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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**OF THE COUNCIL OF EUROPE**  
**(VENICE COMMISSION)**

**NORTH MACEDONIA**

**OPINION**

**ON THE DRAFT LAW ON ADEQUATE AND FAIR REPRESENTATION**

**Adopted by the Venice Commission  
at its 145<sup>th</sup> Plenary Session  
(Venice, 12-13 December 2025)**

**on the basis of comments by**

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Mr Andreas PAULUS (Substitute Member, Germany)  
Mr Jan VELAERS (Member, Belgium)**

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## I. Introduction

1. By letter of 11 July 2025, Mr Hristijan Mickoski, Prime Minister of North Macedonia, requested an urgent opinion of the Venice Commission of the Council of Europe on the draft law on adequate and fair representation ([CDL-REF\(2025\)037](#), hereafter referred to as the draft law). By letter of 17 September 2025, the Prime Minister informed the Commission that he no longer requested the application of the procedure for urgent opinions, as the bill no longer had any prospect of being passed by Parliament before the local elections of 19 October and 2 November 2025.

2. Mr Martin Kuijer, Mr Andreas Paulus and Mr Jan Velaers acted as rapporteurs for this Opinion.

3. On 3-4 September 2025, a delegation of the Commission composed of Mr Kuijer, Mr Paulus and Mr Velaers, accompanied by Mr Michael Janssen from the Secretariat of the Venice Commission, travelled to Skopje and had meetings with the Deputy Prime Minister and Minister of Environment and Spatial Planning, the Deputy Prime Minister in charge of Good Governance Policies, the Deputy Prime and Minister for Relations between Communities, the Constitutional Court, the President of Parliament, as well as with academics and representatives of several international and non-governmental organisations. The Commission is grateful to the authorities of North Macedonia and the Council of Europe Programme Office in Skopje for the excellent organisation of the meetings. While representatives of political parties could not be met, after the visit the President of Parliament informed the parliamentary groups that they could share their views on the draft law with the Venice Commission in writing.

4. This Opinion was prepared in reliance on the English translation of the draft law. The translation may not accurately reflect the original version on all points.

5. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings held on 3-4 September 2025. The draft opinion was examined at the joint meeting of the Sub-Commissions on Democratic Institutions and on the Protection of National Minorities on 11 December 2025. Following an exchange of views with Mr Arben Fetaj, Deputy Prime Minister of North Macedonia, it was adopted by the Venice Commission at its 145<sup>th</sup> Plenary Session (Venice, 12-13 December 2025).

## II. Background and scope of the Opinion

### A. Background

6. The Ohrid peace agreement of 2001,<sup>1</sup> which ended the armed conflict between different groups of the population of North Macedonia, established both the principle of non-discrimination and equal treatment of all under the law (point 4.1) as well as the requirement of measures to assure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration (point 4.2). Accordingly, the authorities should take action to correct existing imbalances in the composition of the public administration, in particular through the recruitment of members of under-represented communities.

7. While the principle of equitable representation was incorporated into North Macedonia's Constitution already in 2001,<sup>2</sup> the implementing regulations have only been applied since 2014. These regulations introduced the so-called "Balancing" mechanism, built on a digital tool that calculated the exact number of employees belonging to each ethnic community required in each

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<sup>1</sup> [Ohrid Framework Agreement](#) of 13 August 2001.

<sup>2</sup> See Article 8 §1, item 2 of the [Constitution](#).

public body. The “Balancer” was one of the key mechanisms aimed at equitable representation for different communities.

8. The Constitutional Court of North Macedonia, acting upon its own motion of 18 September 2024 and upon an initiative submitted by the State Commission for the Prevention of Corruption, reviewed the constitutionality of several provisions of the Law on Public Sector Employees, the Law on Administrative Servants and the implementing by-laws. On 9 October 2024, the court annulled, by majority vote,<sup>3</sup> several provisions of those legal acts, which stipulated that the ethnic affiliation of a citizen was a mandatory element of the entry in the registry of civil servants, in public vacancy announcements and in applications submitted by candidates for posts in the public sector, and which defined the employment planning and the distribution of jobs in the public sector by applying the constitutional principle of adequate and fair representation of communities.

9. The court stated, firstly, that imposing an obligation on candidates for administrative positions to declare their affiliation to a specific community in their employment applications violated the constitutionally guaranteed rights to freedom of expression and to privacy and personal life. Secondly, the court stated that the contested legislative and regulatory provisions had implemented the fundamental constitutional value of adequate and fair representation of citizens belonging to all communities in all state and public institutions; however, the implementation of this fundamental value by its nature represented an instance of affirmative action, namely positive discrimination, and as such deviated from the basic principle of formal equality established as a constitutional guarantee, which could only be justified as a temporary measure. The court went on and stressed that at the moment when the affirmative action had achieved and exhausted its purpose, it lost its meaning and conflicted with other fundamental values of the constitutional order.<sup>4</sup>

10. Based on the above, the court found that “these provisions contradicted the fundamental freedoms and human and civil rights recognised in international law and established in the Constitution; the free expression of national affiliation and adequate and fair representation of citizens belonging to all communities in state authorities and other public institutions at all levels; the rule of law and respect for generally accepted norms of international law as fundamental values of the constitutional order of the Republic of North Macedonia guaranteed by Article 8 §1 [...] of the Constitution. Furthermore, the constitutional principle of equality of citizens before the Constitution and laws established by Article 9 of the Constitution is not respected, nor is the right to accessibility of every job to everyone under equal conditions guaranteed by Article 32 of the Constitution [...]”.<sup>5</sup>

11. As a result of this decision by the Constitutional Court, ethnic affiliation was no longer taken into account in the hiring of public service staff. In response to this development, the Government of North Macedonia adopted the draft law on 24 June 2025 and sent it to the Venice Commission for review before submitting it to Parliament.

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<sup>3</sup> The decision was supported by five Court members. Three members presented separate dissenting opinions.

<sup>4</sup> The Constitutional Court in its decision of 9 October 2024 noted that it took into account the “Report from the Registry of Employees in the Public Sector by Ethnic Structure as of 31.12.2022, presented in Opinion No. 15-1125/2 dated 11.03.2024, submitted by the Ministry of Information Society and Administration within the previous procedure in this case.” See e.g. <https://www.balkanicaucaso.org/eng/Areas/North-Macedonia/North-Macedonia-looking-for-a-new-Balancer-234376>, which refers to the above-mentioned Report from the Registry of Public Sector Employees, according to which “on December 31, 2022, 71.36% of employees in the public sector were Macedonians; 21.60% Albanians; 2.42% Turks; 1.49% Roma; 1.40% Serbs; 0.74% were others, i.e. did not declare; 0.52% were Bosniaks and 0.48% Vlachs.” These data were confirmed by the authorities. According to the 2021 census, 58.44% of the population declared themselves as Macedonians, 24.29% as Albanians, 3.86% as Turks, 2.52% as Roma, 1.30% as Serbs, 0.88% as Bosniaks, 0.48% as Vlachs, etc.; see <https://makstat.stat.gov.mk/PXWeb/pxweb/en/MakStat/>.

<sup>5</sup> By contrast, the dissenting judges opined, *inter alia*, that the purpose of the disputed regulations had not been achieved and exhausted; they argued that the “balancing mechanism” was a living mechanism ensuring the right to the application and realisation of the constitutional principle of adequate and fair representation and was as such constitutional.

