



Open Government Partnership Independent Reporting Mechanism Macedonia Comments Received on the Second Progress Report (2014-2015)

Comments from Vladimir Georgiev, Government of Macedonia:

Што се случи? (страна 77)

Истражувачката од МНИ ги констатираше следниве степени на напредок на четирите заложби од оваа група:

- За заложбата 4.3., Комисијата поддржана од меѓународната заедница лансираше кампања за привлекување на општините да усвојат и **интегрираат политики на антикорупција и интегритет**. Граѓанското општество коментираше дека фактот што тие ја промовираат антикорупцијата како поттик за економскиот развој го прави процесот атрактивен за општините.⁵ Досега, Декларацијата за антикорупција⁶ ја потпишаа 47 општини (од вкупно 81). Сепак, во процесот **сеуште** не се приклучи ниту една национална институција на централно ниво, **бидејќи ова е пилот иницијатива на локално ниво со цел да биде понатаму проширена на националните институции како последователна иницијатива**.
- За обврската 4.4., според извештајот за самооценување и интервјуата со претставниците на Државната комисија за спречување на корупција,⁷ Законот за Јавна внатрешна финансиска контрола од 2009 и Законот за воведување на систем за управување со квалитетот и заедничка рамка за проценка на работењето и давањето услуги во државната служба од 2013 година нуди процедурална рамка во која, исто така, може да биде инкорпорирана⁸ и проценката на ризиците. Со ова е компетирана заложбата, иако нејзиното потенцијално влијание како заложба беше непостојечко бидејќи таа беше завршена пред да биде направена заложбата.
- За обврската 4.5., системот не беше формално усвоен, и малку е веројатно институциите проактивно да усвојат такви мерки.⁹ Сепак, Комисијата организираше обука за 35 општински службеници **за проценка на ризици** и го искористи меѓународниот ден за антикорупција (9 декември 2014) за уште повеќе да се заложат за ова прашање. Во извештајниот период, Комисијата - со поддршка од УНДП и граѓанските организации - разви два различни индекса. Првиот е индекс на информации кои треба да бидат проактивно достапни (на пример, сметководствените биланси) и кои ги оценуваат локалните власти наспроти мерилата за транспарентност. Вториот индекс беше развиен врз основа на концептот на интегритет, но не доби доволно повратни одговори за да овозможи

проценка што би имала некакво значење. Во интервјуто, претставниците на Комисијата наведоа дека можна причина е тоа што беше имплементирана од граѓанските организации и дека идните напори би требало да бидат направени од страна на Комисијата. Бидејќи заложбата беше само да се развијат индекси, таа е значително завршена.

- За заложбата 4.6., извештајот за самооценување на Владата наведе дека тоа е една од двете заложби кои не се започнати во текот на првата година од имплементацијата. Сепак, консултациите со граѓанското општество во рамките на МНИ открија дека е постигнат значителен напредок. Граѓанските организации веќе имаат развиено методологија и во партнерство со заинтересираните јавни претпријатија веќе ја спроведуваат методологијата како пилот-проект, обидувајќи се да го подобрат нивниот систем на интегритет.¹⁰

What Happened? (page 66)

The IRM researcher found the following levels of progress toward the four commitments in this cluster:

- For 4.3, the Commission, supported by the international community, has launched a campaign to convince municipalities to adopt and integrate anticorruption and integrity **policy**. Civil society has commented that the promotion of anticorruption as an incentive for economic development makes the process attractive for municipalities.⁵ So far, a total of 47 municipalities (out of 81) have signed the declaration for anticorruption.⁶ However, no national institution has joined the process **yet, because this is a pilot initiative on local level, with the aim to be further extended to national institutions as a follow up initiative**.
- For 4.4, according to the self-assessment and interviews with the representatives from the State Commission for Prevention of Corruption,⁷ **the 2009 Law on Public Internal Financial Control and the 2013 Law on introducing the quality management system and common assessment framework of operations and provision of public services** provide a procedural framework within which the risk assessments is incorporated.⁸ This completed the commitment, although it had no potential impact as a commitment since it was complete before the commitment was made.
- For 4.5, the system has not been formally adopted, and institutions are unlikely to adopt such measures proactively.⁹ However, the commission provided trainings for 35 municipal civil servants **for risk assessment** and used International Anti-corruption Day (9 December 2014) to further advocate for the issue. In the reporting period, the Commission, supported by the UNDP and CSOs, developed two different indexes. One is an index of information that needs to be proactively available (for example, accounting balance sheets), and it assessed local governments against those transparency benchmarks. The second index is based on the integrity concept but did not receive a sufficient response rate to provide for a meaningful assessment. In an interview, commission representatives suggested that a **possible** reason for the low response rate could be that a CSO **implemented** the index and that future efforts

