

Promoting Good Governance in the Western Balkans

Norwegian Support to Institution Building in Bosnia and Herzegovina, Macedonia and Serbia

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Preface

At the request of the Norwegian Ministry of Foreign Affairs the Agency for Public Management and eGovernment has prepared this study on institution building/public administration reform in three Western Balkan countries – Bosnia and Herzegovina, Macedonia, and Serbia. The report discusses experience with institution building in Eastern and Southeastern Europe and identifies specific areas/topics that may be the object of Norwegian project cooperation in the three countries in question. Senior advisors Anne Kalleberg and Svein Eriksen have prepared the study.

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Abbreviations and Acronyms

BiH	Bosnia and Herzegovina
CARDS	European Financing Programme for assisting the countries of the Western Balkans
CEE	Central and Eastern Europe
CEEC	Central and Eastern European Country
CoE	The Council of Europe
Difi	The Agency for Public Management and eGovernment
EEA	The European Economic Area
EI	European integration
HJC	(High) Judicial Council
IB	Institution building
IPA	Instrument for Pre-Accession Assistance
MFA	Ministry of Foreign Affairs
NPM	New Public Management
OI	Ombudsman institution
OSCE	Organization for Security and Co-operation in Europe
PA	Public administration
PAR	Public administration reform
Phare	Poland Hungary Aid for the Reconstruction of the Economy
SAA	Stability and Association Agreement
SAP	Stability and Association Process
SFRJ	Socijalistička Federativna Republika Jugoslavija, (the Socialist Federal Republic of Yugoslavia)
SIGMA	Support for Improvement in Government and Management - Sigma is a joint initiative of the European Union (EU) and the Organisation for Economic Cooperation and Development (OECD), principally financed by the EU.
SSR	Security sector reform
TA	Technical assistance
UNDP	United Nations Development Programme
WMD	Weapons of mass destruction

Summary

Chapter 1 Introduction

In this chapter the Difi project team

- presents and discusses the mandate of the current study
- defines a set of criteria which proposals eligible for Norwegian support should meet.

Chapter 2 Institution building: the concept and its implications

In this chapter the Difi project team argues that

- institution building (IB) is the creation of governance capacities. It entails the dismantling and/or reformation of old institutions as well as the establishment of new ones. In particular IB aims at enhancing *i.a.* the regularity, professionalism, efficiency and effectiveness of the system of public administration. Efforts to enhance institutional capacities may focus on *horizontal* management systems and *vertical* systems for service/policy delivery
- despite the enormous difficulties encountered in attempts to (re)build institutions in previous communist countries, the experience of the CEECs suggests that it is fully possible, even on a large scale. The political transformations of the region, cutting across all sectors of society, occurring rapidly and without much violence or foreign occupation have been considered truly momentous. However, we cannot infer that this process is irreversible or that it can be easily replicated in Western Balkan states.
- after the collapse of the East Block it is increasingly realized that the instability stemming from weak states has serious security and economic repercussions for the international community. Several governments have argued that their countries now are threatened less by dominant and successful states than by failing ones. This assessment is shared by leading academics.

Chapter 3 Institution building in the Western Balkans

In this chapter the Difi project team argues that

- the three countries under study have made progress, albeit uneven in public administration development during the past 15 years. They all rank behind CEECs in ratings of key variables such as governmental effectiveness, the rule of law, and control of corruption. The progress of reforms may seem to have become more sluggish or even stalled in the last few years.
- The current economic and financial crisis has hit the Western Balkan states particularly hard and has ambiguous consequences for the future of the civil service in these countries. On the one hand, it puts a further squeeze on public finances, which is a blow to civil service reformers. On the other hand, it is conceivable that a new role for the state in the economy will affect the

perception of the civil service by the public and by political actors so that the conditions for reform of the civil service will improve in the years to come.

- While the reform orientation/ reform effectiveness of Serbian and Macedonian governments appears to fluctuate between “relatively positive” and “relatively negative”, the political will and ability of BiH leaders are more clearly on the negative side. Thus, it may seem doubtful if foreign IB assistance may by itself contribute to creating a self-sustaining Bosnian state. While such support may ensure that administrative functions are performed as long as aid is provided, national capacity may not be increased on a permanent basis, and the country may be likely to revert to its former situation once the international community loses interest and pulls out of BiH.
- Though there is broad agreement that the prospect of EU membership is “the one glue that holds the Western Balkans on the path of reform” the current EU policies will not automatically have the same transformative effect on the Western Balkans as the pre-accession process had in the CEECs. There is a critical difference – that of weak states and protectorates – between previous rounds of EU enlargement and the current process of EU integration in the Western Balkans.
- The extent to which CEECs have profited from foreign aid has depended on the characteristics of domestic as well as external actors. Insufficient or dysfunctional political involvement as well as administrative bottlenecks in the recipient country have affected assistance programmes negatively.

Chapter 4 Norwegian assistance to institution building – general suggestions

In this chapter the Difi project team argues that

- advice on strategic priorities for Norwegian IB support must go beyond simply listing a series of separate project ideas. We define 4 broad priority areas for Norwegian assistance within which we recommend that individual projects be selected. Moreover, we discuss possible thematic pitfalls in project design and suggest four concerns or IB-perspectives that we believe should inform the development of concrete project proposals.
- stronger thematic concentration of IB-related assistance makes it easier for aid providers to develop in-depth knowledge, learn from experience and transfer knowledge across projects. In short, a more focused aid package may enhance professionalism in project development and implementation.
- broadly, the proposed target areas should be uniform for all three countries as BiH, Macedonia, and Serbia face similar types of problems and have similar systems/frameworks of PA.

The Difi project team recommends that

- Norwegian IB support be concentrated around the following issues (i) the rule of law, (ii) security sector reform, (iii) public administration reform, and (iii) regulatory frameworks for market economy
- in the area of the *rule of law* attention is given to *i.a.* issues relating to the management of the justice systems (*i.a.* to guarantee separation of powers), to ensuring regularity in the performance of government and administrative

- decisions (legality of the administration), and to establishing/further developing oversight mechanisms (guarantee of fundamental rights and freedoms and equality before the law)
- in the area of *security sector reform* attention is given to issues relating to *i.a.* strategic planning/policy making, accountability, and HRM of security institutions
 - in the area of *public administration reform* particular attention is given to efforts addressing *i.a.* challenges regarding (i) weak capacities for policy development and legal drafting, (ii) insufficient/inadequately implemented legal frameworks for administration and, (iii) lack of professionalism in the civil service
 - in the area of *regulatory mechanisms for the market economy* attention is given to issues regarding (i) the system of regulatory agencies, and (ii) capacity building in individual regulatory bodies
 - the Norwegian MFA takes care not to initiate or support projects that are based on approaches which do not fit in with the local administrative or legal context. Caution is especially warranted with regard to reform efforts aiming at modernising the public sector by applying organisational and operational principles from the private business sector (managerialism, contractualism etc.), which are likely to meet with institutional, cognitive and normative barriers in Western Balkan systems of government.
 - within the Norwegian IB portfolio priority be given to projects aiming at establishing essential administrative and legal regularity rather than introducing advanced and “modern” concepts of public management. Whenever project proposals including the latter type of approaches are considered, it should be ascertained whether necessary regularity has already been established, and if not, if the focus of the proposed project needs to be revised.
 - large-scale/long-term projects pay careful attention to and consider measures to address the interconnectedness of IB-topics:
 - a. Both IT- and capacity building projects (regarding e.g. training) should in principle support and be linked to or pay careful attention to other reform efforts such as implementation of new/revised legal frameworks, and working methods or establishment of new/transformed institutions. IT projects should not be implemented unless it has been established that procedures/documents targeted by the projects are of sufficient quality, and that the responsible institutions have or will have necessary resources to manage and update the IT systems in question,
 - b. projects aiming at preparing new legal frameworks should ascertain (i) the implementability of new regulations, *i.e.* administrative and economic consequences of the new regulations including flanking measures that are necessary to ensure sustainability, and (ii) how the project may possibly assist in (preparing) the practical implementation,
 - c. projects concerning new working methods should consider carefully (i) to what extent possible reforms necessitate review of legal frameworks and (ii) other issues related to implementability.

- projects devoted to particular institutions or individual governmental sectors pay careful attention to
 - a. the ways in which the performance of the targeted organizations are dependent on other governmental bodies and cross-cutting administrative regulations
 - b. the relevance and possibility of linking up with other on-going reform processes regarding for instance the general public administration.

1 Introduction

1.1 The mandate and organization of the report

Institution building (IB) and assistance to public administration reform (PAR) will be central to the Norwegian Western Balkan policy in the years to come. The Ministry of Foreign Affairs (MFA) has asked the Agency for Public Management and eGovernment (Difi) to identify specific problem areas that may be the object of Norwegian project cooperation with countries in the region, Serbia, Bosnia and Herzegovina (BiH), and Macedonia. The main goal of Difi's assignment is to prepare a draft "strategic report" or a "needs analysis". In November 2008 MFA endorsed the following mandate of the study:

- 1) A brief presentation of experience with institution building in Eastern and Southeastern Europe: Implications for Norwegian policies towards the Western Balkan states
- 2) For each of the three countries, a survey of: (i) status of the country's efforts at public administration reform, including international organizations' assessment of the extent of progress, (ii) Norwegian priorities / guidelines concerning assistance, (iii) the country's priorities for public administration reform in the next few years, (iv) requirements / recommendations for reforms as a result of international agreements, etc., (v) plans for international assistance to institution building in the coming years, and (vi) possibilities for Norwegian assistance to institution building
- 3) The most concrete recommendations on areas for Norwegian IB-support in a 3-year perspective.

Regarding the interpretation of the mandate, we want to emphasize:

Under item 2) we are required to make surveys of the recipient countries' priorities for public administration reform (2 iii), requirements / recommendations for reforms as a result of international agreements (2 iv), and plans for international assistance to institution building (2 v). It will take too long and not be particularly appropriate to give a separate discussion of each of these themes. Instead, we deal with them in relation to each of the priority areas defined in chapter 4 and the individual project ideas outlined for each of the countries.

Under item 3) we are asked to make concrete recommendations for areas of Norwegian IB support. Advice on strategic priorities for Norwegian IB support must go beyond simply listing a series of separate project ideas. Thus, we identify four main areas for Norwegian support and within each of these a series of key issues which in turn guide our selection of potential projects in each country. Furthermore, we describe a range of IB perspectives and considerations that we recommend govern the design of future IB projects.

Although we recommend a concentration on four main areas and the provision of a set of guidelines for project design, it is not in our mandate to assess how quickly or to what extent MFA's priorities should be changed. We have not reviewed the ongoing projects and the extent to which our recommendations may apply to these.

Only the general analyses and recommendations are included in the report itself. The detailed proposals regarding each of the countries in question are discussed in a separate annex. The report is organized as follows:

Chapter	Title	Content
1	Introduction	presents the mandate for and the analytical approach of the study
2	Institution building: the concept and its implications	introduces and defines the concept of institutional building and discusses the complexity and importance of this activity and how it affects the interests of the international community. The chapter addresses item 1) of the mandate
3	Institution building in the Western Balkans	discusses current PAR-related challenges across the Western Balkans and factors that influence reform. The chapter deals with items 1) and 2) of the mandate
4	Norwegian support-general suggestions	presents recommendations regarding choices of areas for support and IB-perspectives. The chapter answers items 2) and 3) of the mandate
	Annex	presents recommendations regarding project ideas for each of the three countries. The annex answers items 2) and 3) of the mandate

It is a widely accepted principle – repeatedly stated by *i.a.* Norwegian governments – that public administration reform should be evidence based. This standard should apply for support to institution building in other countries not least because of the complexity of the issues involved. Thus, we place emphasis on describing and analysing the local reform context and the experience gained with PAR up to now and on establishing the link between these general factors and concrete project ideas.

To be able to identify relevant areas of support we will chart the needs of each of the three countries, mainly on the basis of the most recent EU/SIGMA assessments.¹ There are strong reasons for relying on this type of documentation. The EU/SIGMA reports (i) provide the most systematic and comprehensive analyses currently available of candidates' and potential candidates' systems of public administration, (ii) are regularly updated, annually or biannually, (iii) are prepared by leading international experts, and (iv) guide the reform agenda and motivate reform-oriented actors of candidate and potential candidate countries. In addition, we will also consult *i.a.* CoE and OSCE studies covering areas that are not included in SIGMA assessments, concerning *i.a.* police and justice reform.

¹ We will mainly use the most recent versions of two sets of documents – the SIGMA assessments and the Commission progress reports published on 5 November 2008. In addition to the SIGMA assessments our recommendations will also take into careful consideration the conclusions of a SIGMA paper devoted exclusively to public administration reform in the Western Balkans, see footnote 4.

The survey of available documentation enables us to broadly outline the accession-related reform agenda. From this catalogue of institutional challenges and on the basis of a set of criteria we will identify four groups of issues as priority areas for future Norwegian IB support. These strategic priorities will in turn guide our recommendations regarding concrete project ideas for the 2010-2012 period.

In addition to being based on the documents mentioned above, our recommendations are derived from interviews with Norwegian MFA officials/local staff managing the Norwegian aid package, representatives of domestic state authorities, SIGMA staff² and other international experts (mainly EU-Commission, OSCE, CoE, and UNDP).

The meetings with domestic authorities were prepared with assistance from the Norwegian embassies. We sent out lists of around 10 more or less identical questions well ahead of the interviews. The extent and quality of the information received varied somewhat from authority to authority and from country to country. Broadly speaking, we got the most extensive information in Serbia. Here the answers were supported by written material to a greater extent than in the other countries. The descriptions of potential project ideas are therefore a little more complex for Serbia than Macedonia and especially BiH.

1.2 The analytical approach

Our point of departure is an understanding that a key objective of Norwegian IB support is institutional development in the recipient countries. This assumption is not as self-evident as it may seem. It is well established that external assistance may serve a wide variety of purposes, linked for instance to the foreign or domestic policies of the donor country. The various purposes may be more or less in harmony and not all of them supportive of or relevant to public administration reform in beneficiary countries.³ This study will justify its recommendations solely on the basis of their perceived effect on institutional improvement in the three countries under consideration.

There are a number of ways – relating to the use of Western leverage and the establishment of linkages to the West – in which external actors may influence institutional developments in transition countries. Although, it is outside our terms of reference to assess the full range of policy instruments which the Norwegian government may employ to promote public administration reform in Western Balkans states, we will emphasize the need to coordinate the use of diplomatic/political measures with the provision of IB-related aid. As discussed below, lack of progress in the region is to a significant extent related to political circumstances well outside the reach of classical IB support.

² In addition to studying the SIGMA papers mentioned above, the Difi project team interviewed SIGMA Western Balkans experts in Paris 30 November 2008.

³ See for instance Sobis and de Vries, “Pawns on a Chessboard: The role of donor organisations during the transition process” in David Coombes and Laszlo Vass (eds), *Restoring Professionalism and Accountability* (NISPAcee, Bratislava, 2007), 189-216.

The proposals eligible for Norwegian IB support should, in principle, satisfy the following criteria:

- The proposals should include significant IB elements, *i.e.* topics and focus areas discussed in section 2.1. and it should be sufficiently plausible so that the elements chosen are conducive to improved performance of the public institution(s) in question.
- IB must be seen to contribute to the overriding priorities of the countries of the region and in the current circumstances to the priorities of the international community. Current overriding priorities are: (i) consolidation of peace and security, (ii) resolution of outstanding issues in post-conflict settlements, and (iii) re-launching of economic growth.⁴
- The proposals should be included in – or at least be relevant to – the EU integration process and processes of accession to other international organizations, *i.a.* NATO and the Council of Europe. The perspective of membership in the EU is a mechanism that makes it possible for governments to push through extensive and often painful institutional reforms. Arguably, the broad popular and political support for EI ensures that the reform agenda remains stable across elections and changes of government.
- The proposals should be reflected in government programmes/strategies or otherwise enjoy sufficient leadership backing. EU – or other international relevance – does not automatically translate into active support. Particularly the EU agenda is large and all areas included cannot be addressed at the same time. To be relevant to reform, accession-related measures have to be prioritized and arranged in a sequence.
- The proposals should be in line with long-term goals for Norwegian support to the Western Balkans. According to the Norwegian MFA, “The overall objective of Norwegian assistance [...] is to promote peace, reconciliation, Rule of Law and democracy in the region. The main purpose of Norway’s project assistance to the countries in the Western Balkans is to continue supporting processes related to regional stabilisation and Euro-Atlantic integration.”⁵
- The Norwegian assistance should be more strategically oriented than previously. NMFA officials argue that currently the assistance is scattered among a relatively large number of small projects with limited internal coherence. Thus, the NMFA is “aiming at increased geographical and thematic concentration of Norwegian assistance. At the same time, Norway should contribute to increased coordination of international assistance, *i.e.* through closer cooperation with EU and the Nordic countries.”⁶
- There should be a minimum sufficient level of local capacities to manage and monitor assistance. If there are serious administrative problems or other

⁴ SIGMA Public Administration in the Balkans: Overview (2004) available at <http://www.sigmaxweb.org/dataoecd/45/2/34862245.pdf>.

⁵ See document available at <http://www.norveska.ba/Norwegian+Government+Project+Assistance/Government+Fund+guidelines.htm>.

⁶ *Ibid.*

bottlenecks, ways should be considered to neutralize these difficulties as far as possible before projects are implemented.

- There should be no risk of overlap or conflict with other externally-funded activities.

There are, however, a number of *caveats* to be attached to this list of criteria:

- Increasingly, donors are concentrating their support to Western Balkan countries on accession-related or accession-relevant IB processes. Most notably, the largest share of IPA funding is earmarked for transition assistance and IB. Thus, it may seem that the criterion of EU relevance may conflict with the condition that Norwegian support does not duplicate other donor assistance. However, due to particularities of the IPA mechanism (uncertainties regarding EU's actual use of funds, the required size of projects, and the considerable time gap between the conception and implementation of projects – two years or more) there is still substantial scope for bilateral assistance, as long as it can be provided with the necessary speed and flexibility. The current study will not exclude from consideration topics that are broadly included in proposals for IPA funding, provided that Norwegian funding can be targeted at clearly identified issues that are complementary to and not duplicating activities of the IPA project.
- Although we check to what extent project topics are included in domestic plans or strategies, it must be admitted that the actual significance of local priorities may be hard to determine. As we shall see, in all countries studied priority setting mechanisms across government are inadequate. There is a large number of government strategies, in some countries allegedly upwards of 30, designed according to different patterns, often without action plans included and clearly inconsistent in key areas and in need of updating. At least some of these documents are little else than wish lists from which governments and ministers more or less randomly may pick and choose which items to accept and which to ignore. Thus, government strategies/plans have to be interpreted and used with some caution.
- There are several ways in which IB-related aid may be made more strategic. The most radical method is to attempt to address comprehensively in large projects all major variables affecting the functioning of public bodies/the application of instruments of public policy. No matter how attractive this approach may seem on paper, it is not well suited to the *modus operandi* of recipient governments, not least their limited capacities for *i.a.* policy development and coordination which seriously reduce their ability to develop and implement large scale public administration reforms. If the recipient government is unable to behave strategically, it is also difficult for the international aid community to act in accordance with norms of holistic rationality. Thus, a more realistic approach to reform is the incremental method which, if sustained for long enough, also may bring about radical transformations. This said, a key message of our study regards the interrelatedness of various IB elements and the need to see them as parts of a coherent whole. We suggest strategic guidelines concerning the choice of IB- perspectives, and the choice of topical areas for support.

- In this report, it has not been possible to assess the reception capacity of possible beneficiary institutions. This issue will have to be addressed when concrete project proposals have been submitted .

2 Institution building: the concept and its implications

2.1 What do we understand by “institution building”?

Institution building is the creation of governance capacities. It entails the dismantling and/or reformation of old institutions as well as the establishment of new ones. In particular IB aims at enhancing *i.a.* the regularity, professionalism, efficiency and effectiveness of the system of public administration. Efforts to enhance institutional capacities may focus on *horizontal* management systems and *vertical* systems for service/policy delivery.

- *Horizontal* management systems condition how public services/policies are produced. They cut across all sectors of public administration and include arrangements for *i.a.* public procurement, policy making, law preparation, public finance management and administrative justice. Cross-cutting issues related to *e.g.* European integration and public administration reform, belong to this category.
- *The vertical* systems for service/policy delivery are the various substantive policy areas into which the work of government is divided, *e.g.* transport, defence, and culture.

Within these two broad areas of focus, efforts at IB may address various topics, mainly related to

- *the legal framework* of the public administration (defining *i.a.* the tasks and responsibilities of public administration authorities)
- *processes* of the public administration (the working methods of public administration authorities, the ways in which tasks are prepared, approved and implemented)
- *institutions* of the public administration (*e.g.* the system of public administration authorities and the establishment, organization and staffing of individual authorities)
- *the personnel* of the public administration (*e.g.* the recruitment, promotion and training of government officials)

Focus areas and topics may be combined in the way shown in table 1 indicating the scope of possible IB related issues.

Table 1 Categories of IB related issues

IB topics IB areas of focus	Legal framework	Processes	Institutions	Personnel
Horizontal systems	e.g. public procurement legislation	e.g. methods for managing public tenders	e.g. the organization and staffing of the State Public Procurement Agency	e.g. the training of employees working with public procurement in all public administration bodies
Vertical systems	e.g. road transport legislation	e.g. methods for contacting out road building projects	e.g. the organization and staffing of the State Road Agency	e.g. the training of employees of the Ministry of Transport and the State Road Agency

Generally, major challenges of the public administration have horizontal as well as vertical components. Horizontal principles relating to *i.a.* the transparency and reliability of the public service may be difficult to implement because of weaknesses in vertical administrative systems. By the same token weaknesses in vertical systems are often rooted outside the systems themselves. For instance inadequate transport planning and budgeting may be due to the lack of proper systems for planning and budgeting on the level of government, and thus be a problem of all ministries and not just the Ministry of Transport and Communications.

There may be different opinions on which IB topics and areas of focus should be given priority. Public administration reform (PAR) for European integration (EI) is primarily about vertical administrative capacities. The *acquis* on horizontal management systems is weak. However, the experience of EU candidate countries suggests that a one-sided emphasis on vertical administrative capacities will not create sustainable reform.⁷ Therefore, horizontal and vertical perspectives should be better balanced.

Many externally funded projects focus on individual organizations - for instance in the area of EU integration - and intentionally or unintentionally create "island of excellence". However, most public services/functions are not produced by individual organizations. They are delivered by systems with many actors and types of components. Focusing on one element in the system may only marginally change the quality of services or the way in which they are delivered.

The perceived implementability of projects does not necessarily correlate positively with their prospective impact. Projects that are easy to put into operation, for instance because they focus on just one institution, may have limited effect while projects with the greatest potential to make an impact may be institutionally complex and difficult to manage. Thus, donors often face difficult trade-offs between relevance and manageability when deciding which projects they should fund.

⁷ See SIGMA, *op. cit.* footnote 4.

2.2 The importance and complexity of institution building

It turns out that one of the greatest mistakes of the early transition years across CEECs was underestimating the importance of a strong state in the consolidation of liberal democracy, and even equating the decrease of state power with the growth of democracy.⁸ During the past decade there has been a growing recognition that robust public institutions are crucial preconditions for democracy, rule of law and the welfare and stability of societies:

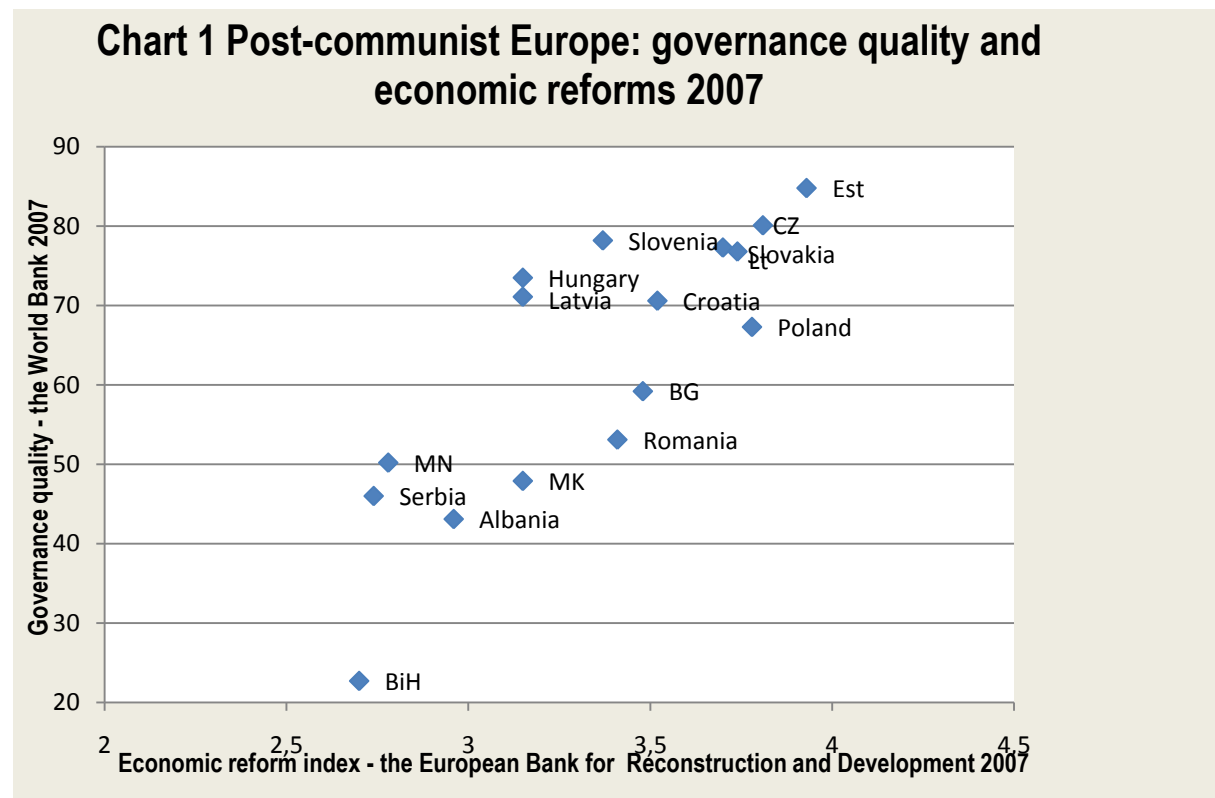
- IB is inextricably linked to the development of democracy. Trust and participation in government are crucial, and these are based both on the effectiveness of government action and the transparency and fairness of government process. The absence of efficient state agencies, the underdeveloped capacity of the state to raise revenue, and the inability of the state to shape strategies for economic development all undermine democratization. State capacity has become more crucial than ever because of the range of technical and political changes states now face. States that are currently coping with the challenges of democratization are also dealing with *i.a.* the consequences of increasing economic independence, globalization, a relative loss of fiscal control and the growing authority of markets.⁹
- The relationship between the development of systems of public administration and the advance of modern capitalism has been long established. There are indications that when the quality of public administration is improved, income and investments grow. By the same token, poor institutions induce poverty traps. The income gap between rich and poor countries will increase if poor countries' institutions do not improve relative to their richer counterparts.¹⁰ A relatively recent empirical study indicates that legal rational bureaucracies of the pattern described by the German sociologist Max Weber promote long-term economic growth.¹¹ Chart 1 below indicates that there is a relatively clear correlation between governance quality and economic reform across post-communist Europe.

