



EUROPEAN COMMISSION
Neighbourhood and Enlargement Negotiations

URGENT REFORM PRIORITIES FOR THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(JUNE 2015)

The following is a list of urgent reform priorities to be fulfilled by the former Yugoslav Republic of Macedonia in the fields of rule of law and fundamental rights, de-politicisation of the public administration, freedom of expression and electoral reform.

These reform priorities have been drawn up by the European Commission on the basis of previously-issued recommendations and previously-agreed reform priorities in these areas, which have been both confirmed and complemented by the findings of the Senior Experts' Group.

They are designed to address the systemic weaknesses inherent in the *making* and the *content* of the wiretap revelations, as well as more cross-cutting weaknesses which contributed to the situation which led to the current political crisis.

Monitoring and implementation of these reform priorities will be pursued through contacts with all relevant stakeholders and the High Level Accession Dialogue, together with other reform priorities included therein e.g. inter-ethnic relations and economic governance (including public finance management).

These urgent reform priorities must be read in conjunction with the more detailed technical "*Recommendations from the Senior Experts' Group on systemic rule of law issues relating to the communications interception revealed in Spring 2015*", all of which are to be implemented in full. Previous recommendations issued in the Progress Report and in the framework of the High Level Accession Dialogue (HLAD) remain valid.

I. RULE OF LAW AND JUDICIARY

a) Judiciary:

- De-politicize the **appointment and promotion** of judges and prosecutors, in practice not only in theory, on the basis of transparent, objective and strictly merit-based criteria, applied by transparent and open procedure.
- Put in place a harmonised **performance management system** based on qualitative as well as quantitative standards, as a basis for all career decisions.
- Remove elements of the **discipline and dismissal system** for judges, which currently interfere with judicial independence, both in legislation and practice.
- Ensure the **professionalism of the Judicial Council**, in practice not only in theory (i.e. clear and foreseeable test for the application of the statutory requirement of "distinguished lawyer").
- Ensure more pro-active role played by Judicial Council and highest courts, to protect judges from interference on their independence (both through improved communication strategies and through decisive action on complaints of interference or pressure).
- Improve **training quality, budget and autonomy** of the Academy for judges and Prosecutors (and encourage secondments of national judges to the ECtHR).
- Ensure **publication of all court rulings** within the clear deadlines imposed by law (and ensure full "searchability" and ease of access).
- Develop a track record on **overall length of proceedings**, with special focus on "old cases".
- Ensure **speedy execution of all ECtHR judgments** against the country (in particular by developing practical and effective measures for each category of cases).

b) Functioning judicial and parliamentary oversight of interception of communications

- **Ensure clearer separation of the mandates and regulations** concerning interception of communications for criminal investigation, on the one hand, and for security purposes on the other.
- **Remove the UBK's intermediary function** as "gatekeeper" for interception activities of the law enforcement agencies (police, customs, financial police).
- **Remove the UBK's direct access** to technical equipment allowing the mirroring of the telecoms providers' communication signal (ie. complete removal of the UBK's practical and technical capability to capture communications directly).
- Clarify in law and in practice that telecoms providers activate and divert signals to the competent law enforcement agencies (Police, Customs Administration and Financial Police) or the security agencies (the Security and Counterintelligence Service (UBK), the Intelligence Agency, and the Ministry of Defence's military security and intelligence service) **only upon prior receipt of the relevant court order**, and only for the purposes of lawful interceptions.
- Introduce **risk management tools** to guide and lead all intelligence operations, as well as reinforced data security and storage.

- Ensure **appropriate training of staff** on data protection, fundamental rights, professional ethics and integrity.
- Ensure immediate and regular **convening of the relevant Parliamentary Committees** on interception of communications and on security and counterintelligence, and their smooth operation.
- Ensure these Committee's **compliance with their statutory reporting duties** as well as their ability to obtain without hindrance the necessary data, testimonies, technical assistance and access, necessary to produce those reports.

c) Independent regulatory, supervisory and oversight bodies

- Ensure sufficient **autonomy of independent regulatory, supervisory and oversight bodies**, not only in theory but in practice, in order to act effectively and free from political pressure. This requires not only pro-active efforts from the bodies themselves but the political will of all other actors to allow them to carry out their functions as intended by law, including through allocation of sufficient financial means.
- Ensure that membership of independent regulatory bodies is based on professional competence, professional experience relevant to the field and comparative merit.
- Ensure that recommendations of the **Ombudsman's office** and other advisory bodies are followed up by all state bodies in full respect for the law and for the principle of accountability.
- Ensure effective legal sanctions for non-compliance with the requests and recommendations of independent bodies.
- Ensure that the Office of the Ombudsman Law is amended to comply fully with the Paris principles.

