# WHITE BOOK

Proposals for improvement of the business environment in Serbia

2015


Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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Proposals for improvement
of the business environment in Serbia

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and Foreign Investors Council

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White Book is also **available for download** at

**www.fic.org.rs/whitebook2015.html**

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# FOREWORD

The latest reports on Serbia show positive indications of economic growth and rise of employment. We believe this shift from a negative to a positive trend is the result of the Government's undertakings in both the budgetary and regulatory areas.

Through its arrangement with the IMF, the Government has managed to restrain the budget deficit, making a tough choice to cut down pensions and salaries and increase excise and electricity prices. Also, revenues rose substantially through improved tax collection. On the business climate side, we have witnessed focused action to improve some of the critical issues hampering the private sector development for years. Examples include more transparent and efficient construction permitting, the so-called land conversion which is enabling land ownership, and a new framework for the work of inspectorates.

All these changes are expected to facilitate and increase the further inflow of investments in a more stable macroeconomic environment with more streamlined real-estate development and improved market surveillance

To sustain this positive trend and preserve the results achieved so far, Serbia needs to accelerate and start implementing difficult, yet necessary, structural reforms. The key preconditions for enabling a level playing field and further private sector development are the finalization of privatization and initiation of public enterprises' corporatization to limit the role of the State as a market player. Only a healthy private sector can absorb the unemployed workforce and secure a sustainable solution for high level of unemployment.

Another big project that lies ahead is the reform of the public administration. This should not be only about cutting numbers and laying off state employees, but primarily about raising the quality of services provided by the State to its citizens and businesses. In an era when everything is computerized, the Government should maximize the use of the e-platform and ensure more transparency, consistency and quality in its work.

Then we come to the issue that has been at the core of all our business advocacy efforts over the past few years – the full and proper implementation of laws. In the absence of trained state administration, clear procedures and methodology, excellent legislative solutions will only have limited impact.

Evidently Serbia has a lot of work ahead to secure a stable economic environment and approximation to the EU. By taking the next step in resolving relations with Kosovo, the Serbian Government has created the impetus for this process and for opening negotiations on the first EU accession chapters in only a few months' time.

Based on the aforesaid, we hope and expect that harmonization of national legislation with the EU acquis will intensify further and that we, the FIC, will be involved in the related consultations process.

A predictable, stable business environment, including a transparent public decision-making process, is yet another important element for foreign and local investors. We are delighted that the Serbian Government has repeatedly reassured investors that no unexpected financial burden, in terms of new parafiscal taxes and fees, would be imposed on businesses. We are pleased with this investor-friendly policy and hope the Government will continue this approach going forward.

The FIC acknowledges and appreciates the Government's clear commitment to reforms, and is ready and capable to provide support. The FIC is an association that represents companies doing business worldwide; we are committed to use our knowledge and expertise to help create a better future for everyone.

Ove Fredheim
FIC President

# EXECUTIVE SUMMARY

Dear reader,

This Executive Summary is not an attempt to present an overarching overview of over 40 topics that the White Book 2015 covers. Rather, it will provide information about the concept and structure of the White Book and share information about progress made in selected areas – those that the FIC considers as priorities, as well as those that have undergone the most or least progress in the period between October 2014 and October 2015.

You are invited to browse through the remaining parts of the White Book to find more detailed information and presentation of the topics not mentioned in the Executive Summary.

## WHAT IS THE WHITE BOOK AND HOW IS IT WRITTEN?

The concept of the White Book is to give a comprehensive overview of the business environment in Serbia and provide concrete recommendations on how to improve it. Moreover, the intent of this annual publication is to track the record of reforms, recognize the accomplishments achieved between the two editions, and identify issues which were left unresolved.

With that in mind, the structure of each White Book chapter encompasses four segments: Current Situation, Positive Developments, Remaining Issues, and FIC Recommendations.

How is the White Book written and what are the regulatory topics that it covers?

The White Book actually is a mechanism to create consensus amongst FIC members around those topics they find relevant. FIC working committees serve as the main forums for defining this consensus, which is subsequently approved by the FIC Board of Directors.