⁸ Grzegorz Ekiert, Jan Kubik, and Milada Anna Vachudova, "Democracy in the Post-Communist World: An Unending Quest", 21(1) *East European Politics and Societies* (2007), 7-30, 15.

⁹ Jean Grugel, *Democratization. A critical introduction* (Palgrave, Houndsmills, 2002), 83 and 84.

¹⁰ See for instance, Dani Rodrik and Arvind Subramanian, "The Primacy of Institutions - and what this does and does not mean", *Finance & Development* (2003), 31-34.

¹¹ James E. Rauch, and Peter B. Evans, "Bureaucratic Structure and Bureaucratic Performance in Less Developed Countries", (75) *Journal of Public Economics* (2000), 49-71.



While IB may be hugely important, sustainable reform of public institutions is difficult to achieve, and promoting it through external support is particularly challenging:

- Sustainable IB takes long time. While new laws and organisations may be put in place swiftly, it may take years, even decades before the norms underlying these frameworks are understood and internalized by those acting within the new organisations and practicing the new laws.
- There is no blueprint. Technical assistance tends to be successful in sectors with clear goals, familiar techniques, measurable results and strong lobbies pressing for reforms of the administration.¹² These features are not easily replicable, particularly not in the area of general public administration.
- Foreign models may not be fully relevant. A post-communist country is not a *tabula rasa* or blank page that can be inscribed with foreign ideas. Such ideas will be ignored, interpreted or rejected in consequence of local conditions. For foreigners who do not speak the local language it may be difficult to fully grasp the informal, cultural determinants of organisational behaviour and thus to provide advice that is entirely adapted to the local context.
- Foreign advice may not be welcome. Since public administration reform affects the very identity of the state and goes to the root of power of those currently forming the government, the rulers may be reluctant to accept advice from foreigners in such a sensitive domain.
- There is no consensus on the content of the aid package. While the beneficiary may have one set of objectives – most often acquisition of

¹² The World Bank, *Capacity Building in Africa. An OED Evaluation of World Bank Support* (World Bank, Washington, DC, 2005).

equipment – the donor has another – technical assistance through advisors who provide expertise and training.

However, despite the enormous difficulties encountered in attempts to (re)build institutions in previous communist countries, the experience of the CEECs suggests that it is fully possible, even at a large scale. The political transformations of the region, cutting across all sectors of society, occurring fast, with little violence and without foreign occupation have been considered truly momentous.¹³ According to Professor Janos Kornai, the most significant explanation for the rapidity of the transformation can be found in the external world, particularly in the use of foreign examples. From the operational forms of corporate management and banking systems to political institutions, there was hardly an area of social activity where foreign examples have not been followed.¹⁴ However, he also adds, “It is easy enough to recognize the model, but it is a much more difficult task to learn how to use it, and to adapt it to the local conditions. If learning were not a difficult and contradictory process, then the realization of the bulk of the transformation would not have taken fifteen years to complete, and we would not need further cumbersome work to apply the model more effectively.”¹⁵

The evaluation of EU assistance to CEECs concluded along similar lines that, “On the whole, the results and impacts of [EU] support were rather mixed as reflected in the significant differences in the performance of sectors. [...] Nevertheless, given the scale and complexity of the pre-accession objectives and the constraints of the very limited implementation period, what has been done with [EU] support is indeed remarkable.”¹⁶

Although the institutional development across CEEC may have been momentous in the years leading up to EU membership, we cannot infer that this progress is irreversible or that it can be easily replicated in Western Balkan states. We will return to both questions below.

2.3 IB support and the interests of the international community

Norway supports IB in a number of states in Europe and elsewhere. The support is given partly for altruistic reasons - because it is useful for the beneficiary countries – and partly for reasons of national self interest – because it is of political importance for Norway. The idea that IB support is linked to and may serve Norwegian interests has been gaining ground during the past couple of decades.¹⁷

¹³ Janos Kornai, “The Great Transformation of Central Eastern Europe: Success and Disappointment”, Presidential Address, delivered at the 14th World Congress of the International Economic Association in Marrakech, Morocco on 29 August, 2005, available at

http://www.colbud.hu/fellows/kornai_publication/paperthegreattransfn_english.pdf.

¹⁴ *Ibid.*

¹⁵ *Ibid.* at 20, 21.

¹⁶ “Support to Enlargement – What does Evaluation Show? Ex post Evaluation of Phare support allocated between 1999-2001 with a brief review of post 2001 allocation”, Consolidated Summary Report, European Commission Directorate-General Enlargement, July 2007, 1.

¹⁷ Leiv Lunde og Henrik Thune *et al.*, *Norske interesser. Utenrikspolitik for en globalisert verden* (Oslo, Cappelen Damm 2008).

After the collapse of the East Block it is increasingly realized that the instability stemming from weak states has serious security and economic repercussions for the international community. Several governments have argued that their countries now are threatened less by dominant and successful states than by failing ones.¹⁸ This assessment is shared by leading academics.¹⁹

Several newly independent republics of the former Soviet Union and Yugoslavia belong to the weak state category²⁰ and have joined the more traditional members of this group of countries in Africa, Latin America and Asia. In most of the 7 new states on the territory of ex-Yugoslavia the experience of independent statehood over the past century has been a precarious one, beset by external insecurity and internal weakness. During the Cold War internal conflicts within the weak states did not destabilize the international systems, partly because the two superpowers bolstered weak states within their camps and partly because communism froze national and minority problems, thus creating a false image of stability.

Today poorly performing countries of the Western Balkans are linked to a series of perils such as large-scale migration, terrorism, regional instability, and international crime that may spill over into other European countries and beyond.

Although the causes of these threats and the mechanisms of spillover are complex and may not be fully understood, it seems plausible that weak state capacities – often together with inadequate political will – are central to transnational dangers. Table 2 below summarizes the conclusions of a recent study analyzing the causal relationships between capacity and will on the one hand and various types of international hazards on the other.²¹ Although the study has a wider scope than the Western Balkans it makes explicit references to threats emanating from this region.

¹⁸ See for instance The National Security Strategy of the United States of America (September 2002), 1, available at <http://www.whitehouse.gov/nsc/nss.html>.

¹⁹ See for instance Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Ithaca, N.Y.: Cornell University Press, 2004), 92.

²⁰ During the 1991-2005 period 22 new states were established in Europe and on the territory of the previous Soviet Union, Valerie Bunce, "The National Idea: Imperial Legacies and Post-Communist Pathways in Eastern Europe", 19(3) *East European Politics and Societies* (2005), 406-442.

²¹ Stewart Patrick, "Weak States and Global Threats: Facts or Fiction?" 29(2) *The Washington Quarterly*, (2006), 27-53, 47.

Table 2 Tentative links between capacity/will and transnational threats

Causal factor Threat	Capacity	Will
Terrorism		X
WMD proliferation		X
Small Arms Proliferation	x	
Crime	X	X
Disease	X	
Energy Insecurity	X	X
Regional Instability	x	X

The table seems to indicate that threats currently associated with Western Balkan states are related to governance weaknesses and that in consequence IB related support may assist in reducing these deficiencies and hence the threats emanating from the region. However, the table also suggests that the relative role of capacity versus will tends to vary, and that an exclusive emphasis on the former may be necessary but not sufficient to achieve crucial reforms. In order to influence the political will and priorities of Balkan governments, other policy instruments will have to be employed, for instance related to governments' vulnerability to external pressure.

Although integrating Western Balkan states into the EU and NATO may reduce some of the gravest hazards associated with low state capacity, the achievement of membership does not in itself put an end to the potential risks emanating from these countries or the preoccupation by foreign governments with the administrative capacities of Balkan states. This is particularly the case in relation to the EU integration process.

Since the EU is not a state the union has no apparatus of its own for the implementation of the *acquis*. EU laws are implemented by the public administrations of the member states. These administrations are required to put into practice EU directives and recommendations in such a way that European citizens are given the same rights and obligations, irrespective of the country in which they live.

Over the last couple of decades key responsibilities have increasingly been delegated to member states acting as agents of the Union at the national level and significantly increased the administrative implications and challenges of membership. The enlarged scope of EU activities has increased interconnections and interdependencies among member states; failure of one member country to enforce EU legislation will increasingly affect businesses, individuals, and governments of other member states. As party to the EEA- and Schengen-treaties this development involves Norway directly.

Although there is no *acquis* for public administration and no major implementation crisis has emerged in the EU, there is an increasing 'peer-pressure' among member states to ensure that joint decisions are properly implemented all across the Union. This preoccupation with the public governance of member states is reflected in Article 111-285 of the Constitutional Treaty of the EU adopted on 29 October 2004 (now article 176-D of the Lisbon Treaty), stipulating that national governance

structures are matters of common interest for all member states.²² The attention to administrative capacity is particularly great as regards future member states – not least the states of the Western Balkans.

²² “Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.”

3 Institution building in the Western Balkans

3.1 The Western Balkans–independent countries joined together

We are dealing with three separate, independent countries that are different in several respects, not least because of their pre 1918-history. Differences amongst and within the countries include *i.a.* religion, industrial development and administrative systems. In contrast to Macedonia and BiH Serbia has established administrative traditions that for long periods have influenced Yugoslav systems of government.²³ Whereas the BiH administrative system is so fragmented that – according to some students – it cannot be fully understood by conventional organization theory²⁴, Serbia and Macedonia can rely on fairly coherent bureaucracies.

The countries are similar in that all of them have a common heritage of modern history, through their participation in the Kingdom of Serbs, Croats, and Slovenes/Yugoslavia from 1918 and then in the Socialist Federal Republic of Yugoslavia (SFRJ) after 1945. This heritage has left many traces in law, institutions and exposure to administrative concepts. The current systems of public administrations in all ex-Yugoslav states are extensions of the previous regional or republican systems – and not the federal system of SFRJ. While the latter was responsible for policy making the former systems were more charged with implementing policies outlined by federal institutions than with developing policies themselves. Almost two decades after the dissolution of Yugoslavia this heritage is still evident across the region.

3.2 Current challenges

The three countries under study have made progress, albeit uneven, in public administration development during the past 15 years. They all rank behind CEECs in ratings of key variables such as governmental effectiveness, the rule of law, and control of corruption, see chart 2 below. Moreover, in the Western Balkans the progress of reforms regarding the state apparatus, the justice sector and public administration is significantly slower than developments in the areas of trade, energy and infrastructure²⁵ and may seem to have become more sluggish or even stalled in the last few years. After the war in Kosovo the divergence between the countries of the Western Balkans has increased.²⁶

In general people in the Western Balkan countries are remote and alienated from domestic governmental institutions. Interest in current affairs is low and only a

²³ The Kingdom of Serbs, Croats and Slovenes, established in 1918, relied mainly on the legislation of the Kingdom of Serbia prior to the adoption of the new constitution in 1921, which was in turn based on the liberal Serbian constitution of 1903. The new common state of the south Slavs was ruled by the Serbian Karadjordjevic dynasty. Serbian legal experts see the Kingdom of Serbs, Croats and Slovenes as a continuation of the previous Serbian state. See Ana S. Trbovic, *A Legal Geography of Yugoslavia's Disintegration* (Oxford University Press, New York, 2008), 69.

²⁴ Lorenzo Cecchi, "Administrative Capacity and Democratization: Bosnia-Herzegovina, Croatia and Serbia in the 21st Century", thesis, University of Florence 2007-2008, available at <http://www.tesionline.com/intl/thesis.jsp?id=25278>.

²⁵ Marie-Janine Calic, "Strategien zur Europäisierung des Westlichen Balkans. Der Stabilisierungs- und Assoziierungsprozeß auf dem Prüfstand", 53(1) *Südosteuropa* (2005), 1-37.

²⁶ *Ibid.*

minority feel represented by any party or politician. Kosovo and Montenegro are the only countries where a majority speak positively about their government's performance. In comparison, dissatisfaction is manifest in Bosnia and Herzegovina, where two thirds give a negative assessment. Trust in governmental institutions is low; the church and other religious organisations come on top in almost all of the countries.²⁷

While formal institutions may be weak and distorted, informal ones are deeply entrenched. In few other regions of Europe is the gap between prescribed procedures and everyday practice so marked as in Southeast Europe. Regarding BiH a UN study observes, "[...] inefficient and ineffective formal institutions act as motive for individuals and businesses to invest in so-called 'informal' institutions in order to ensure that matters which are the responsibility of government are actually done [...]."²⁸ The same informal loyalties which help people carry on under difficult conditions are also those which promote smuggling operations, corrupt police, and keeping silent. While informal social mechanisms in the Balkans are the means which help society survive, they may prove noticeably resistant to efforts at modernisation and institution building.²⁹

The current economic and financial crisis has hit Western Balkan states hard and has ambiguous consequences for the future of the civil service in these countries. On the one hand, it puts a further squeeze on public finances, which is a setback for civil service reformers, especially when taking into account the need for increased investment in civil service salary systems. On the other hand, it is conceivable that a new role for the state in the economy will affect the perception of the civil service by the public and by political actors. If a change in perception is accompanied by the recognition that the quality of the civil service can make a real difference in terms of both the efficiency and effectiveness of the public sector and the intervention of the state in the market, then it is also conceivable that the conditions for reform of the civil service will improve in the years to come.

3.3 Drivers of reform

Debates on the reform of the public administration in post-communist Europe tend to distinguish between domestic and external drivers of reform.³⁰ Key (but not all) domestic variables concern political leadership and administrative structure while processes of EU integration and technical assistance (TA) are forms of external involvement and influence that are of special interest. For the purpose of our study it is important to note that the two sets of variables – domestic and external – interact, *i.a.* in such a way that the former significantly influence the ability of recipient

²⁷ Gallup Balkan Monitor 2008 Analytical Report

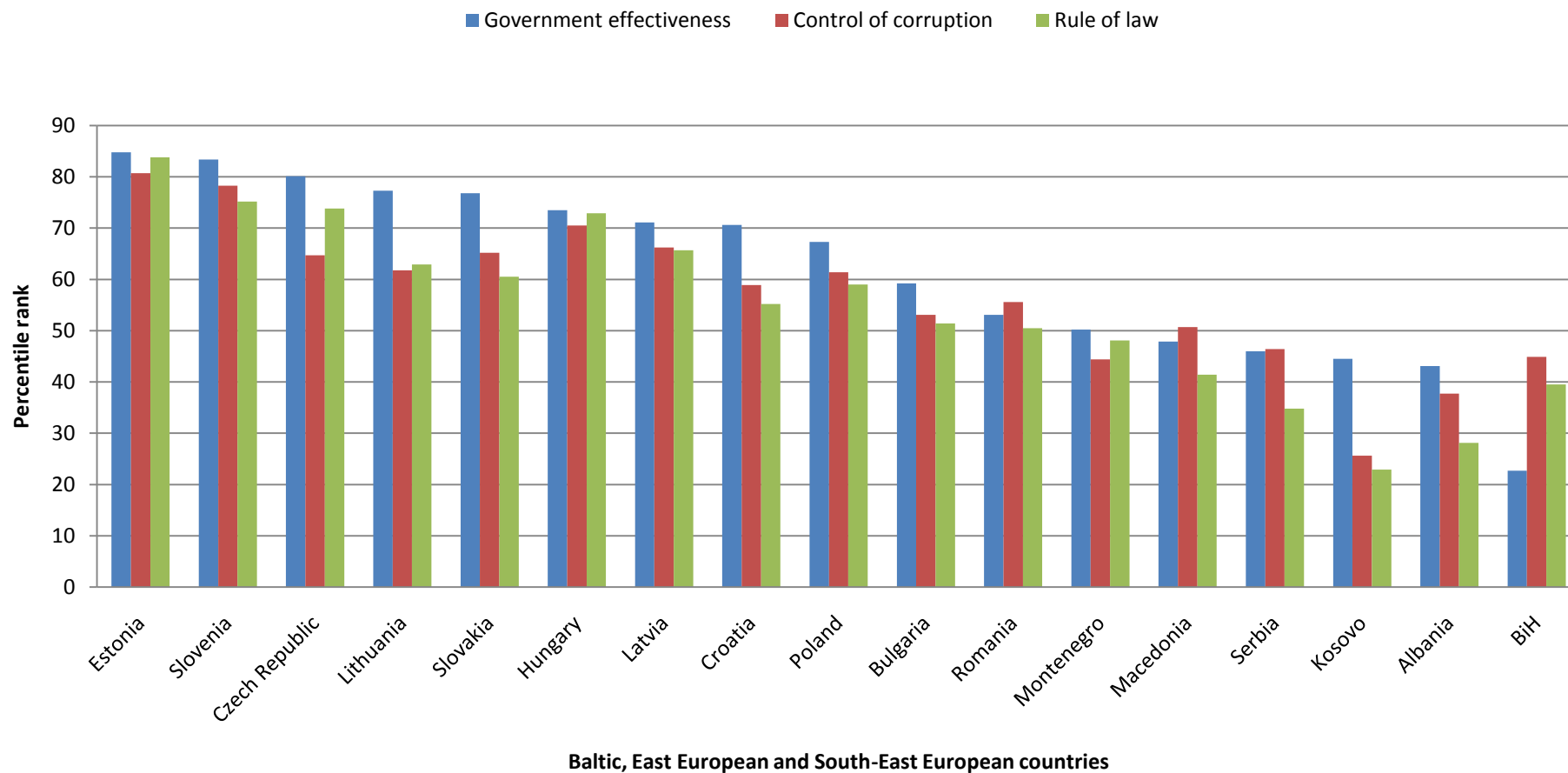
²⁸ UNDP, Bosnia and Herzegovina, "Early Warning System. Third Quarterly Report-September 2008", 32.

²⁹ Steven W. Sampson, "Weak States, Uncivil Societies and Thousands of NGOs: Western Democracy Export as Benevolent Colonialism in the Balkans", available at http://www.anthrobase.com/Txt/S/Sampson_S_01.htm.

³⁰ SIGMA, "Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years after EU Accession", *SIGMA paper no. 44*, May 2009, 78, available at [http://www.oalis.oecd.org/olis/2009doc.nsf/linkto/gov-sigma\(2009\)1](http://www.oalis.oecd.org/olis/2009doc.nsf/linkto/gov-sigma(2009)1).

countries to benefit from external assistance and honour international obligations. The absorption of IB-related aid may be particularly vulnerable to bottlenecks/lack of capacity in the public administration. Arguably, vulnerability increases as more complex issues of administrative reform are addressed.

Chart 2 Governance indicators 2007



3.4 Domestic factors that influence reform

Political leadership

Political leadership is contingent on the commitment and vision of key decision-makers as well as the extent of democratic and stable power concentration.³¹ In transition countries insufficient political demand for institutions or institutional development may be the single most important obstacle to public administration reform.³²

During the 1990's elections in Western Balkan countries brought to power ex-communists or national populists, the majority of whom held up serious reforms for at least a decade and isolated their countries from European developments. Thus, governments in the region introduced transition reforms with a significant delay compared to post-communist CEECs.

SIGMA argues that irrespective of their ideological orientation the political elites of the Western Balkans are inclined to understand their jobs not as making policies but as producing symbolic change or mere gestures and distributing patronage; that many politicians do not understand and recognize the significance of the constitutional order, the rule of law, and the role of professional administration.³³ SIGMA also contends that the administrative reforms desired by the international community are often perceived as working against the personal interests of politicians and strengthening the role of the administration in relation to politics. Local ownership of reform is therefore often weak or lacking.³⁴

A study of Serbian public administration reform argues that, generally, leadership has impacted negatively mainly because it has been fragmented, conflicting, distracted by other issues and not sufficiently dedicated to questions of public administration.³⁵ According to a recent study the politicization of decision-making processes across BiH has led to extreme ineffectiveness of the state institutions, and made them incapable of responding to the EU's demands and of meeting the conditions for further integration with Europe.³⁶ Similarly, the EU Commission has expressed fears that politically motivated dismissal of public officials in Macedonia has disrupted the functioning of the state apparatus.³⁷

³¹ See for instance Yehezkel Dror, "Strategic Brain Center for Central Government" in Martin Potocek, *The Capacity to Govern in Central and Eastern Europe* (NISPAcee, Bratislava 2004).

³² Fukuyama, *op.cit.* footnote 19.

³³ SIGMA, *op. cit.* footnote 4.

³⁴ *Ibid.*

³⁵ Statskonsult (Difi), *Unfinished Transition. Serbian Public Administration Reform 2001-2004* (Statskonsult, Oslo, Belgrade, 2005).

³⁶ UNDP, Bosnia and Herzegovina, "Early Warning System", *Third Quarterly Report* (September 2008), p. 21.

³⁷ The European Commission, "The Former Yugoslav Republic of Macedonia 2007 Progress Report" (2007), 9, available at http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/fyrom_progress_reports_en.pdf.

Administrative capacities

To be conducive to change, an administrative structure must provide capabilities to design and implement reforms. In the countries of the Western Balkans, the institutional structure has had adverse effects on the reform process mainly because there are insufficient capacities for coordination, cooperation, communication and policy development. Apart perhaps from Serbia, public authorities suffer from a serious lack of qualified staff. Reform oriented ministers seem to have been overwhelmed by an inhospitable administrative structure and have become resigned to it. Apparently, the capacity of ministries/authorities responsible for managing the process of public administration reform has been restricted by limited strategic orientation, weak internal coordination, high turnover, and strong centralization of decision-making authority.³⁸ There are, however, cross-institutional variations. In some ministries, internal communication — and the atmosphere more generally — is significantly better than in others and more conducive to innovation.³⁹

In addition to structural deficiencies there are conceptual impediments to reform. In the Balkans the concept of “policy-development” is not understood in the Western sense, but usually as the process of technically drafting legislation without prior analysis.

Nowhere in the region has the contribution of policy inputs from professionals been fully understood or accepted. This situation creates a vicious circle, where ministers do not ask for policy inputs from their professional staff, and so professional staff do not develop the capacities required to contribute to policy-making.⁴⁰ Moreover, in South Eastern Europe the discipline of public administration is not well developed. There are few domestic experts in the field and, arguably, no well-established professional vocabulary. Thus, the question has been asked, “How can one conduct administrative reform when there is not even a language for it – or when the language is only foreign?”⁴¹

Leadership and capacity – policy implications

By distinguishing between political leadership and administrative capacity four categories of transition states may be differentiated: relatively good performers, states that are weak but willing, states that have the means but not the will and those with neither the will nor the way to fulfil the basic functions of statehood.

³⁸ Statskonsult (Difi), *Functional Review of the Serbian Ministry of State Administration and Local Self Government* (Statskonsult, Oslo, 2006).

³⁹ Statskonsult, *op.cit.* footnote 35.

⁴⁰ SIGMA, *op.cit.* footnote 4, 10.

⁴¹ Ronald Young, “Mercenaries, Missionaries or ... Consultants? Is Administrative Reform in Transition Countries a Business, Religion or ... Surgery?”, paper presented at the 14th Annual Conference of the NISPAcee, May 2006, Ljubljana, Slovenia.

Table 3 Combination of political leadership and administrative capacities-groups of countries⁴²

	The political leadership relatively positive	The political leadership relatively negative
Relative high capacity	Relatively good performers	Unresponsive
Low capacity	Weak but willing (Macedonia, and Serbia under reform-oriented leadership)	Weak and not willing (BiH, Serbia and Macedonia under governments that do not fully recognize the importance of strong and professional state institutions)

Although tentative with regard to precise categorization, table 3 indicates that all the countries under study are characterized both by insufficient political leadership and limited administrative capacities. While the reform orientation/reform effectiveness of Serbian and Macedonian governments appears to fluctuate between “relatively positive” and “relatively negative”, the political will and ability of BiH leaders are more clearly on the negative side. According to this assessment BiH belongs to the group of weak and not willing states, while Serbia and Macedonia – depending on the policies of the governments in office - may oscillate between this category and that of weak but willing states.

Two observations may be drawn from this data. First, the prospects of locally driven administrative reform seem doubtful, especially in BiH, and to a lesser extent in Serbia and Macedonia. Second, external IB assistance may promote reform, but given the importance of country conditions this effect may be seriously circumscribed by the lack of commitment/ability of local leaders. Thus, it may seem doubtful if foreign IB assistance may by itself contribute to creating a self-sustaining Bosnian state. While such support may ensure that administrative functions are performed as long as aid is provided, indigenous capacity may not be increased on a permanent basis, and the country may be likely to revert to its former situation once the international community loses interest and pulls out of BiH.

3.5 External factors that influence reform

The role of EU

The EU accession requirements are increasingly considered the only viable options that can secure relatively swift and efficient processes of institutional rebuilding in societies lacking relevant experience and knowledge.⁴³ Largely, the effect of European integration is ascribed to EU’s emphasis on the need to

⁴² The table and the categories are inspired by Patrick, *op.cit.*, footnote 21.

⁴³ See for instance, Robert Bideleux, and Ian Jeffries, *A History of Eastern Europe: Crisis and Change* (Routledge, London and New York 1998), Heather Grabbe, *The EU’s Transformative Power: Europeanization through Conditionality in Central and Eastern Europe* (Palgrave Macmillan, New York 2005), Geoffrey Pridham, *Designing Democracy. EU Enlargement and Regime Change in Post-Communist Europe* (Palgrave (Macmillan, New York 2005), and Milada Anna Vachudova, *Europe Undivided. Democracy, Leverage, and Integration After Communism* (Oxford University Press, Oxford, New York. 2005)

strengthen candidates' administrative capacities and the EU policy dualism of conditionality and socialization.

However, the EI process has also been criticized for being too detailed, bureaucratic, and patronising, with little regard for specific domestic conditions.⁴⁴ In the area of general civil service reform the credibility of EU conditionality has been low as it appears unlikely that a state will be refused or granted entry into the EU on the basis of administrative capacity requirements alone. The case of the Czech Republic is instructive, as the Czech Government postponed implementation of the Civil Service Act until after accession without having to fear any sanctions from the Commission.⁴⁵

A recent study of the sustainability of civil service reforms in CEECs five years after EU accession argues that only a minority of the countries – Lithuania, Latvia and Estonia – have made progress since gaining membership in 2004. The remainder have suffered more or less serious reform reversals. While it is conceivable that EU driven pressure promoted reform in the run-up to accession, there is doubt about the EU role in promoting post-accession sustainability as EU pressure was largely discontinued on the day of accession.⁴⁶

It is argued that the Stabilisation and Association Process (SAP) has been an efficient motor of reform in the Western Balkans, despite the fact that it is a weaker mechanism of integration than the European Agreements used in the recent eastward expansion.⁴⁷ All states of the Western Balkans have taken legal, institutional and administrative measures to promote EU-integration – though at a different pace – and the relationship between EU-integration and public administration reform is to some extent acknowledged.⁴⁸

The present enlargement strategy of the EU Commission establishes a closer link than previously between reform progress and the pace of negotiations. The Commission explicitly states that, “The EU has taken steps to improve the quality of the enlargement process. Greater focus is now given at an early stage to the rule of law and good governance [...] including administrative and

⁴⁴ See for instance Antoanetta Dimitrova, “Enlargement, institution-building and the EU's administrative capacity requirement”, 25 (4)*West European Politics* (2002), 171-190, Anna Grzymala-Busse and Anna Innes, “Great expectations: the EU and domestic political competition in East Central Europe”, (17)1 *East European Politics and Societies*(2003), 64-73, and Kirts Raik, “EU accession of Central and Eastern European countries: democracy and integration as conflicting logics”, 18(4)*East European Politics and Societies*(2004), 567-594.