should be made by the commission. Since the commitment was only to develop the indexes, the commitment was substantially completed.

ЗАБЕЛЕШКА: Текстот што е на англиски *Moving Forward (page 68)* во македонската верзија е во делот *Дали направи разлика?* на страна 79!!!

Покрај тоа, имплементацијата на поамбициозни заложби за антикорупција е од суштинско значење за државата, земајќи го предвид досегашното слабо влијание на Комисијата. Како што е нотирано од страна на Европската комисија, државната антикорупциска комисија треба да ја демонстрира својата независност со исполнување на својот мандат и борба со корупцијата на проактивен и неселективен начин.¹⁸ Постојат обвинувања дека Комисијата не се придржувала до овие две клучни карактеристики.¹⁹

Овој параграф нема никаква релевантност со Кластерот 10: Антикорупција: стандарди на интегритет. Кластерот 10 се однесува на системите на интегритет и нивното пилотирање во општините и на вклученоста на цивилниот сектор во мониторирањето. Укажуваме овој параграф да се избрише од извештајот!

Moving Forward (page 68)

Implementing more ambitious anti-corruption commitments is crucial for the country, taking into consideration the weak impact the Commission had so far. As noted by the European Commission, the state anti-corruption commission needs to demonstrate its independence by fulfilling its mandate to fight corruption in a proactive and nonselective manner.²⁰ Allegations exist that this commission has not been complying with these two key characteristics²¹

This paragraph has no relevance with the Cluster 10: Anti-corruption: Integrity standards. Cluster 10 refers to Integrity systems and their piloting in the municipalities and inclusion of CSO in monitoring. We suggest this paragraph to be deleted

Comments from Oliver Serafimovski, Government of Macedonia:

P. 56: The third commitment was carried over from the first action plan and promised the development of a new website for the Commission the Protection of the Right to Free Access to Information. The aim of the new website as to facilitate electronic access to information, as well to provide an opportunity for electronic submission of annual reports by the information holders. The IRM researcher found this commitment was completed on time. The development of the new web site started in 2014 and was supported by MISA. The current website provides resources for citizens, as well as a catalogue of all information holders. The website also links to relevant civil society web platforms. However, the IRM researcher's search of the web archive found that the Commission stopped publishing its decisions and conclusions in March 2015, and that now, only summary information is provided.

Commission for protection of the right to free access to public information on its web page fully publishes the content of its meetings, its Decisions and Conclusions with prior anonymizing of the personal data. A small percentage of the meetings are published in an information set of summary on the grounds that they were excessive (over a hundred cases).

P.57: However, civil society raised concerns that the commitments are not transformative in their nature, and do not address the roots of the problem – the perceived culture of secrecy in the administration. That this culture undermines the implementation can be seen for example in the frequent turnover of officials responsible for handling free access requests. This makes the potential impact of the first two commitments very limited, as it often happens that officials who were trained are reassigned to different roles, limiting the effect of the trainings.

Committee and its Professional Training Service section for officers and officials repeatedly emphasized the revision of the officials holders of public information , but it can be done only if it really has justifiable reasons.

P.57: IRM recommends further work on the implementation of these measures. In particular:

- The government needs to allocate a non-restricted budget for the Commission to ensure it is able to carry out preventive activities;
- The website of the Commission needs to be improved to allow for a creation of a searchable database of their decisions and conclusions (case law), as well as to serve as a tool for the electronic submission of appeals;
- The Commission should explore how the web platform can be used for collecting information and reports from the information holders. Providing proactive access to the individual reports submitted to the Commission should be considered for the next action plan.