Thus, members are involved in each step of the six-month long process of preparing the White Book. The process starts by consulting the members (inside FIC working committees and through direct inquiry towards the entire membership) on the topics that should be featured in the upcoming White Book edition, and investigating their interest in writing specific texts within the White Book. Once the topics are determined, identified authors take on the responsibility of writing the first drafts of their texts. Relevant FIC working committees then review, potentially revise, and adopt the draft texts. Adopted texts are then sent to the Editor-in-Chief, who reviews them and makes sure that there are no ambiguities, or potential contradictions between different texts. Once edited, texts are put for membership consultations for final remarks, and finally they are reviewed and adopted by the FIC Board of Directors.

This complex process of preparation is designed to ensure that the publication recognizes the interests of the entire FIC membership and to prevent promotion of individual/group interests.

The purpose of the White Book is to serve as the platform for communication with the Government and other relevant stakeholders, and it is actively used by the FIC and its members in public-private dialogue.

## KEY FINDINGS OF THE WHITE BOOK 2015

Between October 2014 and October 2015, significant progress has been attained in the highly relevant fields of real estate, intellectual property, transport, inspections and the fight against illicit trade, as well as in a number of different sectors: telecommunications, insurance, oil & gas, and private security.

### Real Estate

Amendments on the Law on Planning and Construction (which came into force on 1 March 2015) and the adoption of the new Law on the Conversion for a Fee (July 2015) brought significant breakthroughs in the real estate. Out of 16 recommendations presented in the White Book 2014, one marked significant progress, nine marked certain progress, while six marked no progress.

Key positive developments include the acceleration of the procedure for issuing construction permits and the legal solution for conversion, which foresees compensation that corresponds to the value of rights transferred in the conversion process (value of the scope of rights that constitute the difference between the right of use and ownership right).

Key remaining issues are the swift adoption of the new Law on Legalization with a simpler but constitutionally acceptable solution (the Government initiated public discussion on the Draft Law in late September 2015), and to create a more favourable climate for implementing financial leasing in the real estate sector.

## Inspections and the Fight against Illicit Trade

The adoption of the Law on Inspection Oversight (April 2015) brought significant progress to the fighting of illicit trade. Out of 14 recommendations presented in the White Book 2014, one marked significant progress, seven marked certain progress, while six marked no progress.

Key positive developments include adoption of the Law on Inspection Oversight; establishment of special inter-ministerial working groups dedicated to fighting particular aspects of illicit trade; and the founding of the Department for the Suppression of Illicit Trade in Excisable Products within the Criminal Police Directorate, formally forming a permanent team to deal with illicit trade in this field.

Key remaining issues are the introduction of specialized prosecutors for the processing of illicit trade (i.e. economic crime-related cases); to timely change sectoral laws and harmonize them with the Law on Inspection Surveillance; to introduce integrated control of border crossings by all involved departments, in order to prevent the illegal transit of goods across the border into Serbian territory; and to enhance the efficiency in processing cases associated with illicit trade in courts.

## Intellectual Property

New amendments to the Law on Legal Protection of Industrial Design (which came into force in May 2015) improved accuracy of interpretation and efficiency in implementation. Out of four recommendations presented in the White Book 2014, one marked significant progress, and three marked certain progress.

Key positive developments include extending the duration of the period for which rights are granted from one to five years; increasing efficiency of the system of protection of industrial designs through a more detailed definition of those rights which can be exercised by filing a lawsuit, initiating preliminary injunctions and securing evidence; and harmonization with EU directives on intellectual property rights.

Key remaining issues are to focus on combating online copyright infringements, especially with respect to the software, music, and film industries; and to intensify inspection of software licensing requirements in companies, especially by the special unit within the Tax Administration.

## Transport

Progress has been made in the field of transport, particularly in road, inland water, and air transport, as well as harmonization with the EU acquis. Out of 20 recommendations presented in the White Book 2014, two marked significant progress, 13 marked certain progress, while five marked no progress.