⁴⁵ SIGMA, *op. cit.* footnote 30, 79.

⁴⁶ SIGMA, *op. cit.* footnote 30.

⁴⁷ Marie-Janine Calic, “Strategien zur Europäisierung des Westlichen Balkans. Der Stabilisierungs- und Assoziierungsprozeß auf dem Prüfstand”, 53(1) *Südosteuropa* (2005), 1-37.

⁴⁸ Milena Mihajlovic, „Public Administration Reform and European Integration Processes: On the Same or Parallel Tracks? Comparative Study of Serbia and Montenegro”, unpublished manuscript, the College of Europe, the National Campus, the academic year 2004/2005.

judicial reforms”.⁴⁹ Thus, the appropriateness and efficiency of public institutions are likely to be main areas of negotiations with the six countries of the Western Balkans.⁵⁰ The EU change of attitude is likely to be felt on the ground as a much stricter monitoring of the conditionality attached to accession rather than any tightening of the conditions themselves. This has already been evident in the conditions attached to the accession of Bulgaria and Romania, both of which are being closely monitored after joining the Union and in the current negotiations with Croatia.⁵¹ Regarding Macedonia, EU Commissioner Olli Rehn has delivered 8 benchmarks – of which at least 4 are directly IB-/PAR-related – that need to be met in order for EC to recommend start of accession negotiations.

Though there is broad agreement that the prospect of EU membership is “the one glue that holds the Western Balkans on the path of reform”⁵² commentators point out that the current EU policies will not automatically have the same transformative effect on the Western Balkans as the pre-accession process had in the CEECs.⁵³ There is a critical difference – that of weak states and protectorates – between previous rounds of EU enlargement and the current process of EU integration in the Western Balkans. A study on the relationship between EI and PAR in the Western Balkans argues that EU conditionality has not been sufficiently robust to promote consensus among policy makers on the need for PAR, and to ensure efficient implementation of reforms.⁵⁴

Political developments in *i.a.* BiH cast increasing doubt on the actual effect of EU processes. After the signing of the SAA between BiH and EU a UN study observed, “The realization has slowly dawned that the local politicians in both Bosnia and Herzegovina and in Serbia (and many of the international counterparts) have considerable experience in making promises and signing well-intentioned agreements that they have no intention of honouring in practice and that, as a result, leaving the central problems unresolved (to be dealt with later) has resulted in precisely that — nothing has been resolved.”⁵⁵ In the same vein SIGMA experts argue that, one cannot help having the impression that some governments in the region think that the only rationale for change is accession and that some window dressing will suffice.⁵⁶

⁴⁹ The European Commission, “Enlargement Strategy and Main Challenges 2008-2009” (2008), 13, available at http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/strategy_paper_incl_country_conclu_en.pdf.

⁵⁰ SIGMA, “Enlargement of the European Union: An Analysis of the Negotiations for Countries of the Western Balkans” (SIGMA Paper 37 2007), 5, available at [http://www.oecd.org/olis/2007doc.nsf/LinkTo/NT00000D56/\\$FILE/JT03224554.PDF](http://www.oecd.org/olis/2007doc.nsf/LinkTo/NT00000D56/$FILE/JT03224554.PDF).

⁵¹ *Ibid.*

⁵² Lord Ashdown – the international community’s former High Representative of BiH – quoted in “EU Enlargement: the Western Balkans, House of Commons Library Research Paper 07/27 14 March 2007.

⁵³ Giuliano Amato *et al.*, “The Balkans in Europe’s Future”, 52(2) *SüdOst-Europa Zeitschrift für Gegenwartsforschung* (2005), 185-212.

⁵⁴ Cecchi, *op.cit.* footnote 24.

⁵⁵ UNDP, Bosnia and Herzegovina, “Early Warning System. Third Quarterly Report” (September 2008), 7.

⁵⁶ Francisco Cardona, “Integrating national administrations into the European administrative space”, paper, Conference on Public Administration Reform and European Integration, Budva

EU accession will be more difficult for latecomers now that a common currency has been established and more areas of public policy have been harmonized. Moreover, enlargement fatigue within the EU, the current economic recession and new foreign policy priorities may be pushing the Western Balkans into a less favourable strategic position. If the prospect of full membership is significantly delayed, there is a danger that the EU's allure for the Western Balkan states will diminish – and consequently the EU's leverage over these countries. In this case administrative and other kinds of reforms in the region would slow down, halt or even regress.

Technical assistance

The extent to which foreign actors can successfully promote IB in weak or failed states is highly disputed both for principled and pragmatic reasons. While some analysts take a sceptical view of the IB approach in foreign policy,⁵⁷ others argue that this line of action is difficult, but fully possible, on condition that assistance is provided in the right way⁵⁸.

The extent to which CEECs have profited from foreign aid has depended on characteristics of domestic as well as external actors. Insufficient or dysfunctional political involvement as well as administrative bottlenecks in the recipient country have affected assistance programmes negatively. There is no direct relationship between the volume of aid provided and the amount actually put to use or the results achieved. The effect of support programmes has been diminished by domestic patterns of decision-making and leadership. Generally, projects in the area of institution building have had weak strategic guidance and political support. The absence of overall strategies has led to a series of scattered projects rather than a comprehensive approach.⁵⁹

There are indications that projects directly addressing the central level of government have performed deficiently while projects in institutions with some autonomy from this level have scored considerably better. This may be an indication that central government institutions are more prone to political volatility and risks than more independent bodies.⁶⁰

The presence of a great number of external experts and NGO's within a single country may have hampered the transition process by generating problems of competition, overlap and inconsistency. In Macedonia and Kosovo, the number of EU institutions and lack of clarity about the division of labour between them

Montenegro, 26-27 March 2009, available at <http://www.sigmaweb.org/dataoecd/27/16/42747690.pdf>.

⁵⁷ Fukuyama, *op.cit.* footnote 19.

⁵⁸ See for instance, Ashrfa Ghani og Clare Lockhart, *Fixing Failed States. A Framework for a Fractured World*, (Oxford University Press 2008).

⁵⁹ International Policy Services, "An Evaluation of Phare Public Administration Programmes. Final Report", March 1999, available at

<http://ec.europa.eu/europeaid/evaluation/reports/cards/951465.pdf>.

⁶⁰ *Ibid.*

prevented coherent use of external funds and potentially jeopardized the impact of assistance.⁶¹

Summing up the experience with external support to public administration reform in Western Balkan states in 2004, SIGMA observed, “The region is invaded by donors with very varied interests, agendas and perspectives. They propel the legal/administrative system in different directions, generating fundamental inconsistencies. There are very limited national capacities to force project and substantive co-ordination, and donors are often able to circumvent co-ordination systems by building up clientelistic relations with counterpart institutions.”⁶²

SIGMA advice to domestic and external actors

In 2004 SIGMA published a paper on public administration in the Western Balkans analysing the progress of reform and offering guidance to local governments and foreign donors. Five years on SIGMA’s advice is still valid. SIGMA emphasizes that it is important to start from the observation that there are no “silver bullets” to solve the region’s problems. While reducing short-term risks, the international community has to adopt long-term, multi-faceted, regional strategies to promote a stable peace, prosperity and European values in future generations.⁶³ For the purpose of the present study the following recommendations seem particularly relevant:

- PAR must provide political incentives for change. PAR must support priority government policies if it is to have any hope of retaining some political backing. This implies that incentives in favour of and against PAR should be analysed in order to design effective PAR.
- Mobilize European integration to promote PAR. EI has two main advantages for PAR: it provides a strong motivation for reform, usually widely shared amongst political parties and interest groups, and it provides a well structured comprehensive and consistent agenda.
- Get administrative basics right first. The natural desire in the region to become “modern”, coupled with the influence of certain external donors, has created a tendency to move too fast in adopting some of the “New Public Management” (NPM) trends, such as performance pay, “modern” budgeting techniques, or wholesale “agencification”. Reforms along these lines may mean, in practice, greater openness to capture by special interests and weakened accountability chains.
- Tackle systems, not organizations. Many reform projects focus on organizations such as ministries of finance by relying on a sort of “enclave approach”, which has not proved successful in other regions or in substantive areas. In any event, it is a mistake to assume that it is possible to change the way in which for instance budgeting is done only by increasing the capacities of the budget department of the ministry of

⁶¹ Development Researchers’ Network Consortium, “Evaluation of the Assistance to the Balkan Countries Under CARDS Regulation 2666/2000”, Synthesis Report Volume I, Findings of the Evaluation (2004).

⁶² SIGMA, *op.cit.* footnote 4, 9 and 10.

⁶³ SIGMA, *op.cit.* footnote 4, p. 5.

finance. Budgeting is an area where many actors – especially budget units in the ministries – must be competent to participate.

- Balance horizontal and vertical reforms. PAR for European integration is primarily about vertical (sectoral) administrative capacities. The *acquis* on general management (horizontal) systems is weak. The experience of EU candidate countries suggests that a focus on sectoral administrative capacities will not create sustainable reform. There are signs that countries' eagerness to pursue an accelerated EI agenda may be creating an unbalanced reform agenda.
- Upgrade policy capacities. Four tracks are needed: create strategic policy units at the centre of government and strengthen policy capacities in ministries (with priority given to the ministry of finance); introduce strictly enforced, substantive quality control and scheduling processes for the council of ministers; develop policy skills for incumbents and future entrants in university and training institutions, especially in law and economics.
- Address the governance system as a whole. Parliamentary and judicial capacities are vital links in the accountability chain, in the effectiveness and sustainability of democratic governance, and in reform of PA. Donors generally prefer to deal only with, and through, the executive branch, which creates difficulties for addressing other branches of the governance system. Where Justice and Parliaments are addressed it is often by counterpart bodies (e.g. interparliamentary support) or NGOs, and in the case of justice, it is more often the penal and commercial systems rather than administrative justice. This risks creating additional co-ordination and incompatibility problems. Donors should improve mechanisms to support all branches of governance.
- Recognize that PAR is a sociological process. The implications for the assistance process include the following: (a) Support should be designed around long-term processes and include a strong investment in the education system (schools to professional, especially legal training) (b) Support should be provided with greater certainty over longer time frames and should be adaptable to rapidly changing circumstances in the countries.
- Mix country-specific and regional approaches. The countries of the Balkans are densely interlinked, with numerous cross-border issues still outstanding. The pursuit of mutual learning and soft approaches, such as networking and building common institutions across countries, has an important strategic dimension. These approaches should be vigorously pursued.

We will carefully consider SIGMA's recommendations when developing concrete proposals for Norwegian support.

4 Norwegian IB support – general suggestions

4.1 The need for thematic concentration and review of IB-perspectives

Advice on strategic priorities for Norwegian IB support must go beyond simply listing a series of separate project ideas. In this chapter we define 4 broad priority areas for Norwegian assistance within which we recommend that individual projects be selected. Moreover, we discuss possible thematic pitfalls in project design and suggest 4 concerns or IB-perspectives that we believe should inform the development and implementation of concrete project proposals.

Stronger thematic concentration of IB-related assistance makes it easier for aid providers to develop in-depth knowledge, learn from experience and transfer knowledge across projects. In short, a more focused aid package may enhance professionalism in project development and implementation, and hopefully also the impact of Norwegian aid.

Broadly, the proposed target areas should be uniform for all three countries. As we have already suggested BiH, Macedonia, and Serbia face similar types of problems and have similar systems/frameworks of PA. Thus, there is a significant potential for cross-border learning, exchange of experience, and joint training. Moreover, several problems affecting governments and citizens of Western-Balkan countries are of a regional nature and call for joint action by all or several Western Balkan governments. Externally funded projects may facilitate international networking and cooperation across the region.

We suggest that IB support be concentrated around the following issues:

- the rule of law
- security sector reform
- public administration reform
- regulatory frameworks for market economy

Within each of these broad areas we identify more limited topics that may be the object of project collaboration. The proposals meet key criteria outlined above (p.7):

- They involve key IB-elements. Indeed, IB could be said to be the thematic core of these issues.
- They address the overriding priorities of the region: (i) consolidation of peace and security, (ii) resolution of outstanding issues in post-conflict settlements, and (iii) re-launching of economic growth.
- They concern issues that are central to processes of Euro-Atlantic integration, especially EU and NATO accession
- They are in line with long-term goals for Norwegian support to the region (peace, reconciliation, rule of law and democracy, regional stabilization, and Euro-Atlantic integration).

The criterion regarding domestic political support (see p.7) is probably the most difficult to meet. When dealing with the individual countries we shall see that it is fully possible to find government strategies/papers that prioritize concrete measures/project ideas concerning the issues outlined above. Nevertheless, as we have already elaborated in some depth the actual decision-making behaviour of political leaders across the region give reason to doubt the operative significance of several of their programme statements, however convincing they may seem on paper.

Governments and political parties tend to support institutions which are directly under their control. They may be less apt to take an interest in independent bodies with regulatory and watchdog functions, such as for instance ombudsman institutions (OI). Government leaders may even be suspected of not wishing these bodies to become particularly strong, as it is their duty to supervise *i.a.* the legality of decisions made by politically controlled institutions.

Establishment and consolidation of institutions with some extent of professional and decision-making independence are essential to realising the rule of law and the efficiency and effectiveness of regulatory frameworks for market economy. Thus, to some extent our recommendations on IB priorities may entail shifting assistance away from politically dependent to politically independent⁶⁴ institutions.

At least in the short run autonomous organs may be less vulnerable to political volatility and interventions than the central government apparatus and may guarantee a certain extent of professionalism and continuity. In spite of, or perhaps because of their independence several watchdog authorities seem to perform well under difficult conditions.⁶⁵ As we have already noted evaluations of Western support to institutional reform in CEECs indicate that projects addressing the centre of government – probably due to greater political instability – performed less well than projects concentrating on more autonomous bodies.⁶⁶ Because of their responsibilities for enforcing EU rules and their (prospective) *de facto* position as executive organs of the European Commission, independent regulatory agencies may to some extent seem to be shielded from⁶⁷ (dysfunctional) interventions by local politicians. However, this is less the case with autonomous bodies with more clearly domestic fields of responsibilities such as OIs, court administration bodies or public prosecutors. For all types of independent bodies – and indeed all public authorities generally – a lack of political attention and insufficient funding will ultimately undermine their performance and credibility.

⁶⁴ The independence of such bodies does not mean that they are outside the law and exempt from judicial supervision or other forms of external scrutiny.

⁶⁵ The European Commission, Serbia 2008 Progress Report (2008), 11, available at http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/serbia_progress_report_en.pdf.

⁶⁶ International Policy Services, *op.cit.* footnote 59.

⁶⁷ Morten Egeberg (ed), *Multilevel Union Administration. The Transformation of Executive Politics in Europe* (Palgrave Macmillan Houndsmills 2006).

We argue that IB and PAR should be based on an understanding of the particularities of public sector reform as well as the reform context of the western Balkan countries. More specifically, we recommend that donors and local authorities

- be careful not to misinterpret or ignore the inherited PA system
- give first priority to establishing regularity in the civil service based on European standards
- bear in mind that IB-topics are interrelated and should be considered jointly
- take into account that the quality of public functions may depend more on administrative systems than on individual organizations

Although the essence of our recommendations is the need for projects to sufficiently reflect the complexity and interconnectedness of PA issues as well as the broadening nature of challenges facing modern governments, care should be taken not to make efforts unrealistically ambitious. Projects have to be adapted to the specific circumstances of individual countries, not least the practical difficulties related to limited personnel and other administrative capacity or deep societal divisions impeding needed consensus. These concerns should inject a reasoned pragmatism into project design.

4.2 Choice of areas for support

The rule of law

A precise definition of the rule of law does not exist. Nevertheless, for a state to be called a “rule of law state” (or “*Rechtsstaat*”), certain basic elements must be in place. Among these are: (i) separation of powers, (ii) legality of the administration, and (iii) the guarantee of fundamental rights and freedoms and equality before the law.⁶⁸ The Serbian Constitution of 2006 subscribes explicitly to this comprehensive understanding of the “rule of law”.⁶⁹

Issues related to the rule of law figure prominently in the EU accession process. The

“Copenhagen Criteria” require that a candidate country must achieve, among other things, stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. As can be seen from the annual progress reports, the Commission has long recognized that court reform has been lagging behind parliamentary efforts at the implementation of the *acquis communautaire* in all Western Balkan countries. The language concerning the need to increase and improve efforts in court reform has become

⁶⁸ Stefanie Ricarda Roos, “The ‘Rule of Law’ as a Requirement for Accession to the European Union”, speech at International Symposium on Legal Contemporary Institutions within the Context of the European Integration of Romania, 26 October 2007, available at http://www.kas.de/wf/doc/kas_12154-544-2-30.pdf.

⁶⁹ In Article 3, the Serbian Constitution describes how “the rule of law” is to be put in practice. Article 3 reads “The rule of law shall be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary and observance of Constitution and Law by the authorities.”

more and more pressing. As we have already noted these concerns are also given high priority in Norwegian support to the Western Balkans.

While the attention of the international community to rule of law issues is strong, domestic political support remains precarious. For instance, across the region the party inclinations of judges play an important role in determining who will be appointed, and there are reports of political interference in the work of prosecutors and judges. Problems with the judiciary also include the low level of expertise among judges in *i.a.* issues related to EU integration, and a big backlog of cases. Sometimes parties wait for years to have their cases decided. One less often mentioned challenge is how judges themselves perceive their independence: independence is often seen as a privilege of judges, rather than as a privilege and right of citizens in a democratic state based on the “rule of law”.⁷⁰

IB related measures are important to realize and safeguard the *Rechtstaat* elements mentioned above. We recommend that the Norwegian MFA give preference to issues relating to the management of the justice systems (*i.a.* to guarantee separation of powers), to ensuring regularity in the performance of government and administrative decisions (legality of the administration), and to establishing/further developing oversight mechanisms (guarantee of fundamental rights and freedoms and equality before the law).

In the annex we discuss concrete project proposals regarding

- strengthening of ombudsman institutions (OI)
- strengthening the offices of Commissioners for freedom of information and personal data protection
- strengthening of (High) Judicial Councils (HJC)
- development of legal frameworks and practices of administrative decision-making - BiH

Ombudsman institutions have been established in all three countries under study. This is a body established by a Government under the constitution, or by law, which can help citizens and especially poor and disadvantaged people obtain remedies that would otherwise remain inaccessible to them. Once fully established, the OIs may assume an important role in administrative and legal reforms in Western Balkan states. An independent and accountable OI will systematically identify weaknesses of the system of public administration, monitor the progress of reforms and put the issue of human rights and protection of citizens in the public spotlight.

Offices of Commissioners for freedom of information and personal data protection may provide several of the same positive effects as OIs; in particular they are vital to ensure transparency in the public administration and to prevent abuse of personal data.

⁷⁰ Roos, *op. cit.* footnote 68.

Each of the three countries has set up (*High*) *Judicial Councils*. HJC's are mainly responsible *i.a.* for the administration and management of courts and the appointment and promotion of judges. Properly functioning HJC's are models of court administration that are recommended by CoE⁷¹ and considered crucial to ensuring the independence of the judicial system/individual judges and the implementation of article 6 of the European Convention on Human Rights. Across the region both OIs and HJCs face critical challenges including how to make them operational, effective, and supported by high level public authorities.

Legal frameworks and practices of administrative decision-making must be aligned with European principles regarding (i) reliability and predictability (legal certainty), (ii) openness and transparency, (iii) accountability, and (iv) efficiency and effectiveness.⁷² These principles are not simply ideas which governments "sell" to public servants. They must be embedded in institutions and administrative processes at all levels. Actors in the public sphere are legally obliged to comply with these principles, which must be defended by independent control bodies (*e.g.* audit), by systems of justice and judicial enforcement, by Parliamentary scrutiny and by ensuring opportunities for voice and redress to the "clients" of the public administration, namely, citizens and firms.⁷³ In all countries under study laws on administrative procedure suffer from clear deficiencies in particular with regard to legal certainty and transparency.

Security sector reform

Security sector reform (SSR) is essentially aimed at the efficient and effective provision of state and human security within a framework of democratic governance. Reforming the security forces is particularly important in order to strengthen a culture of democratic rights. Failure to do so weakens democracy.⁷⁴ Basic instruments of SSR are defence reform and police reform.

Transformation of security institutions is a key component of Euro-Atlantic conditionality for countries in the Western Balkans. NATO has been the acknowledged leader in the implementation of SSR, primarily in defence reform, driven by its enlargement process. Over recent years the EU has judged SSR to be a priority area, reflected in SSR strategies advocating a holistic approach to security. EU has also driven police reform together with international actors such as OSCE and the Stability Pact for South Eastern Europe.

⁷¹ See Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, Strasbourg 23 November 2007.

⁷² Although there is no general EC legislation applicable in the domain of public administration, a relatively wide consensus can now be considered as part of the *acquis communautaire* and can be grouped into these four categories. See SIGMA, "Sustainable Institutions for European Union Membership", *SIGMA Papers: No. 26* (1998) available at <http://www.sigmaweb.org/dataoecd/20/11/36953545.pdf>

⁷³ SIGMA, *op.cit.* footnote 72, 10.

⁷⁴ Grugel, *op.cit.* footnote 9, 77.

Across the region SSR progress has been hampered by lack of political will and ability. In Serbia, the aftermaths of the events of 5 October 2000 suggest that the non-intervention of the police and the army in the regime change was bought with the promise of a ‘soft’ approach to military and police reform by the new government. The stated aims of post-Djindjic governments to de-politicize, de-centralize, de-militarize and de-criminalize the police have never been systematically developed in policy while reforms have tended to be developed by crises and necessities.⁷⁵

As already indicated, SSR and especially the widely recommended holistic approach to SSR raise key governance and IB-concerns. Three such issues are topics of concrete project ideas described in the annex:

- strategic planning/policy making,
- accountability
- human resources management.

Because of the centrality of these issues and their linkages to more general concerns of public administration reform they might be recommended as priority areas of Norwegian support.

Strategic planning and policy making Almost needless to say, a strategic, carefully planned approach to SSR holds a number of advantages over ad hoc, piecemeal advances and greatly improves the chances of successful sustained advancement of security reform. NATO in particular has made integrated security and military strategies *de facto* membership requirements. As general indicators of security sector maturation, strategies also fit in with the focus of recent EU Presidencies on reform in this area.

A key issue is the need to balance breadth of participation with coherent guidance. To be robust enough, development of security policy/strategy requires consultation with all interested stakeholders, including the operational agencies under the remit of the Ministry of Defence, and other ministries and state bodies. Ministry staff, therefore, need to bring not just expertise in security-related issues but the skills necessary to effectively engage in and manage the various stages and elements of strategy/policy development. A key problem across the region has been lack of interagency cooperation. Even the highest level security strategy documents can still be the exclusive preserve of small teams within ministries of defence or Prime Ministerial or Presidential offices. It was even worse that in several countries security and military strategies were ghost-written by outside contractors.⁷⁶ These concerns guide

⁷⁵ Alex G. W. Dowling, “Executive Summary”, in Anja H. Ebnother *et al.* *Security Sector Reform in South East Europe—from a Necessary Remedy to a Global Concept* (National Defence Academy and Bureau for Security Policy at the Austrian Ministry of Defence in co-operation with Geneva Centre for Democratic Control of Armed Forces and PfP Consortium of Defence Academies and Security Studies Institutes, Vienna 2007), 157-170, 165.

⁷⁶ Matthew Rhodes, “National and Security Sector Reform in Southeast Europe”, in Ebnother *et al.* *op.cit.*, note 75, 37-42, 39.

our assessment of projects regarding the development of a strategic defence review and decommissioning of redundant military personnel.

Accountability Arguably, there are few areas that could have a more significant impact on SSR than enhanced police and military accountability.⁷⁷ Regarding the police, five levels of accountability may be required, (i) internal oversight, (ii) external oversight, (iii) Parliamentary oversight, (iv) police/media policies, and (v) local police/community consultation.⁷⁸ Across the region accountability mechanisms remain weak or may be totally absent. For instance, members of Parliaments may lack expertise, interest and capacity in exercising effective oversight over security institutions. Lack of accountability may imply that the security institutions do not compete for resources with other government agencies, avoid transparency and are liable to become agents of abuse and repression themselves. These challenges motivate our suggestion for a project idea concerning police accountability.

Human resources management. Across the region HR provisions in statutes relating to the police and the armed forces are not fully or only marginally aligned with the general civil service legislation and European standards for the public administration⁷⁹. Such discrepancies make it difficult to achieve the goal of fully democratic and professional security institutions. In projects regarding HRM in the police and the military a key objective should be to align legal frameworks and administrative practices with the basic administrative principles outlined above. This concern is reflected in a project idea regarding police HRM.

Public administration reform

PAR regards horizontal management systems that are generic for the whole public administration (see section 2.1). As we have already indicated performance deficits of individual institutions are often rooted in weaknesses of horizontal administrative systems. Thus, a one-sided emphasis on separate public authorities or vertical systems of service delivery may give limited results.

The importance given to the day-to-day work of the public administration has increasingly gained importance as the assessment of reform possibilities and capacities of the private sector have shown that a major requirement for a sound

⁷⁷ See for instance, *Police Reform in Serbia. Towards the Creation of a Modern and Accountable Police Force* (Law Enforcement Department OSCE Mission to Serbia and Montenegro 2004), 52.

⁷⁸ Council of Europe and OSCE, "Joint final report on police accountability in Serbia"(Strasbourg, 2002) 7.

⁷⁹ In consequence of the principles of administrative law laid down by the European Court of Justice, EC Member states – and states aspiring to achieve membership – are responsible for ensuring efficient, professional and impartial performance of the public administration. As SIGMA points out this is only possible when a set of conditions is in place, regarding (1) separation of politics and administration, (ii) merit base recruitment and promotion, (iii) rights/obligations/disciplinary measures (incompatibilities/conflicts of interest), (iv) salary schemes (clarity/transparency/predictability), (v) HR management systems (central capacity/homogeneous standards/accountability/judicial review).

market economy is a well functioning public administration which in turn largely depends on the quality of its staff.

The reform of the public administration in candidate countries has become one of the main EU accession requirements since the EU Summit in Copenhagen in 1993 and Madrid in 1995. The Copenhagen and Madrid criteria call for a professional civil service free of politicisation based on merit, and working according to acceptable standards of integrity.

