual submission of a new plan. In addition, the methodology for *ex post* RIAs requires ministries to select two policies per year on which *ex post* impact assessments will be conducted²⁸.

However, monitoring and reporting systems are very weak within ministries. All ministries have established a unit on strategic planning and policy co-ordination reporting directly to the State Secretary, but usually the number of staff is limited and they deal mainly with co-ordination activities related to development of the strategic plan. Ministries rarely use their strategic plan in conducting their everyday business. Information on progress is collated only when the ministry has to update the strategic plan for the next mid-term period²⁹. The requirement for publishing ministries' strategic plans is inconsistently implemented.

Monitoring and reporting of government performance is only partially implemented. The Government and ministries monitor decisions to prepare laws and the actual preparation of those laws (and secondary legislation), but not the outcomes of laws or policies. Reporting to the public on the

²³ Article 7, Law on the Government (2000).

²⁴ Articles 87-89, 91, and 120-124, RoP.

²⁵ "[Report on Completed Work 2011-12](#)"

²⁶ The websites of the Ministry of Interior <http://www.mvr.gov.mk> and the Ministry of Defence <http://www.morm.gov.mk> were consulted as part of this assessment.

²⁷ [The Quarterly Economic Report](#) publishes data on inflation, budget revenues, expenditures and deficit, credit rating, foreign trade etc. Until 2009, they used to annual reports on the [implementation of their management strategy for public debt](#)

²⁸ This last requirement is not yet fulfilled, as it is planned for implementation later this year.

²⁹ "[Implementation of the Requirement for Regulatory Impact Assessment](#)", unpublished report prepared for MISA, 2012.

performance of the Government is not undertaken by all ministries and is only partially achieved, through the publication of some strategic plans and economic performance data.

Government decision making

6: The Government decisions are prepared in transparent and reliable manner ensuring sufficient time for consultation and enabling equal access of stakeholders and conflict resolution

The RoP of the Government set out the processes followed in the development of a Government decision. The Rules set a high standard in relation to the timing and transparency of Government decisions, including opportunities for the participation of civil society in the process. The activities centre on the weekly meeting of the Government session (which is overseen by the President and attended by all key ministers) and preparation for it³⁰. Forty-four staff members work in roles directly in support of the Government sessions. This reflects a rather complex structure of committees feeding into the work of the Government session. These committees include meetings of the General Collegium of State Secretaries (which meets a few days before the Government session, considers draft items for its agenda, and confirms whether agenda items may proceed to it), as well as the three standing Commissions, to which the Collegium refers matters immediately before the Government session, which deal with i) the Economic System and Current Economic Policy, ii) the Political System, and iii) Human Resources and Sustainable Development³¹. They, like the General Collegium, have the right to return material before it proceeds to the Government sessions. Data provided by the General Secretariat on the number of materials submitted, and items that are returned, illustrate the ways in which the various bodies operate. The General Secretariat's function (despite the large number of staff) is restricted purely to returning documents that fail to meet the formal requirements. The GS returned only 22 in 2012, a very much lower number than those returned at a more senior level both by the General Collegium and the Commissions (see Figure 3 below).

There are therefore, three tiers of decision making before matters go to the Government sessions: General Secretariat, General Collegium, and Commissions; their functions are not entirely distinct.

Figure 3. Processing of materials before the Government session in 2012

Description of documents	Number of documents
Total number of items (materials submitted to Government sessions in 2012)	5 430
Materials that were returned by the General Secretariat	22 were returned due to incomplete documents
Materials that were returned by the General Collegium of State Secretaries	401 postponed, returned to be completed or cancelled from the agenda
Materials that were returned by the Ministerial committees	Postponed, returned to be completed or cancelled from the agenda: HR Committee: 139 materials of the total number of reviewed materials Economic System Committee: 970 materials of the total number of reviewed materials Political System Committee: 550 materials of the total number of reviewed materials

Source: Data from the questionnaire response from the General Secretariat.

³⁰ The relevant procedures are set out in Part V of the Rules, and these are overseen and enforced by officials of the General Secretariat. Their role includes verification that materials for discussion and supporting documentation are adequately prepared, Article 71, RoP for Operation of the Government.

³¹ Article 72, RoP for Operation of the Government. The functions of the three Commissions are defined in Articles 29 to 33 of the Government RoP.

Agendas of Government sessions and their conclusions are not publicly available. The General Secretariat estimate the current average number of items on the Government sessions agenda as 73. However, SIGMA interviews revealed that the amount of business conducted at sessions includes other items (i.e. items not requiring formal submission of materials), and the length of business can frequently be higher, with an agenda of 100-150 items. The workload on those engaged in giving expert opinions prior to the session is commensurately great: for instance, currently only two staff in MISA work on RIA, and therefore need to provide expert opinions on all laws with RIAs that proceed to the Collegium or the Government session. The agenda of the session typically follows the same pattern: urgent issues are covered first, followed by items focusing on the economic system, the political system, human resources, and routine items that do not themselves require extensive debate³². All materials for discussion and decision must be submitted and distributed via an electronic system.

The formal system for internal consultation, deliberation and participation is therefore strong. However, interview evidence repeatedly referred to cases where the formal requirements for time allowed for internal consultation had not been met³³. The Government RoP sets out deadlines for internal consultation in the development of a Government decision³⁴.

The unplanned character of much Government session business is clear from statistics provided by the GS. A substantial amount of the Government's work does not appear in the AWP: 2 884 of the items processed by the General Secretariat in 2012 had not been planned in this way³⁵. This reflects a formalistic approach to decision making, where everything must be adopted by the Government. Routine items are discussed at Government sessions, rather than being resolved at a more subordinate level within the system³⁶.

The formal processes for the preparation of Government decisions are well defined and known to ministries. However, the frequent use of exemptions bypass the requirements of the RoP and mean that the high standards for analysis, conflict resolution, impact assessment and participation by civil society organisations do not apply in these cases.

7: The Government decisions are based on professional judgement of the administration, legal conformity of the Government decisions is ensured.

A number of secretariats and ministries provide expert advice on specific aspects of policy development: for instance, the Secretariat of Legislation on matters relating to transposition of the *acquis*, the Ministry of Finance in relation to measures with fiscal implications, and the Secretariat for Implementation of the Ohrid Framework Agreement in relation to proposals relevant to the Framework Agreement, including treatment of non-majority communities.

³² SIGMA looked at a sample of three agendas. They are separated into four sections. The largest portion of the meetings was dedicated to decision making items – representing 50 – 60%. Section A: Materials for discussion and decision, Section B: Materials for which decision is made without deliberation, Section C: Proposals for which the Government gives opinion (requests from other institutions such as the Parliament, other state bodies, organisations, etc. which ask the Government to give opinion on specific matters), Section D: Materials for information.

