GRECO
Groupe d'Etats contre la corruption
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Evaluation Report on "the former Yugoslav Republic of Macedonia"

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I. INTRODUCTION

1. "The former Yugoslav Republic of Macedonia" was the 18th GRECO member to be examined in the Second Evaluation Round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Dr Alastair BROWN, Advocate Depute, Advocate Deputes' Chambers, United Kingdom; Mr Ahmet IMIRZALIOĞLU, Judge, Directorate General of International Law and External Relations, Ministry of Justice, Turkey; and Dr Algimantas ČEPAS, Director, Law Institute of Lithuania. This GET, accompanied by two members of the Council of Europe Secretariat, visited "the former Yugoslav Republic of Macedonia" from 6 to 10 December 2004. Prior to the visit the GET experts were provided with replies to the Evaluation Questionnaire (document Greco Eval II (2004) 14E) as well as copies of relevant legislation.

2. The GET met with officials from the following governmental organisations: Ministry of Justice (including the Deputy Minister), the Supreme Court (Including the President), the Ombudsman, the Public Prosecutor General, Courts of Appeal and Higher Public Prosecutor's Offices (Skopje, Bitula and Stip), First Instance Courts (Skopje 1 and 2), the Judges Association, the Public Prosecutors Association, the Centre for Continued Education of Judges, the State Audit Office (General State Auditor), the Ministry of Finance (including the Minister), the Finance Police, the Public Income Administration, the Directorate against Money Laundering, the Ministry of the Interior (Including the Minister) the Organised Crime Sector, the International Co-operation and European Integration Section, the Internal Audit and Professional Standards Sector, the Customs Administration, the Ministry of Local Self Government, the State Commission for Prevention of Corruption (hereafter State Commission) and the Agency for Civil Servants. Moreover, the GET met with members of the following non-governmental institutions: the Bar Association and Transparency International.

3. It is recalled that GRECO at its 10th Plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, agreed that the 2nd Evaluation Round would deal with the following themes:

- **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173[1]), by Articles 19 paragraph 3, 13 and 23 of the Convention;
- **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
- **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the authorities of "the former Yugoslav Republic of Macedonia" in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to "the former Yugoslav Republic of Macedonia" in order to improve its level of compliance with the provisions under consideration.

[1] "The former Yugoslav Republic of Macedonia" ratified the Criminal Law Convention on Corruption on 28 July 1999.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

5. Confiscation is governed by Articles 97-100 of the Criminal Code, following recent amendments (which entered into force on 8 April 2004). Confiscation is defined as a "measure" (and not a sanction), which does not affect the determination of the penalty in a criminal case. Confiscation can only be decided by a court and the decision to confiscate is part of the criminal judgment of conviction. Confiscation is also possible without a criminal conviction (*"in rem"*) in situations where it is not possible to conduct criminal proceedings but sufficient evidence is established that it concerns property or property advantage gained from or used in a criminal offence (Article 493-a of the Criminal Procedure Code, as adopted on 13 October 2004).

6. The rules on confiscation apply with regard to property held by a physical as well as a legal person. If the legal person has ceased to exist, founders and shareholders are obliged jointly to pay an amount corresponding to the value of the proceeds of the crime (Article 96-e of the Criminal Code).

7. Confiscation is to be used with regard to proceeds of crime, whether primary or secondary proceeds. Value confiscation is possible in accordance with Article 98 of the Criminal Code, which establishes that *the property advantage gained through a criminal offence consisting of money, movable or immovable objects of value, as well as any other property, or assets, material or non-material rights, shall be confiscated from the offender. If their confiscation is not possible, another property corresponding to the property advantage gained shall be confiscated from the offender.* Moreover, it is always possible to confiscate the instrumentalities used in a crime, according to Article 100A of the Criminal Code, regardless of whether these are held by the offender or a third party.

8. Proceeds of crime may be confiscated from a third party to whom the proceeds were transferred without appropriate compensation and the third party should have been aware that the property/advantage was the result of a criminal act (Article 98, paragraph 2, Criminal Code). In addition, confiscation of particular objects that constitute cultural monuments, archive or library material, or natural rarity, as well as those to which the damaged party is personally attached may be exacted from a third party, regardless of good faith or not (Article 98, paragraph 3, Criminal Code).

9. The burden of proof with regard to confiscation is the same as in any other criminal proceeding, i.e. it lies with the prosecutor and can never be reversed, nor lowered.

10. The court has an *ex officio* obligation to estimate the economic value of the proceeds of crime to be confiscated and it may ask for special expertise for this purpose. The court may also request necessary information from other state bodies, financial institutions, physical and legal persons. Moreover, when there is suspicion that property is located abroad, the court has a duty to open an international warrant (Article 488 of the Criminal Procedure Code).

11. The GET was not informed of any particular regular training being provided for police, prosecutors or judges with respect to the use of confiscation, following the recent amendments of the legislation. The GET was, however, informed that some seminars for the implementation of

the new legislation in this field had been organised for judges, prosecutors, lawyers and police officers, etc in co-operation with the Council of Europe (PACO Project).

12. There are no statistics available on the use of confiscation in general, nor with regard to corruption offences and the GET was told that no court decision on confiscation, based on the new legislation, had been taken by the time of the GET visit.

Interim measures

13. Interim measures to secure proceeds of crime are provided for in Article 105 of the Criminal Procedure Code, which determines that following the request of the Public Prosecutor or an "authorised person", interim measures for securing a property-legal request arising from the commission of a criminal offence may be rendered during a criminal procedure. The court may also act *ex officio* in this respect. The term "authorised person" relates to those individuals whose rights have been violated by the commission of a criminal offence. Moreover, the Financial Police and the Office for the Prevention of Money Laundering may file a formal request to the competent prosecutor to initiate a request for an interim measure consisting of seizure or freezing of property and funds, bank accounts etc (Article 6.12 of the Law on Financial Police and Articles 29-31 of the Law on Prevention of Money Laundering).

14. The new provisions of the Criminal Procedure Code (Articles 203-a and 203-d), makes it possible for the investigating judge or a court council to decide on interim measures to secure property or assets during the proceedings in connection with a criminal offence, comprising temporary freezing, seizure, withholding of funds, bank accounts and financial transactions or proceeds from all criminal offences. These interim measures also apply to corruption-related offences insofar as they constitute criminal offences according to the Criminal Code.

15. An appeal against a decision of seizure does not prevent the decision from being executed (Article 105, Criminal Procedure Code).

16. Article 203-a, paragraphs 3 to 8 of the Criminal Procedure Code, establishes the relevant procedural requirements with respect to the management of seized property; the property or assets that are subject to interim security measures must be put under court supervision; seizure and freezing of proceeds of crime are to last until completion of the criminal procedure; justification for interim freezing of bank accounts is to be reconsidered *ex officio* every two months during the criminal procedure; immovable property is to be secured by means of mortgaging; seizure of funds is to be effected upon an order and the relevant funds must be kept in a safe or be deposited in a separate account without the right to dispose of them. It is not possible to invoke bank secrecy clauses in order to avoid enforcement of a court decision imposing seizure or freezing of proceeds of crimes deposited in a bank. Following termination of seizure or freezing measures, the investigating judge must pass a resolution for their release and return, which should immediately be communicated to the competent financial or any other relevant institution.