Across the region key horizontal challenges regard

- weak capacities for policy development and legal drafting
- insufficient/inadequately implemented legal frameworks for administration
- lack of professionalism in the civil service

In the annex we have identified project ideas in relation to each of these challenges. Our recommendations have been guided by the following overall normative considerations:

Policy capacities However vital, reform of the policy system is sensitive because it deals with the roles of prime ministers, collective governments and ministers. Across the region it is often perceived (wrongly) as a transfer of power from political to professional levels of government. At the very least, the following measures are required: strengthening of units for policy and law preparation both at the centre and in ministries, with particular attention given to the ministry of finance. Two project ideas respond directly to this concern.

Legal frameworks for administration A minimum set of laws is shared by most countries in the region and includes laws on government, budget, financial control, civil service, administration (systematization), law-making, and general administrative procedures and processes. Generally these general laws have been adapted to EU standards regarding *i.a.* integrity in government and predictability in administrative action. By contrast, employees in the wider public sector – for example in education, the police, and the armed forces – are subject to separate legislation which is often not congruent with the general civil service acts or with European principles of administration. Special legal/administrative regimes should, as far as possible, be abolished, or if they need to be maintained, be checked to ensure that they promote European standards. We discuss three project ideas regarding harmonization/streamlining of PA legal frameworks.

Professionalism of the civil service Apart from the legal framework, reforms to promote professionalisation must address the overall HRM management function and main management systems. Equally important, all executive bodies covered by the civil service law should develop their own HRM functions, which should be networked by the centre. To achieve professionalism of the civil service there is a need for adequate training strategies and training. Within management systems, priority should be given to recruitment, pay and promotion, as well as to the legal regime governing

incompatibilities and conflict of interest. Several project ideas developed in the annex address these concerns.

Regulatory frameworks for market economy

The complexity and dynamism of a market economy requires laws, rules and norms based on transparency and openness that encourage and facilitate economic interchange. It is, therefore, imperative that a regulatory framework is in place to stimulate participation in economic development and to effectively implement government policy.

The worldwide liberalization of economic markets, especially in the network industries (telecom, post, energy, railways and broadcasting), has been accompanied by changed roles for state regulatory authorities. Increasingly, it is argued that to be credible the state regulator has to be organized at arm's length from both political authorities and market operators, and that European countries need to adopt the U.S agency model.⁸⁰ In a growing number of cases the most obvious reason for setting up specialized regulatory mechanisms is linked to obligations resulting from countries being parties to international treaties.

As far as EU member states are concerned, a growing number of sectoral policy instruments – regulations and directives as well as jurisprudence of the European Court of Justice – implicitly or explicitly obliges governments to set up a regulatory authority of some kind. It is a recurrent criticism by the EU that regulatory frameworks for market economy do not function properly across the region. Regarding Macedonia one of the benchmarks delivered by EU Commissioner Olli Rehn (March 2008) obliges the Macedonian government to strengthen “[...] the common business environment by [...] strengthening the independence of the regulatory and supervisory bodies [...]”. Moreover, the EU influences developments *indirectly* through initiatives to liberalize economic markets and through the formation of transnational networks among national regulatory authorities.

As we have already noted – at least in some cases – regulatory agencies across the Western Balkans may seem to function relatively well under unfavourable conditions. However, it is sometimes argued that in CEECs and the Western Balkans the decision-making processes prior to the establishment of such bodies are flawed. Although this may also have been the case in Western Europe, the situation is probably particularly serious in post-communist Europe due to the extent and nature of the challenges their systems of public administration are already facing. The most prevalent issues that have been discussed pertain to the system of regulatory bodies, their independence, and accountability as well as arrangements for/ levels of staffing and funding.⁸¹

We propose projects regarding

⁸⁰ Giandomenico Majone, *Regulating Europe* (Routledge, London 1996).

⁸¹ Difi 2008, *Independent Public Agencies – Legal Frameworks and Institutional Challenges. A Survey of Public Agencies in 6 European Countries*, Difi Report (forthcoming).

- the system of regulatory agencies
- capacity building in individual regulatory bodies

The system of regulatory agencies Agencies were rarely, if ever, established within a systematic legal and conceptual framework. Agencification usually occurred as ‘a quick sectoral fix’ with only patchy mechanisms for ensuring accountability. Domestic decision-makers often copied, or were encouraged by foreign consultants or aid workers to copy the institutional solutions of other countries. However, because the foreign advisers did not consider the wider institutional context of foreign agencies – *i.e.* the factors that make them work properly in their domestic setting – the transfer of external models was often incomplete and inappropriate. For instance, arrangements to ensure financial control and accountability of agencies were often neglected.⁸² In some cases the establishment of agencies has led to increased political and personal patronage – as appointments to management and board positions have served the party or personal interests of the nominating body.⁸³

We propose a regional training project (as challenges are fairly uniform across the Western Balkan countries) dealing with issues indicated above with the aims of improving *i.a.* the clarity of the system of agencies, and strengthening mechanisms for accountability and transparency. The project will mainly be targeted at decision-makers responsible for preparing the establishment of regulatory bodies, for public administration reform and for management of general civil service/public administration legislation.

Capacity building in individual regulatory bodies The best of laws cannot be applied without adequate organizational resources, *i.e.* a staff of sufficient size with adequate technical, legal and economic competence. Across the Western Balkans there is abundant evidence that lack of sufficient capacity may lead to backlogs and under-enforcement of agency duties. It seems plausible to assume that the slower the decision-making process, the higher the likelihood of corruption.⁸⁴ Slow systems increase the incentives of private parties to offer bribes to decision-makers to speed up their case. Inadequate resources may also undermine the standing and reputation of a regulatory body, especially where it results in deficient enforcement efforts such as failing to win a large number of the cases brought before the courts.

In the annex we suggest projects to strengthen the capacity of various types of regulatory bodies in the areas of public procurement, market surveillance, energy, and competition .

⁸² Miroslav Beblavy, ‘Understanding the Waves of Agencification and Governance Problems They Have Raised in Central and Eastern European Countries’, 2(1) *OECD Journal on Budgeting* (2001), 121-138.

⁸³ Regarding Serbia, see for instance Vesna Pesic, ‘State Capture and Widespread Corruption in Serbia’, CEPS Working Document No. 262/March 2007, 22 and 24.

⁸⁴ See for instance, Stefan Voigt, When are judges likely to be corrupt?, in *Transparency Global Corruption Report 2007*,. 296-301, available at http://www.transparency.org/publications/gcr/gcr_2007.

4.3 Choice of IB perspectives

Do not ignore the inherited PA system

Although after 1945 the Yugoslav system of government and public administration was modified to suit the needs of the communist party, key parts of this system – which survived the Tito regime – pre-date communism and are influenced by deep-seated European traditions. Yugoslavia is generally considered to have been an exception among ex-communist states in Central and Eastern Europe because it preserved key features of its pre-World War II system of public administration.⁸⁵ The notion of the civil service as an essential state institution remained unchanged after 1945.⁸⁶ In contrast to all ex-socialist countries the Yugoslav communist regime retained all former royal civil servants who were not openly anti-communist and who had not cooperated with the German occupants.⁸⁷

The Yugoslav system of administrative law – and those of the Yugoslav successor states – are based on continental, mainly Austrian models⁸⁸, which emphasizes that the exercise of state power is governed by a set of codified legal provisions and, consequently, that the public administration is a law-bound quasi-judicial activity.⁸⁹ The continental model of public administration differs clearly from that found in countries such as Norway and countries with Anglo-Saxon traditions where comparatively little of the routine work of civil servants is governed by law and where administration has been considered an “art learned in practice”.⁹⁰ The excessive legalism of *i.a.* the Serbian administration contrasts starkly with the extent of tolerance for discrepancies between written legal norms and actual decision-making practices found in the Norwegian⁹¹ administrative system. Public servants and consultants who have been socialized into the informal, pragmatic ways of, for instance, the Norwegian or UK public administrations may have difficulties in understanding and seeing the usefulness of the strictly formal administrative systems of the Western Balkans.

⁸⁵ Tony Verheijen and Aleksandra Rabrenovic, “Review of the Theory on Politico-Administrative Relations”, in Tony Verheijen (ed.), *Politico-Administrative Relations: Who Rules?* (NISPAcee, Bratislava, 2001), 10-25.

⁸⁶ Zeljko Sevic, “Politico-Administrative Relations in Yugoslavia”, in *ibid.*, 295-319.

⁸⁷ *Ibid.*

⁸⁸ For instance, the Yugoslav law of administrative procedure adopted in 1930 was modeled—in part, word for word—on the Austrian *Verwaltungsverfahrensgesetz* (Law on Administrative Procedure) of 1925. The establishment of Communist rule in Yugoslavia seemed to herald a period of legal discontinuity. In 1946 the new regime passed a law declaring that the principles of civil law in force before April 6, 1941 (the date of the German invasion of Yugoslavia) were no longer effective. However, in 1951 the Yugoslav Supreme Court ruled that the courts could not base their decisions on the presumption that pre-war legislation was no longer valid. This had to be resolved on a case-to-case basis. In wide areas where there had been no new codifications the ABGB (the Austrian Civil Code) was still valid. Key parts of the Yugoslav Civil Code adopted in 1960/1961 were direct translations of Austrian legislation as was the Yugoslav Law on Administrative Procedure which was (re)adopted in 1956.

⁸⁹ F. F. Ridley, “The New Public Management in Europe: Comparative Perspectives”, 11(1) *Public Policy and Administration* (1996), 16-29.

⁹⁰ Ridley, *op.cit.* footnote 89, 24.

⁹¹ Johan P. Olsen, *Organized Democracy. Political Institutions in a Welfare State – the Case of Norway* (Universitetsforlaget, Oslo 1983), 43.

It is easier said than done to transfer directly legal/administrative patterns from one country to another. This may be especially true in the area of public law, which to a greater extent than private law is shaped by domestic administrative culture, constitutional policies and constitutional law.⁹² Unsurprisingly, differences between Anglo-Saxon and Continental administrative law traditions have made it difficult to introduce reforms rooted in the former tradition – most notably ideas of New Public Management – in countries deeply influenced by the latter.⁹³ Scholars argue that across post-communist Europe prescriptions based on Anglo-Saxon administrative cultures may have “detrimental” and “disastrous” consequences.⁹⁴

Although the legal and administrative systems of the Western Balkan countries are in great need of major reform, it is doubtful if effective changes can be achieved by neglecting or working against deeply ingrained local traditions. Thus, the Norwegian MFA should take care not to initiate or support projects that are based on approaches which do not fit in with the local administrative or legal context. Caution is especially warranted with regard to reform efforts aiming at modernizing the public sector by applying organizational and operational principles from the private business sector (managerialism, contractualism etc.), that are likely to meet with institutional, cognitive and normative barriers in Western Balkan systems of government. Rather than imitating Western patterns, countries of the region should be encouraged to develop their own potential.

Establishing regularity based on European standards should be the first priority

Arguably, PAR is not like telephony, where it is easy and more efficient to jump straight to modern wireless networks without going through a “copper-wire” phase.⁹⁵ According to this logic, the development of the public administration passes through various stages with distinctly different challenges/problems, and the solutions of problems at one stage presuppose and are developed from the solution of problems at previous stages.

If the administration is to become an asset for economic and social development, it has to respond to a set of values – regularity, efficiency, effectiveness, quality of service. Regularity represents the basic characteristics of the rule of law – legality, certainty, impartiality, predictability. Without basic regularity other values may be hard to realize.⁹⁶

⁹² The issue has been discussed in relation to *i.a.* regulatory reform and the establishment of independent regulators, see for instance Klaus Oertel, *Die Unabhängigkeit der Regulierungsbehörde nach §§ 66 ff. TKG. Zur organisationsrechtlichen Verselbstständigung staatlicher Verwaltungen am Beispiel der Privatisierung in der Telekommunikation.* (Duncker & Humblot, Berlin, 2000).

⁹³ Concerning Austria, see for instance Barbara Ligl, (“The Fallacies of New Public Management - Can they still be prevented in the Austrian Context?” (1998). Regarding Germany, see Hellmut Wollmann, “Germany’s trajectory of public sector modernisation – continuities and discontinuities”, 2(20) *Policy and Politics*(2001), 151-170.

⁹⁴ Johan P. Olsen, “Towards a European administrative space”, 10(4) *Journal of European Public Policy* (2003), 506-531, 520.

⁹⁵ SIGMA, *op.cit.*, footnote 4, 16.

⁹⁶ SIGMA, *op.cit.*, footnote 4.

As we have already indicated - and will further substantiate below - fundamental weaknesses regarding the regularity of the Western Balkan systems of public administration have not yet been overcome. These problems cannot be solved or bypassed by introducing approaches tried out – but not yet consolidated – in more advanced systems of public administration.⁹⁷ Three questions regarding popular management techniques may illustrate our point. What is the use of introducing

- technically sophisticated systems of e-government when there is reason to believe that administrative/decision-making procedures included in the systems may be seriously inadequate or when the systems are otherwise imbedded in dysfunctional decision-making environments?
- arrangements for management by objectives in institutions/systems of public administration where all decision-making powers are vested in the top-leaders according to a deeply-rooted control and command philosophy?
- performance pay in administrative institutions where the rights, obligations, and job descriptions of public servants are inadequately defined?

Many reforms in the region are basically motivated by concerns for efficiency, which may reduce the chances of introducing basic regularity. While it is obvious that, confronted with weak public finances, efficiency must be a concern; it is also clear that developing and implementing well-organized efficiency policies in countries suffering from a lack of basic administrative regularity may at best be an uphill struggle.

PA scholars not only maintain that “the efforts of Western ‘management gurus’ and ‘academic tourists’ have been of little use”⁹⁸ in post-communist Europe; they also argue that blind import of Western models—for instance, those associated with New Public Management—may lead to state capture, corruption and policy failures, because there are no or only insufficient institutional capacities to ensure proper implementation of the imported models.⁹⁹ Although little empirical evidence may be offered in support of such arguments, and the relation between the quality of bureaucracy and for example economic development is complex and far from fully explored, there are strong reasons to give priority to establishing basic bureaucratic regularity (*i.a.* legality, certainty, impartiality, predictability) as opposed to introducing modern management techniques and implicitly, and often falsely, assuming the actual existence of such regularity:

⁹⁷ *Ibid.*

⁹⁸ Johan P. Olsen *op.cit.* footnote 94, 521.

⁹⁹ William N. Dunn, Katarina Staronova and Sergei Pushkarev, “Implementation—the Missing Link”, in William N. Dunn, Katarina Staronova and Sergei Pushkarev (eds.) *Implementation: The Missing Link in Public Administration Reform in Central and Eastern Europe* (NISPAcee, Bratislava, 2006), 13-25.

- Impartiality in the exercise of public authority can be seen as complementary to the democratic principle of equal access to public office. Just as political equality is a basic norm for legitimizing democracy, impartiality is a parallel principle for legitimizing the wielding of public power. Impartiality applied to decisions of recruitment to the civil service for instance implies that the selection should be based on the merits and qualifications that beforehand are stated as necessary for the position. The norm of impartiality does not only rule out all forms of corruption but also practices such as clientelism, patronage, nepotism, discrimination, and other forms of ‘particularisms’.¹⁰⁰
- Basic fairness in decision-processes affects citizens’ trust in public institutions and their willingness to accept a decision outcome.¹⁰¹
- As we have already noted, application of the legal-rational bureaucratic model, especially meritocratic principles of recruitment and promotion are positively related to bureaucratic efficiency and economic growth.¹⁰²
- The issue of bureaucratic regularity, including professionalism and merit-based civil service management plays a prominent part in the process of EU enlargement. Though the principle is not explicitly laid down in EC legislation, it is part of the legally-binding, non-formalised administrative *acquis communautaire* crossing horizontally all public administration settings. As we have already seen, the issue of administrative regularity will probably play a more prominent role vis-à-vis the Western Balkan countries than in the most recent round of enlargement.

We do not argue that modern management principles are intrinsically wrong or inappropriate in a PA environment. We do maintain, however, that the issue of PAR promotion in other countries is very much an issue of context; that the context may be more or less conducive to certain types of reform; and that the still dysfunctional PA systems of the Western Balkans may not provide the most promising environment for advanced management methods (tentatively) introduced across Western Europe.

Thus, we recommend that within the Norwegian IB portfolio priority is given to projects aiming at establishing essential administrative and legal regularity rather than introducing advanced and “modern” concepts of public management. Whenever project proposals including the latter type of approaches are considered, it should be ascertained if necessary regularity has already been established, and if not, if the focus of the proposed project needs to be revised.

IB-topics are interrelated and should be considered jointly

¹⁰⁰ Bo Rothstein and Jan Teorell, “What is Quality of Government? A Theory of Impartial Government Institutions”, 21(2) *Governance: An International Journal of Policy, Administration, and Institutions* (2008), 165-190, at 170.

¹⁰¹ Marcia Grimes, “Organizing consent: The role of procedural fairness in political trust and compliance”, (45) *The European Journal of Political Research* (2006), 285-315.

¹⁰² Rauch, and Evans, *op.cit.* footnote 11.

In section 2.1 we distinguish between five IB topics - legal frameworks, processes, institutions, equipment, and personnel. Sustainable PAR requires coordinated efforts in relation to all of these topics. Focusing on one and neglecting key related elements may produce little value for money and in worst case scenarios may impact negatively on the reform process.

The Western capacity-building industry has often identified a lack of institutional capacity – in a narrow sense of the term – as the central problem facing post-communist bureaucracies. They have focused their efforts on providing material resources, in particular IT-equipment - to these organisations without fundamentally questioning the broader set of procedural and structural relations in which they are embedded. Thus, numerous projects have had the counterproductive effect of helping to keep in place outdated and dysfunctional structures and well-entrenched power relationships.¹⁰³

By the same token, training has often proved ineffective in helping to improve sustained public sector performance, largely because it was not applied within a broad human resource management framework linked to necessary legal and institutional developments.

Although law is often an essential first step in reform, there is a longstanding practice in the region of passing a law often under pressure from donors, without considering its connection to life and society or its interaction with other laws. Too often PAR projects focus only on formal legal aspects, without regard to implementation or to the necessary internalisation of values or policies that a piece of legislation is meant to promote.¹⁰⁴ Adopting new legislation without enforcement capacity has not only created a mismatch between intentions and real change but also an incentive to bypass and disregard the law.

Having these pitfalls in mind we advise that especially large-scale/long-term projects pay careful attention to and consider measures to address the interconnectedness of IB-topics:

- a) Both IT- and capacity building projects (regarding e.g. training) should in principle support and be linked to or pay careful attention to other reform efforts such as implementation of new/revised legal frameworks, and working methods or establishment of new/transformed institutions. IT projects should not be implemented unless it has been established that procedures/documents targeted by the projects are of sufficient quality, and that the responsible institutions have or will have necessary resources to manage and update the IT systems in question.
- b) Projects aiming at preparing new legal frameworks should ascertain (i) the implementability of new regulations, *i.e.* administrative and economic consequences of the new regulations including flanking

¹⁰³ Alexander Cooley, "Western Conditions and Domestic Choices: The Influence of External Actors on the Post-Communist Transition", 2002, available at

<http://www.unpan1.un.org/intradoc/groups/public/documents/NISPA/cee/UNPAN012485.pdf>.

¹⁰⁴ SIGMA, *op.cit.*, footnote 4, 11.

- measures that are necessary to ensure sustainability, and (ii) how the project may possibly assist in (preparing) the practical implementation.
- c) Projects concerning new working methods should consider carefully (i) to what extent possible reforms necessitate review of legal frameworks and (ii) issues related to implementability (see b) above)

Weaknesses in individual institutions may be rooted outside the institutions themselves

To improve the performance of one particular public institution, external donors and local partners may have to look into factors outside the institution in question. In ex-Yugoslav countries the nature and quality of decision-making of individual state bodies are strongly influenced by a substantial volume of legal norms/decision-making practices applying to all state institutions *e.g.* the laws on the state administration, ministries, the civil service, public procurement, and administrative procedures. Thus, the performance of individual administrative organs may be neither better nor worse than the quality of cross-cutting public administration regulations/practices.

Moreover, ministries' fields of activity are becoming increasingly interrelated. In several policy areas recommended for Norwegian support (section 4.2 below) key challenges cross portfolio boundaries and cannot be adequately addressed by one ministry alone.

Security sector reform is an area highlighting both types of interconnectedness. Key challenges in this area – regarding for example the establishment of sufficient civilian and democratic control over the armed forces – are rooted outside the security sector and relate to wider questions of administrative capacity and political governance. Thus, the reform agenda will generally address two sets of issues: (i) relations between security sector institutions and the wider government apparatus and the general public – *i.a.* the clarity, openness and responsiveness of these relationships, and (ii) internal features of the security sector institutions – the human resource capacities and institutional structures and processes that underpin the functioning of the security sector.

Most countries will face problems under both headings. Though it may be difficult to make progress on both fronts at once, reform on one front but not the other is unlikely to work. Thus, reforms internal to the security sector should be set in a wider reform programme that strengthens the appropriate instruments within the civilian policy sectors.

We recommend that projects devoted to particular institutions or governmental sectors pay careful attention to (i) the ways in which the performance of the targeted organizations are dependent on other governmental bodies and cross-cutting administrative regulations, and (ii) to the relevance and possibility of linking up with other on-going reform processes regarding, for instance, the general public administration.

References for Difi – Agency for Public Management and eGovernment

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Norwegian support to institution building in Bosnia and Herzegovina, Macedonia and Serbia

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Preface

This document is an annex to Difi report 2009:6 "Promoting Good Governance in the Western Balkans – Norwegian Support to Institution Building in Bosnia and Herzegovina, Macedonia, and Serbia". In this report we provide general analyses and recommendations for Norwegian support to institution building in the Western Balkans. In this appendix, we present proposals for detailed project ideas. The proposals show how our general recommendations can be specified and made the object of practical project cooperation. The project ideas have constantly been referred to the Ministry of Foreign Affairs and some have already been acted upon. The proposals are largely based on interviews with public officials and representatives of international organizations in Bosnia and Herzegovina, Macedonia and Serbia in the period February - April 2009. The description of the project ideas and the rationale for them reflects the situation in politics and public administration as it was during the mentioned period. However, the reform environment in Western Balkan is highly volatile. Thus, gradually our relatively detailed description of particular aspects of public administration reform will diverge from the constantly evolving decision-making context. We have therefore decided not to include the specific project ideas in the main report, but to present them in a separate appendix.

Oslo, 27 August 2009



Hans Christian Holte
Director

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Summary

Chapter 1 Bosnia and Herzegovina

In this chapter the Difi project team recommends that 9 project ideas be considered carefully for Norwegian support, that particular attention is given to project proposals written in bold, and that the Norwegian MFA/an institution (institutions) commissioned by the Norwegian MFA follows up these proposals with the intention of defining more precisely the content of projects that may be funded as of 2010.

The rule of law:

- **The staff of the High Judicial and Prosecutorial Council (HJPC) has suggested (i) a regional project targeted at Judicial and Prosecutorial Councils across the region, (ii) the continuation of ongoing Norwegian support for BiH HJPC.**
- The Office of the Human Rights Ombudsman has suggested a project regarding (i) exchange of experiences with/learning from Ombudsman institutions in neighbouring countries, including capacity building for ombudsman staff, and (ii) preparation of a comparative study of how ombudsman institutions in a selection of European countries deal with human rights issues, and on the basis of this analysis develop BiH guidelines/(draft)regulations
- The Ministry of Human Rights and Refugees has suggested a project with two main elements, (i) expert assistance/consultancy services to the ministry regarding i.a. the development of an action plan for identifying and following up compensation claims by refugees/internally displaced persons, (ii) financial assistance for procurement and installation of necessary ICT hardware and software for a register of refugees/internally displaced persons who may be entitled to economic compensation
- **The Ministry of Justice has suggested a project with two components (i) preparation of a revised Administrative Procedures Act that is harmonized across BiH, and covers state and entity levels, and (ii) development of a training program for civil servants who will be charged with implementing the amended act.**

Security sector reform

- **The Ministry of Defence has suggested a project with two main components, (i) the preparation of a Strategic Defence Review, and (ii) the building up of expertise/capacity in the fields of staff planning – recruitment and demobilization - and human resource management.**
- **The Ministry of Security has suggested a project regarding the establishment of two new agencies foreseen in the police reform laws: the Directorate for Coordination of BiH Police Bodies, and the Agency for Forensic Examinations and Expertise.**

Public administration reform

- **The PAR Coordinator has suggested that Norway join the PAR fund.**
- The Civil Service Agency has suggested a project regarding (i) development of new training schemes on prioritized topics, and (ii) development of strategies for e-learning/distant learning

Regulatory framework for market economy

- The Competition Council has suggested a project aimed at capacity building in the areas of state aid, and energy and strengthening of administrative functions of the Council.

Chapter 2 Macedonia

In this chapter the Difi project team recommends that 10 project proposals be considered carefully for Norwegian support, that particular attention is given to proposals written in bold, and that the Norwegian MFA/an institution (institutions) commissioned by the Norwegian MFA follows up these proposals with the intention of defining more precisely the content of projects that may be funded as of 2010.

The rule of law

- **The Judicial Council has suggested a project with two main components; it will review and further develop (i) methods for monitoring the work of courts and judges, *i.a.* through the improvement of criteria for defining efficiency and professionalism in the court system, (ii) procedures for the selection and the dismissal of judges, *i.a.* through an assessment of the current Macedonian arrangements in the light of European standards and practices**
- The ombudsman has suggested a project with two main elements, (i) capacity building with regard to the establishment of a special department of children`s right headed by the deputy ombudsman; *i.a.* by studying the experience of the Norwegian Ombudsman for Children, and (ii) strengthening the Ombudsman`s international experience as a means of further development of staff competence; *i.a.* enabling the Ombudsman to achieve full membership in the European Network of Ombudsmen for Children.
- The Directorate for Personal Data Protection has suggested a project on capacity building for directorate staff linked to cooperation with the Norwegian Data Inspection. Project activities should address *i.a.* data protection and use of smart card/chips (health card, passport, bank card etc.); video surveillance in schools, hospitals workplaces, etc., and personal data protection on the internet.

Public administration reform

- **The Secretariat for Legislation has suggested a project proposal with two main components,**
 - **the preparation of a comparative study of EU/EEA member states, mapping *i.a.* (a) Constitutional amendments that were implemented in these states in consequence of their joining EU/EEA, (b) the organization of efforts in these countries to transpose/implement EU/EEA legislation, and (c) the organization of the national law-making processes of the states studied, especially changes that were necessitated by EU/EEA accession. The study will be used as a basis for proposing institutional and legal/constitutional changes that will be likely results of Macedonia achieving EU membership, and**
 - **strengthening the capacity of the Secretariat staff through *i.a.* the development and implementation of a 1-3 year HR development plan. A key approach might be cooperation and exchange of experience with**

counterpart organizations of countries in the region and EU member states.