³³ Data from the General Secretariat in response to SIGMA's questionnaire.

³⁴ The RoP specifies that Those presenting material to the Government session must allow time for opinions to be given on materials (seven days, or five for urgent matters); they must submit material to the General Secretariat before they proceed to the Government session (15 days for strategic or important materials, and eight days in other cases); and they must also publish draft laws and any accompanying RIAs on ENER, the Single National Electronic Register of Regulations, for the purposes of consultation ten days before submitting the proposed laws to the Government session for review.

³⁵ Data from the General Secretariat in response to SIGMA's questionnaire.

³⁶ The interview with the General Secretariat detailed that routine issues, such as authorising the movement of sundry items from one building to another, require Government approval.

The policy making system centres to a large extent on the preparation of legislation. The Secretariat of Legislation therefore plays a particularly critical role in ensuring the legal conformity of legislation. It provides opinions on the conformity of proposed legislation with the Constitution and other laws, as well as on the compatibility of the national legislation with the *acquis*, assessing the level of harmonisation, and gives advice on law-drafting techniques.

Draft primary legislation must be agreed to by the Government session before it proceeds to the Assembly, but some secondary legislation may be formally approved and put into force once it has the sign-off of the Secretariat of Legislation and the approval of the Government or the responsible Minister.

The Ministry of Finance gives opinions on the fiscal impact assessments that accompany draft laws. The Ministry of Finance does not have the resources to prepare a serious review and re-analysis. The frequency by which they have to provide opinions has increased in the last two years: in 2013, they provided opinions on 5 760 items, an increase from 2012, when they provided opinions on 4 800 items. This is an increase of opinions issued per member of staff from 71 in 2012 85 in 2013³⁷.

The procedures for the checking of legislation are clear. Not all Government decisions take into account the professional judgement of the administration, owing to the volume of Government business. The amount of legislative work in the system is very high, and it is not possible for every item of legislation to receive adequate scrutiny before it is submitted for Government decision. There is inadequate analysis in areas such as fiscal impact assessment.

8: Government decision making process is co-ordinated with the Parliament.

A strict separation of the Executive and Legislative branches of Government applies in the Constitution. Ministers may not be Representatives in the Assembly³⁸, which limits the scope for formal co-operation. The Government's RoP sets out the fundamental principles for co-operation, including the power to nominate members of the Government and state secretaries to participate in parliamentary working bodies³⁹. Over the last three years, over 95% of laws were proposed by the Government.

The work of the Assembly is itself governed by separate regulations⁴⁰. There are no official forums for co-operation between the General Secretariat and the Assembly, and the Government does not report progress on its AWP directly to the Assembly. There is regular informal communication and co-operation between the GS and the Assembly in order to plan the legislative workload⁴¹. The legislative work of the Parliament is divided between 12 Committees: one is generalist in scope (the Committee on Legislation which provides opinions on laws from a nomotechnical and legal-systematic point of view), while others are thematic, focusing on legislation produced by specific ministries. The Committee on the Political System and Community Relations, for instance, processes all laws submitted by the Ministry of Justice and the Ministry for Information Society and Administration. It is the most active Committee, holding the highest number of sessions and reviewing the highest number of laws.

There are three broad types of procedure for legislation: regular, short, and emergency. In the case of short procedure, the proposer of the law may recommend to the Parliament that the proposed law be adopted in cases when it is not complex or extensive. 18% of laws passed in 2012 were subject to short procedure. Urgent procedure is used only in exceptional cases: 1) when it is necessary to prevent or remove significant disruptions in the economy; 2) when it is required for the safety and defence of the country; and 3) in cases of large-scale natural catastrophes, epidemics and other extraordinary

³⁷ Data from the questionnaire response from the Ministry of Finance.

³⁸ Article 89, Constitution.

³⁹ Article 107 (2), Government RoP.

⁴⁰ RoP of the Assembly.

⁴¹ Data from the General Secretariat in response to SIGMA's questionnaire.

situations. It is also used for the ratification of international agreements. The scale of legislation deemed to be “urgent” is high: 21.85% of the laws approved in 2012⁴². A full breakdown of laws passed under the different procedures is given in Figure 4. The impact of these procedures is to shorten parliamentary debate and scrutiny. The proportion of legislation that is simply amending existing laws is high: 75.8% of laws passed in 2012 were amendments to existing laws, as Figure 5 illustrates⁴³.

Figure 4. Adopted laws by type of parliamentary procedure 2010-2012

Year	Regular procedure	In %	Short procedure	In %	Urgent (ratifications)	In %	Total
2012	143	60	43	18	52	21.8	238
2011	290	75.1	61	15.8	35	9	386
2010	189	68.7	36	13	50	18	275

Source: Data from the annual reports of the Assembly 2010, 2011 and 2012.

Figure 5. Number of laws adopted and laws that amend existing laws 2010-2012

Year	Laws	In %	Laws that amend existing laws	In %	Total
2012	45	24.1	141	75.8	186
2011	42	11.9	309	88	351
2010	58	25.7	167	74.2	225

Source: Data from the annual reports of the Assembly 2010, 2011 and 2012.

Procedures for the scrutiny of legislation in the Assembly are well defined. Here as in other parts of the system, the quantity of legislation, much of which amends existing legislation, is an obstacle to effective scrutiny. Co-ordination mechanisms between the Government and the Assembly are purely informal.

⁴² The Parliament decides whether to grant requests for urgent procedures and in cases where it does, the relevant committee and the Legislative Committee review the proposed law. There is no general hearing, and the second and third readings are held in the same session. In such cases, the second reading starts by discussion in the relevant committee and the Legislative Committee, and then in the Parliament. Amendments may be submitted by the end of the sessions of the committees and the Parliament.

⁴³ Data from the 2012 Annual Report of the [Assembly](#)

POLICY AND STRATEGIC CAPACITIES

2. Analysis

Policy development structures

1: The organisational structure of the ministries and the allocation of responsibilities lead to policies that deliver against government objectives.

The Law on Organisation and Operation of State Administration Bodies provides a description of the number of ministries, their subordinate bodies, their mandate and responsibilities. The Decree on the Principles of Internal Organisation of the State Administration Bodies defines the general principles of internal organisation e.g. legality, efficiency and professionalism; the scope of the regulations for internal organisations⁴⁴. There is no catalogue of all institutions in the central administration and their remit.

There is a clear delineation of responsibilities between ministries and secretariats at the centre of government, set out in the RoP. The way in which policy should be developed within ministries is set out in different documents and not provided in a centralised manner. There is guidance on the management of policy development and decision making within ministries, although some of it is over nine years old⁴⁵. Ministries have sectors (departments) that deal with specific policy areas, and sectors that perform common functions (legal department, budget department, IT department and support to the minister, etc.). Generally speaking, co-ordination functions are located in the department supporting the Minister and State Secretary, the EU Integration Sectors, and the Units for Strategic Planning, Policy Making and Monitoring.