17. At the time of the GET's visit, there were no statistics available on the use of interim measures. The GET was only informed of a few examples where seizure had been used; It was mentioned that in December 2004, temporary measures were taken during an ongoing investigation of abuse of official position (Article 353 of the Criminal Code) ; the seizure concerned both movable and immovable property owned by the presumed perpetrator[2].

[2] In 2005, interim measures have been used against 14 legal persons and against 2 physical persons.

18. At the time of the visit, no information was provided to the GET on the practical application of the rules on interim measures, nor with regard to training of staff (see footnote 2).

International co-operation

19. Mutual legal assistance is based on international treaties, reciprocity and dual criminality. The legal framework for mutual legal assistance at international level is provided by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the European Convention on Mutual Assistance in Criminal Matters with its additional Protocols, and the UN Convention against Transnational Organised Crime. There are also bilateral agreements between "the former Yugoslav Republic of Macedonia" and other States, e.g. Albania, Bulgaria, Croatia, Greece, Romania, Serbia and Montenegro, Slovenia and Turkey.

20. Tthe relevant provisions for international co-operation are contained in Chapter XXX of the Criminal Procedure Code (Articles 502-508). Pursuant to Article 502, these rules shall be applied unless ratified treaties stipulate otherwise. In general, the transmission of a foreign State request is conducted via diplomatic channels, involving the Ministry of Foreign Affairs, the Ministry of Justice and the competent court. In case of emergency and if there is reciprocity, requests for legal assistance can be delivered directly to the Ministry of the Interior. When "the former Yugoslav Republic of Macedonia" is the requesting State the same diplomatic process applies.

21. Direct international co-operation between competent courts is regulated in Article 503.1 of the Criminal Procedure Code. Direct communication between law enforcement authorities is possible for confiscation and interim measures requests when provided for under an international treaty, according to Articles 505-a and 203-b of the Criminal Procedure Code. These Articles also enable the transfer from one country to another of confiscated property or seized objects through direct communication as well as the sharing of confiscated property (asset-sharing), when provided for in a treaty.

22. The GET was told by prosecutors that the new legislation on seizure and confiscation of the proceeds of crime represents an important improvement of the system. However, the application of the existing rules, in the international context, remains difficult for the practitioners. The GET was told that more direct contact between law enforcement authorities in "the former Yugoslav Republic of Macedonia" and other countries, in particular members of the European Union, would be necessary for a more efficient system[3].

Money laundering

23. Money laundering is criminalised under Article 273 of the Criminal Code. All corruption offences ("any …punishable offence") are predicate offences to money laundering. The punishment is a fine or imprisonment of up to ten years. Money laundering is sanctioned regardless of whether committed in the country or abroad, provided that the dual incrimination principle is applicable. The crime refers to illegally gained money, property or objects which originate from "any punishable offence".

24. The Money Laundering Prevention Directorate (DMLP) is the National Financial Analytical Unit. It is a body within the Ministry of Finance, which started to function on 1 March 2002. It is

[3] The GET was informed after the visit that the Public Prosecutor's Office had signed memoranda of understanding for legal cooperation against organised crime, etc in March/April 2005 with other countries in the Region.

responsible for collecting, processing, analysing, recording and, where appropriate, disseminating to the investigative agencies concerned, any grounded suspicious transaction (STRs) on the basis of firm evidence of money laundering or other criminal offences (Article 28 of the Law on Prevention of Money Laundering). The GET was informed that since March 2002, the DMLP has submitted 12 STRs to the relevant investigative agencies and that at least 6 of them concerned corruption-related offences where civil servants and organised crime networks were suspected to be involved.

25. Article 2 of the 2004 Law on Prevention of Money Laundering and other Proceeds of Criminal Offences lists the institutions, physical and legal persons, which are obliged to undertake concrete steps for the prevention and detection of money laundering. The list is based on the 2nd EC Directive on Prevention of the use of the Financial System for the Purpose of Money Laundering. Financial institutions, auditors, accountants, notaries, immovable property agents, antique and jewel dealers etc are obliged to report suspected money laundering.

26. No systematic statistics were provided on the number of money laundering investigations, prosecutions and convictions in relation to the predicate offence of corruption.

b. Analysis

27. The legislation concerning confiscation and seizure has very recently undergone comprehensive changes. The GET was informed that the former system concerning confiscation of the proceeds of crime by court orders was extremely difficult to enforce because it was not supported by a system of interim measures. The new substantive legislation on confiscation of the proceeds of crime was amended in April 2004 and the relevant provisions of the Criminal Procedure Code were changed as late as October 2004. It was not surprising to the GET that some of the legal changes presented to the GET were not yet fully known by the professionals entrusted with enforcing the legislation.

28. The new legislation on confiscation is comprehensive and appears to meet all relevant requirements of the Criminal Law Convention on Corruption (ETS 173). Also the legislation presented makes provision for interim measures, which appear to fulfil the formal requirements of the Convention ETS 173. The authorities of "the former Yugoslav Republic of Macedonia" should be commended for the creation of such a complete legal framework.

29. The GET welcomes that special investigative techniques have been in use since November 2004 and that these have been applied in cases of corruption. Article 142 of the Criminal Procedure Code provides for a range of different techniques. As regards the procedure for using interception of communications, at the time of the visit a draft law was in the parliamentary adoption process. The GET was assured that this draft legislation would be adopted shortly. The GET recalled that GRECO in its First Round Evaluation Report on "the former Yugoslav Republic of Macedonia" (Greco Eval I Rep (2002) 7E Final) issued a recommendation to this end.

30. The GET notes that existing legislation does not allow for any situations where the burden of proof can be reversed or lowered. This may be seen as an obstacle for the system to work efficiently as it is often difficult to prove cases of corruption, bearing in mind the characteristics of this offence. However, in the present situation where the new legislation has not been sufficiently tested, the GET is not in a position to issue a recommendation in this respect.

31. The GET recalls that legislative compliance is not the whole issue under evaluation. The efficiency of the system can only be judged in the light of how it works in practice. It is almost

inevitable that the development of a massive legislation, which in part is completely new to those who have to enforce the rules, will create a tremendous need for supporting measures, such as training and logistics. Although the GET was informed of a few cases where the system had been tested with regard to seizure, the limited level of experience in practice makes it impossible to judge how efficient the legislation is. This was confirmed by many of those with whom the GET met, who expressed concern that they were poorly equipped to deal with the new legislation because they had not received training (this did not apply to proceeds of crime issues alone). It was also reported to the GET that there was insufficient budgetary cover to allow the courts to cope with the increased workload which is expected as a result of the recent legislative efforts.