12. According to the Government's request letter, the objective of the draft law is "to ensure that the public administration becomes a true service for all citizens founded on merit, knowledge, professionalism, and integrity while fully aligning with the Constitution and the Ohrid Framework Agreement"; its main purpose is "to harmonise the law with point 4.2. of the 2001 Ohrid Framework Agreement, which provides that '*laws regulating employment in public administration will include measures to ensure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration*', as well as to harmonise the law with the Amendment VI of 2001 of the Constitution of North Macedonia, which requires '*the free expression of national affiliation, adequate and fair representation of citizens belonging to all communities in state power bodies and other public institutions at all levels*'".

## **B. Scope**

13. The Government put the following four questions to the Venice Commission:

1. *Does the draft law ensure the improvement and advancement of the constitutional principle of adequate and fair representation of citizens belonging to all communities in state power bodies and other public institutions at all levels, taking into account the decision of the Constitutional Court of North Macedonia of October 9, 2024 (Decision No. 90/2024) that repealed the so-called "Balancer" that applied in the previous 10 year period for this purpose?*
2. *Does the draft law adequately promote equality, through positive actions and by eliminating employment barriers?*
3. *Is the draft law compliant with other constitutional principles such as fundamental freedoms and rights recognised by international law and defined by the constitution, the free expression of national affiliation, the rule of law and the respect and protection of privacy of citizens belonging to all communities?*
4. *Is the Coordinating Body of the Government, which is envisaged to be established by this draft law, given its composition, competence, leadership with this body as well as the measures and activities it will undertake, an adequately efficient institutional mechanism that would ensure respect, affirmation, improvement, advancement, promotion and monitoring of the adequate and fair representation of citizens belonging to all communities in state power bodies and other public institutions at all levels and is there a need to provide for additional misdemeanour sanctions for public officials who will be responsible for implementing this draft law?*

14. The present Opinion analyses the draft law based on the four questions raised by the Government. It also comments on the legislative process. From the outset, it must be noted – in particular with respect to questions 1. and 3. – that it is not for the Venice Commission to assess the compliance of the draft law with the national Constitution. The interpretation and application of the Constitution of North Macedonia is the responsibility of the Constitutional Court. The present Opinion answers these questions raised in the light of European and international standards and good practices and takes into account Decision No. 90/2024 of the Constitutional Court. It must however be stressed that, while there is a legal obligation for the authorities of North Macedonia to respect the ruling of the Constitutional Court (and the core messages contained therein), it is not for the Venice Commission to state whether the draft law is compatible with that decision.

### III. Analysis

#### A. Legislative procedure

15. The Venice Commission welcomes the fact that the Government of North Macedonia submitted the draft law for its scrutiny at an early stage, even before submitting it to Parliament.

16. The Venice Commission notes that legislation on such a sensitive matter as the adequate and fair representation of ethnic communities in public bodies needs to be carefully prepared in an inclusive process. The Venice Commission's Rule of Law Checklist,<sup>6</sup> together with the Commission's Report on the Role of the opposition in a democratic Parliament<sup>7</sup> provides useful guidance for transparent, accountable, inclusive and democratic law-making procedures, including public debate of proposed legislation by Parliament and adequate justification (e.g. by explanatory reports), public access to draft legislation, at least when it is submitted to Parliament, a meaningful opportunity for the public to provide input, and where appropriate, impact assessments before adopting legislation (e.g. on the human rights and budgetary impact of laws). Moreover, in its checklist related to the Relationship between the Parliamentary Majority and the Opposition in a Democracy, the Venice Commission stressed that "complex and controversial bills would normally require particularly long advance notice, and should be preceded by pre-drafts, on which some kind of (internet-) consultation takes place. The public should have a meaningful opportunity to provide input [...]. Allocation of additional time for public consultations increases the ability of the opposition to influence the content of the legislative proposals by the Government or the majority. The majority should not manipulate the procedure in order to avoid such public consultations".<sup>8</sup>

17. The above considerations are particularly relevant in the sensitive area of ethnic minorities/communities and their representation. The Venice Commission has previously recommended to realise consultations regarding laws that could affect national minorities<sup>9</sup> in accordance with Article 15 of the Council of Europe [Framework Convention for the Protection of National Minorities](#) (FCNM), and to submit draft legislation on national minorities to public consultations and ensure that persons belonging to national minorities have an opportunity to participate actively and effectively in such consultations.<sup>10</sup> The Commission was informed that the present draft law was prepared in a closed working group involving only Government representatives and academics. While such a working method is in line with domestic practice, the Venice Commission recommends for the *further* process that the authorities ensure a transparent, accountable, inclusive and democratic law-making procedure, including public consultations and meaningful involvement of various ethnic communities and other relevant stakeholders such as, for example, the Agency for Administrative Servants, the Ombudsman or the Commission for Prevention and Protection against Discrimination. In their comments on the draft opinion, the authorities stated that the above recommendations concerning compliance with Article 15 of the FCNM would be respected in the further process.

#### B. Overview of the draft law

18. The draft law is quite short, consisting of 15 Articles which focus on basic principles and general rules, and it needs to be complemented by implementing by-laws which shall be adopted

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<sup>6</sup> Venice Commission, Rule of Law Checklist, [CDL-AD\(2016\)007](#), point 5, items iii, iv and v.

<sup>7</sup> Venice Commission, Report on the Role of the opposition in a democratic Parliament, [CDL-AD\(2010\)025](#), paras. 106 - 115.

<sup>8</sup> Venice Commission, [CDL-AD\(2019\)015](#), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, para 74.

<sup>9</sup> See e.g. Venice Commission, [CDL-AD\(2023\)021](#), Ukraine - Opinion on the Law on national minorities (communities), paras 23f., which contain further references

<sup>10</sup> See e.g. Venice Commission and Directorate General of Democracy and Human Dignity, [CDL-AD\(2024\)019](#), Armenia - Joint Opinion on the draft law on national minorities, para. 71.

within six months from its entry into force.<sup>11</sup> During the meetings in Skopje, the authors of the law stressed that the draft was meant to be a framework law, aimed at balancing the principles of adequate representation of ethnic communities and merit-based employment, establishing a new coordination body and calling for promotional, educational and awareness-raising measures in this area. It must be stressed from the outset that the fact that many matters still need to be regulated makes it difficult to assess the draft.

19. According to Article 1, the draft law “regulates the respect, affirmation, promotion and monitoring of the adequate and fair representation of citizens belonging to all communities in state government bodies and other public institutions at all levels as a fundamental value of the constitutional order”. In draft Article 2, it distinguishes between *adequate* representation reflecting the participation of all communities in the population and *fair* representation respecting the rules of competence and integrity governing public administration. Pursuant to draft Article 5, both adequate and fair representation shall be ensured, through respect for the principles of non-discrimination and equal opportunities; merit, professionalism, competence and integrity; transparency and accountability in the hiring and promotion processes; inclusiveness and social cohesion.

20. In contrast to the previous regulation, draft Article 6 emphasises the free, voluntary declaration of affiliation to any community in the state. Under draft Article 7, adequate and fair representation of citizens belonging to all communities in state government bodies and other public institutions shall be achieved on the basis of the results of the last population census conducted in the country, acquired rights and international agreements that are an integral part of the internal legal order. While equal treatment of all citizens, without discrimination, must be ensured (draft Article 7 §3), “preferential treatment for the achievement and promotion of the adequate and fair representation of underrepresented communities with the aim of ensuring effective equality shall not be considered discrimination” (draft Article 7 §4).