Two general approaches to the preparation of policy prevail in ministries. The first model is where the policy development process in its entirety is managed within teams specialising on the given area, who manage and co-ordinate the entire process: analysis, drafting of legislation, and preparation of documents for submission to the Government including the RIA report. The second model is where these processes are managed by the Legal or EU Integration Department in the ministry, in co-operation with the sector with policy responsibility⁴⁶.

There is no specific Government policy or regulation on the number of staff in policy development and co-ordination functions. Each minister is responsible for deciding how the functions (departments) are staffed. For example, the Ministry of Economy has 11 staff is currently involved in policy development and legislative drafting; 22 staff is involved in policy co-ordination. MISA has 9 and 66 for the same categories, see Figure 6.

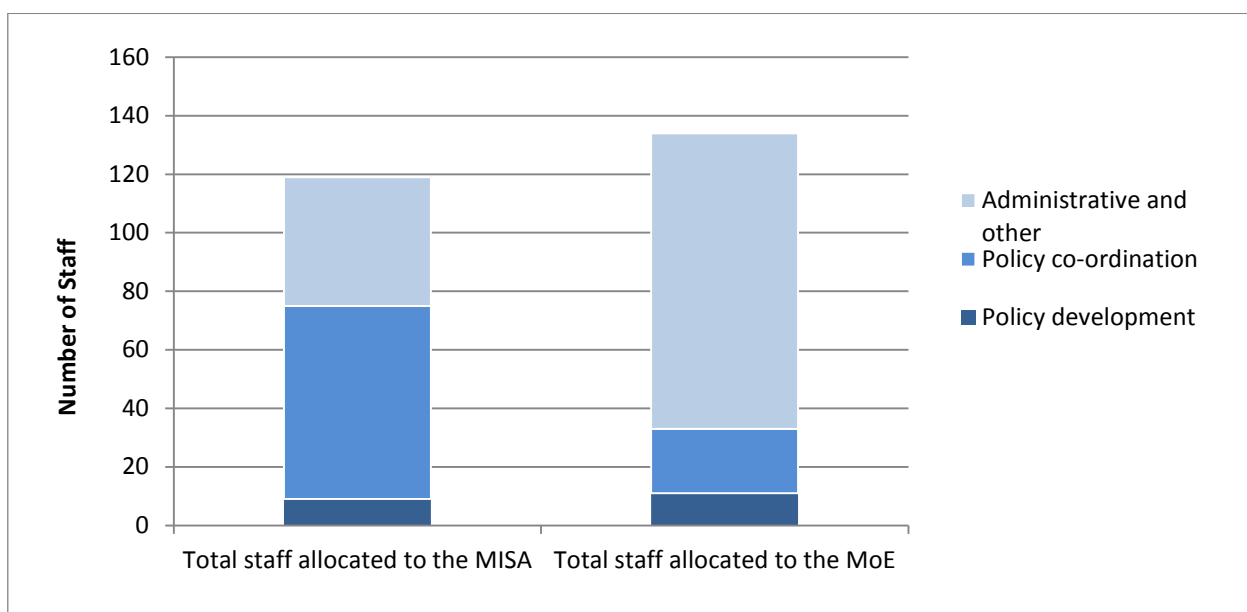
These figures should be considered in the light of workload; MISA had 32 items in the AWP in 2012 and the Ministry of Economy had 75. The boundaries of policy development and policy co-ordination are to some extent subjective, but this does question the ability of staff to deliver effectively on commitments, with only 11 policy development staff in the Ministry of Economy.

⁴⁴ Other aspects include defining the types of organisational units which include departments and requirements for the establishment of units for strategic planning, policy making and monitoring, units for human resources management, and units for internal audit that all report directly to the State Secretary or equivalent.

⁴⁵ *The Methodology for Policy Development* (2005) sets the basic principles and requirements for policy development. Also, *the RIA methodology and the matching Instructions* (2013) include rules that define the activities in each of the steps of the policy process.

⁴⁶ The first sector based model applies in the Ministries of Transport and Communications, Finance, Agriculture, Economy, Local Self-Government, Labour and Social Policy. The second model applies to the Ministries of Foreign Affairs, Defence, Internal Affairs, Justice, Environment, Education, Health, Information Society and Administration.

Figure 1. Staff allocation across functions within the Ministry of Information Society and Administration (MISA) and the Ministry of Economy (MoE)



Source: Data provided by the Ministry of Information Society and Administration and the Ministry of Economy.

Conflict resolution between ministries relies on a variety of methods: the establishment of Working Groups⁴⁷, which can include members from outside the Government, focusing on the development of draft legislation; the General Collegium of State Secretaries, which reviews material before it proceeds to the Government session; and three Commissions to which the Collegium refers matters before the Government session. However, conflict resolution over substantive issues in policy takes place in discussions between ministers rather than between civil servants.

The institutional framework and distribution of staff does not adequately reflect the workloads of departments within ministries and the workload of staff within ministries in implementing multiple proposals, particularly legislative, is high. The different roles of the co-ordination bodies involved can be hard to distinguish. Policy development happens at a number of levels within the system. Most decision making is reserved to the political level.

2: The inter-ministerial processes in place for the development of policies across ministries lead to consistent and clear policies.

The Government RoP defines the requirements for supporting documents that need to be submitted to the Government together with the proposed legislation and lists the ministries and other institutions that must be consulted before submitting the proposed legislation to the Government. The RoP specify requirements for internal consultation with ministries before materials are presented to the centre of government for decision, including requirements that the Ministry of Finance review all materials with fiscal impact, that the Secretariat for Legislation review matters relating to the passing of laws and draft laws, and that the Ministry for Information Society and Administration (MISA) be consulted on laws that are subject to impact assessment⁴⁸.

⁴⁷ Article 68, RoP for Operation of the Government of the Republic of Macedonia (consolidated text).

⁴⁸ Article 68, RoP for Operation of the Government. Materials that are not accompanied by such expert opinions may not proceed to the Government session, and it is the General Secretariat's role to oversee this process.

There is a range of documentation and regulations which gives more detail on the form and content of different government regulations (rulebooks, instructions, etc.) which specifically define the form and contents of all the documents (Government Memoranda, the Accompanying Letter, the RIA Report, the FIA Form, the Concordance Tables for EU related legislation, etc.).

It is clear that the Office of the Prime Minister is of great importance in the development of policy. 12 Prime Minister chaired councils are a driving force in the effective implementation of measures aimed at improving the business environment. For example, a Prime Ministerial meeting with Chambers of Commerce resulted in the implementation of 25 out of 77 proposals that were put forward within a short period; some proposals, involving legislation, were implemented within a month⁴⁹.