Positive developments are noticed in both legislation and infrastructure development. Key legislative achievements are the adoption of the Law on Amendments to the Law on Air Transport, which strengthens the role of the Civil Aviation Directorate as an independent regulatory body (in line with the EU Acquis), and establishes the National Security Committee as a temporary coordination body; and amendments to the Law on Navigation and Inland Waters, which changes the previous categorization of ports and enables the opening of all ports international traffic. In addition, the restructuring of the railway is expected through support of the World Bank. Main achievements in infrastructure development include:

- Modernization of the railway is expected based on a Russian loan in the amount of USD 800 million;
- Preparation of the feasibility study for modernization and construction of a double track railway line between Belgrade and Budapest with a high speed line that would allow commuting in less than three hours;
- Planned construction of Highway E 80, as part of an integrated project submitted to EU;

Serbia was granted Category 1 by the US Federal Aviation Administration and the first direct flight is expected at the end of 2015/beginning of 2016.

Key remaining issues are the restructuring of public enterprises working in the transport sector (with a focus on railway transportation and introduction of result-oriented management); to improve the quality of the national road administration and enable it to provide an adequate institutional framework in this area; to establish the necessary institutional structures to further liberalize railway traffic market; to introduce an efficient road user toll system (to bring back passenger and cargo transit traffic to Serbian roads); to repair the remaining damage caused by floods with high-quality materials in order to diminish the frequency of subsequent repairs; to improve expropriation proceedings; and to introduce a safe transport system in the Republic of Serbia in accordance with EU transport policy (through efficient, quality, reliable, and sustainable services).

## Telecommunications

The telecommunications sector faced new challenges concerning consumer protection and telecom operators' obligations, regulation of roaming charges, more efficient use and sale of the radio frequency spectrum, as well as greater user requirements and needs concerning the new trends and possibilities enabled through modern technology. Out of 12 recommendations presented in the White Book 2014, three marked significant progress, five marked certain progress, while four marked no progress.

Key positive developments include activities concerning the regulation of more efficient use of the radio frequency spectrum and spectrum use on a technologically-neutral basis, and the preparation of the analysis of the wholesale market for call termination in the fixed public telephone network (Market 3), which brought reduction of fixed-line termination rates.

Key remaining issues are related to the predictability of frequency distribution, which should stay very high on the Serbian Government's agenda, since this is of critical importance to market development; transparent allocation of frequencies in the 800 MHz band, based on regional price benchmarks; a need to amend foreign exchange regulations in order to enable operator billing of digital content through monthly mobile service bills; refraining from the introduction of any parafiscal duties on the telecom sector; harmonizing implementation of regulations in the roaming area at regional level, in order to maintain reciprocity/ enable the application of regulated prices as an additional tariff, and not the only tariff.

## Insurance

The new Insurance Law was adopted in December 2014, responding to some of FIC proposals. Out of six recommendations presented in the White Book 2014, one marked significant progress, four marked certain progress, while one marked no progress.

Key positive developments include the fact that the new Law on Insurance made significant progress towards harmonization with applicable EU legislation; and that the process of harmonization with EU regulations related MTPL in terms of insurance sums has started.

Key remaining issues are defining the tax treatment of "shared services" for separate companies with the same shareholder; to allow insurance companies to determine the number of executive directors in their articles of association; to allow MTPL price liberalization which would immediately favour both traditional distribution channels; to consider introduction of the strategy for natural disaster insurance coverage and secure that an important share of losses is transferred to insurance companies; to adopt a new set of laws on insurance: the Insurance Supervisory Law – ISL, Insurance Contract Law – ICL and Insurance Brokers and Agents Law.

## Oil & Gas

The previous year brought changes in regulations without proper consultations with the industry and an increase in the number and amount of fiscal charges at national and local levels. Out of five recommendations presented in the White Book 2014, one marked significant progress, three marked certain progress, while one marked no progress.

Key positive developments include the new Decree on the Marking of Petroleum Products, which eliminated identified deficiencies (adopted in June 2015); and intensified inspection and control of licenses for petroleum products wholesale as part of the fight against illegal trade.

Key remaining issues are the regulation of the collection of fiscal charges and adoption of the by-laws related to Law on Commodity Reserves.

## Private Security

Last year was characterized by significant problems related to the grey economy and challenges in implementation of the Private Security Law (adopted in 2013). Out of five recommendations presented in the White Book 2014, two marked significant progress, two marked certain progress, while one marked no progress.