21. Draft Article 8 adds that “state authorities and other public institutions shall undertake measures to ensure full and effective equality of citizens with the aim of respecting, affirming, promoting and protecting the adequate and fair representation of citizens belonging to all communities”, while “special attention shall be paid to measures to improve the representation of citizens belonging to communities that are underrepresented in state government bodies and other public sector institutions.”

22. Draft Article 9 foresees the establishment of “a Coordination Body for the Implementation of Adequate and Fair Representation of the Government”. This body shall be headed by one of the Deputy Prime Ministers and its composition shall be determined by the Government. It shall cooperate with the Agency for Administrative Servants, and it shall monitor and analyse the situation regarding adequate and fair representation (draft Article 10). Under draft Article 11, recruitment planning shall take into account the principle of adequate and fair representation; in case of an overrepresentation of a community in any public body, measures for the redistribution of new positions shall be proposed. The remaining Articles of the draft law include provisions on raising public awareness, promotion and education, as well as transitional and final provisions.

### **C. Answers to the four questions**

#### **1. Question 1**

23. *“Does the draft law ensure the improvement and advancement of the constitutional principle of adequate and fair representation of citizens belonging to all communities in state power bodies and other public institutions at all levels, taking into account the decision of the Constitutional*

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<sup>11</sup> Article 14 of the draft law.

*Court of North Macedonia of October 9, 2024 (Decision No. 90/2024) that repealed the so-called "Balancer" that applied in the previous 10 year period for this purpose?"*

24. From the outset, it must be stressed that it is not for the Venice Commission to assess the draft law against the constitutional principles and the Constitutional Court decision. The Commission's task is to assess it against international standards only.

25. Article 15 of the Council of Europe [Framework Convention for the Protection of National Minorities](#) (FCNM), to which North Macedonia is a party,<sup>12</sup> requires State Parties to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." The Explanatory Report to the FCNM makes it clear that this article "aims above all to encourage real equality between persons belonging to national minorities and those forming part of the majority."<sup>13</sup> According to the Advisory Committee of the Framework Convention for the Protection of National Minorities (ACFC), "public administration should, to the extent possible, reflect the diversity of society. This implies that State Parties are encouraged to identify ways of promoting the recruitment of persons belonging to national minorities in the public sector [...] Participation of persons belonging to national minorities in public administration can also help the latter better respond to the needs of national minorities."<sup>14</sup> At the same time, "measures which aim to reach a rigid, mathematical equality in the representation of various groups, which often implies an unnecessary multiplication of posts, should be avoided. They risk undermining the effective functioning of the State structure and can lead to the creation of separate structures in the society."<sup>15</sup> Moreover, Article 4 of the FCNM mentions specifically that adequate measures taken in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority shall not be considered to be an act of discrimination. Such measures must comply with the proportionality principle,<sup>16</sup> be limited to what is necessary to achieve effective equality and therefore depend on the specific circumstances at a given time.

26. As the ACFC has furthermore stated, "the effective participation of persons belonging to national minorities in various areas of public life is essential to ensure social cohesion and the development of a truly democratic society."<sup>17</sup> During the meetings in Skopje, various interlocutors emphasised that since the signing of the Ohrid Framework Agreement and the corresponding constitutional amendment in 2001, the principle of adequate and fair representation of ethnic communities has been a key factor for political stability in North Macedonia. At the same time, they noted that the previous "Balancer" system's aim of achieving a strictly proportional

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<sup>12</sup> Date of ratification: 10 April 1997; date of entry into force: 1 February 1998. In 2004, the authorities of North Macedonia have deposited a declaration to the FCNM, which defines national minorities as citizens belonging to the six groups mentioned explicitly in the Preamble of the Constitution. According to this declaration, the term "national minorities" used in the Framework Convention and the provisions of the same Convention shall be applied to the citizens of the Republic of Macedonia who live within its borders and who are part of the Albanian, Turkish, Vlach, Serbian, Roma and Bosniac peoples..

<sup>13</sup> [Explanatory Report to the Framework Convention for the Protection of National Minorities](#), para. 80.

<sup>14</sup> [ACFC Thematic Commentary No. 2](#), The effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, 27 February 2008, para. 120. The Advisory Committee also recalled that effective participation by persons affiliating with national minorities in public life and their effective inclusion, as well as the reinforcement of social cohesion, involve participation by these persons in the management of public affairs within the various government bodies. It considered that the authorities should pay greater attention to this issue and increase their efforts to promote civil service recruitment of persons belonging to national minorities, *inter alia*, by adopting a more flexible approach to the language requirements set out in this field and to monitoring their implementation.

<sup>15</sup> [ACFC Thematic Commentary No. 2](#), The effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, 27 February 2008, para. 123.

<sup>16</sup> [Explanatory Report to the Framework Convention for the Protection of National Minorities](#), para. 39.

<sup>17</sup> [ACFC Thematic Commentary No. 2](#), The effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, 27 February 2008, para. 1.

representation of ethnic communities in public institutions and the frequent abuse of that system jeopardised the principle of merit-based recruitment in the public service.

27. The Venice Commission notes that the present draft law aims to remedy this situation in the light of the Constitutional Court judgment and to ensure both “adequate” and “fair” representation, as defined in the new definitions provided in draft Article 2: representation of all communities in public bodies reflecting approximately their participation in the population, as well as equal treatment and opportunities of all citizens and respect of the rules of competence and integrity.<sup>18</sup>

28. The Venice Commission welcomes the fact that the draft law follows a rather flexible approach instead of strict regulation as before: contrary to the previous “Balancer”, the draft regulation takes into account the two aspects of “adequate” and “fair” representation, but does not seek a rigid, mathematical equality in the representation of the various communities but an “approximate” reflection of their share in the population. In the view of the Venice Commission, this approach is in line with the above-mentioned standards set by the FCNM and the guidance provided by the ACFC;<sup>19</sup> at the same time, the Commission wishes to stress that Article 15 of the FCNM calls for “effective participation” of persons belonging to national minorities in public affairs, which implies not only being represented but also being able to meaningfully influence decision-making processes in practice.<sup>20</sup> It is also positive that the draft calls for respect of the principles of non-discrimination and equal opportunities, merit, professionalism, competence and integrity, transparency and accountability in the hiring and promotion processes, inclusiveness and social cohesion (draft Article 5), as well as of the right to free self-identification (draft Article 6).

29. The Venice Commission furthermore welcomes the fact that the draft law pursues a comprehensive legal approach – albeit in the form of a framework law – rather than leaving this important and sensitive matter to isolated provisions in different legal and sub-legal acts, as has been the case so far. From this perspective, the planned monitoring and promotion of adequate and fair representation, to be carried out by a dedicated Coordination Body (cf. Articles 9 and 10 of the draft law), can in principle be seen as a useful initiative to uphold the constitutional principle of adequate and fair representation. The same is true for the draft provisions on raising public awareness (draft Article 12) and on promotion and education (draft Article 13).

30. That said, in the view of the Venice Commission, the draft law in its current form gives rise to some concerns. The main problem with the draft is that it remains very general and does not resolve the question of the relationship between “adequate” and “fair” representation of ethnic communities as defined in draft Article 2. The draft seems to suggest that both are equally important, see e.g. draft Articles 3 §1, 5 §1 and 7 §1. In reality, these two goals of the draft may in practice contradict each other – the first looking at the ethnic component, the second at the quality of the individual application for a position – if they are not balanced and are not applied with due regard to the principle of proportionality. In order to prevent this, the Venice Commission recommends providing more guidance in the law on how the two principles shall be balanced and how the recruitment process should actually work in practice. In this connection, it must be stressed that the recruitment of persons belonging to national minorities in the public sector, including recruitment into the judiciary and the law enforcement bodies, pursues the legitimate

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<sup>18</sup> The authors of the draft law explained to the rapporteurs that the original English version of the Ohrid Framework Agreement only referred to the single term of “equitable” (or “fair”) representation, which was translated into “adequate and fair (or equitable)” representation in the Macedonian version; those terms had not been defined by law, prior to the present draft law.