There are no formal inter-ministerial processes for developing policy. The Office of the Prime Minister is a critical force in the development of policy. The councils working in support of the Prime Minister play a central role both in the relationship of Government with external stakeholders, and in setting a clear direction in the development of policy. Their role with respect to the procedures for inter-ministerial consultation is not formally established in the RoP

3: The policy making process makes use of analytical tools that systemise the best available information and data to inform governments' decision making processes.

A number of requirements are in place for the presentation of information and data about developing policy proposals: materials submitted to the General Secretariat for submission to the Government session, for instance, must be accompanied by a range of documents including descriptive notes, opinions from the relevant secretariats, and a RIA. Of these requirements, the RIA is the primary mechanism whereby the intentions and the analytical processes underlying government action are explained and set out.

A requirement that all legislation (except that subject to an urgent procedure) should be subject to a RIA was introduced in 2009⁵⁰. The General Secretariat was responsible for checking formal compliance of RIA requirements according to the "old" RIA Methodology that was valid until May 2013. A clear guide to the regulations was issued in September 2013⁵¹. The circumstances within which RIAs need not be prepared are defined in the Government RoP and the regulations on RIA⁵².

The new RIA system has yet to be fully established. MISA data shows that the number of laws accompanied by RIAs (as a proportion of the total number of laws approved by the government) grew from 21% to 35% between 2012 and 2013⁵³. It has the potential to provide a useful mechanism for public engagement and analysis if ways can be found to meaningfully engage the public in the consultation process.

⁴⁹ Interview with the Chambers of Commerce. The councils are supported by a secretariat drawn from within the Office of the Prime Minister. In addition, nine advisory counsellors (not civil servants) were appointed in 2013, providing focused advice on policy making.

⁵⁰ *Methodology for regulatory impact assessment* 2009.

⁵¹ [Regulations Governing Regulatory Impact Assessment](#), September 2013. The guide sets out clear processes and procedures for impact assessment, both of which embody internationally recognised good practice: for instance, a description of the objectives to be served by the regulation, an identification of the main options available to address the objective, and an assessment of costs, risks, etc., under each heading.

⁵² [Regulations Governing Regulatory Impact Assessment](#), September 2013, "... legislation adopted under an urgent procedure, namely the legislation on ratification of international agreements, the laws harmonising the terminology across legislation, the proposed budget, and the law on adoption of the Budget of Government".

⁵³ Necev, Z. and A. Nikolov (2012), *"Mechanisms used by the executive authorities to ensure stakeholders' participation in policy making: Evaluation and recommendations"*, *State-of-Affairs, Challenges and Recommendations for Public Policy Improvements*, Foundation Open Society, Skopje, Macedonia, p. 53.

SIGMA analysed samples of RIAs from the Ministry of Environment and Spatial Planning, the Ministry of Economy, and MISA. While the formal requirements of RIAs are met (with a very brief description of the objective of the policy, for instance, and of alternative options), the analysis of the impacts involved in the various options was cursory and costs and benefits were not quantified⁵⁴. This is problematic as MISA has no formal role in issuing judgments on the *quality* of analysis and information within the RIA. They are only enabled to issue a formal opinion that the formal requirements for completion of a RIA have been met. Given the small scale of the team responsible in MISA (two members of staff managing both quality appraisal and the development of regulatory impact policy), there is not capacity for in-depth quality analysis.

However, the emerging RIA framework is a good starting point for further progress, providing a framework for analysis and public engagement which draft laws do not possess. The challenge will be to mainstream this kind of analysis, and open it for public participation and consultation as the system is further embedded.

The introduction of *ex post* analysis for two laws per ministry per year is a proportionate approach that enables a staggered introduction⁵⁵. Areas acknowledged for improvement of RIAs by MISA include quantifying the impact of legislation through, for example, cost benefit analysis and the Standard Cost Model methodology⁵⁶, as well as the more systematic application of risk analysis. Training programmes are in place, however, to teach a broader pool of civil servants to become trainers and widen the impact of MISA expertise to ministries (Figure 2).

⁵⁴ There was a marked differential between the quality of the RIA from MISA and those of the other two ministries. Given MISA's ownership of the framework for RIAs, it is not surprising that the RIA that accompanied the Law on Media and Audiovisual Media Services was of good quality. It also provoked extensive debate on ENER and provided a clear account of the thinking behind the legislation, for instance its objectives, considerations, and alternative options for tackling the objectives. However, even within MISA's RIA, some of the analysis is lacking, for example, the assertion that there will be no fiscal implications for legislation. The analyses do not make best use of data and information as quantification in the discussion of costs and benefits for the groups affected is also lacking.

⁵⁵ A staggered approach to RIA is viewed as being more sustainable to long term success e.g. [OECD](#).

⁵⁶ [The Standard Cost Model](#) is a method for determining the administrative burdens for businesses caused by regulation. It is a quantitative methodology that can be used to measure a single law, selected areas of legislation or to perform a baseline measurement of all legislation in a country. The model is also suitable for measuring simplification proposals as well as the administrative consequences of a new legislative proposal.

Figure 2. Training provided on Regulatory Impact Assessment and the Single National Electronic Register of Regulations

Year	Topics	No. of training events	No. of trainees covered
2013	1. Analytical tools for RIA	2	47
	2. Training of Trainers in RIA	1	11
	3. Training on RIA	4	43
	4. Workshop on the legal framework for RIA	2	20
	5. Co-ordination meetings to present the new ENER	2	41
	6. Training for the administration and businesses on the use of ENER	8	94 – (20 businesses)
2012	1. Introductory RIA training	3	50
	2. Advanced RIA training	22	40
	3. Practical RIA training in two policy areas – Economy and Housing	2	32
	4. How to use ENER	4	30
	5. The new ENER – a mechanism for improved public-private dialogue	1	25

Source: Data from questionnaire responses from the Ministry of Information Society and Administration.

The framework setting out the formal requirements for the analytical tools to be used in policy development, particularly RIAs, is strong. There are good examples of improving practice and increasing compliance with the Government's own rules for cases where the RIA technique should be applied. Good guidance is in place and, with the introduction of ex post analysis and additional training; the system is starting to provide clearer analysis of policy options as well as meaningful engagement with those outside Government.

4: Policies are designed with the active participation of society and the people responsible for their implementation and ensuring compliance.

The legal framework for stakeholder participation is set out in three key laws: the Law on Organisation and Operation of State Administration Bodies, the Law on the Government, and the RoP of the Government. The capacity of civil society to take part in policy development and the Government's capacity to reach out effectively to external expertise remain challenging areas.

There are guidelines for ministries on involving stakeholders in the procedure of legislative drafting. MISA may recommend removal of items from the Government agenda if there has been a failure to meet the recommended deadlines. Interviews with stakeholders identified three consistent obstacles to meaningful participation in policy making: i) a low awareness of electronic channels of consultation ii) a lack of confidence that information or perspectives submitted would be used or even viewed; and iii) the speed with which policy was made.