- **The State Administrative Inspectorate in the Ministry of Justice has suggested a project proposal with two main components, regarding (i) the preparation of the framework law on inspections, regulating *i.e.* cross-cutting issues concerning personnel policies, organizational patterns, decision-making procedures of inspection services, and (ii) the implementation of the law, *i.e.* adaption of specific legal frameworks, *lex specialis*, to the new framework law, the introduction of cooperative arrangements among inspection wherever feasible, and preparation of training activities. Expert assistance is needed, *inter alia*, to help make an analysis of strengths and weaknesses of individual inspectorates/inspectors` work, based on an assessment of key European standards, such as impartiality, transparency and predictability.**
- **The Ministry of Finance (MoF) has suggested two projects to improve its systems of decision-making. The first one pertains to the MoF`s general systems for internal communication and flow of information. The second project regards capacity building in the area of regulatory impact analysis.**
- **The Ministry of Justice has suggested a proposal with two components, (i) preparation of a framework law on public servants specifying the main principles – based on European standards – for personnel management in public institutions that are currently subject to special laws, *lex specialis*, and (ii) adaption of relevant special laws to the principles set out in the planned law on public servants, and development of a program to assist the affected institutions to implement the new provisions.**

Regulatory frameworks for market economy

- The Commissioner for Protection of Competition (CPC) has suggested a project proposal with two main elements, (i) preparation of a comparative study to address issues of inter-institutional cooperation in the area of competition and adjacent areas (*e.g.* energy and telecommunications, and (ii) capacity building for CPC staff and support for administrative functions (purchase of literature, participation in workshops, translation of professional literature on EU regulations).
- The Public Procurement Bureau has suggested a project with two components (i) an analysis of public procurement processes in order to develop a methodology for detecting corrupt practices in the various stages of these processes, and (ii) capacity building for PPB staff and support for administrative functions (*e.g.* purchase of literature, participation in workshops).
- The State Appeals Commission for public procurement (SAC) has suggested a project regarding (i) capacity building for SAC members and public officials working with public procurement across the public administration, mostly training, (ii) support for administrative functions, *i.a.* establishment of a website, procurement and installation of a document management system, and (iii) technical assistance, *i.a.* regarding development of strategic documents, and a media strategy.

Chapter 3 Serbia

In this chapter the Difi project team recommends that 8 project proposals be considered carefully for Norwegian support, that particular attention is given to proposals written in bold, and that the Norwegian MFA/ an institution (institutions) commissioned by the NMFA follows up these proposals with the intention of defining more precisely the content of projects that may be funded as of 2010.

The rule of law:

- **the national Ombudsman has suggested a project regarding the establishment of a comprehensive IT system which will (i) facilitate communication and information-sharing with other state supervisory bodies, including the Internal Affairs Division of the Ministry of the Interior, (ii) allow citizens to access the ombudsmen via at least 12 public libraries , (iii) facilitate statistical and other analyses of the ombudsman's casework, and (iv) make it possible to include an on-line complaints section on the ombudsman's website.**
- **the Commissioner for Freedom of Information and Protection of Personal Data has suggested a project with two components, (i) a comparative analysis of organizational patterns and working methods of bodies for data protection in Western Europe/new EU member states outlining implications for Serbia, and (ii) the establishment of a public register data base.**

Security sector reform:

- **The Ministry of the Interior has suggested a project idea with the overall objective to promote the professionalism and capabilities of the Section for Internal Control of Police. Two topics may be suggested for further discussions with the MoI (and Office of the State Ombudsman) regarding possible Norwegian support: (i) acquainting the ministry with arrangements for control and measurement of police performance in Western countries, and (ii) exploring the possibilities of entrusting the ombudsman with greater responsibilities for investigating issues relating to the police services.**
- Moreover, the Ministry of the Interior with the assistance of the OSCE Mission to Serbia has proposed a project to strengthen key elements in the MoI system of human resources management (HRM). The Difi project team strongly recommends that a key objective of this and a possible future HR project be the establishment of essential administrative and legal regularity based on European standards and necessary alignment with recently amended Serbian civil service legislation.¹⁰⁵

Public administration reform:

- The Ministry of Public Administration and Local Self Government and the Human Resources Management Service have submitted a project proposal with a view to developing a strategy for civil service training.¹⁰⁶

¹⁰⁵ This project is already being followed up.

¹⁰⁶ This project is already being followed up.

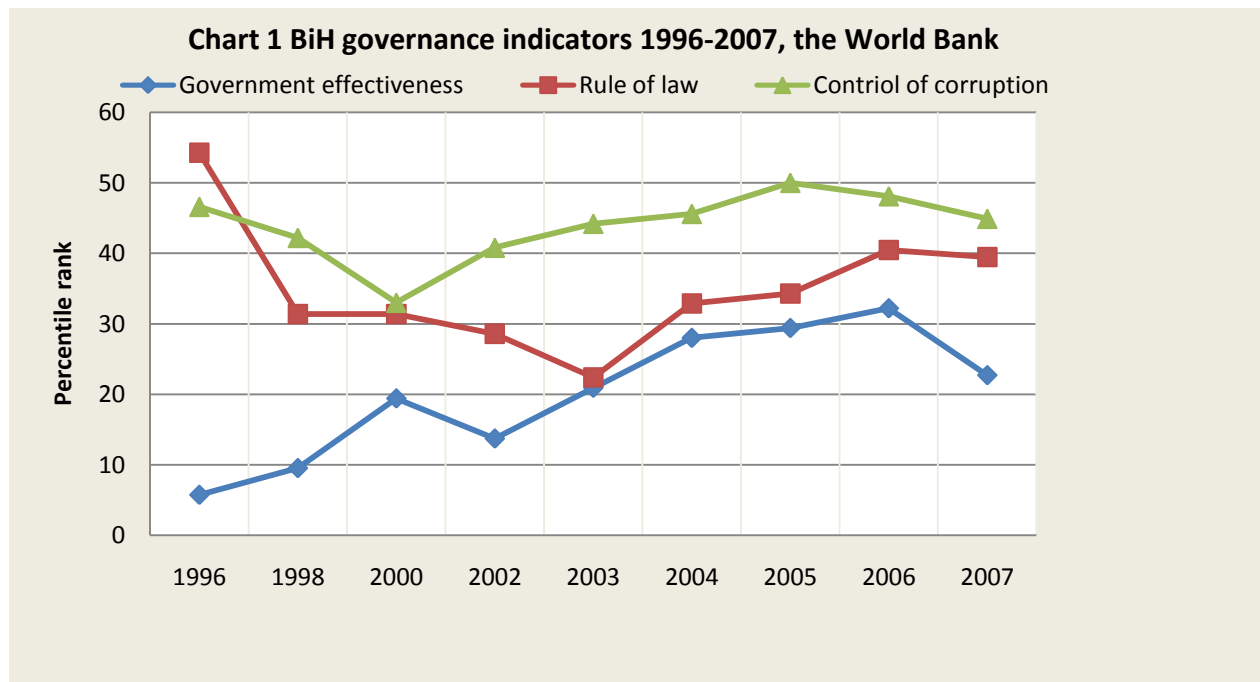
Regulatory frameworks for market economy:

- **The Ministry of Trade and Services has proposed a project with two main components: (i) review of the institutional structure in the area of market surveillance, with emphasis on improved coordination – analysis of the current situation, and a proposal for a reformed market surveillance structure, (ii) a review of revised/new methods/inspection procedures in the area of product safety – especially of internal control and their potential applicability in Serbia.**
- The Public Procurement Office has suggested a project to support capacity development in the Public Procurement Office. The projects will include *i.a.* the development of (i) a scheme for benchmarking and monitoring public procurement in Serbia, (ii) a methodology for assessing the capacity of purchasing entities across the Serbian public administration, and (iii) a training strategy and curriculum for certification of civil servants.
- The Energy Agency of the Republic of Serbia has suggested a project proposal with the objective to strengthen the capacity of the agency so that it is capable of developing and implementing regulatory policies and strategies and overseeing necessary reform in the energy sector. The project proposal include four main components related to, (i) upgrading the agency IT system (ii) exchange of expertise with the Norwegian Water Resources and Energy Directorate (NVE), (iii) capacity building of agency staff, and (iv) as of the beginning of 2011, technical assistance related to (a) the implementation of existing regulations, (b) the introduction of new regulatory concepts, and (c) the implementation of expected new competencies

5 Bosnia and Herzegovina (BiH)

5.1 BiH developments and challenges

In the 2003 – 2005 period, most governance indicators included in the chart below showed progress. However, since 2006 progress has stalled and indicators of government effectiveness actually dropped sharply.



The most recent assessments of the public administration by SIGMA and the EU Commission are summarized in table 1 below. SIGMA notes that there has been some progress regarding public administration reform. The PAR co-ordination office has been strengthened and the Public Administration Reform Strategy is being implemented. However, administrative structures remain cumbersome and fragmented. The civil service is in need of professionalization, and transparent and merit based arrangements for recruitment and career development. SIGMA further notes that there is still a need to limit political interference and the role played by ethnic identity and party membership in public administration. According to SIGMA, transparency of public activities is hampered by political pressure on public institutions, and there is lack of political will to implement actions to combat corruption.

According to the EU Commission's 2008 progress report, EU-related reforms have stagnated. There is no consensus on reform priorities, and state-level institutions have only to a limited extent been made more functional and efficient. Consolidation of the judicial system continued to make progress, even if the environment for reforms in this sector is not favorable. It is generally agreed that the country's predicament is caused by the current politico-administrative structure with a total of 14 governments on three levels - state, entity and canton

Table 1 IB Needs BiH– EU Assessments 2008¹⁰⁷

		IB topics			
		Legal framework	Processes	Institutions	Personnel
Horizontal systems					
(1)	Policy-making and coordination	<ul style="list-style-type: none"> There are some discrepancies between the Entities in the efficiency of adoption and implementation of legislation. 	<ul style="list-style-type: none"> Fragmented policy-making between the State and the Entities remains the main obstacle to efficient work by the State Government. Lack of resources, lack of coordination, ethnic tensions, and internal conflicts continue to delay reform. 	<ul style="list-style-type: none"> Limited progress on making state-level government structures more functional and efficient. 	
(2)	Public administration	<ul style="list-style-type: none"> Harmonisation of the three Civil Service Laws, and the three draft laws on administrative procedure are still pending The Ombudsman Act from 2006 was still not implemented in 2008. 	<ul style="list-style-type: none"> Some progress in the area of public administration reform, but the country is still in an early phase of PAR. 	<ul style="list-style-type: none"> The Public Administration Reform Office has made significant progress in terms of staffing. The accommodation of State-level institutions remains a problem. The Coordination Board for Economic Development and European Integration, designed to integrate State and Entity agendas, does not play an effective role. 	<ul style="list-style-type: none"> The civil service is in need of professionalization, transparent and efficient recruitment procedures and modern career development.
(3)	Judicial system	<ul style="list-style-type: none"> Progress in the area of harmonization of State and Entity criminal legislation has been limited. Problems persist, especially with prosecution of war crimes and organized 	<ul style="list-style-type: none"> Political interference in the judicial system remains a cause for concern. A clear and concrete national strategy dealing with war crimes issues has still to be adopted. 	<ul style="list-style-type: none"> The lack of a Supreme Court hampers efforts to harmonize application of legislation across the four jurisdictions. Having 14 Ministries of Justice each preparing judicial budgets has been detrimental to judicial independence 	

¹⁰⁷ The information in the table is extracted from, The European Commission: Bosnia and Herzegovina 2008 Progress Report, SIGMA: Public Service and the Administrative Framework (2008), SIGMA: Policy Making and Coordination 2008, and SIGMA: Public Procurement 2008.

		crime.		and the overall implementation of judicial reform. <ul style="list-style-type: none"> Material conditions, e.g. suitable premises, remain an obstacle to the judicial reform. 	
(4)	Anti-corruption policy	<ul style="list-style-type: none"> BiH has not signed the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption. BiH still needs to harmonize its legislation with the Council of Europe Civil Law Convention on Corruption. The amendments to the Act on financing of political parties are still not adopted. No legal measure in place to ensure confidentiality and protection of civil servants reporting corruption. 	<ul style="list-style-type: none"> Very little progress has been made to improve tools to fight corruption. Corruption is widespread and remains a serious problem, especially within Government. No progress has been made towards ensuring proper implementation of the 2006 National Anti-Corruption Strategy. Some of the decisions of BiH's Central Election Commission have not been properly implemented. 		
(5)	Human rights and protection of minorities	<ul style="list-style-type: none"> Implementation needs to improve. No progress has been made on reforming the BiH constitution, and minorities therefore continue to be excluded from the House of Peoples and the tripartite Presidency. 	<ul style="list-style-type: none"> Introduction and implementation of human rights conventions and legal provisions to prevent discrimination and to protect the rights of <i>i.a.</i> women, children, disabled and socially vulnerable persons, have been poor overall. No improvements made in the area of labour and trade unions. 		
(6)	Public procurement	<ul style="list-style-type: none"> There has been no major progress in terms of legislative alignment. 	<ul style="list-style-type: none"> Proper implementation of public procurement procedures across the country is not yet ensured. 		
Vertical systems					

(7) Free movement of goods	<ul style="list-style-type: none"> Limited progress has been made on technical regulations transposing the new and old approach directives into national legislation. Necessary to further approximate the legal framework to the Community legislation on free movement of goods and to efficiently implement and enforce it. 	<ul style="list-style-type: none"> Further development of the market surveillance system based on horizontal legislation and appropriate product-specific legislation is needed. Overall preparations in the fields of standardization, accreditation, conformity assessment, metrology, market -surveillance and consumer protection remain at an early stage. 	<ul style="list-style-type: none"> There is lack of proper conformity assessment infrastructure (testing and calibration laboratories, certification and inspection bodies). Further strengthening of institutional and administrative capacity and increasing cooperation between the relevant institutions is necessary. 	
(8) Free movement of persons, services and the right of establishment	<ul style="list-style-type: none"> Movement of persons within the country remains constrained by fragmented internal labour legislation and social security systems. The rules on operators from EU-Member States who provide cross-border services and those who are permanently established in the country are not transparent. No progress has been made with regard to adoption of the State-level legislation on leasing and obligations. The Entity securities markets still lack a coherent legislative and regulatory framework. Legislation governing postal services remains inconsistent between the state and Entities. 	<ul style="list-style-type: none"> BiH is lagging behind in the field of movement of persons. BiH remains one of the most difficult and costly places in the region for setting up a business. 	<ul style="list-style-type: none"> The Insurance Ombudsman has been appointed, but the legal framework for his activities has not yet been finalized. The role of the State Insurance Agency remains limited, with licensing and supervision remaining responsibilities of the Entity agencies. 	
(9) Free movement of capital	<ul style="list-style-type: none"> Further legislative initiatives are needed with regard to movement of capital. 			

	<ul style="list-style-type: none"> There is a need to ensure that legislation concerning foreign currency operations is harmonized across the country in line with EU legislation. 			
(10) Competition	<ul style="list-style-type: none"> No action has been taken to bring the Competition Act closer to the <i>acquis</i>. 	<ul style="list-style-type: none"> Overall, BiH's preparations in the area of anti-trust are moderately advanced. No progress has been made as regards State-aid. 		
(11) Intellectual property		<ul style="list-style-type: none"> Little progress has been made with regard to intellectual, industrial and commercial property rights (IPR). It is necessary to develop a comprehensive IPR strategy No progress has been made in relation to administrative procedures and copyrights and related rights. No significant development has taken place concerning industrial property rights. IPR enforcement remains weak. 	<ul style="list-style-type: none"> It is necessary to strengthen the capacity of the Institute and law enforcement agencies. 	
(12) Social protection and public health	<ul style="list-style-type: none"> Labour legislation has not yet been harmonized across the country. Little action has been taken to comply with EU provisions on health and safety at work. The revised European Social Charter has been ratified, but apart from this, little has been achieved in terms of social dialogue 	<ul style="list-style-type: none"> There has been no significant progress as regards social protection. As regards equal opportunities, no serious measures have been undertaken to address the problems related to women's access to the labour market. Limited progress has been made on social inclusion and anti-discrimination. 	<ul style="list-style-type: none"> Extreme fragmentation of the relevant institutional and legislative frameworks undermines progress The fact that there are no powers at State level in the field of employment and social policies or public health, remains an obstacle to the development of a countrywide strategy for employment . 	
(13) Education	.	<ul style="list-style-type: none"> Harmonization of legislation at Entity and Canton level was not completed by the end of April 2008, as provided 	<ul style="list-style-type: none"> Establishment of state-level agencies responsible for standards and assessment, quality assurance, 	

		<p>for by the Higher Education Act, and equal implementation throughout the country is not being ensured.</p> <ul style="list-style-type: none"> • The system of "two schools under one roof" remains a serious problem. 	<p>curriculum development and accreditation in education needs to be completed.</p>	
(14)	Agriculture and fisheries		<ul style="list-style-type: none"> • Efforts are needed to strengthen the administrative capacities in the fields of food safety, <i>i.a.</i> in the Veterinary Directorate. 	
(15)	Environment	<ul style="list-style-type: none"> • Coordination between local and central levels is insufficient. • Judicial enforcement of environment legislation needs to be strengthened. 	<ul style="list-style-type: none"> • The Environmental Protection Agency lacks capacities. 	
(16)	Transport policy		<ul style="list-style-type: none"> • The administrative capacities of the Ministry for Infrastructure need to be reinforced. • Division of responsibilities between the Ministry and the Civil Aviation Directorate needs to be clarified. 	
(17)	Energy	<ul style="list-style-type: none"> • Amendments to the energy law, concerning electricity distribution grid codes and electricity market rules have not yet been adopted. 	<ul style="list-style-type: none"> • The separation between distribution and supply of electricity has still to be implemented, and the related deadlines of the Energy Treaty have not been respected. 	<ul style="list-style-type: none"> • An appropriate regulatory authority has still to be established in the area of energy efficiency and renewable energy.
(18)	Information society and the media	<ul style="list-style-type: none"> • The enforcement of judicial decisions need to be strengthened 	<ul style="list-style-type: none"> • The administrative capacities of the Ministry of Information Society and the media need to be strengthened. • The Telecommunication Agency does not have sufficient expertise to regulate an open telecommunications market. Its independence needs to be strengthened. • The transparency and accountability of 	

			the Broadcasting Agency need to be strengthened.	
(19) Financial control		<ul style="list-style-type: none"> A working group has been established to draft a Public Internal Financial Control (PIFC) policy paper. No tangible results made so far. 	<ul style="list-style-type: none"> Further work relating to the status of the Supreme Audit Institutions and of the quality of external audit is needed. 	
(20) Visa, border control, asylum and migration	<ul style="list-style-type: none"> There are procedural weaknesses in the law on asylum. In particular there is no appeal to an independent judicial body. 		<ul style="list-style-type: none"> Technical capacities of agencies involved in the issuing of visas need to be strengthened. The capacities of the Asylum Office and the Asylum Commission remain weak. 	
(21) Money laundering		<ul style="list-style-type: none"> Criminal investigations of money laundering cases have very little success. 	<ul style="list-style-type: none"> Police and prosecution service lack capacities and expertise to investigate suspicious transactions. 	
(22) Police	<ul style="list-style-type: none"> Legislation on the reform of the security service has not been adopted. 	<ul style="list-style-type: none"> There is a lack of coordination in core areas such as corruption, organized crime, and war crimes. Concerns remain over the level of transparency in police work and potential undue political influence. 		
(23) Protection of personal data	<ul style="list-style-type: none"> Existing data protection rules have not been implemented. 		<ul style="list-style-type: none"> Structural problems in the police forces persist. Considerable differences in the capacities of departments and services as well as a lack of coherent approach to human resources and financial management within the Ministry of Interior. The internal control department has not been sufficiently effective owing to limited support within the police, staff shortages and a lack of resources. 	

5.2 Potential areas for Norwegian support to BiH - an overview

Together with BiH officials the Difi project team has developed 9 project ideas which are summarized in table 2 below.

Table 2 Potential areas for Norwegian support to Bosnia and Herzegovina.

	Legal framework	Processes	Institutions	Personnel
Rule of law				
Horizontal systems		<ul style="list-style-type: none"> The State Ombudsman The High Judiciary and Prosecutorial Commission The Ministry of Human Rights and Refugees 		
Vertical systems				
Security sector reform				
Horizontal systems				
Vertical systems		<ul style="list-style-type: none"> The Ministry of Defence - Strategic Defence Review, staff planning The Ministry of Security - Police Reform 		
Public administration reform				
Horizontal systems	<ul style="list-style-type: none"> The Ministry of Justice – law on administrative procedure 		<ul style="list-style-type: none"> The National PAR –Co-ordinator 	<ul style="list-style-type: none"> The National Civil Servant Agency
Vertical systems				
Regulatory frameworks for market economy				
Horizontal systems				
Vertical systems		<ul style="list-style-type: none"> The Competition Council 		

5.3 BiH: the rule of law

The High Judicial and Prosecutorial Council

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) is established in accordance with the standards set by the Consultative Council of European Judges. It is widely recognized that the Council and its judicial secretariat has played a leading role in implementing reforms in the BiH judicial sector.¹⁰⁸ The 2008 EU Progress Report notes that HJPC substantially guides judicial reform and has contributed to increased professionalism and efficiency in the judicial sector. It should also be noted that the HJPC has functioned as a role model for judiciary councils in the region.

¹⁰⁸ *Country Report BiH*, Bertelsmann Stiftung 2008, and *Publication produced for review by the USAID*, prepared by Suren Y. Avanesyan and Christie S. Warren, Management Systems International. June 2008.

Norway has been a strong supporter of the HJPC and has *i.a.* seconded a judicial advisor to serve as a full member of the Council.¹⁰⁹ There are plans for the Norwegian assistance to continue for another two years, *i.e.* through 2010 albeit at progressively lower levels.

Representatives of HJPC have asked the Difi project team to look into the possibilities of prolonging/renewing the current strategic partnership with Norway. HJPC staff refer to the positive results that have developed from the cooperation so far, and argue that in all likelihood support from other donors will not fully replace Norwegian efforts. They refer to the mutual trust and understanding that has grown up between Norwegian and Bosnian judges and other legal experts, and argue that this benefit should be preserved and further developed. Furthermore, they argue that the Norwegian support has been provided in a fashion that has been conducive to local capacity building.

The HJCP has suggested that support from the Norwegian Government be prolonged for another three-year period, and the budget kept on the same level throughout the project period. HJCP further suggests that the support should be provided in the same manner as previously; *i.e.* by allowing for a combination of (i) direct budget supplements (ii) technical assistance, (iii) support to capacity building in HJPC, its secretariat and the courts, and (iv) support to concrete projects.

HJPC staff also suggests a new project aimed at establishing networks and partnerships between judiciary councils in several Western Balkan states. This is considered especially important as all countries in the region are facing the same types of challenges in the justice sector.

The 2008 EU Progress Report emphasizes that HJPC's contributions to improving the BiH judiciary have been realized in spite of unfavourable odds, and need to be further developed and consolidated to ensure the sustainability of reforms that have been painstakingly implemented. The Difi Project team has noted that other international organizations and experts also argue that HJPC's need for assistance is as great now as in 2006. In our opinion, the fact that the HJPC is still fragile and that there are constant attempts to undermine its authority, highlights the need for the Norwegian and other international assistance to be given with a long-term perspective.

The European Partnership document¹¹⁰ emphasizes further progress in the judicial system as a short term priority for the BiH government. Over the past years the international community has focused more attention on judicial councils. Thus, in addition to the EU, USAID¹¹¹ and SIDA are expected to provide significant support in the years ahead. The Difi Project team does not see the recent array of donors as an argument for reducing and phasing out Norwegian assistance, provided that it will be possible to strengthen donor coordination.

¹⁰⁹ According to a donor mapping performed by UNDP in 2007, Norwegian support to the HJPC had totalled € 1.2 million up to date, not including secondment salaries.

¹¹⁰ 2008/211/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with BiH and repealing Decision 2006/55/EC

¹¹¹ USAID has launched the five-year *Justice Sector Development Project (JSDP)*, implemented by East-West Management Institute (EWMI), aiming to improve the efficiency and fairness of the judicial system in BiH by building the capacity and sustainability of key local institutions.

The Difi project team believes that Norway has a unique opportunity to continue its successful investment in the justice sector and to make a difference in this particular area across the Western Balkans. This argument is in line with our general recommendation that the NMFA concentrate resources on projects where it is possible to make use of experience and insight gained by previous support.

The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposals developed by HJC staff with the intention of defining more precisely the content of a regional project and the continuation of ongoing support in BiH.

Office of the Human Rights Ombudsmen

The Office of the Human Rights Ombudsmen of BiH (OHRO) is an independent institution of the State of BiH established in consequence of the Dayton Peace Agreement (DPA). The procedures established by the Office of the Ombudsman are modelled on recommendations by the European Commission of Human Rights. The OHRO is an institutional vehicle for general complaints against any aspect of maladministration in the public service.

The previous system of entity ombudsmen was abolished in April 2006, when all human rights prosecutors were merged into one single Ombudsman institution. The institution was renamed and started its operations from headquarters in Banja Luka in January 2007. Field offices are located in Sarajevo, Mostar and Brcko.

However, so far OHRO has neither had resources nor powers to function properly. The process of taking over competences from the entity level institutions has been difficult, and the Ombudsmen representing the three constituent peoples of BiH were only appointed in 2009 after a series of delays. The OHRO office in Sarajevo does not have adequate premises, and the institution's budget is far from sufficient.

The European Partnership document calls on the BiH government to ensure that the State and Entity Ombudsmen be fully integrated and that the state-level offices have the resources necessary to function properly. Further delay of the merger of the three offices may undermine the credibility of the national ombudsman institution.

OHRO has suggested a project proposal regarding

- Exchange of experiences with/learning from ombudsman institutions (OI) in neighbouring countries, including capacity building for ombudsman staff
- Preparation of a comparative study of how OIs in a selection of European countries deal with human rights issues, and on the basis of this analysis develop BiH guidelines/(draft)regulations

The Difi project team recommends that the project idea suggested by the OHRO – when and if fully developed - be considered carefully for Norwegian support.

The Ministry of Human Rights and Refugees

The Dayton Peace Accords and the subsequent peace implementation have established an elaborate system of civil and human rights protection. In Annex VII of the General Framework Agreement for Peace in BiH on Refugees and Displaced Persons, Article IX on

Compensation, it is stated that BiH authorities “shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.”

The 2008 EU Progress Report notes that the revision of the Strategy of BiH for implementation of the requirements regarding refugees and internally displaced persons can be considered a significant effort on the part of the State and the Entities to finalize the process of return. There are, however, still some 125 000 persons who wish to return to their original place of residence. One of the priorities of the European Partnership Agreement concerns remaining challenges regarding refugee return; *i.a.* the need to achieve significant progress towards their economic and social integration

The Ministry of Human Rights and Refugees (MHRR) will now intensify its efforts with issues regarding refugee return/refugee compensation claims, and plans the establishment of a new unit within the ministry for these matters. MHRR has suggested a project aimed at capacity building for this new unit. The project should provide

- expert assistance/consultancy services to the ministry/personnel in the new unit, regarding *i.a.* the development of an action plan for identifying and following up compensation claims by refugees/internally displaced persons.
- financial assistance for procurement and installation of necessary ICT hardware and software for a register of refugees/internally displaced persons who may be entitled to economic compensation

The Difi project team recommends that the project proposal suggested by the Ministry of Human Rights and Refugees – when and if fully developed - be carefully considered for Norwegian support.