32. In view of the above, the GET is of the opinion that the recent legislation must be complemented with follow-up measures to promote its use in practice. The development of guidelines and training appears to be necessary for, in particular, the law-enforcement and the prosecution but also with regard to the judiciary. To this end the *implementation* of the new legislation could be addressed in a plan of action, which should to a large extent deal with training of staff. The GET welcomes that "the former Yugoslav Republic of Macedonia" participated in international regional co-operation (Council of Europe; "Cards Project"), but it was of the strong opinion that a particular plan for the implementation of the new legislation was necessary. Moreover, the GET was of the opinion that an in-depth evaluation of how the new legislation works in practice would be necessary in the future. To prepare for this it would be beneficial to systematically collect information on the use of measures with regard to proceeds of corruption and related crime - as well as to collect information on situations where the use of these measures did not work - and to analyse the efficiency of the system in a not too distant future. Consequently, the GET recommends **to prepare a project for the implementation of the new proceeds of crime legislation on confiscation and seizure and connected issues, including the establishment of guidelines and thorough training for the officials concerned and to collect detailed information on the use, and failure to use, confiscation and interim measures in order to be able to evaluate how the system operates in practice.**

33. It was explained to the GET that difficulties had been experienced in international judicial co-operation as a result of the use of the formalistic and time consuming channels of communication and the inability of public prosecutors to seek assistance directly from their foreign counterparts. As offences linked to financial crime and corruption often have an international dimension, a good national legal framework is not enough. This opinion was shared by several of the officials met. The GET observes that the authorities *should consider ways of achieving more direct international communication between prosecutors in "the former Yugoslav Republic of Macedonia" and other countries in order to optimise the use of direct communication in mutual assistance with regard to seizure and confiscation, in particular in relation to member States of the European Union.*

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

34. "Public Administration" is a wide term which covers all types of public administrative bodies and employees at central as well as at local level, including the city of Skopje, dealing with the provision of public services. Public administration also covers employees in State bodies who do not have civil servant status. "State administration" is defined within a more restrictive scope; including only civil servants in the legislative, the executive and the judiciary branches, only

connected to state-related functions. It should be noted that at the time of the visit by the GET there were some 10 000 civil servants and some 60 000 other public employees (in total 70 000 financed from the State Budget); the latter being governed only by ordinary labour law and not by the Law on Civil Servants (and the Agency). In addition, there are some 25 000 civil servants in "non budget institutions", such as the Health Fund, Pension Fund etc.

Anti-Corruption Policy

35. The cornerstones of the Public Administration are laid down in the Constitution and in the Law on Civil Servants, whereas the Anti Corruption policy is addressed particularly in the Law on Prevention of Corruption. The Law on Civil Servants provides a detailed framework for civil servants and its implementation is ensured by the Civil Servants' Agency, which is an independent state body; its Director is appointed by Parliament for 6 years. Several guidelines, which concern recruitment, training and behaviour have been developed by the Agency.

36. The Law on Prevention of Corruption is based on the principles of legality, trust, equality, publicity and responsibility. Moreover this Law provides particular regulations to prevent corruption in various fields of interest, covering both elected representatives and civil servants. It deals with the prevention of conflicts of interest, reporting of offences and the exercise of discretionary powers. The Law envisages active co-operation between authorities which play an important role in the fight against corruption and organised crime (cf. the State Audit Office, the Public Prosecutor, the Ministry of the Interior, the Public Revenue Office, the Financial Police and the Customs). Furthermore, the Law provides for the establishment of the National Commission for Preventing Corruption (the State Commission).

37. The State Commission, which was established at the end of 2002, is an autonomous and independent body consisting of seven members, elected by and accountable to Parliament. The State Commission is mainly a body for prevention of corruption; it has been given the competence to adopt the National Programme against Corruption and the Matrix for its implementation. Moreover, the State Commission has control functions; it may investigate cases of, for example, conflicts of interest with regard to elected officials and civil servants and is also entitled to initiate cases for investigation by the prosecutorial bodies and it receives complaints from the public (the control function is described below). The GET took note of the first annual report of this body, covering November 2002 to November 2003[4].

38. In accordance with Article 55 of the Law on Prevention of Corruption, the State Programme for Prevention and Repression of Corruption was adopted by the State Commission in June 2003. This is a comprehensive document which contains an analysis of the situation with regard to corruption in "the former Yugoslav Republic of Macedonia", a broad definition of corruption (abuse of a position to obtain an advantage), a description of the problems and the aims of the programme (creation of "zero-tolerance" for corruption and making corruption a high-risk and low-profit exercise…). Officials met by the GET expressed concern that the Programme and the Matrix had not been formally adopted by either the Government or Parliament and the GET was made aware of the fact that the Law does not oblige these bodies to do so.

39. To the State Programme is attached an "Action Plan Matrix" (the Matrix) for the implementation of the anti-corruption measures. The Matrix deals with a large variety of state areas under reform, such as the political system, the justice system, the financial system and the state administration. The Matrix is a systematic document which points out "basic characteristics" and their

[4] The annual report of the State Commission of 2004 was discussed and approved by Parliament in August 2005.

"implications" for the system, "recommendations" to improve the situation, "responsible bodies" for the implementation, "period" (time given for the implementation of the recommendations), monitoring bodies and, finally, the "level of implementation" (stage of the reforms).

40. The Matrix describes, *inter alia,* the situation - as it was in 2003 - in public and state administration as inefficient with a low level of service provided to the public, as being un-professional with a low level of quality of the services provided, as non-transparent and politicised with nepotism built in, as unethical with issues of conflicts of interest arising as well as corruption, etc The shortcomings listed are addressed in recommendations for reforms in almost every field of public administration, comprising recruitment procedures, education, training, simplifying of procedures, legislation on access to public information, codes of conduct etc. The Matrix reflects that a comprehensive legislation process is underway, that control mechanisms within public administration are in place, etc.

41. The Matrix contains recommendations for improvements of the system, such as new legislation, simplification of procedures and more transparency. It also contains a variety of measures with regard to public officials, civil servants with special powers, new recruitment procedures, training of staff, monitoring of staff and sanction systems, etc.

42. At the time of the visit, a complete re-organisation of the local authorities was in its final stages. From previously 124 municipalities the number of municipalities has decreased to 85. In addition to the territorial changes the transfers are generally about decentralisation of state powers in areas such as culture, education, health and urban planning. Another new task for the local authorities is that of collection of local taxes and value added taxes through their own revenues, which will be put in place through a step by step approach. Elected officials of the municipalities will be assisted by civil servants; however, at the time of the visit of the GET, only half of the local authorities had recruited civil servants, the rest being manned by staff without civil servant status (and corresponding regulatory framework).

Transparency

43. As noted above, a general lack of transparency - as a result of a lack of relevant legislation - in public administration was an important shortcoming described in the Matrix. The GET was informed that at the time of the visit, the Law on the Organisation and Work of the Bodies of State Administration and some of the special legislation in place concerning public access to information. New legislation was, however, underway and the GET was made aware of the draft Law on Free Access to Information, covering state as well as local administration which was being drafted by the Government (second stage)[5]. The draft law contains provisions on access to all information as a main rule which, in principle, would only be limited when legislation so prescribes. The draft law also contains provisions which oblige the authorities to register information in order to make it available and which indicate that information may be requested orally or in written form. Moreover, the draft law provides for the establishment of an independent body ("State Commission") as a complaints body in cases where information requests by citizens are rejected.

44. The Law on the Organisation and Work of the Bodies of State Administration provides for consultations with the public in the form of public announcements, debates and the submission of opinions from citizens or representative organisations.

[5] The GET was informed during the adoption of the present report that the draft Law on Free Access to Information was pending before Parliament (second reading).

45. Similarly, the Law on Local Self Government (adopted in 2002) contains a Chapter on direct participation of citizens in the decision-making process of the municipalities through "civil initiative" (right to propose), citizens' gatherings as convened by the mayor, referenda, appeals and public hearings, etc.

46. The use of electronic means for communication is growing rapidly and the GET noted that a large number of public institutions had already or were in the process of developing web sites, etc. The Strategy for Information Society (part of the Matrix), *inter alia,* dealing with improvements in the communication between the Government and Parliament was before Parliament at the time of the GET's visit. The GET was not made aware of any particular provisions concerning the use of electronic communication means in public administration ("e-government") in relation to authorities' obligations *vis-à-vis* the wider public[6].