For the next Action Plan, the Commission will include a measure that would provide a preparation of a platform through which an electronic submission of complaints will be allowed, as well as, an electronic submission of annual reports from holders which will have an electronic review of reports submitted to the Commission.

P.59: The second commitment concerns the ratification of the Council of Europe Convention for Access to Public Documents. The self-assessment did not include information on the implementation of this commitment, and the IRM researcher's review found no progress. Consulted officials in the Ministry of Foreign Affairs reported that the state is unlikely to ratify the Convention before it enters into force. For that, it needs at least 10 ratifications, and so far it has seven, from the 14 signatories. Macedonia was one of the 12 countries that first signed the Convention in 2009.

Inter-ministerial working group was established to determine the compliance of the CoE Convention on access to public documents and establish the national legal conditions for accession to this Convention. Also, analysis preparation of and possible amendments of the Law for protection of the right to free access to public information

P.63: The IRM researcher recommends further work on basic implementation of this commitment. As it works to continue implementation, the government and the Commission should:

1. Assess the impact of the conducted capacity building activities as well as effectiveness of the existing web platforms;
2. Develop new measures to ensure that outputs produced by civil society, including identified challenges, are taken up by respective authorities to improve their transparency. The Commission could facilitate this dialogue, by organizing joint meetings and discussing 'chronic' problems with information holders;
3. Incorporate the right to access to information in the civic education curriculum, thus securing a sustainable, long-term awareness raising measure.

Commission by signing MoUs for collaboration began organizing and holding lectures in higher education institutions to familiarize the students with the law for right of access to public information, thus in return raise higher awareness by informing the public of this i.e. their constitutionally guaranteed right to know.

Public comments from Vladimir Georgiev, Government of Macedonia, on an earlier draft of the report:

P.10:

Cluster 11- Anti-corruption: Laws, systems, and whistleblowing	
4.1- Law on Prevention of Corruption <ul style="list-style-type: none"> • OGP Value Relevance: Clear • Potential impact: Transformative • Completion: Not started 	The 2002 Law on Prevention of Corruption has undergone five changes. In November 2013, the Ministry of Justice started the process to amend the law again, to ensure risk assessments occur and introduce whistleblower protection. However, civil society and experts criticized the legislative proposal, and it was withdrawn from Parliament in June 2014. On awareness-raising, civil society organized one event, and two media articles were published. UNDP supported 'My Municipality' through which citizens can assess municipal openness and accountability. A total of 15 municipalities are covered, but the platform was not yet working. Finally, amendments in June 2015 increased the competence of the Commission for Prevention of Corruption, and set a framework for a central database of all officials and their asset disclosures. Still, corruption remains a serious problem, and while mechanisms for reporting corruption have been introduced, so far the fight against corruption remains ineffective. The effects of these measures were limited and their inclusion in the OGP action plan did not prove sufficient to strengthen the fight against corruption. The IRM researcher recommends taking up the legislative revision again but with more participation, designing a specific roadmap for addressing the challenges identified by the EU's Senior Expert Group, considering the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and further developing asset disclosure through CSO consultation and the guidance in the Open Government Guide.
4.2- Raise awareness to report corruption <ul style="list-style-type: none"> • OGP Value Relevance: Clear • Potential impact: Minor • Completion: Limited 	
4.7- IT tools for social responsibility in municipalities and other institutions <ul style="list-style-type: none"> • OGP Value Relevance: Clear • Potential impact: Minor • Completion: Limited 	
4.9- Define scope of elected and appointed officials subject to asset declaration <ul style="list-style-type: none"> • OGP Value Relevance: Clear • Potential impact: Minor • Completion: Complete 	

P.65:

- For #4.5, the system has not been formally adopted, and institutions are unlikely to adopt such measures proactively. However, the Commission provided trainings for 35 municipal civil servants and used the international anti-corruption day (9 December 2014) to further advocate on the issue. In the reporting period, CSOs developed two different indexes. The first developed an index of information that needs to be proactively available (for example, accounting balance sheets) and assessed local governments against those transparency benchmarks. The second index was developed based on the integrity concept, but did not receive a sufficient response rate to provide for a meaningful assessment. In the interview, the Commission representatives stated that a possible reason could be that it was implemented by a CSO and that future efforts should be made by the Commission. Since the commitment was only to develop the indices, the commitment was substantially completed.