The Ministry of Justice: the law on administrative procedure

The BiH Ministry of Justice (MoJ) is the central coordinating body for the judicial system. MoJ is responsible for implementing key parts of the Public Administration Reform Strategy, especially reforms concerning administrative decision-making, (*i.e.* legally binding decisions made by administrative authorities). According to MoJ legal experts rights of BiH citizens are more frequently affected by administrative decisions (practically all citizens) than court decisions (allegedly 2 of 10 citizens).

The PAR strategy sets out the main principles of public administration reform: transparency, participation, accountability, effectiveness, efficiency and coherency. The strategy recommends that amendments to the Law on Administrative Procedure (LAP) be passed to simplify, and align the BiH public administration with modern European standards of administrative decision-making. The current large number of administrative procedures which may vary across the BiH entities reduces transparency and predictability of administrative decision-making. The BiH LAP is based on the 1925 Austrian administrative code (*Verwaltungsverfahrensgesetz*), which is, or was until very recently, the corresponding body of legislation in all ex-Yugoslav states. The law which in broad terms is unchanged since the 1950s should be subjected to a thorough review.

In the same vein SIGMA recommends that general administrative procedure legislation be reviewed and adapted to democratic requirements, and that special administrative procedures be abrogated and limited to the absolute minimum. General administrative procedures need to be unified for the whole country and local laws abolished.

In response to *i.a.* SIGMA concerns, MoJ has suggested a project with two components

- Preparation of a revised Administrative Procedures Act that is harmonized across BiH, and covers state and entity levels. According to MoJ officials this is an area which is not controversial vis-à-vis the entity governments
- Development of a training program for civil servants who will be charged with implementing the amended law.

At present MoJ does not receive external support for capacity building, nor are there plans for/prospects of support that might overlap with the suggestions above.

The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follow up the proposal developed by MoJ with the intention of defining more precisely the content of a future project that may be funded as of 2010.

5.4 BiH: security sector reform

Defence planning

In 2006 the BiH Ministry of Defence took over responsibilities from the entity-level ministries. The army remains divided into ethnically defined units, throwing some doubt on how well the army is likely to function as an integrative institution.

In the past, the international military presence (under EU leadership since 2004) has provided security guarantees. The number of international peacekeepers has been gradually declining and was cut substantially from 6,000 in early 2007 to around 2,500 by March 2007. Their function has been to shore up the peace process and the state. Due to the decline in any apparent security threat to the state, this military presence has become less necessary.

BiH has undertaken major defence reform initiatives in an effort to stabilize the country and make it a credible candidate for both NATO's Partnership for Peace and the European Union Stabilization and Association Agreement Process. These efforts included a drastic downsizing of the armed forces in both entities and the subsequent demobilization of military personnel.

Norway has supported a transitional assistance programmes for discharged soldiers, *i.e.* assistance to facilitate their transition to civilian life with as little economic and social disruption as possible. In the period before 2006 these programmes were implemented by the International Organization for Migration (IOM), in cooperation with FBiH and RS Ministries of Defence. After 2006 the Ministry of Defence and the NATO Trust Fund have been responsible for efforts to discharge redundant personnel from the armed forces and assist them in their transition to civil life. Norway has given substantive support to these schemes.

However, the Ministry of Defence has not built sufficient capacity to cope with demobilization processes in 2009, and 1 – 5 years ahead when again a large number of

personnel will have to leave the armed forces at the age of 35, *i.e.* when they are too old for service and too young for retirement.

The Ministry of Defence, like other state-level ministries and institutions, is far from staffed or equipped to carry out the tasks it is charged with. Due the critical lack of capacity the Ministry has expressed the wish that Norway support

- the preparation of a Strategic Defence Review, and
- the building up of expertise/capacity in the fields of (i) staff planning – recruitment and demobilization, and (ii) human resource management/personnel management

As we have pointed, in section 4.2 of the report, the kind of projects that are proposed here should not be confined to passing on purely military know-how. Projects on public planning – no matter in what area – raise questions that go beyond the remit of individual ministries. They regard *i.a.* rules and practices for policy preparation and coordination across ministries. A Defence Ministry cannot on its own deal with, let alone decide, the kind of issues suggested in the project proposal. The preparation of a Strategic Defence Review must to some extent involve at a minimum the Foreign Ministry, the Ministry of Interior/ Police, the Ministry of Finance, and probably also units for policy planning at the centre of government. As we have emphasized earlier, SSR projects in the region have tended to focus too narrowly on military matters.

With this caveat we still recommend that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal developed by BiH MoD, with the intention of defining more precisely the content of future projects that may be funded as of 2010. Possible Norwegian support should be planned and implemented in contact with the PAR coordinator and an ongoing UNDP project on strategic planning and policy development

The Ministry of Security: police reform

The law enforcement system in Bosnia and Herzegovina is fragmented and inconsistent, and the lack of cooperation among police bodies undermines the fight against organized crime and crime in general. According to assessments by international experts the police are working with an outdated philosophy, without clear modernization strategies, with an old management style, with mostly outdated equipment and too many under-trained police officers. However, in 2005 the BiH Council of Ministers adopted a Political Agreement acknowledging the overall principles set out by the European Commission as the basis for an acceptable police reform:

- all legislative and budgetary competencies for all police matters must be vested at the State level;
- no political interference in operational work;
- functional local police areas must be determined by technical policing criteria where operational command is exercised at the local level.

After several failed attempts at police reform, two police reform acts were finally adopted in April 2008 and entered into force in May 2008. The acts foresee the establishment of seven new agencies at state level. There is no transfer of competences from the entity, cantonal and Brcko level to the new agencies; however, the Law on the Directorate for Coordination of

BiH Police Bodies prescribes that all police bodies in BiH are obliged to cooperate with this Directorate, and upon its request provide assistance to it.

The Ministry of Security has suggested a project regarding the establishment of two new agencies foreseen in the police reform laws:

- Directorate for Coordination of BiH Police Bodies
- Agency for Forensic Examinations and Expertise

According to an informal assessment by the EU Delegation in Sarajevo the new institutions might create a positive momentum for improved cooperation on police matters and may become a platform for streamlining the overall police structure in the coming years. In this context, transitional provisions in the laws determine that future steps will be considered after the constitutional reform; this approach is considered essential to ensure full compliance with the three European Union principles (referred to above) over a longer period of time. In meetings with the Difi project team, representatives of the EU Delegation emphasized that the police reform will need strong support and that the time is now favourable to start assistance.

However, based on previous experience from the long-lasting negotiations on police reform, it is expected that political difficulties will persist during the whole implementation period. The difficult and fragmented internal political situation of the country will require fine-tuning and commitment from the beneficiaries, in order to ensure the sustainability of the projects.

With these reservations in mind the Difi project team still recommends that Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal developed by the Ministry of Security, with the intention of defining more precisely the content of a future project that may be funded as of 2010.

5.5 BiH: public administration reform

The Public Administration Reform Coordinator`s Office: PAR fund

Public administration reform is a key priority in the EU integration process. The European Partnership Agreement calls for BiH to:

- further improve the functioning of public administration
- implement the consolidated Action Plans on public administration reform
- improve administrative procedures
- improve policy-making and co-ordination capacities
- strengthen Human Resource Management across all governmental levels, in particular the development and implementation of efficient recruitment procedures and the building of training capacity for civil servants.

The 2008 EU progress report states that there has been some progress in the area of public administration reform. However, the country is still in an early phase of PAR. The progress so far is mainly related to the establishment and performance of the Public Administration Reform Coordinator`s Office (PARCO).

PARCO has developed a PAR strategy with a corresponding action plan that has been adopted by all governments in BiH . The first phase of the action plan covers the overall

development of horizontal administrative capacities such as legislative drafting, administrative procedure, human resource management, public finance, policy-making, institutional communication, and information technologies. The second stage of the action plan focuses on the reorganization and strengthening of particular governmental sectors to enable the public administration in BiH on all levels to adopt and implement the *acquis*.

PARCO has made significant progress in terms of staffing, and the Public Administration Reform Fund (PAR fund) under its administration has become operational.

The PAR fund is financed by the donor community in BiH. The memorandum on the establishment of the Par fund was signed in July 2007 by *i.a.* the prime ministers of BiH, the Federation and RS, the mayor of the Brcko District, the ambassadors of the donor countries – the UK, the Netherlands and Sweden – and the head of the EU Delegation in BiH. When the memorandum was signed, the fund disposed of € 4.5 mill Euros earmarked for the implementation of the PAR strategy over a three year period.

The PAR fund can be increased either through participation of additional donors or through the increase of shares held by existing partners. By 2010 PARCO expects some of the donors to reduce their shares, and even to withdraw from the fund. PARCO has asked the Difi project team to look into the possibility that Norway joins the PAR fund.

Conversations we have had with representatives of the three donors, the EU, UK, and Sweden, clearly indicate that PARCO works rather well under adverse conditions.

The Difi project team recommends that Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal presented by PARCO with the intention of defining more precisely the content of future Norwegian support as of 2010.

The State Civil Service Agency: support to civil servants training

The European Partnership document obliges the BiH government to build training capacity for civil servants. The 2008 EU Progress Report notes that significant further efforts are needed to establish an efficient, professional, stable, accountable and transparent civil service.

The Civil Service Agency (CSA) has the mandate to plan and organize horizontal training for all state institutions. On the other hand, state institutions are responsible for developing training activities related to their specific areas of policy. The two entities and the Brcko District have their own civil service agencies charged with the training of civil servants, and are entirely independent in their work.

Coordination between State- and entity Civil Service Agencies has improved, with joint involvement in several large scale training schemes. However, the financial resources allocated for training of civil servants are not sufficient. Training is to a great extent donor-driven, poorly coordinated and not well enough targeted at officials who need it most. There is a clear need to strengthen the capacities of training institutions such as the CSA.

The Agency has proposed a project regarding

- development of new training schemes on prioritized topics
- development of strategies for e-learning/distant learning

The Difi project team recommends that the project idea suggested by the CSA – when and if fully developed - be considered carefully for Norwegian support.

5.6 BiH: Regulatory framework for market economy

The Council of Competition of BiH

The Council of Competition was established in 2004 as an independent public body with a mandate to ensure implementation of the Law on Competition, passed in 2001. The Council of Competition has particularly focused on developing competition policy and on institutional capacity building. The number of completed cases has increased steadily since 2006. Raising public awareness on various aspects of competition law is regarded as a key activity.

The Council of Competition has established contacts with relevant authorities in the region, EU countries, as well as multilateral cooperation with appropriate international bodies and organizations, such as OECD and UNCTAD, and has been a member of the International Competition Network (ICN) since 2005. The Competition Council has signed a memorandum of understanding on competition policy and relevant market legislation with its counterparts in Macedonia, Bulgaria and Croatia.

The European Partnership Document calls for the BiH government to strengthen the administrative capacity of the Competition Council. The 2008 EU Progress Report notes that there has been progress in the fields where the Competition Council has been most active, *i.e.* anti-trust control, and abuses of dominant position.

The Competition Council is aware of the need to strengthen its capacities. This year 6 – 7 new employees will be recruited, and Council officials point out that both new and old staff members need training. The council has suggested a project aimed at capacity building in the areas of state aid, and energy and strengthening of administrative functions (*e.g.* purchase of literature, participation in workshops, and meetings with experts from the region). The Competition Council wants to send an employee to Norway to study Norwegian experience with the enforcement of competition policies in the energy sector.

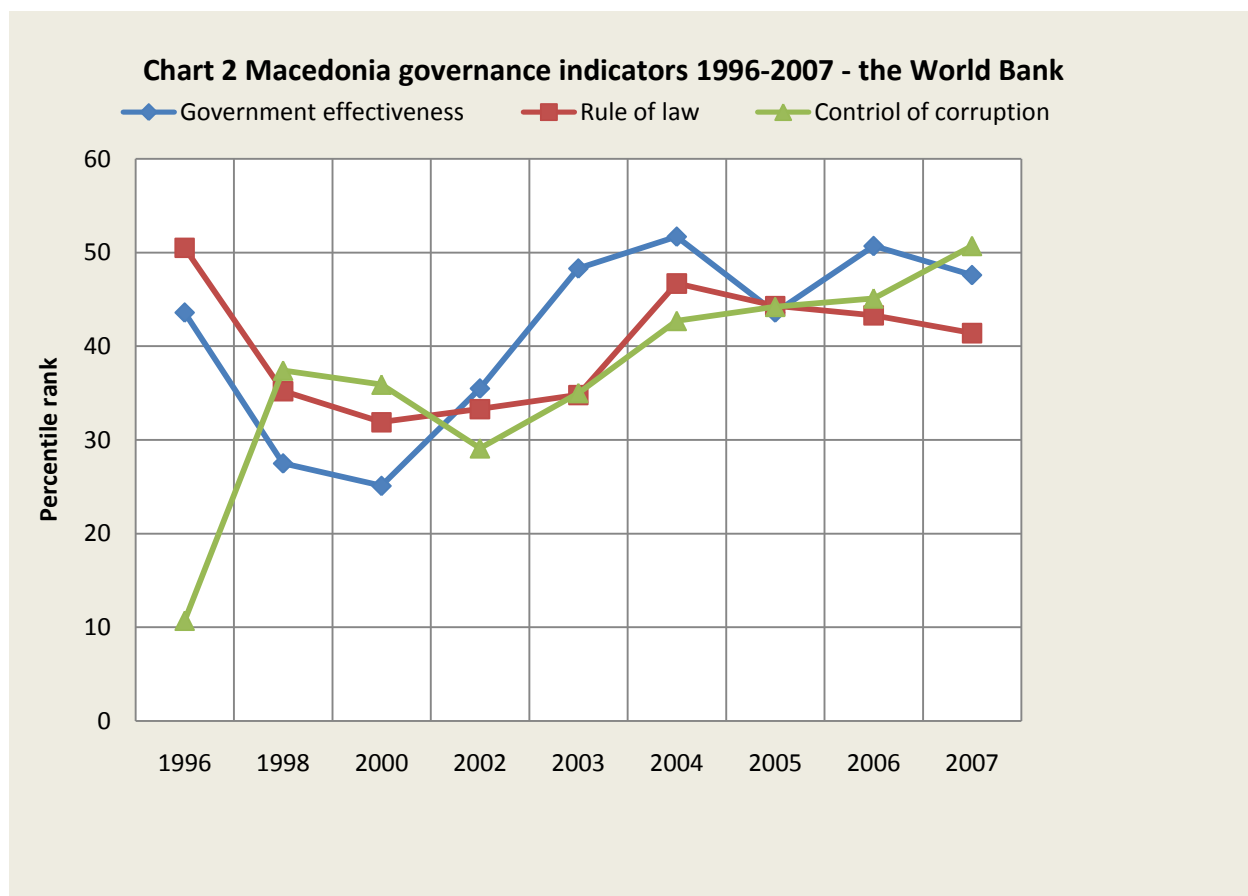
The Council of Competition does not currently receive any foreign assistance, nor are there plans for/prospects of such assistance in the near future.

The Difi project team recommends that the project proposal suggested by the BiH Competition Council – when and if fully developed - be carefully considered for Norwegian support.

6 Macedonia

6.1 Macedonian developments and challenges

Since 2002 there has been progress, although uneven, for all governance indicators included in the chart below. Improvements in government effectiveness and control of corruption are slightly more pronounced than enhancement of the rule of law. However, government effectiveness actually deteriorated during the 2004 – 2006 period. Control of corruption is the only indicator that shows steady progress in the post 2002 period.



The most recent assessments of the Macedonian public administration by SIGMA and the EU Commission are summarized in table 3 below.

The SIGMA assessments from 2006 – 2008 report significant progress in legislation and supporting regulations for policy preparation, co-ordination, and strategic planning. Further, good structures for management and coordination of European integration activities have been set up. SIGMA nevertheless identifies a series of remaining challenges in horizontal management systems. Some weaknesses relate to legal frameworks, *i.a.* regarding the scope of the Law on Civil Servants. A number of areas in the state administration are not aligned with basic principles for civil service. Weaknesses as regard processes are evident in many areas, *i.a.* with regard to following up the requirements to implement regulatory impact assessment (RIA) in the Ministry of Finance. According to SIGMA, professionalism and depoliticization of the civil service remains a concern. The dismissal of a large number of managers at the very beginning of the new government provided some contradictory signs to

the general public society and to the civil service. Ethics in civil service should be strengthened.

According to the EU Commission the country made some progress during the 2006 – 2008 period, but it does not yet meet the political criteria for commencement of accession negotiations.

Table 3 IB Needs Macedonia – EU Assessments 2008¹¹²

		IB topics			
		Legal framework	Processes	Institutions	Personnel
Horizontal systems					
(1)	Policy-development, coordination and planning	<ul style="list-style-type: none"> • Framework needs to be established for effective social dialogue between the government and the organisations representing civil servants • Coordination of the NPAA with the strategic plans of ministries and the work programme of the government needs to be strengthened • The capacity to prepare legislation is variable, which is reflected in its quality. 	<ul style="list-style-type: none"> • There are inadequate structures and insufficient administrative capacity for human resources management, policy development, strategic planning, and internal coordination and planning. 	<ul style="list-style-type: none"> • Human and financial resources to implement the <i>acquis</i> (NPAA) are still inadequate. • A number of key positions in the Secretariat for European Affairs (SEA), the Ministry of Justice and the Ministry of Local- Self Government remain vacant. 	
(2)	Public administration and decentralization	<ul style="list-style-type: none"> • Some progress made in reforming public administration, but the country has a long way to go in establishing a public administration which is transparent, professional and free of political interference • Specific statutes need to be revised and aligned with basic principles for the civil service. 	<ul style="list-style-type: none"> • Limited progress in strengthening the role of Civil Servants Agency (CSA). 	<ul style="list-style-type: none"> • Training needed for staff of HRMS and HR units across the public administration. • Understanding of the performance assessment process is still poor, and the capacities in ministries to implement are low. • There is no fully functional network of human resource management 	

¹¹² The information in the table is extracted from, The European Commission: The Former Yugoslav Republic of Macedonia 2008 Progress Report, SIGMA: Public Service and Administrative Framework (2008), SIGMA: Policy Making and Coordination (2008), and SIGMA: Public Procurement (2008).

				<p>units in line ministries.</p> <ul style="list-style-type: none"> Existing HRM units deal only with personnel issues and are under-equipped to handle training and performance appraisal issues . A comprehensive plan for training of civil servants still not in place.
(3) General administrative law framework and anti-corruption legislation and measures	<ul style="list-style-type: none"> Corruption remains a serious cause for concern and key weaknesses remain, notably as regards financing of political parties and election campaigns. The anti-corruption legal framework still needs to be completed and rationalized. The amendment to the code of ethics for civil servants are so far ineffective. 	<ul style="list-style-type: none"> More effective implementation of the preventive measures by anti-corruption legal framework , including the law on general administrative procedures and the law on free access to information, would narrow the opportunities for corruption. The judiciary remains weak, and delivery and enforcement of court decisions are deficient. 	<ul style="list-style-type: none"> The administrative capacity of the commission for protecting access to public information remains weak. The State Anti-Corruption Commission (SACC) is not sufficiently fulfilling its leadership role and should be more active in particular in awareness raising and engagement with the public. 	
(4) Public Procurement	<ul style="list-style-type: none"> The new law on concessions and public-private partnerships not in line with the acquis Further changes in remedies system are necessary. 	<ul style="list-style-type: none"> The system of public procurement is bureaucratic and time-consuming. Lack of transparency and openness. No up-to date manuals/guidelines. 		<ul style="list-style-type: none"> Current efforts on training for the contracting authorities and economic operators need to be sustained. Little professional assistance available for procurement officers.
Vertical systems				

(5)	Market economy development	<ul style="list-style-type: none"> Modest progress in the area of corporate accounting auditing. 	<ul style="list-style-type: none"> The Institute for Chartered Auditors (ICA) still only has one full-time employee and has not yet begun to implement the programme for education and training of auditors. 		
(6)	Free movement of goods	<ul style="list-style-type: none"> No progress can be reported as regards general principles. Most of the sectoral <i>acquis</i> on free movement of goods has still to be transposed and implemented , Comprehensive strategy with milestones for implementation of the <i>acquis</i> for the relevant horizontal institutions has not yet been prepared. 	<ul style="list-style-type: none"> The capacity of the various institutions is still insufficient to ensure proper enforcement. Market surveillance is still very weak. 		
(7)	Free movement of workers		<ul style="list-style-type: none"> Hardly any progress in the area of freedom of movement for workers. 	<ul style="list-style-type: none"> The Employment service agency and its network of employment offices are still weak. The administrative capacity for coordinating social security schemes is insufficient. 	<ul style="list-style-type: none"> The technical capacity and human resources of the employment agency are insufficient.
(8)	Establishment of freedom to services	<ul style="list-style-type: none"> No progress regarding mutual recognition of professional qualifications. 	<ul style="list-style-type: none"> Lack of transparency and objectivity in granting authorizations still persist. 	<ul style="list-style-type: none"> The Postal Agency was established as an independent regulatory authority, but is not yet fully operational. 	<ul style="list-style-type: none"> The Postal Agency has not yet developed appropriate administrative capacity.
(9)	Freedom of the movement of capital			<ul style="list-style-type: none"> The administrative capacity and enforcement record on combating money laundering are not sufficient. 	
(10)	Customs	<ul style="list-style-type: none"> The customs legislation is well aligned with the <i>acquis</i>, but still has to be further harmonized. 	<ul style="list-style-type: none"> Adoption of the single administrative document has not been addressed. Customs procedures need to be further strengthened. A comprehensive IT system and a strategy for interconnectivity with the Community IT systems have yet to be developed. 		
(11)	Competition		<ul style="list-style-type: none"> Progress made in the area of State aid, but the ex-ante control of state aid is not sufficiently effective. 	<ul style="list-style-type: none"> The financial independence of the Commission for Protection of Competition secured (CPS), but the 	<ul style="list-style-type: none"> The CPC still needs better qualified staff and adequate funding.

			<p>MoF still determines the size of the CPC's budget.</p> <ul style="list-style-type: none"> Some overlap of competencies between CPC and the public prosecutor's office. 	
(12) Financial services			<ul style="list-style-type: none"> Deficiencies persist in the administrative capacity of the supervisory bodies, in particular as regards insurance, where enforcement is particularly insufficient. 	
(13) Intellectual property rights		<ul style="list-style-type: none"> Further effort needed in order to improve the track record, strengthen the capacity of enforcement bodies, adopt a coherent IPR strategy and carry out awareness raising activities. 		<ul style="list-style-type: none"> Enforcement of IPR hampered by lack of appropriate awareness, experience and qualifications of the inspectors and judges in the field.
(14) Social protection	<ul style="list-style-type: none"> Limited progress reported in social policy and employment. A moderate level of alignment has been reached. Little progress made in the area of labour law, social dialogue, social protection and anti-discrimination. 		<ul style="list-style-type: none"> Administrative capacity in the Labour Inspectorate is insufficient . Coordination between institutions involved in implementing social inclusion policies remains inadequate. Insufficient administrative capacity in the field of social inclusion 	
(15) Consumer and health protection		<ul style="list-style-type: none"> A strategy on public health has not yet been developed. 	<ul style="list-style-type: none"> The administrative capacity within the Public Health Institute is limited. The administrative capacity of the coordination n body market surveillance has not been strengthened. 	
(16) Agriculture and fisheries	<ul style="list-style-type: none"> There has been modest progress in the area of food safety, veterinary 	<ul style="list-style-type: none"> The animal health control system does not comply with EU legislative and institutional requirements. 		

	and phytosanitary policy, mainly regarding legislative preparedness.			
(17) Environment	<ul style="list-style-type: none"> The implementing legislation intended to transpose the <i>acquis</i> on strategic environmental assessment has been adopted, but is not yet fully aligned. 	<ul style="list-style-type: none"> Environmental protection requirements are not yet well integrated into policy-making and implementation in other areas. <ul style="list-style-type: none"> Judicial enforcement of environment legislation needs to be strengthened. 	<ul style="list-style-type: none"> The Environmental Protection Agency lacks the proper capacities. Administrative capacity in terms of human and financial resources is insufficient and its strengthening remains a priority. 	
(18) Transport policy		<ul style="list-style-type: none"> The reforms undertaken in railways still need further implementation. 	<ul style="list-style-type: none"> Administrative capacity in all sectors remains insufficient. Regulatory bodies and safety authorities have yet to become operational in the fields of land, air and rail transport 	
(19) Energy policy	<ul style="list-style-type: none"> In the field of energy, the country is yet not sufficiently prepared. There has been modest progress in the area of state aid, but preparations in this area are advanced. 		<ul style="list-style-type: none"> The administrative capacity to enforce energy efficiency policy and radiation protection regulations has improved, but requires further strengthening. The degree of independence of the energy regulator and the radiation protector regulator remains inadequate. 	

(20) Information society and media			<ul style="list-style-type: none"> • Despite legal provisions regulating the independence of the Broadcasting Council and the public service broadcaster, both remain vulnerable to political interference. • In the media the financial situation of the Broadcasting Company and the public service broadcaster remain a cause for concern. The Broadcasting Council is understaffed. Decisions of the Broadcasting Council are sometimes not respected by the broadcasters. 	
(21) Financial control			<ul style="list-style-type: none"> • The administrative capacity of the institutions responsible for public internal financial control and external audit has been strengthened, but is still inadequate to meet the obligations arising from the <i>acquis</i>. • The State Audit Office (SAO) is still not fully independent. 	
(22) Taxation	<ul style="list-style-type: none"> • The level of legislative alignment in indirect taxation is sufficient, but need to be improved in direct taxation. 			
(23) Statistics			<ul style="list-style-type: none"> • Cooperation with the MoF and the Central Bank has improved, however roles have still to be clearly defined. • The human and financial resources of the statistical office remain weak. 	
(24) Economic and monetary policy	<ul style="list-style-type: none"> • No progress reported in aligning the legal framework with the <i>acquis</i> in the area of monetary policy. 		<ul style="list-style-type: none"> • Administrative capacity has improved, but some gaps remain. 	
(25) Enterprise and			<ul style="list-style-type: none"> • The SME Agency still lacks sufficient 	

industrial policy			human and financial resources.	
(26) Trans European networks	<ul style="list-style-type: none"> No progress reported in the area of telecommunication networks. 			
(27) Police and justice, freedom and security	<ul style="list-style-type: none"> Secondary legislation on migration policy and integration policy plan is still lacking. The Council of Europe Convention on Action against Trafficking in Human Beings has not yet been ratified. 	<ul style="list-style-type: none"> The law on employment of foreigners and the Law on Aliens not fully implemented. .Asylum procedures are not yet fully in line with European standards. Little progress can be reported in the area of judicial cooperation in civil and criminal matters. Little progress reported in the area of drugs. Regulations on private possession of firearms are still insufficiently enforced. 	<ul style="list-style-type: none"> Structural problems in the police forces persist. Considerable differences in the capacities of departments and services as well as a lack of coherent approach to human resources and financial management within the Ministry of Interior pose serious challenges for ongoing reform efforts. Cooperation between public prosecutors and criminal bureau of the regional police headquarters has improved, but not sufficiently. The internal control department has not been sufficiently effective owing to limited support within the police, staff shortages and a lack of resources. Shortcomings in the logistics and funding of the department for witness protection have not been fully addressed. 	<ul style="list-style-type: none"> Staff who implement visa policy are undergoing training. An overall strategy for HRM management for the border police has not yet been adopted, and in-depth analysis of the staffing situation is lacking. Merit-based career development and appraisal not yet ensured, politicization of senior police officers is a problem.
(28) Fundamental rights and citizens rights		<ul style="list-style-type: none"> With regard to <i>freedom of expression</i> including freedom and pluralism of <i>the media</i>, the legal framework continues to meet most international standard. However, poor implementation leads to weaknesses in practice. There are several cases pending at the European Court of Human Rights concerning police abuse of the Roma people. No state funds are available for legal aid in civil cases. 	<ul style="list-style-type: none"> The inter-ministerial body for protection of human rights is not yet effective. The Committee for the Prevention of Torture has expressed deep concern about conditions in prisons. The economic and financial autonomy of the public service broadcaster and the regulatory body has still not been ensured .The media continues to be subject to significant political interference. 	<ul style="list-style-type: none"> The Directorate for Personal Data Protection remains understaffed.