Control of Public Administration

47. There are several mechanisms in place to ensure control of administrative bodies. These include petitions to a higher administrative authority, revisions before a court, complaints to the Ombudsman and, finally, State and internal revision.

48. Decisions by administrative bodies can be challenged within the executive branch. For this purpose Commissions have been established within each administrative institution. Their decisions may be appealed to several Governmental Commissions (as well as the Civil Servants' Commission) established within various fields of activities, such as finances, public procurement, ecology, transportation, communication, urban planning, construction, etc. The Commissions act as second instance for appeals. Ultimately, administrative complaints can be lodged with the Supreme Court for a final decision. Administrative complaints are governed by the Law on Administrative Disputes. The GET was informed that the Supreme Court has difficulty in dealing with all the appeals against administrative acts. Consequently, there is a large backlog of administrative cases and the time before the Supreme Court would in average be some two years.

49. The GET was informed of the on-going reform of the judiciary and that, in this respect, the introduction of courts specialised in administrative complaints or even an administrative court system had been discussed; however, no final decision had been taken in this regard.

50. The Ombudsman institution was introduced in 1997. In 2003 the Law on the Ombudsman was amended and the Ombudsman opened branch offices in six regions of the country. The Ombudsman is competent to deal with the protection of citizens' constitutional and legal rights, in particular when these rights have been violated by state, local or any other public administration. The Ombudsman's monitoring function is based on complaints from the public; however, it cannot deal with anonymous complaints. The Ombudsman can also initiate investigations *ex officio*. Moreover, the Ombudsman carries out inspections of public administration. The Ombudsman has the role of a mediator, s/he cannot modify, suspend or invalidate a decision of an administration (except temporarily in certain cases) but s/he may influence the administration in a certain direction, and the administration has to respond to this. The Ombudsman can inform the higher body or officials about the action or inaction of a lower body or officials, and may initiate criminal proceedings. In 2003, the Ombudsman received some 2 600 petitions and, in

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[6] The GET was informed after the visit that a project concerning "e-government" (www.services.gov.mk) was under implementation.

2004, some 2000 petitions. The GET was told that the Ombudsman never or rarely comes across cases of corruption.

51. The Ministry of Finance has a general monitoring function over the "day to day"[7] finances of all Ministries, central and local authorities and the GET was informed that the fight against corruption is considered an area of priority in this respect. The Ministry of Finance has through the Financial Police, established in 2002, at its disposal a specialised body for the investigation of financial crime, tax offences, money laundering etc. The Financial Police has the same powers as the ordinary police. There is a Memorandum of Understanding between the Ministry of Finance and the Ministry of the Interior on the distribution of cases between their respective police services. The GET was informed of a draft amendment to the Law on the Financial Police, which would extend its tasks to include investigation of corruption offences. It was told that if that would materialise there would be a need for specialised training on investigation of such cases.

52. Pursuant to Article 34 of the Law on Prevention of Corruption, the State Commission (National Commission for Preventing Corruption) and the Public Income Administration of the Ministry of Finance are the receivers of the obligatory income declarations from public officials. These bodies are also entitled to investigate the incomes and possessions of holders of public offices (elected or appointed officials, civil servants, public employees and responsible persons in a public enterprise and any other legal entity managing State capital). The Public Income Administration may impose tax on assets which are not proven to be the result of declared incomes. Furthermore, Article 37 of the Law on Prevention of Corruption establishes that the Public Income Administration alone, or at the initiative of the State Commission, may bring criminal charges before the public prosecutor's office when property of the public official has accrued in significant proportions and does not appear to result from his/her legitimate income. Moreover, Article 4 of the Law on Prevention of Money Laundering requires co-operation between the Public Income Administration, the Financial Police, and the Directorate for the Prevention of Money Laundering.

53. According to Article 20, paragraph 3 of the Law on the Establishment and Collection of Public Income, certain data from tax records may be communicated to the Ministry of the Interior, to the public prosecutor's office and to the relevant courts.

54. The Ministry of Local Self Government monitors the work of local authorities, except for the internal financial control, which is monitored by the Ministry of Finance. As from 2005, the local authorities also have internal financial control. The administrative appeal system described above applies also to local authority decisions.

55. The State Audit Office (established in 1998) is an independent body, accountable only to Parliament. It is the supreme audit institution for external control over public spending. It carries out the auditing of the budgets and assesses the efficiency and effectiveness in the use of public assets of central public administration and will, as soon as the local authority legislation is in force, also audit the local administrations. The State Audit Office applies international audit standards (INTOSAI). The reports of the State Audit become public when they are submitted to the audited entity. The GET was informed that there is a developed co-operation and exchange of views between the State Audit Office, the Public Prosecutor's Office, the Ministry of the Interior (the Police) and the State Commission for Prevention of Corruption. Suspected criminal offences (including corruption) are reported to the Ministry of the Interior (police) and to the Public Prosecution. During recent years several cases of suspected criminal offences were reported to

[7] However, the State Audit Office carries out the external supreme audit.

the competent law enforcement authorities, some of these cases concerned corruption. The GET was informed by the State Audit that it had not received any feedback from the law enforcement authorities concerning cases they had reported to them. The Government authorities have provided the GET with statistics indicating that these reports have been followed up by the law enforcement bodies but admitted that the communication between the State Audit Office and other relevant bodies could be strengthened. Representatives of the State Audit informed the GET that they receive no particular training relating to the tracing of corruption.

Recruitment, career and preventive measures

56. In the past, the recruitment of public employees was under the responsibility of the respective departments themselves. This system has been reformed with the adoption of the Law on Civil Servants, which not only sets out the basic standards for the recruitment of this category of staff (citizenship, minimum age, education and experience, no criminal convictions etc), but which gives the Civil Servants' Agency full responsibility for the actual selection of civil servants to all public institutions (except the uniformed bodies). Detailed criteria on selection and recruitment have been developed by the Agency, which also conducts the selection/recruitment process of civil servants. According to the Law there are three types of civil servants: managerial, expert and expert administrative civil servants. A university degree is required for the two higher categories and a college/high-school degree for the lower. In accordance with the requirements of the law, the Agency has developed the Rulebook on the Criteria, Standards and Procedure for Employment and Selection of Civil Servants; the selection procedure is based on "knowledge", "ability" and "achievement". The Agency bases its decisions on previous education, training and experience as well as on written theoretical and practical tests (including a professional examination) and on an interview before the Agency. A points system has been developed for the selection process. The GET understood that screening of candidates' criminal records does not take place as a rule prior to recruitment of civil servants. All candidates for employment in the Public Administration have an obligation to prove that there is noprohibition of profession, activity or duty against him or her. Civil servants posts are as a rule announced publicly by the Agency as well as internally. The announcement has to include, *inter alia,* a job description, the number of posts available and indicate that it concerns a civil servant's post.

57. Specific rules on recruitment procedures with regard to other public officials do not apply in general; however, special regulations exist with regard to recruitment to the military and the Ministry of the Interior (police), etc.

Training

58. Also with regard to training (professional development) of civil servants, the Law gives the co-ordinating role to the Civil Servants' Agency. The GET was told that the Agency was in the process of drafting a *"National System for Co-ordination of Training and Professional Development"* of civil servants in general. The Agency would carry out co-ordination of training; however, the specific training would normally be carried out by the respective departments.