<sup>19</sup> In addition to the [ACFC Thematic Commentary No. 2](#), see also ACFC, [Fifth Opinion on North Macedonia](#), 18 May 2022, para. 130, in which the ACFC “strongly encourages the authorities to further improve the equitable representation of persons belonging to national minorities in the public administration with a view to upholding the principle of merit [...]”

<sup>20</sup> Effective participation in public administration thus implies having access to positions where one can influence decisions; ensuring that minority voices are actually heard and considered; ensuring that participation is not symbolic.

aim of ensuring that the public administration reflects the diversity of society; this is in the interest of the whole society, not only of national minorities. Similarly, merit-based recruitment pursues the legitimate aim of ensuring an efficient public administration, which is in the interest of the whole society, including national minorities. From the perspective of the FCNM, the objectives of ensuring adequate and fair representation of persons belonging to national minorities and maintaining merit-based, qualitative recruitment in public administration are not mutually exclusive but must be carefully balanced. The ACFC has repeatedly underlined that measures to promote minority representation (including differential measures) must be implemented in line with the requirements of proportionality, ensuring that they are appropriate, necessary, and do not unduly compromise the general standards of public administration; such measures must be designed and applied in a way that does not establish automatic ethnic quotas, preserves the overall integrity and professionalism of the civil service, and ensures that recruitment processes remain objective, transparent, and fair for all candidates.

31. At first sight, draft Article 7 §3 and §4 could be understood as establishing a procedure in the hiring process for public positions that starts with the “fairness” element in paragraph 3: equality, merit, competence, and not ethnicity or identification with a community are supposed to be the main criteria for hiring a candidate. In turn, paragraph 4 is what remains of the “adequate” community representation: “preferential” treatment of underrepresented groups shall not be considered discrimination. In this connection, the Venice Commission takes the view that the term “preferential” treatment should be avoided in the law because it evokes a privilege. The Commission recommends replacing the term “preferential” by “differential” or an equivalent, more neutral term in draft Article 7. Draft Article 8 is structured in a similar way as draft Article 7: paragraph 1 calls for measures to ensure full and effective equality of citizens, while paragraph 2 states that “special attention” shall be paid to measures to improve the representation of underrepresented communities, in line with Article 4 §2 of the FCNM. During the meetings in Skopje, the drafters of the law stressed that it was aimed at ensuring recruitment of the best candidates; merit and competence should be the first employment criteria; ethnicity should still be a factor, but not as in the previous “Balancing mechanism” where posts were reserved for persons belonging to a certain ethnicity. This was confirmed by the authorities in their comments on the draft opinion.

32. The Venice Commission finds it crucial that this shift of priorities be made clear in the draft law, thus ensuring that ethnic employment criteria are not used in a way which may jeopardise merit-based recruitment. The current draft leaves it to the future by-laws (to be adopted by the Government) and the “Methodology for planning employment in the public sector” (to be adopted by the Agency for Administrative Servants in cooperation with the Coordination Body) to regulate all the details. In the view of the Venice Commission, for the sake of legal certainty and clarity as well as democratic legitimacy, the basic rules for recruitment should however be enshrined in the law itself (to be adopted by Parliament). Even if the draft law is intended to be only a framework law and does thus by its nature only set the basis for more specific regulations in other acts, it is worrying that it leaves some fundamental questions unanswered. In addition to the above-mentioned provisions, draft Article 11 must be mentioned in this context; this Article concerns recruitment planning by the Agency for Administrative Servants in cooperation with the Coordination Body, and it stipulates that measures for the redistribution of new employment shall be proposed in case of an overrepresentation of a community in any public body (paragraph 4). This wording is too vague and potentially leaves the door open for the introduction of a mechanism similar to the “Balancer”, i.e. the application of strict ethnic quotas.<sup>21</sup> If ethnic quotas are not intended, as was confirmed by the drafters of the law – and by the authorities in their comments on the draft opinion, then it should be made clear in the law itself.

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<sup>21</sup> The Venice Commission has expressed concerns about strict ethnic quotas, with respect to the selection of Constitutional Court judges, in the Opinion [CDL-AD\(2024\)015](#) (BiH), Bosnia and Herzegovina - Opinion on the method of electing judges to the Constitutional Court, para. 31.

33. In the view of the Venice Commission, it should also be stated more clearly in the law under which conditions certain affirmative measures to ensure adequate, balanced representation of communities may be taken. As mentioned above, draft Article 11 §4 calls for measures for the redistribution of new employment in case of an overrepresentation of a community in any public body, but it does not answer the question of the degree of “overrepresentation” at which there is an obligation to propose such measures. Furthermore, draft Article 7 §4, according to which “preferential” – differential – treatment for the achievement and promotion of the adequate and fair representation of underrepresented communities with the aim of ensuring effective equality shall not be considered discrimination, may have as a consequence that a candidate loses to another applicant because the competitor belongs to an underrepresented group. According to Article 14 of the ECHR and Protocol No. 12 to the ECHR, such difference in treatment requires a justification.<sup>22</sup> The European Court of Human Rights has made it clear that the prohibition of discrimination does not prohibit treating groups differently in order to correct “factual inequalities” between them,<sup>23</sup> but where a difference in treatment is based on race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible.<sup>24</sup>

34. The Venice Commission has previously stated that “the adoption of special measures in favour of minorities or of individuals belonging to minorities and aimed at promoting equality between them and the rest of the population or at taking due account of their specific conditions shall not be considered as an act of discrimination”,<sup>25</sup> however, “‘positive discrimination’ is legitimate only if, and to the extent that the positive action concerned is necessary in order to bring about substantive equality.”<sup>26</sup> It is up to the authorities of North Macedonia to assess, in the light of the most recent data, whether such a necessity exists, taking also into account the assessment by the Constitutional Court in its decision of 9 October 2024.<sup>27</sup> In the light of this decision, which has to be respected, the authorities will have to demonstrate whether and to what extent positive measures are currently necessary. Article 4 of the FCNM stresses that the promotion of full and effective equality between persons belonging to a national minority<sup>28</sup> and those belonging to the majority may require the parties to adopt special measures that take into account the specific conditions of the persons concerned, and that such measures are not to be regarded as contravening the principles of equality and non-discrimination; however, such measures need to be “adequate”. According to the Explanatory Report to the FCNM, this means that such measures need to be “in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others. This principle requires, among other things, that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve

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<sup>22</sup> According to para. 3 of the preamble to Protocol No. 12 to the ECHR, “the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures”.

<sup>23</sup> ECtHR, *Kovačević v. Bosnia-Herzegovina*, [no. 43651/22](#), 29 August 2023, para. 52, with further references.

<sup>24</sup> ECtHR, *D.H. and Others v. the Czech Republic* [GC], [no. 57325/00](#), 13 November 2007, para. 196.