A key positive development is the formation of the Expert Council for the improvement of private security as a forum for communication with the private sector.

Key remaining issues are to continue preparation of by-laws to the Law on Private Security, which should be harmonised with EU legislation to the extent possible; and to set a reasonable time schedule and deadline for the training and licensing of security officers and companies.Between October 2014 and October 2015, the least progress was marked in foreign exchange regulations and taxes, as well as in the fields of food and agriculture, leasing, pharmaceuticals, and home care products and cosmetics industry.

## Foreign Exchange Regulations

There was no notable progress since the changes of the Law on Foreign Exchange Operations in 2012. Out of 12 recommendations presented in the White Book 2014, two marked certain progress, while 10 marked no progress.

A key positive development is the adoption and amendments of certain by-laws, such as the Decision on Reporting on Transactions with Securities and Minor Amendments to the Decision on Reporting on Foreign Credit Transactions.

Key remaining issues are the modernization of regulations on payment operations and adjusting them to modern-day transactions; allowing of cash-pooling between affiliated companies; and enabling global netting between affiliated companies.

## Tax

There were no notable improvements in the tax area. Problems in the application of tax regulations, no safe-guard against new parafiscals, and cases of sudden law changes (i.e. the Law on Excise Taxes and the Law on VAT) are still present. Out of 37 recommendations presented in the White Book 2014, four marked as certain progress, while 33 marked no progress.

Key positive developments included the further implementation of the tax returns electronic filing system, which contributed to reducing taxpayers' costs, greater legal certainty, accuracy of the Tax Administration's data, and easier access to various certificates issued by the Tax Administration; and setting up of the working group to draft the Law on Fees (parafiscals) at the start of 2015.

Key remaining issues are the inconsistent application of the same tax rules by different organizational parts of the Tax Authority and lack of co-ordination between the Tax Authority and the Ministry of Finance; regulations are adopted and amended without the participation or without adequate participation of the public (i.e. Law on Excise Taxes, Law on VAT); CIT Law should be amended to allow a full deductibility of marketing expenses and change the current norm that only paid taxes are recognized as an expense in the tax balance sheet, and align this provision with the IFRS rules; introduction of a synthetic system of personal income tax; VAT Law should be amended to regulate the status of foreign entities in line with best practices; large number of VAT rulebooks should be replaced with one comprehensive regulation; Property Tax Law norms which determine the method of the calculation of the property tax base using the zoning method should be revisited; and the Law on Charges has still not been adopted, while in practice there are still attempts at introducing new charges and fees.

## Food and Agriculture

In the past year, there were no notable improvements in addressing key issues: implementation of food-safety regulations, lack of quality assurance (National Reference Laboratories), and uneven treatment in registering PPP (plant protections products). Out of 31 recommendations presented in the White Book 2014, four marked certain progress, while 27 marked no progress.

A key positive development is the adoption of the Law on Inspections, which should reduce overlapping of jurisdictions and the grey economy, but there is still no practical effect.

Key remaining issues are adoption of relevant by-laws on food safety and establishment of National Reference Laboratory; inconsistent application of rules by inspectors especially in the phytosanitary and sanitary areas; a new Labelling Rulebook is needed to overcome problems with a sudden change in the interpretation of the current one by Phytosanitary Inspection; and harmonization of the regulation on food safety and plant protection products with relevant EU regulations.

## Leasing

Out of six recommendations presented in the White Book 2014, one marked significant progress, while five marked no progress.

Key positive developments include the adoption of the new Insurance Law, which allows leasing companies to conduct representation in insurance activities; and the issuing of the NBS decision with precise rules for acquiring licences for mediation and representation in insurance.

Key remaining issues are equalizing VAT treatment of interest in financial leasing with the treatment of interest in the banking sector; regulating operating leasing; inclusion of leasing financing within the agricultural incentives programme by amending the Law on Incentives for Agriculture and Rural Development; leasing and insurance companies should be on the same level playing field as banks regarding write-off of receivables from individuals; alteration of

the decisions on public car parks of local governments so that the lessee can be considered the user of a public car park in the case of leased vehicles.