59. The Agency of Civil Servants is dealing with the co-ordination of training of civil servants, but not with regard to other public officials. There is no co-ordination of training provided for other public officials.

Conflicts of interest

60. The Constitution and the Law on Prevention of Corruption provide the legal framework to prevent conflicts of interest of public officials; some additional rules for special categories of public officials have been established in other laws, e.g., Law on the Election of Deputies and the Law on Civil Servants as well as in sectorial codes of ethics, see below. The Law on Civil Servants obliges such personnel to carry out the duties impartially, without political influence (the Rulebook on recruitment also prohibits the Agency from interviewing candidates on their political convictions or affiliation) or financial interest. Moreover a civil servant must notify his/her superior of unconstitutional or illegal orders and is obliged to keep state secrets. Moreover, the Code of Ethics for Civil Servants contains further details on conflicts of interest with regard to political and financial aspects (Article 8). The Code also contains provisions on personal conflicts of interest (family, etc).

61. There are no specific legal provisions concerning periodical rotation of personnel, except in the customs, where rotation is used on a routine basis.

62. The phenomenon of civil servants moving to the private sector is not explicitly regulated, however, the Code of Ethics for Civil Servants states that civil servants are not allowed to accept future agreements for employment with other persons or bodies that have had economic interests in the body in which the civil servant has been employed during the past three years (Article 8).

Codes of conduct/ethics

63. On the basis of the Law on Civil Servants (Article 18.3), the Director of the Agency for Civil Servants adopted a Code of Ethics for Civil Servants in 2001. The Code deals with basic principles, such as legality, equality, professionalism, impartiality and independence. It also covers conflicts of interest, transparency, gifts (see below), relations with the public etc.

64. Moreover, the GET was informed that there are similar codes of ethics for other administrations not covered by the civil service rules, for example, tax officers, the police (part of the Law on Internal affairs), the Customs and the judiciary. Sanctions are not contained in these codes as these form part of the union agreements of each institution.

65. The GET was informed that as a result of the low number of civil servants there were only few violations of the Code of Civil Servants (in the Ministry of the Interior, only one case).

Gifts

66. Pursuant to the Law on Prevention of Corruption (Article 31), public officials should not accept gifts or promises of gifts, except for those cases where gifts have little value (e.g., books, souvenirs, etc.). Furthermore, two Governmental Decisions, adopted in 2002 and 2003, specifically regulate the acceptance and offer of gifts from foreign representatives which should always be recorded by the Ministry of Finance and their ownership transferred to the State whenever the value exceeds 100 EUR.

67. The Civil Servants' Code of Ethics lays down that civil servants shall not use advantages or give advantages arising from their status, or use information for personal benefit (Article 5) and that they shall not ask for or accept gifts which could or could be seen to affect their decisions (Art 9).

Reporting corruption

68. The Law on Prevention of Corruption determines that any person who has revealed a corruption-related offence should not be prosecuted and should be provided with adequate protection. This law also states that a person who has testified in a procedure concerning corruption, has a right to compensation for damage s/he (or his/her family) has suffered as a result of the testimony.
69. As mentioned above, the Law on Civil Servants obliges civil servants to report illegal orders; however, it does not contain any specific rule on the reporting of offences (including corruption), nor does the Code of Ethics. An obligation to report corruption is, however, contained in the rules of the Customs.

Disciplinary proceedings

70. All civil servants, except at the level of state secretary and secretary general (the highest level) are subject to disciplinary proceedings in case of a breach of duties, according to the Law on Civil Servants. Civil servants may either be subject to "disciplinary irregularity" (less serious violation of duties) or "disciplinary offence" (significant violation of official duties). Disciplinary irregularity may lead to a reduction in salary of up to 10 per cent. The decision is taken by the relevant Minister or other official following a written report by the superior of the civil servant. The more serious disciplinary offence procedure is conducted by a Disciplinary Commission which suggests the sanction (up to 30 per cent reduction in salary or termination of employment) to the Minister or other official for decision. A disciplinary decision may be appealed to the Agency of Civil Servants. Liability for a criminal offence or misdemeanour does not exclude disciplinary liability.

b. Analysis

71. Corruption has for a long period of time been considered a serious problem in public administration in "the former Yugoslav Republic of Macedonia". Public administration has been described by the authorities themselves as non-transparent, politicised and with a large degree of in-built nepotism. Moreover, the services provided have been described as unprofessional and of a low quality. Consequently, the fight against corruption has been and remains one of the top priorities of the Government. To what extent the situation is changing is difficult to assess in the absence of regular studies of the phenomenon of corruption.[8]

72. It was, however, obvious that an impressive number of measures, covering most fields of public administration, have been introduced in recent years to provide for an administration based on European standards. One of the more significant measures is the establishment of the State Commission. This autonomous and independent body established by law is clearly an important factor for a continuous fight against corruption. The State Commission has both a preventive role and investigative powers, the latter with regard to conflicting interests of public officials.

73. Above all, the State Commission has developed the State Programme for the Prevention and Suppression of Corruption, which is an extraordinarily comprehensive piece of work covering almost every sector of Government, including the public administration. The State Commission has emphasised the importance of having political will and consensus for the State Programme; however, the GET was made aware of the fact that neither the Government nor Parliament have formally adopted this Programme. The GET noticed that the Law on Prevention of Corruption

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[8] See GRECO's First Round Compliance Report on "the former Yugoslav Republic of Macedonia" (Greco RC-I (2004)15, recommendation i).

does not explicitly call for such an adoption; however, the lack of confirmation of the Programme at the highest level was considered a major shortcoming as indicated by several interlocutors met during the visit. In the GET's view, the formal endorsement of the Programme by the Government would express a clear commitment to actively pursue anti-corruption policies. Therefore, the GET recommends **that the Government formally adopts the State Programme for the Prevention and Suppression of Corruption.**

74. Moreover the National Programme is complemented with a plan of action for the implementation of the suggested reforms ("the Matrix"). The GET was highly impressed by the level of detail as well as the timetable for the reforms included. It was of the opinion that in order to be in line with the above recommendation, it would be preferable if the Matrix had also been formally adopted by the Government.

75. The GET was briefly introduced to the massive reform efforts underway with regard to local authorities. In particular, this means that several functions, which in the past were exclusively given to State bodies, will now be dealt with by the local authorities themselves, for example, in the area of taxation. Such decentralisation will place a particular burden on the local authorities to provide for a variety of integrity and control mechanisms in their work as the reforms may open undesired avenues for misuse of power etc. The GET was not in a position to scrutinise in detail the extensive new legislation which has been provided for the reform of local authorities, but did not come across any particular shortcomings with regard to the prevention of corruption. However, the GET noted that the National Programme does not specifically focus on corruption at the local authority level. The GET recommends **to include anti-corruption measures concerning local authorities as a specific subject of the State Programme against Corruption and to see to it that they are implemented in practice.** This could serve the purpose of addressing problems in an area which in most European countries is considered as particularly vulnerable to corruption[9].