<sup>25</sup> Venice Commission, [CDL\(1991\)007](#), Proposal for an European Convention for the Protection of Minorities (reproduced in “The protection of minorities”, Collection Science and Technique of Democracy, no. 9, 1994, p. 10). See also, *inter alia*, Venice Commission, [CDL-MIN\(1998\)001rev](#), Summary report on participation of members of minorities in public life, Introduction; Venice Commission, [CDL\(2000\)079rev](#), Opinion on the Draft Constitutional Law on the Rights of Minorities in Croatia, para. 6.

<sup>26</sup> Venice Commission, [CDL-AD\(2003\)013](#), Opinion on the Draft Law on Amendments to the Law on National Minorities in Lithuania, para. 9. See also Venice Commission, [CDL-AD\(2005\)009](#), Report on Electoral Rules and Affirmative Action for National Minorities’ Participation in decision-making process in European countries, para. 11: “... the action taken must be proportional to the real needs of the minority group in question and directed to providing means for achieving equal opportunities.”

<sup>27</sup> See para. 9 above.

<sup>28</sup> In 2004, the authorities of North Macedonia have deposited a declaration to the FCNM, which defines national minorities as citizens belonging to the six groups mentioned explicitly in the Preamble of the Constitution. According to this declaration, the term “national minorities” used in the Framework Convention and the provisions of the same Convention shall be applied to the citizens of the Republic of Macedonia who live within its borders and who are part of the Albanian, Turkish, Vlach, Serbian, Roma and Bosniac peoples..

the aim of full and effective equality.”<sup>29</sup> The Venice Commission recommends including these requirements – which the authorities recognised in their comments on the draft opinion – explicitly in the draft law; the draft would benefit from clarifying the criteria, limits, and safeguards governing such differential treatment to ensure that measures to improve representation remain consistent with FCNM standards and do not unduly undermine merit-based recruitment or lead to perceptions of reverse discrimination.

35. In a literal reading, one may understand the provisions of draft Articles 7 §4 and 11 §4 as referring to differential treatment of the underrepresented community as such. It remains however open how far belonging to a group may be a ground for differential treatment in the recruitment process. One possibility would consist in allowing for favouring candidates of an underrepresented group when candidates are equally qualified otherwise. If this is the solution sought by the authorities of North Macedonia – which the Commission understands, based on the meetings held in Skopje and on the authorities’ comments on the draft opinion, to be the case – this should be clearly set out in the law. In other words, the Venice Commission recommends making it clear in the law that qualifications are the primary criterion for recruitment in public bodies, and that affiliation with an underrepresented community may be considered as a secondary criterion for equally qualified and competent candidates.

36. Furthermore, the Venice Commission has some concerns about the effectiveness of the measures proposed by the draft law. While draft Article 6, according to which citizens are no longer obliged to declare their affiliation, is to be welcomed in light of international standards<sup>30</sup> and previous Opinions of the Venice Commission,<sup>31</sup> it also raises the question how the system envisaged in draft Article 11 can operate in practice. Draft Article 7 §2 stipulates that adequate and fair representation shall be achieved on the basis of the results of the last population census conducted in the country. But how can this system effectively operate if citizens do not state their affiliation?<sup>32</sup> Draft Article 6 §4, which states that “the free declaration of citizen’s affiliation may be conditioned by objective criteria in order to prevent abuse of arbitrary declaration”, does not answer this question, as it appears to be a mechanism which applies only in case of an actual self-declaration. It is for the authorities of North Macedonia to choose how to resolve this issue; it could be argued that if the majority of citizens choose not to declare any affiliation, the need for the second criterion subsides. At any rate, it must be ensured that citizens who do not declare an affiliation are not disadvantaged, in line with Article 3 §1 of the FCNM and with draft Article 6 §3.<sup>33</sup>

37. Moreover, in the view of the Venice Commission it would be advisable to more clearly define several terms used in the draft law. For instance, the terms “acquired rights” (in draft Article 7 §2), “special attention” (which shall be paid to citizens belonging to underrepresented communities,

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<sup>29</sup> [Explanatory Report to the Framework Convention for the Protection of National Minorities](#), para. 39. In practice, the draft provisions could result in a situation where a candidate is not selected because another applicant belongs to an underrepresented community. Under the FCNM, this is permissible only if the measure pursues a clearly defined legitimate objective (remedying structural underrepresentation); is applied case-by-case, not automatically or mechanically; respects the principles of merit, proportionality, and fairness within the civil service; and is subject to adequate procedural safeguards and periodic review.

<sup>30</sup> See Article 3 §1 of the FCNM. See also the case-law of the ECtHR, e.g. ECtHR, *Tasev v. North Macedonia*, no. 9825/13, 16 May 2019, paras 32-33, with further references.

<sup>31</sup> See e.g. Venice Commission, [CDL-AD\(2012\)011](#), Opinion on the Act on the Rights of Nationalities of Hungary, para. 40; Venice Commission, [CDL-AD\(2009\)032](#), Joint opinion on the Electoral Code of “the former Yugoslav Republic of Macedonia” as revised on 29 October 2008 by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, para. 39.

<sup>32</sup> In their comments on the draft opinion, the authorities stated that there was a strong inclination within the population for ethnic affiliation; the last census, as well as the previous ones, demonstrated that the percentage of non-affiliation under circumstances in which declaration of ethnic affiliation was completely voluntary was less than 0.5%. In this respect, the Venice Commission notes that while the scenario of a significant number of citizens not declaring affiliation may be rather theoretical at present, this might change in the future; in any case, it must be regulated how public sector candidates who do not declare their affiliation are treated.

<sup>33</sup> In case those who do not declare an affiliation are considered as non-affiliated, draft Article 7 §1 should be amended since it (only) refers to “all communities”, or the non-affiliated should be considered as a community.

under draft Article 8 §2) should be clarified, as well as the previously mentioned question of the degree of “overrepresentation” at which there is an obligation to propose measures to redistribute employment (draft Article 11 §4); it should also be made clear that “overrepresentation” of communities must not be a reason for citizens of those communities to lose their job.

38. During the meetings in Skopje, attention was also drawn to the fact that the notion “population data from the last census” referred to in several draft Articles as the basis for adequate representation lacked the necessary clarity, given different census methods, depending on whether non-resident population is included or not. The Venice Commission reiterates the statement it has made in previous Opinions that “with respect to the implementation of the guaranteed representation rights, the manner the census is conducted becomes particularly important. The draft law should set forth a special provision guaranteeing the impartiality of its procedure, as well as its accuracy.”<sup>34</sup> Moreover, it was stated that the notion of “public bodies at all levels” employed throughout the draft – which stems from Article 8 §1 of the Constitution – was not defined in any law. In the view of the Venice Commission, it would be advisable to provide for a legal definition, for the sake of legal certainty and to avoid an excessively broad scope (e.g. by excluding certain public services not related to public administration or by applying the law only to administrative units of a certain size).

39. To conclude, in the light of European and international standards – in particular, those set by the Council of Europe [Framework Convention for the Protection of National Minorities](#) – and good practices, the Venice Commission welcomes that the draft law opts for a more comprehensive and a more flexible approach than the previous regulation, but it is concerned that the draft leaves many questions unanswered. In their comments on the draft opinion, the authorities stressed that the draft law was clearly intended to be a framework law. The adequate balance between the merit-based criteria and ethnic affiliation through specific rules of recruitment was intentionally left to be regulated by the relevant sectoral laws,<sup>35</sup> and possibly also by special laws regulating particular public sectors and by implementing by-laws. While the Venice Commission recognises that the draft law cannot regulate all the details, it is of the opinion that too many issues are left to the by-laws referred to in draft Article 14 and to the methodology for planning employment in the public sector referred to in draft Article 11. In the view of the Venice Commission, several questions, specified above, should be dealt with in the draft law itself. Furthermore, it would benefit the democratic process if the by-laws and the methodology – or at least the essential elements – were submitted to Parliament before the law was passed.