### Pharmaceuticals

The legal framework is still a cause of special concern. It is underdeveloped and non-compliant with EU legislation, causing great uncertainty in the sector and allowing non-transparent procedures at different levels, both the Government and the National Health Insurance Fund. Out of 20 recommendations presented in the White Book 2014, one marked significant progress, one marked certain progress, while 18 marked no progress.

Key positive developments include a better quality of dialogue between the Government and interested parties; and the competition on the health services and health insurance market was somewhat improved by steps made towards equalizing the state and private sector.

Key remaining issues are Serbia's health budget, which has to be financially consolidated and made more transparent to increase business predictability and safety of investment; the same tax treatment should be provided for the entire pharmaceutical sector; the Rulebook on criteria for the pricing of medicines for human use should be adopted every three months; groups of medicines that can be issued without prescription should be expanded.

### Home Care Products and Cosmetics Industry

Out of six recommendations presented in the White Book 2014, one marked certain progress, while five marked no progress.

Key positive developments include intensified dialogue with the Ministry of Agriculture and Environmental Protection through the organization of seminars and presentations; and support of consumer protection associations for communication of price per wash load together with price per pack.

Key remaining issues are the further and accelerated harmonization with changes in EU regulations and technical requirements; sanitary inspection of relevant products should be regulated only by the Law on Chemicals; cleaning and hygiene products labelled as "irritants" should have the same treatment as in EU member states; and increasing consumers' awareness on unit pricing. Labour Regulations

After July 2014, when the labour legislation underwent significant and comprehensive structural reforms, there were no changes in the period that followed. While the FIC fully recognizes significant reforms conducted in July 2014, the White Book score card doesn't reflect this, as it monitors only the period between October 2014 and October 2015, which did not bring progress. Therefore, out of 26 recommendations presented in the White Book 2014, two marked certain progress, while 24 marked no progress.

Key positive developments include changes to the Law on Employment of Foreigners that allow self-employment, exercising unemployment rights, and harmonization of national legislation with the EU acquis; and that the new Draft Law on the Protection of Citizens Working Abroad simplifies the procedure and strives to bring balance between the needs of the global labour market and the protection of domestic workers while on temporary work abroad.

Key remaining issues are staff leasing, which is still not regulated; salary compensation during leave should be equal to the amount of the base salary increased by seniority (Labour Law); limit for a fixed-term employment contract should be extended from 24 to 36 months (Labour Law); and complex model of calculation of salaries should be simplified (Labour Law); in the employment of foreigners it is necessary to streamline the procedure for acquiring a residence permit and to exclude labour market tests for the employment of directors and top management.

# FIC OVERVIEW

Over 130 companies, more than 97,000 directly employed[1], over €23.5 billion of investments[2] and 18% GDP[3] – that is the Foreign Investors Council today. The main purpose of the association is to facilitate the dialogue between the members which will yield the recipe for improvement of general business climate, and which will then be presented and, in continuous communication, elaborated to the Government and other relevant stakeholders.

The fact that FIC gathers over 30 sectors, and that our members are competitors on the market, is the guarantee of comprehensiveness and inclusiveness of our views. Dialogue between members evolves within 8 working committees and additional ad-hoc groups which FIC formed to ensure a transparent and fair decision-making process – so that the determined positions represent the view of the majority, and do not oppose the interest of any member company. Therefore, decisions are taken in two steps, first on the level of working committees, with full inclusion of members, after which they need to be confirmed by the Board of Directors. This complex process somewhat impedes the FIC efficiency, but at the same time it gives weight and credibility to the accepted decisions.

The key factor which influences the work of FIC is – trust. Trust of members that there is a level playing field in FIC, transparent and predictable way of taking decisions. Trust that vote of every member will have the same importance and weight, regardless of the company's strength or industry in which it operates. Therefore, high ethical standards and clear management rules are of great significance for FIC. Over the years, FIC has adopted a series of statutory acts which determine rights and obligations of FIC members and officials in more detail, promote competition rules and define guidelines for engagement in FIC. And so FIC has developed guidelines for protection of competition, guidelines for work of the committees, guidelines for cooperation with the Government and other relevant stakeholders, as well as guidelines for media activities. All of the above makes FIC the organisation with high ethical rules and corporate governance which sets the standards for operations in its field.