76. Transparency of public administration is yet another area of particular concern. As pointed out in several of GRECO's evaluation reports, access to public information is an important factor in creating a modern administration and is considered crucial for the prevention as well as the detection of corruption. This is recognised in the National Programme and in the Matrix, and the GET was informed that a draft Law on Free Access to Public Information had been underway since 2003. Moreover, the use of electronic communication means is a rapidly developing sector in; the GET was informed of a large number of projects aiming at making information more accessible through the Internet. In the view of the GET, this trend needs to be complemented with an e-government culture, based on principles and routines for authorities in their use of these measures (how to answer a request for information, within what time limit, etc). The GET did not come across any developed work in this particular area. The GET recommends **to urgently adopt basic legislation on access to public information and to develop modern principles and routines for "e-governance".**

77. There is a variety of controlling mechanisms and bodies monitoring public administration, internal as well as external,. The Ombudsman has the traditional task of dealing with citizens' complaints about maladministration. He cannot deal with anonymous complaints, but may initiate investigations *ex officio*. The GET took note of the yearly report (2003) of the Ombudsman, where the situation with regard to corruption in the country is described as follows: *"if we add the fact that citizens have lost their trust in the institutions of the system and the functioning of the*

[9] The authorities stated, after the visit of the GET, that the State Commission for the year 2005 has adopted an Annex to the State Programme (June 2005) on measures for the prevention of corruption in the field of local authorities.

legal state, where citizens believe that no right can be realised without a bribe, corruption, friends, nepotism, membership in a political party or alike, we can realize that the situation is really difficult for any institution to function, and even more difficult for the Ombudsman…". In this context the GET was surprised to hear that the Ombudsman, who received some 2600 cases in 2003, had "never or rarely come across cases of corruption". In the view of the GET, the Ombudsman should better emphasise its role as protector of the citizens against maladministration – including corruption-type of activities - through, for example, public information campaigns (centrally or through the local offices) or seeking ways to deal with anonymous complaints, etc. The GET recommends **to increase public awareness of the Ombudsman as a potential mechanism for processing complaints concerning corruption in the public administration.**

78. Administrative appeals in the strict sense are dealt with by administrative commissions established within the various departments and ministries and may ultimately be brought to the Supreme Court. The GET was informed that this system was not very successful at the level of the Supreme Court which had a constantly large backlog of administrative cases pending. The GET understood that there were moves (within the general judicial reform) towards the establishment of administrative tribunals, which would specialise only in administrative cases and complaints. The GET, underlining the importance of having administrative appeals tried by independent bodies and the necessity that such cases are, at least ultimately, tried by a court of law, supports this idea and recommends **to consider the introduction of specialised courts - or departments of existing courts – only focusing on administrative law and complaints.**

79. There is a variety of different State bodies with monitoring functions, in addition to those already mentioned, for example, the State Commission in respect of income declarations, the Ministry of Finance (in particular, the Financial Police) and the State Audit office and the central internal audit with regard to budget. The State Audit reported a considerable number of cases of corruption to law enforcement in 2003; however, without any feedback as to what these reports led to. The GET noted apparent unevenness in levels of communication between different bodies of the State Administration. Although operational bodies do appear to have good communication, especially about actual cases, the ministries responsible for policy appear to have only limited information about the operation of the law in practice and there appears to be room for significant improvement as regards the feedback from law enforcement authorities to those official bodies which report suspicions of crime. The GET recommends **to encourage law enforcement and prosecutorial bodies to enhance their communication with other state bodies, in particular those with an obligation to report suspicions of corruption or similar activities[10].**

80. The GET welcomed the new rules in respect of civil servants and their enforcement. With the adoption of the Law on Civil Servants this system is undergoing considerable reform towards the shaping of a completely new civil service based on modern principles. This work is successfully led by the Civil Servants'' Agency, which appears to be a well functioning body. Recruitment to the civil service is now centralised under the Agency and procedures are based on transparency (posts are announced) as well as on objective grounds (selection of candidates based on experience and tests). Consequently, the GET is of the opinion that the civil service reforms are promising. On the other hand, the large majority of public employees are not members of the civil service – and not under the control of the Civil Servants' Agency - and for this staff the situation remains less promising. Consequently, the GET recommends **to consider establishing a regulatory framework of modern administrative principles for the large number of public**

[10] The GET was informed of the fact that a Memorandum of Cooperation on pre-investigative procedure between the Prosecutor's Office and the Ministry of the Interior, Finance Police, Public Revenue Office and Customs had been signed in March 2005.

officials who are not civil servants, which correspond, to the extent possible, to the regulations applicable to civil servants.

81. Civil servants are covered by the Code of Ethics for Civil Servants as adopted by the Director of the Agency of Civil Servants in 2001. The GET was of the opinion that this document is rather wide as it covers both fundamental principles of the civil service (objectivity, independence, etc) and more practical matters (gifts, conflicts of interests, etc). The Code does not contain any obligation to report corruption. It was pointed out that the Law on Civil Servants obliges civil servants to report illegal orders (from superiors); however, there is no obligation for civil servants to report instances of corruption they come across in the service by colleagues, etc. The GET considers this to be a significant shortcoming and takes the view that an obligation in this respect should be included in the Code of Ethics for Civil Servants. The Civil Servants' Agency is in charge of the developments for training of civil servants and was at the time of the GET visit in the process of preparing a National co-ordination system of training and development. The actual training was, however, to be implemented by the respective departments concerned. The GET was informed that in-service training was not yet well-developed with regard to any category of public officials. Considering that corruption is perceived as a considerable problem throughout the entire public administration, the GET recommends **to introduce codes of conduct for all public officials including clear rules for reporting suspicions of corruption and to provide training on such matters as well as the risks of corruption, preventive measures and public awareness raising.**

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons

82. Legal entities are divided into two main categories depending on their regulation under either public or private law. The Law on Trade Companies entered into force in May 2004. According to this Law a "company" is defined as a legal person wherein one or more persons invest cash, kind or rights in assets used for joint operation and who share the profit or loss from such operation (Article 19). A company as a legal person may acquire rights and assume liabilities, etc as from the date of its entry into the Commercial registry (Article 25). There are five types of companies/legal persons:

a) General partnerships;
b) Limited liability partnerships (minimum capital 2 500 euros);
c) Limited liability companies;
d) Joint stock companies (minimum capital 10 000 Euros); and
e) Limited partnership by shares.

83. The Law on Trade Companies lists the requirements for establishing legal persons. These include that the legal person can be established by a physical or a legal person, that it must have a permanent address for its main seat and premises, that the subject of operation is determined and that there is evidence that the founder(s) of the company are not excluded from establishing a company.

Registration and transparency measures

84. Registration of legal entities is mandatory and constitutes a pre-condition for acquiring legal capacity. The registration of legal persons is not handled by a central body, instead the country has been divided into three regional areas and within each region a court is in charge of the registration (first instance courts of Skopje, Stip and Bitola). Although it is foreseen to establish one Commercial company registry, Article 83 "one-stop-shop-system", at the time of the visit by the GET there were still only the three local company registries, one for each region, run by the respective court. The GET noted that the registry in Skopje, which has some 70 000 registered legal persons, was to a large extent kept manually (cards); however, this is gradually changing and registrations and search systems are becoming computerised. The GET was informed that a central registry of legal persons was planned to be established in 2005

85. In each of the three registering courts there is one judge (assisted by administrative staff) responsible for the decisions of the registration process. The GET was informed that before the entry into force of the 2004 Law on Trade Companies there were three judges responsible for this task. The registration procedure is basically formalistic; the court does not carry out any material checks more than that the required information is submitted to each application (i.e. name of the company, founders, amount of investment capital, activities of the company, names of manager and other representatives, registered signature of the person authorised to represent the company). The identity of the founder(s) of a legal person as well as that the required capital is paid have to be certified by a notary. The procedure follows a "Rule book" adopted by the Minister of Justice which contains a checklist of required information. Non-obedience of the obligation to register a company may be sanctioned with a fine. Final decisions concerning registration may be appealed. The GET was informed that in principle an application would be processed within eight days; however, it understood that in reality the processing time was often much longer, up to 48 days. There were some indications that "facilitation payments" are being used in order to speed up the procedure.