d) Anti-corruption policies and legislation:

- Establish a **credible track record on high-level corruption**, in particular ensuring that all law enforcement and supervisory bodies have sufficient autonomy to act independently in line with the law (the credibility of the current track record suffers from the absence of a number of high-profile cases from recent years).
- Overall fight against corruption needs to be reinforced.
- Improve scrutiny of conflict of interest and assets of elected and appointed officials by **establishing a central register of such officials**.
- Work with GRECO experts to establish a new, comprehensive **whistleblowing protection** mechanism in line with latest Council of Europe recommendations and best European practices.

e) Lustration:

- Address the serious shortcomings and revise / repeal of the Law on Lustration and its implementation (in particular with reference to the Venice Commission's *amicus curiae* brief) as regards e.g. temporal limits; safeguards against political, ideological or party

reasons used as grounds for lustration; exclusion of persons in private or semi-private positions and stronger safeguards protecting the identity of subjects until final court decision.

II DE-POLITICISATION OF PUBLIC ADMINISTRATION

- a) Implement rigorously the new legal framework, **Law on Administrative Servants and Law on Public Employees**, fully observing the principles of transparency, merit and equitable representation
- b) Employment policies need to follow the principles of transparency, merit and equitable representation in the public service through of open procedures. There should be no further employments not respecting the rules.
- c) Impose a moratorium on implementation of the **Law on Transformation of Temporary Positions** into Permanent Contracts until the principle of merit is fully observed in the transformation process
- d) Provide figures for the total number of public service employees in all government ministries, agencies and other bodies, broken down by sectors

III ELECTORAL REFORM

- a) **Finalise the electoral reform** in line with OSCE/ODIHR and Venice Commission recommendations, including increasing the scope and possibilities to file complaints and appeals, ensuring sufficient separation between State and political party activities and ensuring a bipartisan approach of electoral bodies on all levels.
- b) **Conduct an audit of the Voters' List**, in line with OSCE/ODIHR recommendations assessing the accuracy and completeness of voter data in particular as regards possible duplicate voters; voters registered separately with ID card and passport details; and addresses with large numbers of registered voters, **Identify areas of potential improvement** in voter data accuracy. **Revise and improve** accuracy of voters' list accordingly.

IV. IMPLEMENTATION OF THE RECOMMENDATIONS OF THE COMMITTEE OF INQUIRY INTO THE EVENTS OF 24 DECEMBER

- Implement the recommendations of the 2013 Committee of Inquiry as regards the better functioning of parliament and the scheduling of its work.

V. MEDIA: FREEDOM OF EXPRESSION

a) Public Service Broadcaster

- Provide tangible evidence of ongoing policy-, organisational-, training- and editorial-reforms within the Public Broadcaster aiming at addressing criticisms made regularly in the past about its lack of political independence, and lack of balanced reporting, as well as to provide informative, high-quality content.

b) Government advertising

- Establish stringent rules on government advertising based on transparent, objective and non-discriminatory criteria.
- Ensure full transparency on government advertising (not only on the spending of public finances but also on its recipients and contents).
- Develop a mechanism for unpaid public service announcements of a true public interest character.

c) Access to Information

- Address the main obstacles which journalists face in obtaining public information (e.g. the failure of relevant bodies to respond at all to many requests for information, the unjustified over-use of the "classified" category for documents not of that nature).

d) Defamation

- Reduction in the number of defamation cases reaching the courts to be achieved by:
 - (i) revising the legislation to remove "honour", "dignity" and "offence"-type cases, most of which are raised under the statutory definition of insult and which fall outside scope of defamation in the sense of Article 10 ECHR;
 - (ii) revising the procedural rules to exclude petty cases and instead increase the use of mediation to resolve these;
 - (iii) support and promote greater use of self-regulation as alternative to court action;
 - (iv) guarantee and enforce, at political level, the exercising of appropriate self-restraint by politicians and public officials **not to resort to defamation actions**, in line with ECtHR principles.