## 2. Question 2

40. *Does the draft law adequately promote equality, through positive actions and by eliminating employment barriers?*

41. The previous regulation (the “Balancer”), namely the reservation of posts for candidates belonging to the ethnic community indicated in the advertisement, thus excluding candidates belonging to a different community, and its application in practice, had raised concerns both at the domestic and the international levels. The ACFC noted in its Fifth Opinion on North Macedonia (2022) that “the principle of merit is reportedly still often circumvented, even though the authorities point out this is no longer the case. Cases where applicants changed ethnic affiliation to increase their chances in application processes were also reported, and the

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<sup>34</sup> Cf. Venice Commission, [CDL-AD\(2004\)026](#), Opinion on the Revised Draft Law on Exercise of the Rights and Freedoms of National and Ethnic Minorities in Montenegro, para. 50. In this context, see also the [ACFC Thematic Commentary No. 2](#), The effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, 27 February 2008, para. 127, which states: “Comprehensive data and statistics are crucial to evaluate the impact of recruitment, promotion and other related practices on minority participation in public services. They are instrumental to devise adequate legislative and policy measures to address the shortcomings identified.”

<sup>35</sup> I.e. the Law on Public Sector Employees and the Law on Administrative Servants.

authorities admit that the possibility to change one's ethnic affiliation with every new application procedure is problematic."<sup>36</sup> Furthermore, the European Commission in its [Report for 2023](#) regarding the progress of North Macedonia noted the lack of progress concerning the public administration reform including measures aimed at merit-based employment and fair promotion and dismissal (most recently, some progress has however been noted<sup>37</sup>), and it raised concerns about the "Balancer" formula. Finally, the Constitutional Court, in its decision of 9 October 2024, ruled that the previous regulation violated the constitutional principle of equality of citizens before the Constitution and laws established by Article 9 of the Constitution, as well as the right to accessibility of every job to everyone under equal conditions guaranteed by Article 32 of the Constitution.

42. Against this background, the Venice Commission welcomes the fact that the draft law emphasises the principle of *fair* representation which shall ensure "fair treatment and opportunities for citizens, while respecting the rules of competence and integrity which govern public administration". This principle is also reflected in other provisions of the draft law, e.g. in draft Articles 5 and 7 §3.

43. That said, as mentioned under question 1, the draft law does not make it clear how the principles of "fair" and "adequate" representation shall be balanced. Moreover, the relevant provisions are very general in nature; they do not specify in detail how the principles of equality, professionalism and integrity shall be ensured in practice. Under these circumstances, it is difficult to provide a detailed answer to question 2. In this connection, it must be noted that in view of the ACFC's general standards, the draft law's approach to promoting equality through positive measures and removing employment barriers appears incomplete. While the ACFC recognises that States may adopt targeted positive measures to advance effective equality and address structural underrepresentation, such measures must be clearly framed, proportionate, and accompanied by safeguards ensuring transparency and fairness. The ACFC also emphasises that promoting equality in public employment requires not only differential measures but also a systematic removal of practical, linguistic, procedural, or institutional obstacles that disproportionately affect persons belonging to national minorities. In its current form, the draft law does not sufficiently clarify the nature, scope, and limits of such positive actions, nor does it define the concrete barriers to be addressed or the mechanisms for monitoring their elimination. As a result, the draft only partially reflects ACFC standards on ensuring substantive and effective equality in access to public employment.<sup>38</sup>

44. The Venice Commission welcomes the fact that the draft law includes provisions on awareness-raising (draft Article 12) as well as promotion and education (draft Article 13); the latter are aimed at encouraging the participation of employees belonging to all communities in education, training and professional development programmes, with the aim of improving competencies and achieving the principle of adequate and fair representation. The Commission wishes to add that adequate representation of all communities will depend, in a merit-based system, on the level of education of citizens; it can only be achieved if citizens of all ethnic communities benefit from equal education from an early age.

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<sup>36</sup> ACFC, [Fifth Opinion on North Macedonia](#), 18 May 2022, para. 128.

<sup>37</sup> In its [report for 2025](#) (page 24), the European Commission noted that "the long-awaited revised legislation on administrative servants and on public-sector employees, aimed at ensuring merit-based recruitment and fair promotions and dismissals, was enacted in July 2025"; at the same time, it stated that "with the current legal framework, inconsistent application of recruitment and promotion procedures across the public sector continued" and that "public service and human resources management remains insufficient".

<sup>38</sup> Moreover, the Venice Commission draws attention to the recommendation it has made above under question 1, aimed at making it clear in the law that qualifications are the primary criterion for recruitment in public bodies, and that affiliation with an underrepresented community may be considered as a secondary criterion for equally qualified and competent candidates.

### 3. Question 3

45. *Is the draft law compliant with other constitutional principles such as fundamental freedoms and rights recognised by international law and defined by the constitution, the free expression of national affiliation, the rule of law and the respect and protection of privacy of citizens belonging to all communities?*

46. In answer to this question, the Venice Commission first refers to Article 3 §1 of the FCNM which states that “every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”<sup>39</sup> Furthermore, the European Court of Human Rights has consistently stated<sup>40</sup> that “ethnic identity is a detail pertaining to an individual’s identity that falls within the personal sphere protected by Article 8 of the Convention”, that the choice not to be treated as a member of a minority “is completely free, provided it is informed” and that “the right to free self-identification is not a right specific to the Framework Convention. It is the ‘cornerstone’ of international law on the protection of minorities in general.”<sup>41</sup> The Venice Commission has also referred to this principle in several previous Opinions.<sup>42</sup>

47. Against this background, the new approach of the draft law to set forth the principle of free and voluntary declaration of affiliation and to make it clear that non-declaration cannot affect a citizen’s rights and freedoms or his or her position in the state (draft Article 6 §§1-3) is to be welcomed. As already mentioned under question 1, however, the possible consequences (in terms of representation) of the choice not to declare an affiliation need to be clarified.

48. Draft Article 6 §4 states that “the free declaration of citizen’s affiliation may be conditioned by objective criteria in order to prevent abuse of arbitrary declaration”. In this respect, attention is drawn to the Explanatory Report to the FCNM, according to which Article 3 §1 of the FCNM “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity.” The ACFC has commented on this issue that “self-identification begins with the free decision of the individual which, if no justification exists to the contrary, is to be the basis of any personal identification”,<sup>43</sup> and that “a person’s free self-identification may only be questioned in rare cases, such as when it is not based on good faith”; at the same time “identification with a national minority that is motivated solely by the wish to gain particular advantages or benefits, for instance, may run counter to the principles and purposes of the Framework Convention.”<sup>44</sup>

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<sup>39</sup> The right to free self-identification also extends to multiple affiliation. Persons belonging to national minorities should not be obliged to choose between preserving their minority identity – or identities – or claiming the majority culture, as all options must be fully available to them. This implies that practices by which an individual affiliates with a particular minority should not be seen as exclusive, as he or she may simultaneously identify with other minorities or with the majority. However, this must not be used as an argument to interfere with the rights of persons belonging to national minorities to self-identify freely and to claim minority protection. See ACFC, [Thematic Commentary No. 4](#), para. 13.