The Foreign Investors Council is characterised by yet another particularity which is linked to strategically important process for Serbia – process of European integrations. 70% of FIC members come from European Union, while other members, which come from other parts of the world – United States of America, Russia, China, Japan – also do business on the European market. Thus, FIC has a unique ability to combine knowledge and experiences about European and Serbian markets and give council and concrete suggestions how to go through the process of economic integration of Serbia into EU as efficiently and productively as possible.

A key characteristic of relations between FIC and the Government and other partners is also – trust. FIC has been building this trust over the past 13 years mainly through consistency and constructiveness of views and suggestions we give, but also through receptiveness, openness and consistency in dialogue. Therefore, we can proudly note that FIC is a regular participant in processes of changing regulations, and that at the request of the Government and other stakeholders FIC actively participates in defining new rules on the market.

FIC is not a chamber and does not provide b2b services, consulting, training and similar types of support. Our full attention is devoted to analysis of regulations and policies, and exchanges of opinions and experiences related to conditions under which the business is done

Although the White Book is the best known FIC project and product, whose preparation and presentation requires almost 6 months of active work, this is in no way our only project. Throughout the year we execute number of activities focused on improvement of the business climate in Serbia. On one hand, we analyse regulations, new drafts of laws and by-laws, we question their application. On the other hand we organize the dialogue with the state and other stakeholders, expressing our standpoints and suggestions and exchanging views how to overcome concrete problems and increase competitiveness of the Serbian market.

## What were the key FIC activities in the last year?

Between two White Book editions, FIC analysed in detail over 38 regulations, by submitting more than 30 written initiatives, and participating in 17 public discussions about new draft laws. Topics that we tackled mostly related to 5 areas we defined as priorities:

1. Introduction of coherent overall legal framework, in particular liberalization of foreign exchange regulations and less rigidity in their interpretation

1 Data for 2015, source: FIC records

2 Data for 2015, source: FIC records

3 Data for 2014, sources: FIC records, National Bank of Serbia

2. Improvement and more consistent implementation of tax laws, including introduction of safeguard mechanism against new parafiscal charges

3. Enabling ownership over land, so-called land conversion

4. Ensuring efficient market surveillance by changing the inspection regulations and more effective mitigating of shadow economy

5. Continuing upgrading of labour-related legislation, above all areas of staff-leasing and employment of foreigners

Besides these, FIC also engaged in improvement of regulations related to investments' regulations, enforcement, concentration regulations, personal data protection, introduction of registry of disqualified persons, validation of university diplomas, tax incentives, FATCA, authorization for submission of financial reports, construction permitting, occupational health and safety, protection of citizens working abroad, formula for gas prices, as well as in fields of agriculture, insurance, leasing and telecommunications.

With regards to dialogue with the Government, beginning May 2015, FIC organized the Reality Check Conference, which aimed to track the record of fulfilment of given recommendations, half a year after the White Book, and instigate positive changes in the most important regulatory areas. This conference gathers management of member companies, highest state officials, state administration and limited group of diplomats, who within four working and a plenary session discuss key topics for improvement of the business climate. This year we also had a pleasure of hosting EU Commissioner for European Neighbourhood Policy & Enlargement Negotiations, thus making a stronger reference to the EU integration process in all 7 topics which we focused on: foreign exchange regulations, employment of foreigners, adoption and implementation of tax laws, land conversion, inspections, insurance and telecommunications. Working sessions produced conclusions, which were presented at the plenary session, as guidelines for further work.

The Reality Check Conference clearly portrays one of the main characteristics of our regular dialogue with the Government – multilevel communication. Besides talks with highest Government officials, great attention is devoted to active communication with state administration carefully assessing specific regulatory problems and potential solutions. We believe that only the combination of clear political will and expert administrative support can produce good and implementable policies. Thus it is not unusual that, in the period between two White Books, we organized over 36 meetings with highest Government officials and representatives of state administration, coupled by organization of 11 roundtables and presentations.

This year, FIC continued its active engagement in the process of European integrations. In September, in the eve of opening of active accession negotiations, FIC delegation met Serbian negotiating team and after that travelled to Brussels where it had series of meetings with 5 directorate-generals of European Commission, European External Action Service, as well as with European Parliament's Rapporteur on Serbia. We deemed important to consistently convey that Serbia should remain in EU focus and that we are ready to provide active support to both negotiating parties to better understand particularities of Serbian market and modalities of its adjustment to European principles and standards.