P.66:

As noted by the European Commission, the State Anti-Corruption commission needs to demonstrate its independence by fulfilling its mandate to fight corruption in a pro-active and non-selective manner. Allegations exist that this commission has not been complying with these two key characteristics.

Vladimir Georgiev 3/3/2016 7:06 AM

Comment [1]: Nine changes and amendments

Vladimir Georgiev 3/3/2016 7:06 AM

Comment [2]: The Law on Whistle-blowers Protection was adopted by the Parliament on November 10, 2015 (Official Gazette of RM, No. 196 / 2015). The Commission and MoJ are currently working on development and adoption of necessary by-laws.

Vladimir Georgiev 3/3/2016 7:06 AM

Comment [3]: On whistle-blowers awareness raising

Vladimir Georgiev 3/3/2016 7:06 AM

Comment [4]: "Open Municipality"

Vladimir Georgiev 3/3/2016 7:06 AM

Comment [5]: In addition, the platform "My Municipality" which covers all municipalities was developed and it is operational via link <http://www.mojja-opstina.mk/>

Vladimir Georgiev 3/3/2016 7:06 AM

Comment [6]: Register

Vladimir Georgiev 3/3/2016 7:06 AM

Comment [7]: Asset disclosure system was already established in 2002 with the Law on Prevention of Corruption. Commission developed and continuously maintain data base of asset declarations. All data from the asset declaration forms submitted by elected and appointed officials, excluding data protected by the Law on Personal Data Protection are available to the public and are published on the web-site of the State Commission for Prevention of Corruption http://www.dksk.org.mk/imoti_2/

Vladimir Georgiev 3/3/2016 7:06 AM

Comment [8]: As said in the previous comment, asset disclosure system is established and fully operational.

Vladimir Georgiev 3/3/2016 7:08 AM

Comment [9]: Commission supported by UNDP and CSO

Vladimir Georgiev 3/3/2016 7:08 AM

Comment [10]: It is not clear what is the relevance of this statement with the commitment 4.3. Commitment is in respect of Integrity systems and their piloting in the municipalities. We suggest to be deleted.

Cluster 11, P.70-71:

What happened?

The Law on Prevention of Corruption was adopted in 2002 and since then has undergone five changes, the last one of which was in 2010. The first commitment in this cluster sought to address the main concern with the system for prevention of corruption by introducing integrity systems that will ensure risk assessments take place and appropriate measures to mitigate them are designed, as a legal obligation, as well as introducing a system for the protection of whistleblowers.

The Ministry of Justice started the process of amending the law in November 2013 and at the time of preparing of this report still listed the laws as 'under preparation' despite the fact that the proposal for legislative changes was withdrawn from Parliament in June 2014 as a result of the criticism it received from civil society and expert community. The government self-assessment does not provide information about any progress made. It does note, however, the ongoing process that started for the adoption of a new framework in July 2015. The commitment was therefore not started in the first year of the implementation of the action plan.

The second commitment refers to activities for raising awareness that are to be conducted by civil society. The self-assessment refers to one event organized in April 2015, and two media articles. The IRM researcher considers this limited progress.

Regarding the third commitment, according to the self-assessment, UNDP supported the development of a tool that gathers feedback from citizens using ICT. They have developed, piloted and launched a platform, My Municipality (<http://www.moja-opstina.mk>) through which citizens can provide feedback on their assessment of the municipal openness and accountability. Touch screens were installed in the municipalities, which are also connected with the tool. Because it is a newly introduced tool, civil society stated that it was too early to assess its effectiveness. The IRM researcher's review found that a total of 15 municipalities are covered so far, but the platform is not working.