<sup>40</sup> See ECtHR, *Tasev v. North Macedonia*, no. 9825/13, 16 May 2019, paras 32-33, with further references.

<sup>41</sup> See, *inter alia*, ECtHR, Grand Chamber judgment in the case of *Molla Sali v. Greece*, no. [20452/14](#), 19 December 2018, para. 157.

<sup>42</sup> See e.g. Venice Commission, [CDL-AD\(2012\)011](#), Opinion on the Act on the Rights of Nationalities of Hungary, para. 40; Venice Commission, [CDL-AD\(2009\)032](#), Joint opinion on the Electoral Code of “the former Yugoslav Republic of Macedonia” as revised on 29 October 2008 by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, para. 39.

<sup>43</sup> According to the ACFC, decisive weight should be given to the free, subjective choice of the individual to be treated as belonging (or not) to a national minority. This belonging is therefore the freedom of the individual, which should only be questioned in rare cases. Whilst the FCNM in its Explanatory Report refers to objective criteria linked to the subjective self-declaration of minority affiliation, the ACFC emphasises that where objective criteria are applied to define a minority identity, this may refer to some evidence of a person’s practice of a different religion, language, culture or traditions compared to the majority. Identity in the context of the FCNM, as spelled out in the preamble and Article 5, refers to religion, language, traditions and cultural heritage.

<sup>44</sup> ACFC [Thematic Commentary No. 4](#), para. 10.

49. During the meetings in Skopje, various interlocutors informed the Venice Commission about cases where applicants changed ethnic affiliation only to increase their chances in recruitment processes.<sup>45</sup> Against this background, the Commission in principle welcomes the reference to objective criteria in draft Article 6 §4. That said, the Commission deems it necessary that the draft provides guidance concerning the objective criteria to be used by the authorities in order to verify the self-identification of the candidate and eventually to reject it – such criteria must be narrowly defined, strictly necessary, and fully aligned with the FCNM –, that it determines how and by which authority this verification is carried out and what the consequences of proven abuse will be. Admittedly, it is difficult to define objective criteria for verifying ethnicity. Consistency, i.e. comparison with an earlier self-identification can be one element in assessing the sincerity of community affiliation. This must however not exclude the possibility of reasoned change (for instance after marriage). The law must ensure that any reference to objective criteria does not jeopardise the principle of free self-identification, which is “a cornerstone of minority rights”,<sup>46</sup> and is only aimed at preventing abuse.

50. Secondly, the Venice Commission draws attention to the statements made by the ACFC that “collection of data on the situation of national minorities should be made in accordance with international standards of personal data protection, as well as the right for persons belonging to a national minority freely to choose to be treated or not to be treated as such. Representatives of the national minorities concerned should be involved in the entire process of data collection and the methods of collection of such data should be designed in close co-operation with them.”<sup>47</sup> In light of this, it is welcome that draft Article 10 on data collection by the Coordination Body makes it clear that “when processing and submitting personal data, the provisions of the Law on Personal Data Protection shall be respected” (paragraph 4). That said, the Venice Commission is concerned that the preceding paragraphs enumerating the “data and information related to the situation with the representation of citizens belonging to all communities” to be submitted by “all competent authorities” not only include specific items such as “statistical data on representation” or “data from the register of public sector employees (...)” but also refer to “other information” (draft Article 10 §3, last item). This formulation is excessively vague and should be removed from the draft.

51. Thirdly, question 3 also refers to the Rule of Law principle. In this respect, the Venice Commission draws attention to the relevant case-law of the European Court of Human Rights<sup>48</sup> and to the Commission’s Rule of Law Checklist,<sup>49</sup> according to which the principle of legal certainty requires that the effects of law are foreseeable, which implies that it must “be formulated with sufficient precision and clarity to enable legal subjects to regulate their conduct in conformity with it.” As indicated in various parts of the present Opinion, the draft law needs to be amended to provide for clearer regulations and definitions, in order to comply with these standards.

#### 4. Question 4

*52. Is the Coordinating Body of the Government, which is envisaged to be established by this draft law, given its composition, competence, leadership with this body as well as the measures and activities it will undertake, an adequately efficient institutional mechanism that would ensure respect, affirmation, improvement, advancement, promotion and monitoring of the adequate and fair representation of citizens belonging to all communities in state power bodies and other public*

<sup>45</sup> See also ACFC, [Fifth Opinion on North Macedonia](#), 18 May 2022, para. 128.

<sup>46</sup> See ACFC [Thematic Commentary No. 4](#), para. 9.

<sup>47</sup> [ACFC Thematic Commentary No. 2](#), The effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, 27 February 2008, para. 127.

<sup>48</sup> ECtHR, *The Sunday Times v. the United Kingdom* (No. 1), [no. 6538/74](#), 26 April 1979, paras 46ff.; ECtHR, *Rekviényi v. Hungary*, [no. 25390/94](#), 20 May 1999, paras 34ff.

<sup>49</sup> Venice Commission, Rule of Law Checklist, [CDL-AD\(2016\)007](#), point II.B.3.

*institutions at all levels and is there a need to provide for additional misdemeanour sanctions for public officials who will be responsible for implementing this draft law?*

53. The Venice Commission in principle welcomes the planned monitoring and promotion of adequate and fair representation, to be carried out by a dedicated Coordination Body (cf. Articles 9 and 10 of the draft law). That said, under the present draft this body suffers from the same dilemma as the law in general, namely the open question of how the principles of “adequate” and “fair” representation shall be balanced and what mechanism shall be applied to ensure respect of both principles in the recruitment process. As long as this substantive question is not clearly answered in the law, the Coordination Body cannot play an effective role – unless it answers this question itself, which is highly undesirable: for reasons of legal certainty and clarity, legislation on such an important and sensitive issue must be precise and clear in its objectives and priorities, and it must be statutory legislation.<sup>50</sup>

54. Regarding the composition of the Coordination Body, the Venice Commission is concerned that it is not defined by law but shall be determined by the Government (draft Article 9 §3). While it is welcome that the body shall include one representative of the Ombudsman, one representative of the Commission for Prevention and Protection against Discrimination and one representative of the academic community, in addition to one of the Deputy Prime Ministers as its head, ministers and a representative of the Agency for Administrative Servants, it would clearly be preferable for the composition to be comprehensively regulated by law. The current draft leaves it to the Government to decide how many ministers and, possibly, other persons shall be members of this body. In the Venice Commission’s view, the composition of a body entrusted with such a sensitive task as protecting ethnic communities’ rights should be more precisely defined by law, and the law should ensure genuine representation of non-majority communities. The Commission finds it crucial that the authorities ensure a diverse and competent composition of that body and reflect on limiting the ‘governmental’ element *within* the body – bearing also in mind that it will be tasked to report *to* the Government. It would also be preferable for the body not only to report to the Government, but also to Parliament. Such mechanisms would ensure that all relevant groups are heard. Another possible way to ensure this would be to entrust the monitoring tasks to a parliamentary committee or a separate body whose composition would be determined by Parliament,<sup>51</sup> instead of a governmental body.

55. Further aspects of the Coordination Body’s work should also be regulated more precisely, for example the question of *to whom* it shall propose measures for the redistribution of new posts under draft Article 11 §4; and, as mentioned previously, the question of what degree of “overrepresentation” of certain communities shall trigger the obligation to make such proposals. It is also advisable to ensure transparency of the body’s activities, for instance by providing for publication of its reports.