(30) Judiciary and fundamental rights		<ul style="list-style-type: none">• Access to justice still limited in case of appeals against actions and decisions by civil servants. Government commissions which decide on complaints against decisions of administrative bodies were the least responsive to the Ombudsman's recommendations.• The new system of enforcement has had a mixed record.• Little progress reported as regards observance of international human rights law.	<ul style="list-style-type: none">• A significant number of vacancies remain open in the public prosecution service, and the Higher Prosecutor's Office which is yet to be set up. Furthermore, prosecutors are not using their competence to the full.• The Administrative Court and the Court of Appeal are not fully staffed which hinders the efficiency of these courts.• The budget of the courts is too low and jeopardizes the efficiency of the judiciary system .	
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6.2 Potential areas for Norwegian support to Macedonia – an overview

Together with Macedonian officials the Difi project team has developed 9 promising project ideas which are summarized in table 4 below.

Table 4 Potential areas for Norwegian support to Macedonia

	Legal framework	Processes	Institutions	Personnel
Rule of law				
Horizontal systems		<ul style="list-style-type: none"> The Judicial Council The Public Attorney (Ombudsman) The Directorate for Personal Data Protection 		
Vertical systems				
Security sector reform				
Horizontal systems				
Vertical systems				
Public administration reform				
Horizontal systems		<ul style="list-style-type: none"> The Secretariat of Legislation 		
		<ul style="list-style-type: none"> The Ministry of Justice, consolidation of public service legislation The State Administrative Inspectorate, supervisory bodies 		
		<ul style="list-style-type: none"> The Ministry of Finance 		
Vertical systems				
Regulatory frameworks for market economy				
Horizontal systems		<ul style="list-style-type: none"> The State Committee for Complaints to Public Procurement The Commission for Protection of Competition 		
Vertical systems				

Three of the projects seem to address benchmarks delivered by the EU Commissioner Olli Rehn (March 2008):

- The judicial Council
- The Ministry of Justice, consolidation of public service legislation
- The State Administrative Inspectorate, supervisory bodies

6.3 Macedonia: the rule of law

The Judicial Council

In 2004 the Government adopted a strategy and an action plan for the reform of the judiciary. The aim was to strengthen independence and efficiency of the court system and thereby to safeguard international human rights standards.

Since then, a series of reform measures have been implemented, regarding *i.a.* the Judicial Council (JC). According to the Law on the Judicial Council which entered into force on 1 January 2007 the JC among other things nominates and evaluates the work of judges (who are still elected by Parliament), monitors the reputation of judges and the confidence of the general public in the judiciary, and acts upon citizens' complaints regarding the courts and members of the courts. The JC has been given extended powers to counteract the tendency of political appointment of judges. Apparently, the reformed JC has also taken a more resolute approach to combating corruption.

Justice reform is a key priority in the EU accession process. The 2005 European Partnership drew special attention to the need to ensure a timely implementation of the Strategy and Action Plan on Judicial Reform.

Progress in this area has been noted by the EU Commission. The 2008 progress report emphasizes that the JC is now complete and functioning. The Commission insists, however, that a track record needs to be established. The Commission regards the JC as a main pillar in a reformed judiciary system, not least because of its role in promoting, protecting and monitoring judicial independence. Further strengthening of the JC is considered an important measure to alleviate seemingly persistent problems with lengthy judicial proceedings. One of the benchmarks delivered by EU Commissioner Olli Rehn (March 2008) obliges the Macedonian government to “Achieve continuous results in the implementation of judicial reforms and enhance the independence and overall capacity of the judiciary system [...]”.

The JC has suggested a project with two main components; it will review and further develop

- methods for monitoring the work of courts and judges, *i.a.* through the improvement of criteria for defining efficiency and professionalism in the court system
- procedures for the selection and the dismissal of judges, *i.a.* through an assessment of the current Macedonian arrangements in the light of European standards and practices

Although the EU and many other donors have been engaged in development and implementation of reform in the judicial sector, it is clearly stated in the multi-indicative planning document for IPA (MIPD) that elements of the Judicial Reform Strategy needs further attention, such as efforts to strengthen the independence and efficiency of the court system. As far as we are aware, no other donors currently support the JC, and there are no plans for future assistance that would overlap or conflict with the project activities suggested above.

Given the centrality of court-related issues in the Macedonian reform process, the Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the JC proposal with the intention of defining more precisely the content of a future project that may be funded as of 2010.

The public attorney (ombudsman)

The competence of the Public Attorney (Ombudsman) is laid down in the Constitution and the Law on the Ombudsman. “The Public Attorney protects the constitutional rights and legal rights of citizens when these are violated by bodies of state administration and by other bodies and organizations with public mandates. The Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life”.¹¹³

The legal framework provides the Ombudsman with a relatively firm institutional basis for promoting and safeguarding human rights. The office has expanded over the years and currently has some 70 employees. Citizens approaching the ombudsman submit complaints, mostly about violations of procedural rights and fair trial guarantees, as well as police

¹¹³ Article 77 in the Constitution of the Republic of Macedonia

conduct. Property rights, labor relations, social protection and children`s rights are other key areas of concern. A deputy ombudsman for children has recently been appointed.

The EU, UNDP, OSCE and local NGOs report that the Ombudsman has succeeded well in its efforts to reach out to the citizens, cooperate with NGOs, and be highly visible in the media. There has been some improvement over the years regarding the cooperation of the Ombudsman with the public bodies, reflected in the percentage of cases where the public bodies responded on the instructions of the Ombudsman. In 2007 and 2008 the response rate was around 85 per cent, compared with 77 per cent in 2006.

Although the Ombudsman is increasingly recognized, the functions of the Ombudsman remain insufficiently well understood by the population. Often the Ombudsman receives requests for assistance that are not within its mandate, and often the Ombudsman is not approached in cases where assistance could be provided. Secondly, the staff members of the Ombudsman need exposure to international experiences. For the past few years, internal training has improved the quality of the staff, but the lack of access to international experience is hampering a further development of competence.

The ombudsman has suggested a project proposal with two main elements

- capacity building with regard to the establishment of a special department of children`s right headed by the deputy ombudsman; *i.a.* by studying the experience of the Norwegian Ombudsman for Children
- strengthening the Ombudsman`s international experience as a means of further development of staff competence; *i.a.* enabling the Ombudsman to achieve full membership of The European Network of Ombudsmen for Children

The project will enable Macedonia to better fulfil key international obligations. Macedonia signed the Convention on the Rights of the Child in 1991, and in 2005 the Council of Europe Convention on Action against Trafficking in Human Beings. Recently the Convention on the Protection of Children against Sexual Exploitation was adopted. Ratification and implementation of these conventions are anticipated. The measures taken to strengthen the capacities of the Ombudsman`s institution to promote and monitor children`s rights are in line with recommendations by the Commissioner for Human Rights, CoE.

Currently the Ombudsman does not receive any external support in the field of children`s rights, nor are there plans for such support in the foreseeable future.

The Difi project team recommends that the project idea suggested by the Ombudsman – when and if fully developed – be carefully considered for Norwegian support.

The Directorate for personal data protection

In the last few years a reformed legal and organisational structure has been established to ensure appropriate handling of data protection issues. Macedonia has ratified the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data, and the domestic legal framework has been amended accordingly.

In June 2005, the Directorate for Personal Data Protection (DPDP) was established as an independent state body with the duty to supervise the lawfulness of activities regarding personal data processing. Currently DPDP has 17 staff members.

DPDP is deeply engaged in international cooperation in the areas of the police (INTERPOL, Schengen), the judiciary and human rights. Exchange of experience and learning from counterpart organizations in other European states and beyond, is regarded as an important way of building staff competence. DPDP has so far had few opportunities to meet with counterparts in contexts where there is room for in-depth professional discussions. DPDP has already established contact with the Norwegian Data Inspectorate (NDI) and has applied, in a modified form, some of the tools developed and put to use in Norway.

DPDP has suggested a project on capacity building for directorate staff linked to cooperation with the NDI. Project activities should address *i.a.* data protection and use of smart card/chips (health card, passport, bank card etc.); video surveillance in schools, hospitals workplaces, etc., and personal data protection on the internet.

DPDP is one of the beneficiaries in a project under IPA2008, which will not, however, overlap or conflict with the proposal suggested above.

The Difi project team recommends that the project proposal suggested by DPDP – when and if fully developed - be carefully considered for Norwegian support.

6.4 Macedonia: public administration reform

The Secretariat for Legislation

Reinforcing the institutional and administrative capacity by developing the capacity for policy development and legislation is a key requirement for the country's EU accession.¹¹⁴ To enable the adoption, implementation and compliance with the *aquis communautaire*, Macedonia, as a candidate country, needs to strengthen its institutional and administrative capacities.

Preparing for EU membership requires far-reaching changes in the system for policy and law preparation. In its most recent assessment of policy-making and coordination (November 2008) SIGMA observes that the capacity of the Macedonian government to prepare legislation is deficient, which is reflected in quality.

The Secretariat for Legislation – an expert state body reporting directly to the Macedonian Government – is one of the key players in this system. Its main assignment is to safeguard the quality and internal consistency of the domestic legal system, *i.a.* the constitutionality of new legislation and to ensure that domestic laws and other regulations are harmonized with international agreements. In particular the Secretariat monitors and evaluates the approximation of the national legislation with the EU *acquis*.

Although the Secretariat for Legislation has been continuously engaged in capacity building activities, its current capacity is strained to the utmost and needs to be significantly strengthened.

¹¹⁴ Council Decision of 18 February 2008 (2008/212/EC).

The Secretariat for Legislation has suggested a project proposal with two main components:

- The preparation of a comparative study of EU/EEA member states, mapping *i.a.* (i) constitutional amendments that were implemented in these states in consequence of their joining the EU/EEA, (ii) the organization of efforts in these countries to transpose/implement EU/EEA legislation, and (iii) the organization of the national law-making processes of the states studied, especially changes that were necessitated by EU/EEA accession. The study will be used as a basis for proposing institutional and legal/constitutional changes that will be likely results of Macedonia achieving EU membership.
- Strengthening the capacity of the Secretariat staff through *i.a.* the development and implementation of a 1-3 year HR development plan. A key approach might be cooperation and exchange of experience with counterpart organizations of countries in the region and EU member states.

At present the Secretariat for Legislation does not receive external support for capacity building apart from a minor activity for 2009 funded by NORMAK, nor are there plans/prospects of support that might overlap with the suggestion developed above. On the basis of the institution's prior record with project assistance, the Difi project team considers it has a good "absorption capacity".

We recommend that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the project proposal suggested by the Secretariat for Legislation with the intention of defining more precisely the content of a future project that may be funded as of 2010.

The State administrative inspectorate, supervisory bodies

As in all ex-Yugoslav states the work of Macedonian administrative bodies as well as private businesses are monitored by a large number of supervisory bodies/inspection services. The legal status, organizational patterns, working methods and HR systems of these bodies vary a great deal, not always for well-reasoned purposes it seems.

The large number and extensive fragmentation of supervisory bodies may influence the business environment negatively. Moreover it may mean an unnecessary demand on staff and create problems of overlap between supervisory bodies and /or problems of *lacunae*, where issues are not addressed because there is no responsible agency. This state of affairs may in turn hamper the enforcement of and compliance with key regulations. An upgrading of the supervisory bodies may be crucial to strengthening the regularity and quality of the work of state institutions and improving the business environment. As we have mentioned several times, a recurrent criticism from SIGMA regards the exceeding fragmentation of the civil service and civil service legislation, and the insufficient alignment of this legal framework with basic European principles.

In an effort to address this criticism the State Administrative Inspectorate (SAI), which supervises the implementation of the Law on General Administrative Procedure, has been given the task of drafting a framework law on state inspections, aiming at homogenizing the activities of this type of body on the basis of fundamental European standards.

SAI has suggested a project proposal with two main components, regarding

- the preparation of the framework law on inspections, regulating *i.e.* cross-cutting issues concerning personnel policies, organizational patterns, decision-making procedures of inspection services,
- the implementation of the law, *i.e.* adaption of specific legal frameworks, *lex specialis*, to the new framework law, the introduction of cooperative arrangements among supervisory bodies wherever feasible, and preparation of training activities. Expert assistance is needed, *inter alia*, to help make an analysis of strengths and weaknesses of individual inspectorates/inspectors` work, based on an assessment of key European standards, such as impartiality, transparency and predictability.

The suggested project seems to address one of the benchmarks delivered by EU Commissioner Olli Rehn (March 2008) obliging the Macedonian government to strengthen “[...] the common business environment by further improvement of the rule of law [and] strengthening the independence of regulatory and supervisory bodies [...]”.

At present the SAI receives no external support, nor are there plans/prospects of support that might overlap with the suggestion developed above.

The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal suggested by SAI with the intention of defining more precisely the content of a future project that may be funded as of 2010.

The Ministry of Finance – improvement of decision-making practices

As might be expected, the Ministry of Finance (MoF) plays a crucial role in governmental decision-making. It is involved in all major issues and provides on a regular basis input to policy proposals from the other ministries. However, according to MoF’s own assessment the internal procedures of the ministry are inadequate to MoF’s responsibilities and to the challenges it is currently facing.

MoF has suggested two projects to improve its systems of decision-making. The first one regards the MoF’s general systems for internal communication and flow of information. It includes two main components

- an analysis of the internal procedures for communication and document management with a view to developing reform proposals, and
- if warranted by the preceding analysis, a recommendation regarding the introduction of a document management system.

The second project regards capacity building in the area of regulatory impact analysis (RIA). Currently, MoF’s assessments of policy proposals submitted for the Government’s consideration are not based on proper cost-benefit analysis. This situation seriously weakens the value and impact of MoF’s contributions and ultimately also the quality of the Government’s decisions. RIA was made compulsory for Macedonian state authorities in 2008. However, the public administration is not sufficiently acquainted with RIA concepts and methodology. Thus, the current regulation remains largely unimplemented. The consequence of this is that the government is not able to calculate properly the social and economic consequences of its decisions, which of course is particularly serious in the current economic and financial crisis.

MoF has suggested a project to strengthen its capacity – and if possible that of other relevant ministries as well – to make quantitative analyses in general, and cost-benefit analysis in particular. MoF applied for IPA 2009 funds for institutional capacity building in respect of *i.a.* cost-benefit analysis. However, this potential project would start at the earliest in 2011, and thus would not meet the Ministry's current and acute needs.

The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposals suggested by MoF with the intention of defining more precisely the content of a future project that may be funded as of 2010.

The Ministry of Justice, consolidation of public service legislation

As we have indicated in the main report (section 4.2), a recurrent criticism by SIGMA concerns the fragmentation of legal frameworks for the public service. Different laws that are not harmonized with basic European standards govern HR management in different parts of the public administration. In response to the SIGMA assessment, the Ministry of Justice (MoJ) has suggested a proposal with two components

- preparation of a framework law on public servants specifying the main principles – based on European standards – for personnel management in public institutions that are currently subject to special laws, *lex specialis*,
- adaption of relevant special laws to the principles set out in the planned law on public servants, and development of a programme to assist the affected institutions to implement the new provisions.

The suggested project seems to address one of the benchmarks delivered by EU Commissioner Olli Rehn (March 2008) obliging the Macedonian government to “Ensure that the recruitment and career advancement of civil servants are not subject to political affiliation, further strengthen the merit-based career system, and fully implement the law on civil servants”.

The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposals suggested by MoJ with the intention of defining more precisely the content of a future project that may be funded as of 2010.

6.5 Macedonia: Regulatory frameworks for market economy

The Commission for protection of competition

The Commission for Protection of Competition (CPC) is responsible for enforcing the Law on Protection of Competition, adopted on 11 January 2005

The purpose of the competition rules is to ensure equal conditions for all business operators so that their market position is solely determined by the quality and price of the goods and services they produce. The key task of competition authorities is to counteract schemes which will give some market operators unwarranted advantages over others.

According to the Stabilization and Association Agreement, article 69, EC competition rules under Articles 81 and 82 EC Treaty applies in Macedonia. Article 8 of the 2008 Accession Partnership stipulates that Macedonia should “Strengthen the administrative capacity of the Commission for Protection of Competition and provide the adequate budget and staff”.

The EU Progress Report for 2008 notes progress in the area of anti-trust policies, including mergers. According to the report progress has also been made in the area of State aid, inter alia through legislative measures. The decisions of the CPC on State aid are respected, but the administrative capacity is not regarded as sufficient for proper monitoring of state aid.

Although CPC performs its duties independently, its financial autonomy has been questioned, as the Ministry still determines the size of the CPC's budget, which was reduced in 2008. According to the EU Commission, CPC's need for better qualified staff and adequate funding, may undermine further progress.

The CPC has suggested a project proposal with two main elements:

- preparation of a comparative study to address issues of inter - institutional cooperation in the area of competition and adjacent areas (*e.g.* energy and telecommunications)
- capacity building for CPC staff and support for administrative functions (purchase of literature, participation in workshops, translation of professional literature on EU regulations).

CPC has expressed interest in entering into cooperation with relevant Norwegian authorities: the Competition Authority and the Telecom and Energy regulators.

The CPC does not currently receive other foreign assistance that would duplicate the project idea outlined above.

The Difi project team recommends that the project suggested by CPC – when and if fully developed – be carefully considered for Norwegian support.

Public procurement

The setting up of an efficient public procurement system is a fundamental precondition for the success of a market economy. It contributes to long-term economic growth and the emergence of a competitive market culture focused on business efficiency and on “best value for money”. Moreover, a well-run public procurement system may contribute to reducing both public expenditure and the extent of corruption.

Development of the Macedonian system for public procurement will contribute towards the implementation of the SAA article 72 on the opening-up of the award of public contracts on the basis of non-discrimination and reciprocity. For public procurement, the Accession Partnership, article 8, outlines the importance of strengthening the complaints committee for public procurement, with the aim to provide an effective remedies system. It calls for achieving fully operational public procurement structures which ensure that public procurement procedures are conducted fully in accordance with the EC standards.

The National Plan for Adoption of the *Acquis* with regard to public procurement intends to further strengthen the capacities of the Public Procurement Bureau (PPB) as well as those of a State Appeals Commission (SAC).

In its most recent assessment of the public procurement system (November 2008) SIGMA observes *i.a.* that there is a lack of transparency and openness and that there are no up-to date manuals/guidelines .

The Difi project team met with representatives of both PPB and SAC. Both institutions have suggested areas for Norwegian project support.

The proposal regarding PPB has two components

- an analysis of public procurement processes in order to develop a methodology for detecting corrupt practices in the various stages of these processes
- capacity building for PPB staff and support for administrative functions (*e.g.* purchase of literature, participation in workshops)

PPB has ongoing project cooperation with *i.a.* SIGMA and USAID, but none of these projects will overlap the proposal suggested above.

SAC started its operations in 2008 despite the fact that no budgetary funding was allocated that year. All expenditures for November and December 2008 had to be covered by the budget for 2009. The committee met further obstacles with regard to office premises; first of all, the Government did not offer the State Committee for Complaints any furnishings or IT equipment in the new premises, nor did they have a budget for this. With the forthcoming central budget revision the budgetary item for the State Committee will be reduced by some 11 per cent.

SAC has suggested a project proposal regarding

- capacity building for SAC members and public officials working with public procurement across the public administration, mostly training
- support for administrative functions, *i.a.* establishment of a website, procurement and installation of a document management system
- technical assistance, *i.a.* regarding development of strategic documents, and a media strategy.

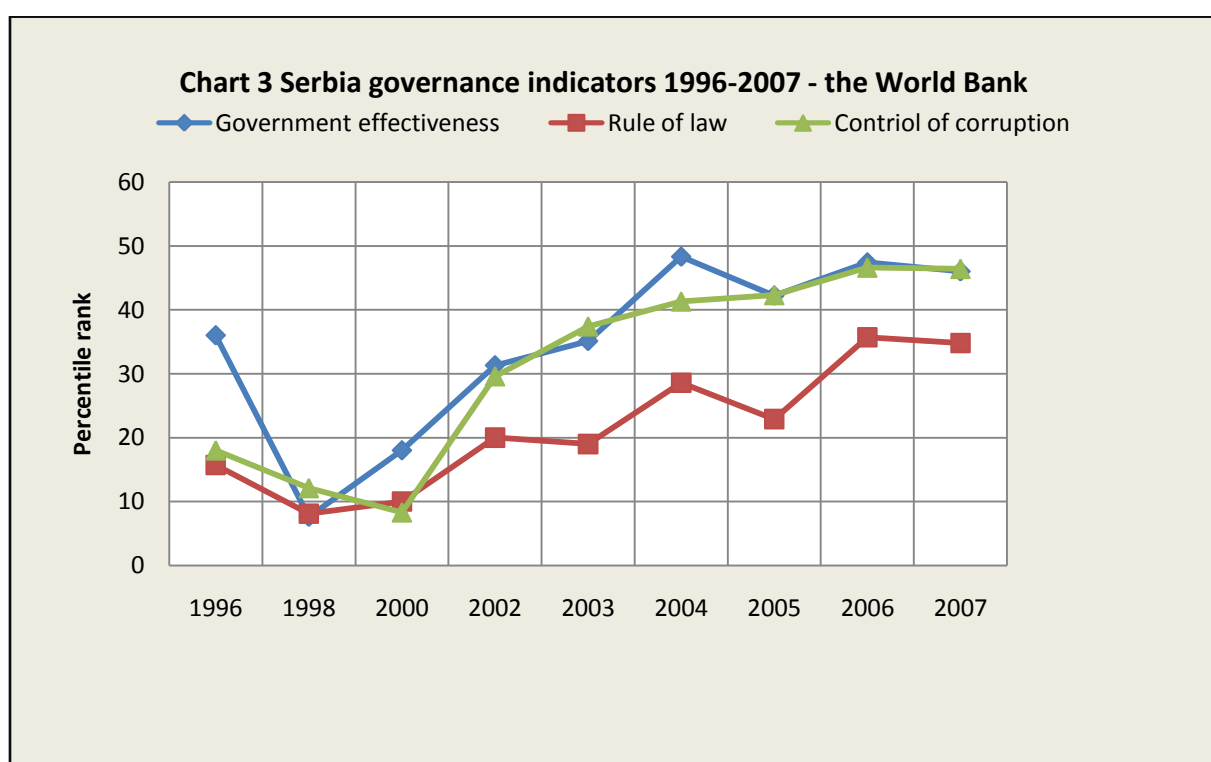
Currently SAC does not receive any foreign assistance. It will benefit from IPA 2008 support, but this assistance will not duplicate activities outlined above.

The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposals developed by PPB and SAC with the intention of defining more precisely the content of future projects that may be funded as of 2010.

7 Serbia

7.1 Serbian developments and challenges

Since 2000 there has been progress for all governance indicators included in the chart below. Improvement of government effectiveness and control of corruption is more pronounced than enhancement of the rule of law. However, government effectiveness actually deteriorated during the 2004-2007 period. A report published in September 2007¹¹⁵ estimated that the reduction of corruption has mainly been fostered by foreign trade liberalization, the reform of public finances, and liberalization in general. No major improvement – the argument goes – has resulted directly from government policies. Governments are said to have lacked necessary political will.



The most recent assessments of the Serbian public administration by SIGMA and the EU Commission are summarized in table 5 below. SIGMA identifies a series of challenges in horizontal management systems, policy-making and coordination, public service, the general administrative law framework, and public procurement. The weaknesses relate to legal frameworks (*i.a.* in the area of administrative procedures), processes of the public administration (*i.a.* inadequate procedures for drafting of legislation), institutions (*i.a.* insufficient technical conditions for the functioning of the Ombudsman's office), and personnel (*i.a.* lack of training in most institutions responsible for horizontal management systems).

¹¹⁵ Boris Begovic et al. "Corruption in Serbia: Five years later", Center for Liberal-Democratic Studies, Belgrade 2007.

Table 5 IB Needs Serbia – EU Assessments 2008¹¹⁶

		IB topics			
		Legal framework	Processes	Institutions	Personnel
Horizontal systems					
(1)	Policy-making and coordination	<ul style="list-style-type: none"> Legal competencies of the General Secretariat inadequately reflected in Law on Government and Rules of Procedure of Government 	<ul style="list-style-type: none"> Lack of strategic focus. Overly legalistic approach. 	<ul style="list-style-type: none"> Weak capacities in the General Secretariat . Weak capacities in ministries. 	
(2)	Public service	<ul style="list-style-type: none"> Implementation of the 2005 law on Civil Servants proceeds at a slow pace. Merit-based recruitment and professionalism remain fragile. Mechanisms to protect the integrity of civil servants are weak and inefficient. Action plan for fight against corruption lacks clear deadlines, specific action and necessary resources. Specific statutes, especially for security forces and information services need to be revised and aligned with basic principles for the civil service. 		<ul style="list-style-type: none"> HRM units insufficiently staffed. Centralized training facility should be set up. Anti-Corruption Council unable to perform its advisory role. Anti-corruption agency has not yet been established 	<ul style="list-style-type: none"> Training needed for staff of HRMS and HR units across the public administration.

¹¹⁶ The information in the table is extracted from: The European Commission: Serbia 2008 Progress Report, SIGMA: Public Service and the Administrative Framework (2008), SIGMA: Policy Making and Coordination (2008), and SIGMA: Public Procurement (2008).