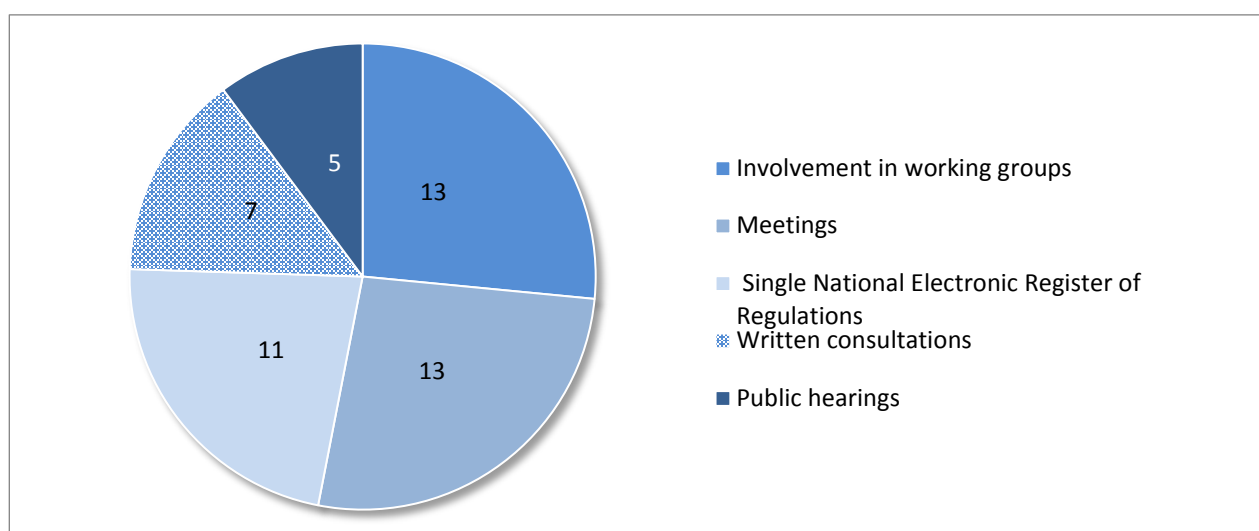
Responsibility for the Government's strategy for interaction with civil society lies with the General Secretariat, where the Unit for Cooperation with NGOs forms part of the Sector for Policy Analysis and Co-ordination. A Code of Good Practice for the Participation of the Civil Society in Policy Making

Processes was introduced in 2011⁵⁷, and the Government adopted a second strategy for co-operation in 2012⁵⁸.

The current strategy notes the importance of an effective RIA methodology as part of transparent law making, and has a number of objectives which should be monitored: it aims to monitor the impact of the Code of Practice, to report on recommendations that have been made by NGOs to Government between 2012 and 2014, and to include material on the importance of participation and consultation in civil service training.

The Government's formal strategy for participation is focused on the development of electronic platforms. This includes ENER⁵⁹ and the website e-demokratija.mk, created in February 2012. Both serve as platforms for debates on key areas, and allow members of the public to submit their views. The platform e-demokratija.mk is underused at present. Interviews revealed some scepticism as to whether it was worth NGOs' time to use the system rather than to seek to influence government in ways that would provide clearer feedback⁶⁰. More traditional methods of engagement are still used to consult. Figure 3 demonstrates this, as in 2012 consultation using ENER only accounted for 11% of the methods used to engage stakeholders.

Figure 3. Methods ministries used to involve stakeholders in policy making in 2012



Source: "Implementation of the regulatory impact assessment process: Analysis of the process of development of laws, secondary legislation and strategic documents in the ministries", unpublished report, 2012.

⁵⁷ *Official Gazette*, no.99, 2011.

⁵⁸ "Strategy for Cooperation of the Government with Civil Society, 2012-17", 2012.

⁵⁹ Article 68A of the RoP set out the requirements for publication on ENER i) The competent ministry shall publish the proposals for adoption of a law, draft-laws and proposed laws on its website and in the Single National Electronic Register of Regulations (except in cases where an urgent procedure is proposed) ii) All interested parties may submit opinions, comments and proposals in relation to the published proposals for adoption of a law, draft-laws and proposed laws in the Single National Electronic Register of Regulations, within 10 days from the date of publication iii) These shall be accompanied by RIAs, where the competent ministry shall give a review of the received opinions and specify the reasons for not accepting the comments and proposals, and the ministry shall publish the review on its website and ENER.

⁶⁰ This is perhaps not surprising, given the results from 15 ministries about how they provide feedback to those consulted about a policy. When asked whether they explained to consultees how comments have been incorporated and, where they have not, whether a clear explanation was given, only five reported they did this; eight reported that they sometimes did this, and one ministry reported that they did not do it at all. "Implementation of the regulatory impact assessment process: Analysis of the process of development of laws, secondary legislation and strategic documents in the ministries", unpublished report prepared for MISA, 2012.

There are cases where public consultation requirements are not met; only 44.5% of draft laws, for instance, were published on ENER in 2013, a reduction from 61.3% published in 2012⁶¹. A number of explanations as to why timetables and documentary requirements were not observed in specific cases were put forward: the application of “shortened procedure” (a parliamentary process), and the fact that the relevant laws were not “systemic” in character, or that they had no costs for stakeholders or Government. However, this has implications for exempting the policy proposals from consultation procedures. It is clear that the analytical process is not routinely followed in cases where officials are required to take action in a short time period, in order to deliver on a political priority. The difficulty is that in practice, such cases are not always subject to the same high standards for analysis, conflict resolution, impact assessment and participation by civil society organisations. This can result in difficulties in implementing a law, reflected by frequent amendments to laws and Constitutional Court rulings against the Government⁶².

There was a disparity in the experiences of the NGOs interviewed as part of the assessment when asked how they thought ministries engaged with them⁶³. NGOs felt that when consultation had been effective, it had taken place through a means other than electronic channels – e.g. through discussion with senior officials, or by being sent a draft act for comment⁶⁴. This is problematic for the Government’s strategy for engagement with NGOs being centred on electronic channels. In many areas of known priority for the Government, such as reforms to the business environment, consultation in practice can be well targeted and effective and although using e-enabled platforms is a priority, the Government continues to use a wide range of channels to communicate, alongside electronic channels like ENER.