The last commitment refers to the register of assets disclosures and their merger with the data of appointed and elected officials. According to the government self-assessment and interviews with the representatives of the Commission for Prevention of Corruption, the amendments in the legislation adopted in June 2015 increased the competence of the Commission and set a framework for the creation of a central database of all elected and appointed officials and their asset disclosure. This completed the commitment. Although the law provided for a six month period for the adoption of the bylaw, the Commission already adopted it in July 2015.

Did it matter?

Corruption remains a serious problem in the country. While various mechanisms for reporting corruption have been introduced, so far the fight against corruption remains ineffective. The European Commission's Expert mission sent to the country after alleged illegal surveillance was revealed by the opposition in 2015, identified apparent direct involvement of senior government and party officials in illegal activities including electoral fraud, corruption, abuse of power and authority,

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [11]: Nine changes and amendments

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [12]: 2015

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [13]: The Law on Whistle-blowers Protection was adopted by the Parliament on November 10, 2015 (Official Gazette of RM, No. 196 / 2015). The Commission and MoJ are currently working on development and adoption of necessary by-laws.

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [14]: "Open Municipality"

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [15]: With the tool "Open municipality"

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [16]: This is not correct. The platform "My Municipality" is functional <http://www.moja-opstina.mk>

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [17]: Register

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [18]: Asset disclosure system was already established in 2002 with the Law on Prevention of Corruption. Commission developed and continuously maintain data base of asset declarations. All data from the asset declaration forms submitted by elected and appointed officials, excluding data protected by the Law on Personal Data Protection are available to the public and are published on the web-site of the State Commission for Prevention of Corruption http://www.dksk.org.mk/imoti_2/

conflict of interest, blackmail, extortion as well as severe procurement procedure infringements aimed at gaining an illicit profit.

Therefore, supporting citizens to report corruption cases could be a major step forward. However, the effects of these measures largely remained limited and their inclusion in the OGP action plan did not prove sufficient to strengthen the fight against corruption.

The awareness-raising promised in the second commitment was very non-specific, and so the IRM researcher was unable to presume that the commitment would be more than a positive but minor step forward. Furthermore, it did not address the root of the issue, which is trust in institutions and the belief that complaining to the commission would have an effect. The complaints received by the Commission have declined over the years: The number of requests received decreased from 201 in 2013 to 141 in 2014; similarly, the number of cases decreased from 27 to 17, while a total of seven initiatives to the prosecutor were brought by the Commission in the last two years. Civil society representatives report that more cases are reported to them, compared to state institutions.

Lack of specificity was also an issue for the third commitment in the group. While the resulting tool may actually have significant effects, the commitment as written did not allow the IRM researcher to surmise this major potential impact.

Finally, it is too early to assess whether the creation of the Register will strengthen the supervisory role of the Commission, but its work so far is very limited, and asset declaration is one of the key competences of the State Anti-Corruption Commission that remains inefficiently implemented. The commitment provides a good initial framework for advancement in this area. Claims of selective enforcement and political influence in this area persist, and at the time of the start of the implementation, serious corruption scandals tested the competence of the commission, particularly in the area of asset declaration. An independent monitoring by civil society was funded by the EU in August 2014, ensuring independent insights into the implementation. Civil society has complained that they were not consulted in the completion of the commitment, and that the Commission fails to check the assets disclosure, so the register merely collects self-reported data. They also noted that the monitoring of the disclosures revealed that officials' property and assets have increased disproportionately compared to their official earnings and that it seems they deliberately register their property under the names of their relatives to avoid the obligation to prove the origin of their assets. The IRM researcher's search on the register found that it is searchable by name, function, and institution. However, the data is not reusable, as it is published in closed format, and much of the information provided is inconclusive. It is therefore necessary to strengthen the independence and reactivity of the Commission and other control bodies.

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [19]: This is not clear to to which number of cases is related?

Vladimir Georgiev 3/3/2016 7:09 AM

Comment [20]: This is not correct. See comment "Asset disclosure system was already established in 2002 with the Law on Prevention of Corruption. Commission developed and continuously maintain data base of asset declarations. All data from the asset declaration forms submitted by elected and appointed officials, excluding data protected by the Law on Personal Data Protection are available to the public and are published on the web-site of the State Commission for Prevention of Corruption" http://www.dksk.org.mk/imoti_2/