86. Pursuant to Article 85 of the Law on Trade Companies, trade registries are publicly accessible, but any photocopy or certified copy of data is subject to a fee. Access to certain enclosures submitted by the registered company is also allowed to any person, except for those pertaining to a public trade company or a limited liability company, which could only be requested by the relevant shareholders or any person proving a legal interest in obtaining the specific information.

87. It should be noted that in addition to the commercial company registry, which attributes a court number, a company must also register at the State Statistical Bureau to obtain a company number and at the Ministry of Finance, Public Revenues Administration for a tax number.

Limitations on exercising functions in legal persons

88. Article 29.2 of the Law on Trade Companies prohibits physical persons who have been found guilty of maliciously causing bankruptcy or any person against whom bankruptcy proceedings have been initiated, any person who has failed to pay taxes, persons whose accounts have been blocked, etc, to found a company. Moreover, it is possible to disqualify persons convicted for a corruption offence from working in a managing position in a legal person (Article 38b of the Criminal Code).

Liability of legal persons

89. Administrative liability for legal persons has existed in "the former Yugoslav Republic of Macedonia" for a long time. However, this only applies to minor administrative offences. Liability of legal persons for misdemeanours exists in the Law on Misdemeanours of 1977 (Article 8).

90. With the amendment of the Criminal Code in April 2004, criminal liability was introduced for legal persons. According to the new Article 28-a, a legal person can be held liable for a criminal offence if the carrying-out of the offence was the result of an action, or failure to exercise the supervision required by the legal entity, by the responsible physical person in the legal entity or by any other person with authorisation to act on behalf of the legal entity. The act must have been committed for the benefit of the legal person. Criminal liability exists with regard to active bribery as described in Article 353 of the Criminal Code. According to Article 273.7 of the Criminal Code there is also criminal responsibility for legal persons with regard to money laundering. Trading in influence is not criminalised in respect of legal persons.

91. Foreign legal entities can be held criminally liable if they have committed the act within the national territory of "the former Yugoslav Republic of Macedonia", irrespective of whether they effectively have their headquarters in the country or not. Although the Law on Prevention of Corruption (Article 7, paragraph 2) indicates that there needs to be an effective benefit to establish liability; according to the General Part of the Criminal Code, a sanction may, however, be imposed if attempts are punishable for a particular criminal offence. Corporate criminal liability does not exclude criminal proceedings against natural persons who are perpetrators, instigators or accomplices in the case of active bribery, misuse of an official position and money laundering. Although procedures to decide on criminal liability of legal and natural persons do not necessarily need to take place at the same time, they are normally dealt with in the context of the same proceedings.

92. Due to the recent establishment of criminal liability, no information regarding investigations of offences committed by legal entities was available and it appeared as if no prosecutions of legal persons had taken place up to the time of the GET's visit[11].

93. The GET was told that, although there was a clear need, no particular training for police, prosecutors and judges concerning corporate criminal liability was available.

Sanctions

94. Article 96-a of the Criminal Code lists a wide range of available sanctions for criminal offences committed by a legal person, including fines amounting to between 100,000 and 30,000,000 denars (approximately 1,600 to 478,530 EUR), temporary or permanent ban on the legal person to perform certain professional activities and dissolution of the legal person. Moreover, Article 96-d provides for the possibility of imposing a conditional sentence. Confiscation of property derived from crime from a legal person is also possible (Article 96-e). The GET was informed that active bribery committed by a legal person would normally be punished with a fine.

95. There were no statistics available on the use of corporate sanctions in practice and there is no registry for convicted legal persons (see footnote 12).

[11] The authorities informed the GET that in 2005 (until October) five criminal cases against legal persons were pending before the courts and in one case a legal person had been convicted.

Tax deductibility

96. There is no explicit legal provision to prohibit deductibility of “facilitation payments”, bribes or other similar expenses. However, the GET was informed that tax legislation (the Profit Tax Law and Personal Income Tax Law) contains exhaustive lists of admitted deductions, according to which deduction of “facilitation payments” or bribes, etc are excluded.

Tax authorities

97. Most taxes are administered by the Public Income Administration (personal income tax, tax on profit, value-added tax, excise and other tax). The Public Income Administration has an obligation to report any kind of corruption it comes across, according to Articles 5.3, 38.3, 61.2 and 65.7 of the Law on the Prevention of Corruption. The Financial Police was established in 2002 as a special investigative body within the Ministry of Finance. The Financial Police has police powers and investigates cases of tax evasion, money laundering, and other financial crime. It is also competent to deal with corruption offences. The Financial Police has full access to tax records at the Ministry of Finance. There is a Memorandum of Understanding between the Ministries of Finance and the Interior on the co-operation between the Financial Police and the ordinary police. The GET was informed that legislation and procedures were undergoing changes within the Ministry of Finance, *inter alia*, the establishment of a working group on tax evasion and the possible establishment of an anti-corruption unit within the Ministry of Finance, similar to the existing bodies in the police and prosecution service.

98. It should be added that on-going reforms concerning delegation of state powers to local authorities will change the previously centralised tax system as the local authorities will also be responsible for tax collection.

Accounting Rules

99. According to the Law on Trade Companies, the Law on Accounting for Budgets and Budget Users and the Law on Accounting for Non-profit Organisations, all types of legal persons are obliged to maintain accounting records. Non-profit organisations, whose total value of property or annual income is less than 2,500 EUR, are not required to make financial statements and report those to the competent authorities; however, they still have to ensure that at least a cash book and a book of incomes and expenditures are kept.

100. The use of invoices or other accounting documents containing false or incomplete information is criminalised in the Criminal Code; firstly as forging a document (Article 378) and, secondly, as falsifying and destroying business books (Article 280). Both crimes are punished with fines or imprisonment of up to three years in the case of natural persons, and with fines in the case of legal persons.

Role of Accountants, Auditors and legal professionals

101. The Law on Prevention of Money Laundering (Articles 2, 5, 6 and 18) obliges investment-related institutions (e.g. banks, financial service institutions/companies, etc.), as well as those professionals dealing with payment operations (e.g. accountants, auditors, lawyers and notaries etc.) to undertake the necessary measures to identify and prevent money laundering and to subsequently report suspicions of money laundering to the Directorate for the Prevention of Money Laundering.

b. Analysis

102. The regulations concerning the forming of business companies as legal persons, their registration etc. are contained in the Law on Trade Companies, which is a very recent piece of legislation. It appears that most necessary elements are contained in the rules. What is more difficult to evaluate is to what extent the rules are implemented in practice.

103. The GET had the impression that the registration process in general was rather cumbersome and old fashioned and that it might be slow in certain cases. Furthermore, it was worrying that some information (however, not substantiated) indicated that facilitation payments might be used to speed up the registration process and to obtain the necessary documents and certificates for the process.