In practice, consultation (as with the rest of the policy making process) focuses on the development of legislation in draft, whether as discussion in working groups, or as published in the period immediately before it proceeds to the Government session. Feedback on how drafts have been developed shows that the process can be unclear to stakeholders; drafts can be published shortly before they are presented to the Government session, containing significant changes from drafts that have been prepared by working groups including NGOs. The lack of clarity as to how public perspectives are used and decisions are made about them acts as a strong disincentive to participation. ENER is actually being used less. Although publication of draft laws on ENER declined between 2012 and 2013, the number accompanied by RIAs increased from 35% to 78%. See Figure 4. The rules regarding circumstances when draft laws do not need to be published on ENER, or when the periods for publication might be waived, are not clear. NGOs are sceptical about the extent to which the rules are followed and the extent to which comments received via ENER are acted upon or fully considered⁶⁵.

⁶¹ Data provided by MISA in response to SIGMA’s questionnaire.

⁶² The Constitutional Court ruled against the Government on 20 occasions in 2012 and in the same year, 75.8% of legislation was amendments to existing legislation.

⁶³ Sazdevski, M. and S. Ognenovska (2012), [Public Participation in Law-Making Processes: Government Mirror 2012](#), Macedonia Centre for International Co-operation, p. 24. The Macedonian Centre for International Cooperation (MCIC) reported on the representation and civil society participation in the work of 12 ministries on 26 acts. in 73% of cases, no opinion was given on proposals; a generic opinion as part of a response to multiple proposals was given in 23% of cases; and individual feedback (that is, feedback setting out the reasons why the Government did not accept a specific point that was made in consultation) was given in 15% of cases.

⁶⁴ SIGMA interviews with NGOs.

⁶⁵ SIGMA interviewed the Association of Chambers of Commerce, MOST Citizens’ Association, Foundation Open Society Institute Macedonia, Association of Units of Local Self-Governments and the Macedonian Centre for International Cooperation.

Figure 4. Number of draft laws and draft Regulatory Impact Assessments that were published on the Single National Electronic Register of Regulations

Year	% of published draft laws on ENER (in relation to no. of laws approved by Government)	% of draft laws accompanied by RIA (in relation to no. of draft laws published on ENER)
2013	44.5	77.9
2012	61.3	35

Source: Data from questionnaire responses of the Ministry of Information Society and Administration.

The requirements for policy makers in relation to consultation and engagement with NGOs are strong, but depend on electronic channels of communication that are as yet underused, both by government and stakeholders. In areas of political priority, consultation methods can be very effective and policies are designed with the active participation of society, though these consultations entail direct engagement at a political level, rather than through the electronic channels that are at the centre of the Government's strategy. In interviews, different NGOs reported divergent experiences of their interaction with the Government, reflecting the unsystematic and partial character of most engagements.

REGULATORY MANAGEMENT AND QUALITY OF LEGISLATION

2. Analysis

1: The systematic management of the processes of developing, drafting and making new legislation is set out in concrete procedures.

The development of legislation is governed by a number of documents: the Law on Organisation and Operation of State Administration Bodies, the Law on Government, Parliament's RoP, Government RoP, and the Handbook on Normative and Technical Rules.

The Secretariat of Legislation (LS) is responsible for checking the quality of legal drafts. Their opinions are focused on formal aspects related to the legal system and technical law-making rules rather than on the practicalities related to implementation of legal provisions. Although the Secretariat of Legislation has no specific mandate regulated by law for issuing guidance or handbooks, they have developed two guides to ensure a consistent approach in the development of legal texts and efficient transposition of the EU *acquis* into the national legislation⁶⁶.

The main challenges to the development of quality assured legislation and effective implementation are:

- The implementation of laws encounters many difficulties – lack of funds, late development and adoption of enacting regulations, low capacities of implementing ministries/agencies, etc.
- Monitoring is irregular and focusses only on outputs rather than outcomes.
- The CoG is rarely involved in assessment of the quality of implementation; by law, ministries are responsible for implementation and monitoring.
- Ministries rarely submit a policy paper to be reviewed by the Government before drafting the legislation.

The Constitutional Court decides on the conformity of laws, collective agreements and regulations with the Constitution, as well as on matters like conflicts of competency among parts of the administration. It has the right to repeal or invalidate a law if it does not conform to the Constitution⁶⁷. The figures from decisions of the Constitutional Court do not suggest that there is any particular trend over the past three years, with approximately 20 decisions resulting in abolition or cancellation in the years 2011 and 2012, see Figure 1. This remains high, however, relative to the quantity of new laws, and is partly a reflection of the quality of legislation.

The highest number of legislative cases that the Constitutional Court has ruled on in the last three years is those which delegate powers through secondary legislation i.e. to determine the amount of the amount of compensation of costs, remuneration for issuing licences. In such cases, the Court has found such authorisation to be in disagreement with the Constitution on the basis of the principle of rule of law⁶⁸. This issue of inappropriate delegation of power in primary and secondary legislative instruments is

⁶⁶ The Handbook on Normative Rules (December 2007) and the Handbook on Transposition of the EU *Aquis* into the Legislation.

⁶⁷ Article 112 of the Constitution regulates the legal effect of the decisions of the Constitutional Court, which states that the Court shall abrogate or annul a law if it determines that the law does not conform to the Constitution. The decisions of the Constitutional Court are final. Role of the Constitutional Court as set out in the Constitution, Articles 108-113. [Constitution](#), 17 November 1991.

⁶⁸ [“Problems of legislative omission in constitutional jurisprudence”](#) XIVth Congress of the Conference of European Constitutional courts National Report Skopje, October 2007, Page 10.

one of the main reasons that the Legislative Secretariat suggests amendments to the legal drafts submitted to them prior to Government decision⁶⁹.

Figure 1. Types of decisions of the Constitutional Court related to cases involving laws

Type of Decision	2012	2011	2010
Abolition (of laws or specific provisions)	17	21	39
Cancellation	3	1	1
No grounds to continue the case	71	82	91
No grounds for the initiative	32	42	12
Stopping of the procedure	1	5	1
Administrative decision (closure)	3	1	None
Total	127	152	144

Source: Data from the Constitutional Court annual reports 2010, 2011 and 2012.

The formal procedures for the development of legislation are strong and clearly set out, and the Secretariat of Legislation has put in place a number of initiatives to improve the quality of legislative drafting. The inappropriate allocation of powers within secondary legislation is an obstacle to the development of law that achieves its intended purpose and can withstand constitutional challenge.

2: Stock of regulation is regularly reviewed to ensure that it remains up to date, cost-justified, cost-effective and consistent, and delivers the intended policy objectives.

The Government has a strategy to transition to a market economy and to improve the business environment⁷⁰. This involves reviewing existing legislation and several initiatives to stimulate growth and reduce the burdens on businesses and citizens, including the RIA process and the “one-stop shop” initiative⁷¹, which is establishing electronic registration of businesses and employees and bankruptcy registries.

The “regulatory guillotine”⁷² programme began in 2006, and has resulted in 629 revisions to domestic legislation to date; these are summarised in Figure 2 below. The most important achievements under this initiative include reducing the complexity, time and cost of starting a business and registering property⁷³. However, whilst this is good, the Government has no data about the impact of these measures or cost savings generated.