(3)	General administrative law framework	<ul style="list-style-type: none"> • Legislation of administrative procedures and administrative disputes is inadequate. • Legal framework in the area of free access to information is inadequate. 	<ul style="list-style-type: none"> • Transparency in the public administration has not yet been achieved. • Inadequate procedures for law drafting. 	<ul style="list-style-type: none"> • Overlapping of tasks and responsibilities between ministries create confusion. • Organisation of administration excessively complex. • Insufficient technical conditions for the functioning of the Office of the State Ombudsman. 	<ul style="list-style-type: none"> • Training needed in Council for Regulatory Reform. • Courts and administrative bodies.
(4)	Public Procurement	<ul style="list-style-type: none"> • Public procurement law not fully harmonized with <i>acquis</i>. 	<ul style="list-style-type: none"> • System bureaucratic and time-consuming. • Lack of transparency and openness. • Little professional assistance available for procurement officers. • No up-to date manuals/guidelines. 	<ul style="list-style-type: none"> • Key functions of Public Procurement Office seriously neglected (development of system, training, advice) 	<ul style="list-style-type: none"> • Training for procurement officials needed.
Vertical systems					
(5)	Market economy development	<ul style="list-style-type: none"> • Several reform-related laws have been held up and implementation of existing laws is often weak. 			<ul style="list-style-type: none"> • Courts and administrative bodies lack the technical capacities and personnel to perform their tasks properly.
(6)	Free movement of goods		<ul style="list-style-type: none"> • Coordination among market surveillance authorities is lacking. 	<ul style="list-style-type: none"> • The preparation of a proper market surveillance structure has not yet started. • The administrative capacity of the Ministry of Trade and services is weak. • There are no out-of-court dispute resolution bodies. • The Standardisation Institute needs to strengthen HR and improve training facilities • The Accreditation Bureau suffers from lack of HR and training facilities. 	

(7)	Free movement of capital			<ul style="list-style-type: none"> The Securities Commission is not sufficiently independent and lacks competencies as defined by international standards. Supervisory capacities in the banking sector need to be further strengthened. 	
(8)	Customs		<ul style="list-style-type: none"> Customs procedures need to be further strengthened. 	<ul style="list-style-type: none"> The infrastructure of the customs administration needs to be strengthened. 	
(9)	Competition			<ul style="list-style-type: none"> The enforcement capacity and independence of the Competition Commission are weak. There is still no operationally independent state aid authority. 	
(10)	Intellectual property			<ul style="list-style-type: none"> The Intellectual Property Office is not sufficiently developed. 	
(12)	Social protection		<ul style="list-style-type: none"> Implementation of strategies at the local level remains weak. 		
(13)	Public health	<ul style="list-style-type: none"> A law on public health has not yet been prepared. 	<ul style="list-style-type: none"> A strategy on public health has not yet been developed. 	<ul style="list-style-type: none"> The administrative capacity within the Public Health Institute is limited. 	<ul style="list-style-type: none"> Managerial skills are not sufficiently developed.
(14)	Education			<ul style="list-style-type: none"> Limited administrative capacities and lack of coordination among responsible institutions remain a concern. 	
(15)	Agriculture and fisheries			<ul style="list-style-type: none"> Efforts are needed to strengthen the administrative capacities in the fields of food safety, veterinary and phytosanitary policy, <i>i.a.</i> in the Veterinary Directorate. 	<ul style="list-style-type: none"> The Veterinary Directorate is in need of training activities.
(16)	Environment		<ul style="list-style-type: none"> Coordination between local and central levels is insufficient. Judicial enforcement of environment legislation needs to be strengthened. 	<ul style="list-style-type: none"> The Environmental Protection Agency lacks the proper capacities to ensure proper implementation of the integrated monitoring strategy. Institutional capacity and HR at the local level are insufficient. 	

(17) Transport policy			<ul style="list-style-type: none"> The administrative capacities of the Ministry for Infrastructure need to reinforce its capacities. The operational structures need to be reorganized. Responsibilities divided between the Ministry and the Civil Aviation Directorate need to be clarified. 	<ul style="list-style-type: none"> Expertise of ministerial staff needs to be strengthened especially as regards the alignment of national legislation with the <i>acquis</i>.
(18) Energy	<ul style="list-style-type: none"> Amendments to the energy law, concerning electricity distribution grid codes and electricity market rules, have not yet been adopted. The separation between the distribution and supply of electricity has still to be implemented, and the related deadlines of the Energy Treaty have not been respected. 		<ul style="list-style-type: none"> An appropriate regulatory authority has still to be established in the area of energy efficiency and renewable energy. 	
(19) Information society and the media		<ul style="list-style-type: none"> The enforcement of judicial decisions need to be strengthened. 	<ul style="list-style-type: none"> The administrative capacities of the Ministry of information society and the media need to be strengthened. The Telecommunication Agency does not have sufficient expertise to regulate an open telecommunications market. Its independence needs to be strengthened. The transparency and accountability of the Broadcasting Agency need to be strengthened 	
(20) Financial control			<ul style="list-style-type: none"> The State Audit Institution is not fully operational 	
(21) Visa, border control, asylum and migration	<ul style="list-style-type: none"> There are procedural weaknesses in the law on asylum. In particular there is no appeal to an independent judicial body. 		<ul style="list-style-type: none"> Technical capacities of agencies involved in the issuing of visas need to be strengthened The capacities of the Asylum Office and the Asylum Commission remain weak. 	<ul style="list-style-type: none"> Staff of the Asylum Office need to be trained.
(21) Money laundering		<ul style="list-style-type: none"> Criminal investigations of money laundering cases have very little success. 	<ul style="list-style-type: none"> Police and prosecution service lack capacities and expertise to investigate suspicious economic transactions. 	
(22) Police	<ul style="list-style-type: none"> Legislation on the reform of the security service has not been adopted. 	<ul style="list-style-type: none"> In the absence of new legislation on the division of responsibilities, there is a lack of coordination in core areas such as corruption, organized crime, and war crimes. Concerns remain over the level of transparency in police work and 	<ul style="list-style-type: none"> Structural problems in the police forces persist. Considerable differences in the capacities of departments and services as well as a lack of coherent approach to human resources and financial management within the Ministry of Interior pose serious challenges for ongoing reform efforts. 	

		potential undue political influence.	<ul style="list-style-type: none"> The internal control department has not been sufficiently effective owing to limited support within the police, staff shortages and a lack of resources. 	
(22)	Protection of personal data	<ul style="list-style-type: none"> Existing data protection rules have not been implemented 	<ul style="list-style-type: none"> There is no independent and efficient data protection supervisory authority 	

According to the European Commission most sectoral institutions responsible for the accession agenda perform inadequately. A red thread running through the most recent progress report is the argument that professional authorities are insufficiently independent and/or have insufficient capacities, e.g. the Competition Commission, the Intellectual Property Office, the Veterinary Directorate, the Telecommunication Agency, and the State Audit Institution).

7.2 Potential areas for Norwegian support to Serbia – an overview

Together with Serbian officials the Difi project team has developed 8 project ideas which are summarized in table 6 below

Table 6 Potential areas for Norwegian support to Serbia

	Legal framework	Processes	Institutions	Personnel
Rule of law				
Horizontal systems		<ul style="list-style-type: none"> The National Ombudsman (Protector of Citizens) The Commissioner for Freedom of Information and Personal Data Protection 		
Vertical systems				
Security sector reform				
Horizontal systems				
Vertical systems		<ul style="list-style-type: none"> Police accountability 		<ul style="list-style-type: none"> Police HRM
Public administration reform				
Horizontal systems				<ul style="list-style-type: none"> A strategy for civil service training
Vertical systems				
Regulatory frameworks for market economy				
Horizontal systems		<ul style="list-style-type: none"> Public procurement 		
Vertical systems		<ul style="list-style-type: none"> Market surveillance Energy regulation 		

7.3 Serbia: the rule of law

The National Ombudsman (the Protector of Citizens)

Over the past few years Serbia has made progress regarding the rule of law, human rights and protection of minorities. However, the European Commission also observes that there has been insufficient progress on implementing international human rights law and that the institutional structures for the implementation of human and minority rights have to be further reinforced.¹¹⁷

¹¹⁷ The European Commission: Serbia 2008 Progress Report.

The newly established Office of the State Ombudsman (OSO) has been very active. Good cooperation has been established between the State ombudsman, the ombudsman in Vojvodina and municipal ombudsmen. However, due to *i.a.* insufficient technical conditions the OSN still does not function properly. Moreover, the Serbian administration lacks sufficient knowledge of the ombudsman institution and its role and has not paid sufficient attention to its recommendations.

The European Partnership document defines as a short-term priority Serbia's obligation to implement legislation regarding the establishment of the Ombudsman's Office. As mentioned above in its most recent progress report the EU Commission underlines the need to strengthen the functioning of this office.

Apart from stating the necessity of establishing the institution of Ombudsman, the Serbian

National Strategy for Accession to the European Union clearly stresses the importance of capacity building in the office once it is established, with the aim of achieving generally accepted international standards in the field of protection of human rights and freedoms.

Moreover, the Serbian strategy for public administration reform highlights the importance of the Ombudsman's Office as an external mechanism for overseeing the work of public administration.

The OSO has suggested a project regarding the establishment of a comprehensive IT system which will

- facilitate communication and information-sharing with other state supervisory bodies, including the Internal Affairs Division of the Ministry of the Interior (MoI)
- allow citizens to access the ombudsmen via at least 12 public libraries
- facilitate statistical and other analyses of the ombudsman's casework
- make it possible to include an on-line complaints section on the ombudsman's website.

The project idea seems to meet the criteria regarding IT projects we have suggested in the main report (section 4.3). Among other things the acquisition of equipment/software is directly and plausibly linked to reforms of the OSO regarding *i.a.* improved access and transparency. The suggested link to the Internal Affairs Division of the MoI seems interesting as several international expert organisations such as the UNDP and OSCE recommend that OI's have roles in the external monitoring of the police. We return to this topic in greater detail below. At the time of our meetings with representatives of the OSO there appeared to be no risk of overlap/duplication with other external support.

The Difi project team recommend that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the project idea developed by the OSO with the intention of defining more precisely the content of a future project that may be funded as of 2010.

The Commissioner for Information of Public Importance and Personal Data Protection

The Commissioner for Information of Public Importance and Personal Data Protection is an independent public authority with the primary function of protecting human rights in the areas of free access to information and personal data protection.

The functions covered by the Commissioner are central in the EU accession process.

The SAA, article 81 obliges the Serbian government to “harmonize its legislation concerning personal data protection with Community law and other European and international legislation on privacy upon the entry into force of this Agreement. Serbia shall establish one or more independent supervisory bodies with sufficient financial and human resources in order to efficiently monitor and guarantee the enforcement of national personal data protection legislation”.

The European Partnership document calls on Serbia to revise the legal framework, sign the relevant international conventions and set up an independent supervisory authority for data protection. Sufficient protection of personal data is a precondition for Serbia to achieve visa liberalisation.¹¹⁸

Despite the political centrality of the issues dealt with by the Commissioner, the institution faces great difficulties in implementing its statutory responsibilities; *i.a.* lack of qualified staff and lack of willingness in the case of public authorities to comply with the Commissioner’s decisions.

The Commissioner has suggested a project with two components:

- a comparative analysis of organizational patterns and working methods of bodies for data protection in Western Europe/new EU member states outlining implications for Serbia,
- the establishment of a public register data base.

At present the Commissioner receives no external support, nor are there plans/prospects of support that might overlap with the suggestion developed above.

The Difi project team recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the proposal developed by the Commissioner with the intention of defining more precisely the content of a future project that may be funded as of 2010.

¹¹⁸ Benchmarks 32-33, Updated assessment for the implementation by Serbia of the roadmap for visa liberalization, EU Commission Expert Document, 18 May 2009.

7.4 Serbia: security sector reform

Police accountability

In the process of supporting democratization in Serbia, the Ministry of the Interior has one of the most important roles. The European Partnership document identifies police reform and the need to ensure accountability, reform of police education and co-operation among law enforcement agencies as crucial steps in the transformation of Serbia's judicial system. The SAA, article 80, identifies improved functioning of the police and other law enforcement bodies through the provision of adequate police training and fighting corruption as the key to the reform of the judicial system.

Under the 2005 Police Law, the Internal Control Section of the MoI will monitor the legality of police work, especially with regard to respect and protection of human rights. As we have noted the EU Commission in its most recent progressive report calls for measures to improve the functioning of this unit. According to the Ministry's own assessment the Internal Control Section suffers from insufficient knowledge of EU standards and practices, and lack of good communication links between central and regional offices. Thus, the unit cannot readily implement preventive or punitive actions against corruption.

There are indications that the current Government and the Minister of the Interior in particular give higher priority to police reform and police accountability than their predecessors. The Government emphasizes that the provision for internal oversight of the policing services is a key part of the reform process and that the relationship between accountability and policing is directly connected to the social values of a democratic society. Key objectives of the ongoing reform of the public administration are tackling corruption and ensuring accountability in all parts of the administration.

The Ministry of the Interior has suggested a project idea with the overall objective to promote the professionalism and capabilities of the Section for Internal Control of Police. The proposal includes two elements, (i) development of methods regarding control of personnel and financial management, and (ii) procurement of surveillance equipment.

Given the centrality of police accountability in the Serbian reform process and the current "window of opportunity", the Difi project team recommends that the NMFA follow up the MoI suggestion with the intention of studying more closely the possibility of defining the content of a future project. Having said this, it must be added that the current arrangements for the monitoring of the police suffer from serious structural deficiencies, which to some extent should be addressed in an eventual project. In Serbia there is *i.a.* no external monitoring and no efficient Parliamentary control mechanism. While ideally, the MoI internal control unit should enjoy a certain degree of independence, the head of the unit is under the (potentially) strict control of the minister. The unit's key focus is control of individual police officers. However, according to CoE/OSCE standards police investigating other police should not be the rule,

but the exception. Complaints against police officers should be investigated by or under the supervision of an independent body.¹¹⁹ Instead of focusing on individual cases the attention of the Internal Affairs Unit should be directed to more general aspects of police performance.

Two topics may be suggested for further discussions with the MoI (and OSO) regarding possible Norwegian support: (i) acquainting the ministry with arrangements for control and measurement of police performance in Western countries, *e.g.* Sweden and the UK, and (ii) exploring the possibilities of entrusting the ombudsman with greater responsibilities for investigating issues relating to the police services. The OSCE mission to Serbia has proposed introducing a position of assistant Ombudsman with such authority¹²⁰. The OSCE suggestion is in line with general guidance from the UNDP and the Geneva Centre for Democratic Control of the Armed Forces (DCAF) regarding the role of OIs in the oversight of security institutions¹²¹.

We recommend that a minor pilot study be carried out with a view to exploring these issues further and clarifying the basis for a possible future project.

MoI has submitted a project proposal for IPA funding, which will be decided upon towards the end of 2009. This proposal does not involve the OI component indicated above nor control with personnel or finance management. The project discussed below regarding police HR is clearly relevant for the issue of police accountability and the role of the Internal Affairs Division, for instance as regards disciplinary procedures and protection of police officers from false allegations. The two projects should be considered jointly.

Police HRM

The Serbian Ministry of the Interior (MoI), with the assistance of the OSCE Mission to Serbia, has asked (NMFA to support a project to strengthen key elements in the MoI system of human resources management (HRM). In a meeting between representatives of MoI, OSCE and Difi on 27 April, MoI officials expressed a wish to proceed, as a first step, with a gap analysis emphasizing that it should “be the beginning of a deep, sustainable process of reform of human resources planning and management in the MoI, including revision of the regulatory framework and procedures, increase of capacities, and updating of human resources management practices.”

The Difi project team will strongly recommend that a key objective of the current and possible future HR project is to establish

¹¹⁹ See *i.a.* OSCE, Office for Democratic Institutions and Human Rights, “Comments on the draft police act and the draft parliamentary police oversight act of the republic of Serbia”, Warsaw, 3 February 2005.

¹²⁰ “Police Reform in Serbia. Towards the creation of a modern and accountable police service”, Law enforcement department, OSCE Mission to Serbia and Montenegro, January 2004, at 55.

¹²¹ UNDP and DCAF argue that independent OIs can play an important role in monitoring and investigating the security sector. See K. Kinzelbach and E. Cole (eds.), “Monitoring and Investigating the Security Sector: Recommendations for Ombudsman Institutions to Promote and Protect Human Rights for Public Security”, UNDP/DCAF, 2007.

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- essential administrative and legal regularity based on European standards regarding *i.a.*(a) HR systems (HR plans, systematization/job descriptions, and HR management), (ii) selection scheme (recruitment, promotion, and career development), (iii) obligations/rights/discipline, (iv) salary system, (v) performance appraisal, (vi) training, and (vii) accountability mechanisms.
 - necessary alignment with recently amended Serbian civil service legislation, *i.a.* the Laws on Civil Servants, on Prevention of Conflict of Interest in the Exercise of Public Functions, and on Salaries of Civil Servants and State Employees
 - necessary contact/cooperation with ongoing Serbian PAR efforts.

As already mentioned the pilot phase of the project (gap analysis) could be used to identify measures to strengthen police accountability that would involve the Internal Affairs Division.

7.5 Serbia: public administration reform

A strategy for civil service training

As noted above, Serbian progress in public administration reform remains sluggish. In its most recent progress report the EU Commission observes that the reform effort actually slowed down during the reporting period. Significant weaknesses in the horizontal systems of the public administration (relating to *i.a.* merit based recruitment and professionalism, see table 2 above, lines 2 and 3) jeopardize the sustainability of sectoral reforms. Development of administrative capacities remains one of the key criteria for EU membership. By the same token the EU integration process remains the main guideline for the Serbian PAR process.¹²² Lack of PAR progress, *i.a.* regarding civil service training has been a key concern in a number of Commission and SIGMA documents.

Key PAR priorities are defined in the PAR strategy adopted in 2004. According to this document the Serbian reform effort is guided by five overall principles, decentralization, de-politicization, professionalization, rationalization and modernization. These principles will be the cornerstones of a Serbian “European” public administration. While the reform process suffered a number of setbacks in the post 2003 period, there are indications that the current

¹²² The European Partnership document obliges Serbia in the short term to, “Continue efforts to implement the reform of the public administration, including the civil service pay system, to ensure transparent recruitment and promotion as well as professionalism and accountability, strengthen the European integration structures, improve coordination throughout the public administration and parliament and pay particular attention to policy coordination.” In the medium term the EP document stipulates that Serbia shall ensure, “full implementation of civil service and public administration laws, implement measures to develop human resources in the civil service, strengthen the policy-making and coordination capacity of the public administration.” The SAA, article 114, lays down that the “Cooperation shall aim at ensuring the development of an efficient and accountable public administration in Serbia, notably to support rule of law implementation, the proper functioning of the state institutions for the benefit of the entire population of Serbia as a whole and the smooth development of the relations between the EU and Serbia.”

government may pursue a more vigorous reform agenda than some of its predecessors. Due to recent amendments in the Law of Ministries giving MPALSG more comprehensive PAR responsibilities, former uncertainties as to the actual authority of the ministry may have been reduced.

The Ministry of Public Administration and Local Self Government (MPALSG) and the Human Resources Management Service (HRMS) have submitted a project proposal to NMFA with a view to developing a strategy for civil service training. Based on *i.a.* the recommendation by the Difi project team the NMFA has expressed its readiness to support the project.

7.6 Serbia: Regulatory frameworks for market economy

Market surveillance

Market surveillance is a fundamental mechanism for ensuring free movement of goods and services. It makes certain that only goods and services complying with all applicable EC legislation are allowed to be put into circulation in the internal market. The problems faced by Serbia in the field of trade are particularly worrisome with a view to the effort of the Serbian government to harmonize framework conditions for business enterprises with those of the EU. Main challenges concern (i) illegal marketing of goods, and (ii) the presence of a grey economy. These deficiencies entail distinctly negative consequences for (a) the consumers (low product quality/safety), (b) employees of trade businesses (non-payment of social contributions), and (c) for the state (tax evasion).

In Serbia the preparation of a proper market surveillance structure has not yet started and there is little or no coordination between the various inspection authorities. In short, there is a serious mismatch between the gravity and acuteness of the problems which the Ministry of Trade and Services is facing on the one hand, and the capacity and the resources of the inspection services to deal with them on the other.

The issue of market surveillance is highly relevant in the EU accession process. The European Partnership document stipulates that Serbia should “establish a market surveillance structure and ensure proper coordination among the market surveillance authorities.”¹²³ According to article 77 of the SAA “effective consumer protection is necessary in order to ensure the proper functioning of the market economy, and this protection will depend on the development of an administrative infrastructure in order to ensure market surveillance and law enforcement in this field”. As we have noted the Commission’s 2008 Progress Report identifies a number of weaknesses in the Serbian system of market surveillance.

¹²³ 2008/213/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC.

The National Plan for EU-Integration explicitly emphasizes the need to enhance the institutional framework for market surveillance, including the Ministry of Trade and Services. The NFIA document mentions as mid-term priorities for trade and services:

- Market inspection developed according to European standards and preparations implemented for the introduction of self-regulation systems for market operators.
- Capacities, organization and operational methods of the Ministry of Trade and Services structured according to programmatic activities in the field of trade and services.

The strategy of public administration reform makes reference to the OECD principle that it is essential to monitor the effectiveness and enforcement of the principle of free competition and if necessary, to strengthen it. The strategy particularly mentions that the policy of decentralization should be considered for state inspections.

The poverty reduction strategy stresses the need to establish strong public institutions as bases for the development of a market economy. The reform of the inspection services is defined as a high priority in the Annual Operational Plan of Activities (GOP) of the Ministry of Trade and Services.

The MTS has proposed a project with two main components: (i) review of the institutional structure in the area of market surveillance, with emphasis on improved coordination – analysis of the current situation, proposal for a reformed market surveillance structure, and (ii) a review of revised/new methods/inspection procedures in the area of product safety – especially of internal control and their potential applicability in Serbia.

MTS has previously received support under the CARDS programme relating to the preparation of a revised legal framework for consumer protection. At present the EU is funding a project regarding market surveillance aiming at harmonizing other legal acts with the EU *acquis* and strengthening capacities for law preparation and enforcement. A smaller EU-funded project regarding IT based systems for the control of unsafe products will be completed by mid-2009. A project proposal has been submitted for 2009 IPA funds. However, due to the ongoing revision of IPA the project will not be considered for support this year. In this case the earliest possible start time for the project is 2012.

The Difi project team clearly recommends that the Norwegian MFA/an institution commissioned by the Norwegian MFA follows up the project proposal suggested by MTS with the intention of defining more precisely the content of a future project that may be funded as of 2010. Given the fact that the EU Commission has recently pointed out that the administrative capacity of the Ministry of Trade and Services is weak¹²⁴, we recommend that a minor pilot

¹²⁴ The EU Commission: Serbia 2008 Progress Report

study be carried out to define more precisely (i) the issues that could be addressed by a possible full project, and (ii) arrangements for project management.

Public procurement

As we have already noted the setting up of an efficient public procurement system is a fundamental precondition for the success of a market economy and it contributes to long-term economic growth.

According to the European Partnership document , Serbia shall, “implement a consistent and effective public procurement regime [and] ensure transparent procedures, regardless of the value of the contract concerned. ” The SAA (article 81) emphasizes the importance of public procurement: “[...] Serbia shall report annually to the Stabilisation and Association Council on the measures they have taken to enhance transparency and to provide for effective judicial review of decisions taken in the area of public procurement.” As noted above (table 5, line 4) the most recent EU assessments (SIGMA and the European Commission) identify serious weaknesses in the Serbian legal framework for public procurement, public procurement procedures and the Public Procurement Office. According to the Office’s own estimation it has a lack of capacities due to inadequately defined duties as well the absence of other institutions necessary for a well-functioning system of public procurement (*e.g.* a fully operational Supreme Audit Institution).

The National Strategy for EU Accession emphasizes that “[...]The area of public procurement is especially important as its functioning affects the relations between the state and the economic sector, and influences proper use of the budget, the economic development of the Republic of Serbia, as well as other, non-economic parameters such as the fight against corruption. Regulation of public procurement in the European Union has a significant role in the forming of a common market with equal terms of participation for all interested economic entities in the European Union [...]”.

The National Anti-corruption Strategy includes the following recommendations regarding the public procurement sector: improvement and strict implementation of legislation in the field of public procurement and creation of efficient control mechanisms with the necessary independence from the executive branch of government.

The Public Procurement Office has suggested a project to support capacity development in the Office. The projects will include *i.a.* the development of (i) a scheme for benchmarking and monitoring public procurement in Serbia, (ii) a methodology for assessing the capacity of purchasing entities across the Serbian public administration, and (iii) a training strategy and curriculum for certification of civil servants.

The Difi project team recommends the project proposal suggested by the Public Procurement Office – when and if fully developed - be carefully considered for Norwegian support.

Energy regulation

In order to introduce market mechanisms and competition in the area of energy supply and to attract foreign investment in the energy sector it is vital to establish an effective, stable and transparent regulatory regime. Moreover, such a regime will significantly contribute to the fulfilment of Serbia's obligation under the Energy Community Treaty, a regulatory and market framework to which the entire Western Balkans region has now subscribed. This Treaty aims to create an integrated regional market for electricity and gas compatible with the European Union's internal energy market. However, a number of regulatory issues relating to the EI process and the Western Balkans Energy Treaty have not yet been solved (see table 2 above, line 18).

The project proposal addresses directly short term priorities of the European Partnership document stipulating that Serbia shall "Fulfil the obligations arising from the Energy Community Treaty as regards the full implementation of the *acquis* on the internal gas and electricity market and on cross border exchanges in electricity [and] amend and implement the Energy Law and ensure smooth functioning of the independent energy regulatory agency". The SAA states (article 109) that the cooperation between the EU and Serbia shall be based on priority areas related to the *acquis* in the field of energy, and be developed with a view to the gradual integration of Serbia into Europe's energy markets.

The National Strategy for EU integration identifies AERS as the most important new institution resulting from the reform of the legal and institutional framework of the energy sector. The National Programme for the Integration of the EU (NPI) identifies the need to transpose into domestic law a series of EC legal acts directly relating to the AERS field of responsibility. The same concern is expressed in the National Strategy of Economic Development of Serbia (2006-2012) and the Energy Development Strategy.

The Energy Agency of the Republic of Serbia (AERS) has suggested a project proposal with the objective to strengthen the capacity of the agency so that it is capable of developing and implementing regulatory policies and strategies and overseeing necessary reform in the energy sector. The project proposal include four main components related to, (i) upgrading the AERS IT system, (ii) exchange of expertise with the Norwegian Water Resources and Energy Directorate (NVE), (iii) capacity building of AERS staff, (iv) as of the beginning of 2011, technical assistance related to (a) the implementation of existing regulations, (b) the introduction of new regulatory concepts, and (c) the implementation of expected new competencies.

AERS has been supported by EU funding. While previous projects focused on the establishment of the agency and preparation of secondary legislation, future projects should, according to AERS, be aimed at assisting the agency in implementing – in accordance with best regulatory practices – regulations already adopted. A project financed within IPA 2007 is currently in the tendering procedure. Indicated commencement date is June 2009. However, the project does not duplicate the activities mentioned above for possible

Norwegian support. A proposal regarding the strengthening of *i.a.* the organisational and management capacities of AERS was submitted for IPA funding in 2009 but was turned down because it was considered too small for this type of assistance.

The Difi project team recommends the project proposal developed by the Public Procurement Office - when and if fully developed - be carefully considered for Norwegian support. In particular we recommend that a minor pilot study be carried out to define more precisely the issues that could be addressed by a possible full project regarding technical assistance, with early 2011 as a possible start date.