104. It is of crucial importance that the information available in the register is correct and reliable. This is particularly significant in respect of the prevention of legal persons being used to shield inappropriate activities such as corruption. A thorough control of the data submitted to the registration authorities is therefore necessary, but at the same time it must be understood that registration courts have a large number of applications to process. Consequently, there is a balance to be struck between an efficient registration system and important public interest protection to avoid that companies become vehicles for criminal activity. In this respect the GET noticed that the control carried out by the courts consists only of a formal check that the required documents have been submitted. No control of the identity of the persons behind the legal person is made, nor whether the required capital have actually been paid. It is true that, both the correct identity and the payment of the capital has to be certified by a notary; however, the GET learned that this was a weak point in the system and that it was not difficult to obtain false certificates. The GET finds this situation particularly critical in a country which is in the process of developing a market-orientated private sector. The GET therefore recommends **to strengthen the controlling functions of the courts in charge of the registration of legal persons with regard to the identity of the founders of legal persons as well as other pertinent information necessary for registration.** The GET noted that a better control of the registration process would require adequate staffing and logistics.

105. The registrations are carried out by three first instance courts in various regions of the country. Each Court maintains its respective registry. Although the Law on Trade Companies foresees the introduction of a central commercial registry, this process appears to be slow and at the time of the visit by the GET it had not materialised. The registries are open to the public; however, the GET, who visited the Court of Skopje, was of the opinion that access to the files, partly kept manually and partly electronically, should be much improved in order to provide for an easy access. The GET recommends **to establish a centralised registry for legal persons and to improve the material possibilities for the public to accede to information contained in the registry/ies.** Preferably, the central registry should be electronically available.

106. The Criminal Code was amended in April 2004 (entered into force in September 2004) in order to provide for criminal liability of legal persons. "The former Yugoslav Republic of Macedonia" should be commended for this move, which follows the mainstream of GRECO Members. Legal persons may be held criminally liable for active corruption (Article 358) and money laundering (Article 273), but not for trading in influence. As this is not in conformity with Article 18.1 of the Criminal Law Convention on Corruption , the GET recommends **to adopt legislative or other measures to ensure that legal persons can be held liable for the criminal offence of trading in influence, in accordance with Article 18 of the Criminal Law Convention on Corruption (ETS 173) .**

107. Moreover, the GET was also of the opinion that some kind of criminal record registry for convicted legal persons would be useful. As no such registry exists, the GET recommends **to consider the establishment of a criminal record registry for legal persons.**

108. The penal sanctions provided for in law appear to be effective, proportionate and dissuasive. However, the GET was of course aware of the fact that this new legislation had only recently been adopted. Consequently, the GET could not assess whether the sanctions applied were effective, proportionate and dissuasive (Article 19, ETS 173) also in practice. Linked to the fact that the corporate liability is new in legislation brings a need for implementation of the rules, in particular in terms of the training of those professionals who will apply them. This need was confirmed to the GET in several meetings. Consequently, the GET recommends **to establish extensive training for police, prosecutors and judges on corporate liability of legal persons and the implications of corporate liability legislation for the investigation, prosecution and adjudication of relevant cases.**

109. The GET was pleased to note that there is a growing understanding for the usefulness of a multidisciplinary approach with regard to fighting economic crime. The establishment of the Financial Police as a specialised body with police powers within the Ministry of Finance, in charge of investigating tax evasion, money laundering, etc and the discussion on extending its skills with regard to corruption and the possible establishment of a broad working group on tax evasion are examples of this.

110. The GET was also pleased to note that financial institutions as well as certain types of professionals, such as accountants and lawyers are obliged to prevent and report instances of money laundering they come across. The GET was concerned in this respect that these obligations should be accompanied by relevant training in order to become efficient and *observes that the authorities should offer training for legal professions in respect of reporting money laundering including where corruption could be a predicate offence***.**

V. CONCLUSIONS

111. Corruption in "the former Yugoslav Republic of Macedonia" remains a serious problem, which the authorities address as a high priority. The State Programme against Corruption and the Matrix for its implementation are proof of this; however, a formal adoption of the Programme by the Government) would emphasise even more their commitment to fight corruption.

112. Modern legislation concerning proceeds of crime (confiscation and seizure) as well as with regard to legal persons (registration and criminalisation, etc) have only recently been adopted. It is therefore difficult to evaluate their effectiveness. However, in both these fields, there is a clear need to implement the new legal framework and this calls for extensive training of staff who are entrusted with applying the new rules.

113. The civil service reform which aims at developing a civil service based on modern European norms and standards appears to be particularly promising. This reform is a long-term project and in addition to the already functioning recruitment procedure, massive training will be important. However, it should not be neglected that the large majority of employees in the public administration are not part of the civil service.

114. In the light of the foregoing, GRECO addresses the following recommendations to "the former Yugoslav Republic of Macedonia":

i. **to prepare a project for the implementation of the new proceeds of crime legislation on confiscation and seizure and connected issues, including the establishment of guidelines and thorough training for the officials concerned and to collect detailed information on the use, and failure to use, confiscation and interim measures in order to be able to evaluate how the system operates in practice** (paragraph 32);

ii. **that the Government formally adopts the State Programme for the Prevention and Suppression of Corruption** (paragraph 73);

iii. **to include anti-corruption measures concerning local authorities as a specific subject of the State Programme against Corruption and to see to it that they are implemented in practice** (paragraph 75);

iv. **to urgently adopt basic legislation on access to public information and to develop modern principles and routines for "e-governance"** (paragraph 76);

v. **to increase public awareness of the Ombudsman as a potential mechanism for processing complaints concerning corruption in the public administration** (paragraph 77);

vi. **to consider the introduction of specialised courts - or departments of existing courts – only focusing on administrative law and complaints** (paragraph 78);

vii. **to encourage law enforcement and prosecutorial bodies to enhance their communication with other state bodies, in particular those with an obligation to report suspicions of corruption or similar activities** (paragraph 79);

viii. **to consider establishing a regulatory framework of modern administrative principles for the large number of public officials who are not civil servants, which correspond, to the extent possible, to the regulations applicable to civil servants** (paragraph 80);

ix. **to introduce codes of conduct for all public officials including clear rules for reporting suspicions of corruption and to provide training on such matters as well as the risks of corruption, preventive measures and public awareness raising** (paragraph 81);

x. **to strengthen the controlling functions of the courts in charge of the registration of legal persons with regard to the identity of the founders of legal persons as well as other pertinent information necessary for registration** (paragraph 104);

xi. **to establish a centralised registry for legal persons and to improve the material possibilities for the public to accede to information contained in the registry/ies** (paragraph 105);

xii. **to adopt legislative or other measures to ensure that legal persons can be held liable for the criminal offence of trading in influence, in accordance with Article 18 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 106);

xiii. **to consider the establishment of a criminal record registry for legal persons** (paragraph 107);

xiv. **to establish extensive training for police, prosecutors and judges on corporate liability of legal persons and the implications of corporate liability legislation for the investigation, prosecution and adjudication of relevant cases** (paragraph 108).

115. Moreover, GRECO invites the authorities of “the former Yugoslav Republic of Macedonia” to take account of the *observations* (paragraphs 33 and 110) made in the analytical part of this report.

116. Finally, in conformity with Rule 30.2 of the Rules of procedure, GRECO invites the authorities of “the former Yugoslav Republic of Macedonia” to present a report on the implementation of the above-mentioned recommendations by 30 April 2007.