⁶⁹ SIGMA interviews with the Legislative Secretariat cited several instances of draft secondary legislation that ministries had submitted to them that attempted to provide powers to do such things as grant licences and set fees, which must be done within primary legislation.

⁷⁰ The programme covers the period 2011-15.

⁷¹ The former Yugoslav Republic of Macedonia’s ranking for ease of starting a business is seventh in 2014. The positive impact can be seen in specific areas such as the number of procedures to start a business dropping from 13 in 2004 to 2 in 2014, and the time taken falling from 48 days to 2, as measured by [Doing Business](#).

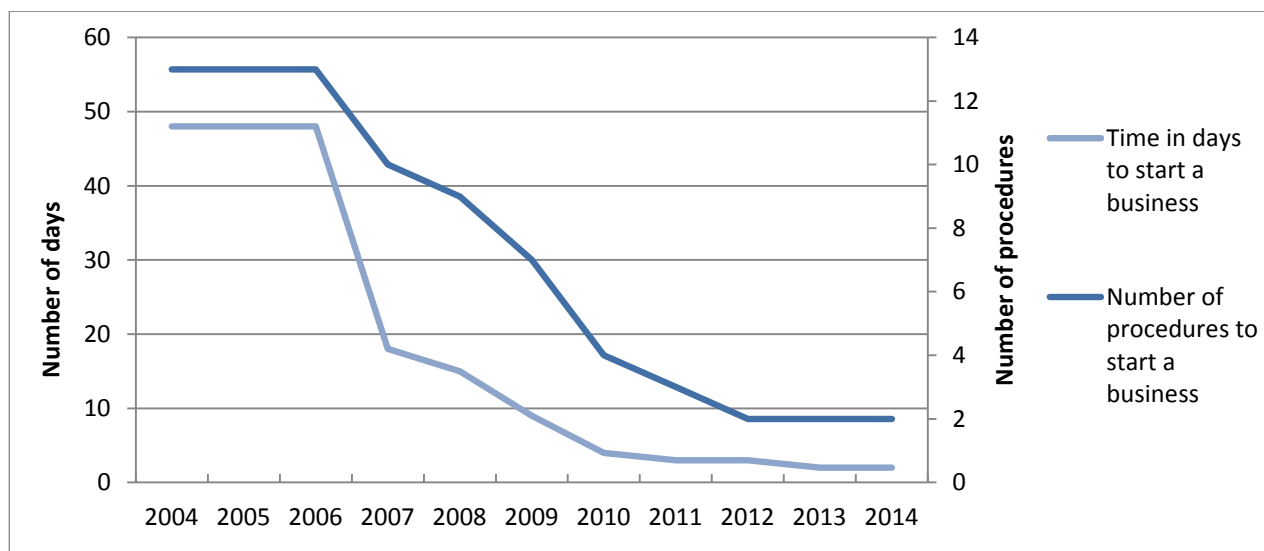
⁷² The regulatory guillotine method involves a government review of the existing stock of legislation that impacts upon business. It seeks to measure items such as such lists of business regulations/licenses, and then remove those that cannot be justified for retention.

⁷³ The *Law on Spatial and Urban Planning* and the *Law on Construction*, both amended 14 February 2011, have streamlined the construction permitting process.

Figure 2. The impact of the regulatory guillotine programme 2006-ongoing

Regulatory guillotine	Main areas of focus	Changes to primary legislation	Changes to secondary legislation
Phase 1 – completed	Focused on simplifying and streamlining of administrative procedures and the requirements for documentation to be submitted by applicants, revision of fees and deadlines, and abolishment of existing regulations.	64	481
Phase 2 - ongoing	Primarily focused on customs regulations and operation of the Customs Office.	6	7
Phase 3 - ongoing	Focused on reducing administrative barriers for the small and medium enterprises (SMEs) and large companies.	22	38
Phase 4 - ongoing	Focused on assisting SMEs and simplifying public procedures related to public services.	1	7
Number of legislative changes		93	533

Source: Data from questionnaire responses of the Ministry of Information Society and Administration.

Figure 3. Number of required procedures and time taken to start a business

Source: Data from World Bank *Doing Business* Reports 2004-2014.

The Government has an active programme to review existing legislation and has implemented a programme dedicated to the identification and amendment of legislation that is burdensome to business. This has led to the streamlining of required processes to start a business, which is to be applauded. However, beyond this, the Government does not evaluate the impact of such measures so little is known about the financial impact and benefits of this approach.

3: A consistent approach to structure, style, and the use of language and relevant principles for the drafting of laws is in place.

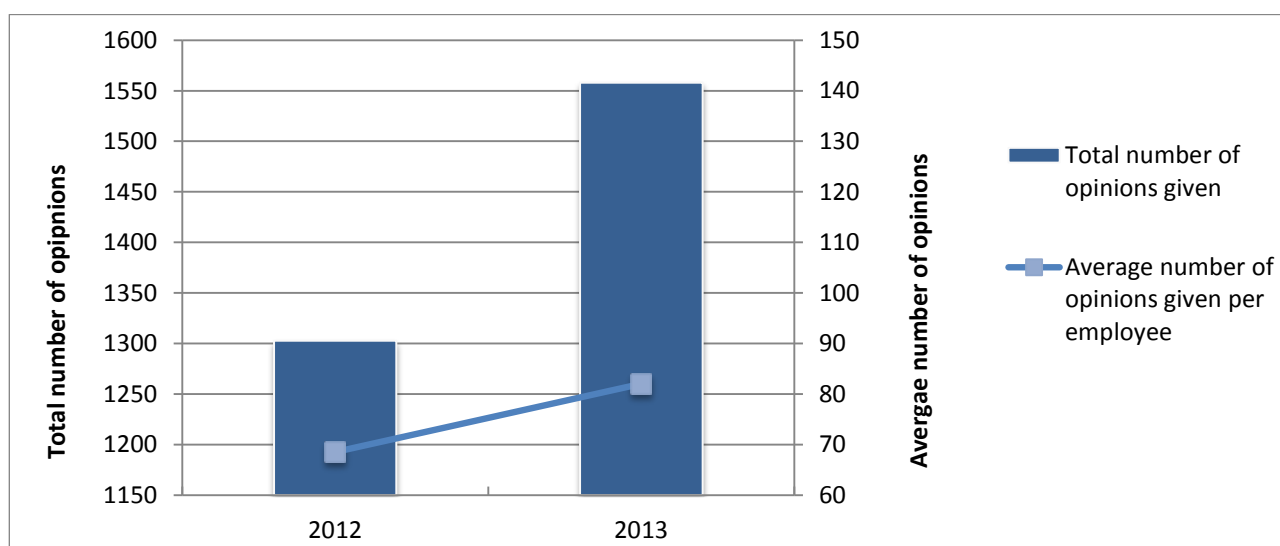
There is a handbook on normative and technical rules that describes the desired structure of legislation. The Assembly's RoP regulates the procedure for the consolidated text of laws and the procedure for authentic interpretation of laws⁷⁴. The Secretariat of Legislation has put in place a number of initiatives to improve the quality of drafting across the ministries, undertaking the training of trainers who are