56. As to the question whether this Coordination Body will be an efficient institutional mechanism, this is difficult to answer on the basis of the current draft provisions; it will depend on the formulation of a clearer mandate, as suggested above, on the necessary further regulations for its organisation and operation, and on the resources dedicated to it. In any case, this body appears to be designed as an advisory body, which is mainly tasked with analysing and monitoring the situation and proposing measures. Even if it will undoubtedly be an influential advisory body under the present draft, according to which it is headed by one of the Deputy Prime Ministers, its powers appear to be rather limited.

57. Regarding the necessity of additional sanctions, the Venice Commission is of the opinion that sanctions for misdemeanours by public officials who will be responsible for implementing the law

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<sup>50</sup> Cf. Venice Commission, Rule of Law Checklist, [CDL-AD\(2016\)007](#), point II.A.4.

<sup>51</sup> E.g. similar to the Commission on Prevention and Protection against Discrimination (CPPD), provided for in the anti-discrimination law, which is composed of seven members appointed by Parliament with five-year mandates.

should follow the general rules, provided that those rules are applicable and there are no loopholes. In case the authorities choose to include any additional sanctions, it would be crucial that the rules and the infringements giving rise to sanctions be precisely defined.

#### IV. Conclusion

58. By letter of 11 July 2025, Mr Hristijan Mickoski, Prime Minister of North Macedonia, requested an Opinion from the Venice Commission of the Council of Europe on the draft law on adequate and fair representation.

59. The draft law was prepared in a closed working group involving only Government representatives and academics, and it was adopted by the Government on 24 June 2025. The Venice Commission welcomes the fact that the Government submitted the draft law for its scrutiny at an early stage, even before submitting it to Parliament. For the further process, the Venice Commission recommends ensuring a transparent, accountable, inclusive and democratic law-making procedure, including public consultations and meaningful involvement of the various ethnic communities and other relevant stakeholders. It is crucial that legislation on such a sensitive matter as the adequate and fair representation of ethnic communities in public bodies be carefully prepared, in an inclusive process.

60. The main purpose of the draft law is to harmonise the legislation with the 2001 Ohrid Framework Agreement, which ended the armed conflict between different groups of the population and stipulated in point 4.2 that *'laws regulating employment in public administration will include measures to ensure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration'*, as well as with the subsequent Amendment VI of 2001 to the Constitution. The law was drafted in response to a decision of the Constitutional Court of 9 October 2024 abolishing the "Balancing" mechanism, which previously governed the equitable representation of communities within the state administration; as a result of this decision, ethnic affiliation was no longer taken into account when hiring for public service positions.

61. It must be noted that it is not for the Venice Commission to assess the compliance of the draft law with the national Constitution or with the aforementioned Constitutional Court decision. It is up to the authorities of North Macedonia to respect the ruling of the Constitutional Court and the key statements contained therein, which may also have implications for compliance with international law, in particular the condition that positive action is only legitimate if it can be considered necessary. The present Opinion answers several questions raised by the Government in the light of European and international standards – in particular, those set by the Council of Europe [Framework Convention for the Protection of National Minorities](#) (FCNM) – and good practices.

62. As a starting point, the Venice Commission notes that both the authorities and several other interlocutors met in Skopje emphasised that the previous "Balancer" system's aim of achieving a strictly proportional representation of ethnic communities in public institutions and the frequent abuse of that system jeopardised the principle of merit-based recruitment in the public service. The Venice Commission notes that the present draft law aims to remedy this situation and to ensure both "adequate" and "fair" representation as defined in draft Article 2: representation of all communities in public bodies reflecting approximately their participation in the population, as well as equal treatment and opportunities of all citizens and respect of the rules of competence and integrity. In light of the standards set by Article 15 of the FCNM and the guidance provided by the Advisory Committee of the Framework Convention for the Protection of National Minorities, the Venice Commission welcomes the fact that the draft law follows a rather flexible approach instead of strict regulation as before: contrary to the previous "Balancer", the draft regulation takes into account the two aspects of "adequate" and "fair" representation, but does not seek a rigid,

mathematical equality in the representation of various communities but an “approximate” reflection of their share in the population. The Commission furthermore welcomes that the draft pursues a comprehensive legal approach – albeit in the form of a framework law – rather than leaving this important and sensitive matter to isolated provisions in different legal and sub-legal acts, as has been the case so far. In terms of content, the Commission welcomes that the draft law explicitly entrenches merits and competence, non-discrimination and equal opportunities, as well as free and voluntary declaration of affiliation to a community as guiding principles, in line with European standards including the FCNM and the European Convention on Human Rights; and that it establishes a Coordination Body to monitor the situation and make proposals to ensure fair and adequate representation.

63. That said, the Venice Commission is of the opinion that the draft needs to be amended to bring it fully into line with international standards and to become an effective tool for achieving the stated goal of ensuring merit-based recruitment in the public service while respecting the constitutional principle of adequate and fair representation of communities. The main problem with the draft is that it remains very general and does not resolve the question of how the recruitment process should actually work in practice. The current draft leaves it to the future amendments to sectoral legislation (Law on Public Sector Employees, Law on Civil Servants), possibly specific sector laws, as well as by-laws (to be adopted by the Government) and the “Methodology for planning employment in the public sector” (to be adopted by the Agency for Administrative Servants in cooperation with the Coordination Body) to regulate all the details. Even if the draft law is intended to be only a framework law, the Venice Commission is of the view that, for the sake of legal certainty and clarity as well as democratic legitimacy, the basic rules for recruitment should be enshrined in the law itself.

64. The Commission wishes to make the following key recommendations:

A. Including more detailed regulations in the draft law, clarifying how the principles of “adequate” and “fair” representation shall be balanced, how the recruitment process should actually work in practice and what mechanism shall be applied to ensure that ethnic employment criteria are not used in a way which may jeopardise merit-based recruitment [paras 30, 32];

B. Making it clear in the law that qualifications are the primary criterion for recruitment in public bodies, that affiliation with an underrepresented community may be considered as a secondary criterion for equally qualified and competent candidates, and that special measures in favour of underrepresented communities or of individuals belonging to such communities need to be in conformity with the proportionality principle requiring, *inter alia*, that such measures do not extend, in time or in scope, beyond what is necessary in order to ensure full and effective equality [paras 34, 35];

C. Clarifying the possible consequences (in terms of community representation in public bodies) of the choice by candidates not to declare affiliation to a community [para. 36];

D. Providing more guidance on the objective criteria to be used in order to verify the self-identification of the candidate, that are narrowly defined, strictly necessary, and fully aligned with the Framework Convention for the Protection of National Minorities; and determining the authority competent for such verification as well as the consequences of proven abuse [para. 49];

E. Precisely defining in the law the composition of the Coordination Body, while ensuring genuine representation of non-majority communities, and ensuring transparency of the Body’s activities [paras 54, 55];

F. Defining several terms used in the draft law, which are highlighted in this Opinion, and including essential elements of the planned by-laws and the “Methodology for planning employment in the public sector” in the law or, at least, submitting them to Parliament prior to the adoption of the law [paras 37-39].

65. To conclude, the Venice Commission welcomes that the draft law includes provisions on awareness-raising, promotion and education aimed at improving the competencies of employees belonging to all communities. It wishes to add that adequate and fair representation of all communities will depend on the level of education of citizens; it can only be achieved if citizens of all ethnic communities benefit from equal education from an early age. Equal conditions for all citizens will contribute to achieving a veritable merit-based system and diminishing the importance of ethnic origin.

66. The Venice Commission remains at the disposal of the authorities of North Macedonia for further assistance in this matter.