⁷⁴ Article 177 regulates the procedure for consolidated texts of laws, and Article 175 the procedure for authentic interpretation of laws.

competent to work with officials on improving their approach, as well as the publication of two guidance documents setting out principles for the drafting of legislation and transposition of the *acquis*. When possible, members of the Secretariat of Legislation participate in Working Groups on major (what they refer to as ‘systemic’) laws, but the scale of their workload generally makes this impractical. The level of training provided to civil servants that draft legislation is currently very low, with only two training events provided in 2012 (covering 40 individuals⁷⁵) and none at all in 2013. As many legal drafters within ministries are not lawyers, continued professional development to raise awareness and embed the standards expected of legal drafting is very important⁷⁶.

The Constitutional Court has examined the provisions of several laws over the past years. These initiatives concluded by abolishing several provisions; this indicates that either the quality of the draft law provisions was not judged satisfactory, or that the Government decided to propose such laws despite the opinion of the Secretariat of Legislation. The speed with which legislation can be passed is striking; cases are known where the entire policy process, from submission of an idea to legislation, has taken less than a month. The number of laws passed was somewhat lower in 2013 than in the previous year; but still, the scale and timetables involved remain a significant challenge to the quality of legislation. The workload of the Secretariat of Legislation has increased from 2012 to 2013, as summarised in Figure 4.

Figure 4. The work of the Secretariat of Legislation 2012-13



Source: Data from questionnaire response of the Secretariat of Legislation⁷⁷

A review of three pieces of legislation⁷⁸ showed that the laws set out rights and obligations, and in the case of one law mandated biennial reporting on progress of implementation of the legal requirements. They were drafted in an accessible way and could be understood by a non-expert⁷⁹.

⁷⁵ Training was provided to 40 civil servants responsible for legal drafting in ministries, in 2012 and was on “Law development – normative rules”.

⁷⁶ Interviews with the Ministry of Economy, Ministry of Information Society and Administration and the Secretariat of Legislation.

⁷⁷ Total number of opinions issues by the Secretariat on domestic and EU laws and other regulations in the last two years.

⁷⁸ The draft Law on Protection of Soil, the Bill on amending the law on material raw materials, November 2013 and the Bill on amending the law on environment, January 2014.

⁷⁹ As shown by the reading by SIGMA staff and consultants, who are not sector experts in the areas of law.

There are clear guidelines in place to assist ministries in the drafting and transposing of legislation. The guides are easy to read and make clear the procedures that should be followed. The Secretariat of Legislation's increasing workload has resulted in a lack of training in legislative drafting for ministries.

4: Legislation and explanatory materials are made publicly available.

There is a clear system in place for the publication and dissemination of laws that are in force. The Constitution mandates that laws and other regulations be published before they come into force. It specifies that laws should come into force no sooner than the eighth day after publication, except in cases which are determined by the Assembly⁸⁰. The Government RoP set out clear responsibility for the Secretary General to publish the regulations adopted by the Government in the *Official Gazette*; the Law on publishing of laws, other regulations and enactments in the *Official Gazette* sets out further requirements, such as the scope of the items the *Official Gazette* publishes⁸¹.

All the past editions of the *Gazette* are available free of charge on the website of the *Official Gazette*⁸². In addition, an electronic register of legislation is available on subscription. The Enterprise also sells different publications, including collections of legislation in specific areas and explanatory notes. The register is functioning well⁸³. Making the changes to the legislative framework available promptly is important in a country where the proportion of laws that amend existing laws is high relative to the number of laws passed. In the three-year period 2010-13, over 74% of laws were amendments to existing legislation⁸⁴.

The Single National Electronic Register of Legislation was developed with the purpose of giving a clear overview of all valid legislation including primary and secondary legislation by policy areas, as well as proposed laws open for comments of NGOs and citizens. The entries are grouped in three categories: legislation, proposed legislation and consolidated versions of laws. In each of these categories there is a mix of the three types of documents. They are listed by date of publishing instead of alphabetical order, policy area or any other more useful categorisation. Moreover, we found that the register is not always up-to-date, the common issues being that consultation comments and RIAs are not available⁸⁵. In addition to this source and the *Gazette*, SIGMA was told that ministries often publish legislation that relates to their sector and remit on their websites. This does not happen in practice⁸⁶.

There are procedures in place to make legislation readily accessible. The Official Gazette provides this information, with free access to primary and secondary legislation a year after it has been formally

⁸⁰ [The Constitution](#), Article 52, sets out the provisions for the publication and commencement of laws and other regulations. It specifies they must be published before they come into force. Laws and other regulations may not have a retroactive effect, except in cases when this is more favourable for the citizens.

⁸¹ *Official Gazette*, No.56/99. The main activity of the Public Enterprise Official Gazette is publishing laws, other regulations and acts in the *Official Gazette*, as well as issuing the official newspaper, "*The Official Gazette*". The publishing of laws is done in written and electronic form.

⁸² All laws from 1945 to 2013 are available free of charge.

⁸³ SIGMA accessed the register on three occasions in January, February and March 2014 and the website was functioning and search function was operational.

⁸⁴ Figures relating to laws that amend existing legislation: 75.8% in 2012; 88% in 2011; and 74.2% in 2010 (from the Annual Reports of the [Assembly](#)).

⁸⁵ We accessed the site to look at a sample of five laws and accompanying RIAs in January and February 2014: the Ministry of Agriculture, Forestry and Water Supply, the Ministry of Culture, the Ministry of Defence, the Ministry of Economy, and the Ministry of Environment. An NGO also regularly assesses the availability of materials on ENER. The Macedonian Centre for International Co-operation has been publishing weekly and monthly reviews of the published draft laws on ENER since 18 November 2013.

⁸⁶ SIGMA checked the websites of five ministries and found that they did not contain an up-to-date list of legislation. The [Ministry of Agriculture, Forestry and Water Economy](#) publishes current and draft legislation on its website. However, the last updates were made in 2011. For example, it does not include current laws such as the *Law on the Quality and Safety of Fertilisers, Biostimulants and Soil Improvers*, which was adopted on 5 February 2014 and came into force on 13 February 2014.

adopted. There is also a paid subscription service which enables people to keep abreast of recent legislative changes. Despite its name, the Single National Electronic Register of Legislation (ENER) cannot be used to determine the status of legal acts.