Throughout the year, FIC also held active dialogue with all other relevant stakeholders, international financial institutions, development agencies, embassies and, of course, other business associations. We also launched several joint initiatives with American Chamber of Commerce, NALED, Serbian Association of Managers and Serbian Chamber of Commerce. We believe in dialogue and positive impact that synergy with partners can bring and we will remain open to cooperation in the future.

In closure, let us point out that everything that FIC does comes from direct involvement of its members - foreign companies which willingly invest their resources and share their knowledge for the greater benefit of all. Having said that, FIC could even be seen as a CSR product, one of many activities that FIC members, CSR champions, execute in Serbia as part as their commitment to operate with high governance standards and contribute to the societies in which they operate.

To reiterate, the backbone of FIC are its committees within which representatives of member companies analyse specific regulatory areas and policies and formulate joint conclusions and proposals. FIC currently has eight committees, both cross-sectoral like Anti-Illicit Trade, Human Resources,

Legal and Taxation; as well as sectoral such as Food& Agriculture, Leasing & Insurance, Real Estate and Telecommunications& IT.

In order to attain its goal, the Foreign Investors Council will continue to pay close attention to members' interests, stimulate active debate and diligently work on formulating recommendations for better business conditions in Serbia. Going forward, we will try to continue to be a reliable partner to the authorities and all relevant stakeholders in the process of creating a sustainable business environment in Serbia.

- The Foreign Investors Council was established in 2002, by 14 foreign companies, with support of the OECD, with the common idea to contribute to the improvement of the investment environment in Serbia.
- The FIC mission today states: "To actively promote a sustainable business environment through an open dialogue with the Authorities and other relevant stakeholders".

# CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

The pressing need for transformative and innovative societal and economic changes has become evident both in underdeveloped and developed parts of the world, as unemployment rates continue to stand high, demographic changes are reshaping the landscape of our societies, and climate and natural resources challenges remain a concern. With the aim of finding sustainable solutions to these complex and interdependent challenges, lines between for-profit and non-profit sectors continue to blur with the emergence of "social economy" and companies offering products and services whose sole purpose is societal benefit.

In such a context, the business sector is uniquely positioned to help establish a more equitable, inclusive and sustainable society, as the driving force behind economic growth. The concept of corporate social responsibility has evolved significantly over the past several decades, from companies simply writing checks to non-profits, to a multitude of practices that have become highly integrated into business itself. However, a transformative change requires all companies to further integrate environmental, social, ethical and good governance approaches into their strategies. The developments in the year behind us that include growing sustainability challenges, global political instability, and pressing issues of economic inequality, have opened the door for a whole new level of corporate engagement in society, focusing on collaboration with governments and civil society to achieve large-scale and systemic impact. Contributing to partnerships established across the "golden triangle" of businesses, governments and civil society is the true value that corporate responsibility brings to a more sustainable world.

Recognizing the need to support and advance such multi-stakeholder partnerships, in June 2015 the largest European business network for corporate social responsibility CSR Europe launched the "Enterprise 2020 Manifesto", inviting governments and businesses to joint action, especially focusing on increasing employability, sustainable livelihoods, embracing transparency and respect of human rights in all aspects. The network's Manifesto, which is also supported by its partners in Serbia, invites businesses to take the lead in establishing and working with collaborative multi-stakeholder platforms to tackle the identified issues.

Similar tendencies are present in Serbia as well – companies are moving towards collaborative CSR actions through business or industry associations, and partnering with the government and non-profits to identify the most acute issues that need to be resolved. The need for collaborative action of all sectors has become evident during the devastating floods in May 2014, when numerous businesses joined the government, citizens and non-profits in disaster relief efforts across the country. Our peers did much more than make direct donations to devastated areas – many of them provided emergency supplies of products, put the expertise of their employees at the community's disposal by, for example, helping manage collective centres, offering special support programmes to their employees and consumers, and engaging in refurbishment as volunteers. Once again, this showed the variety of mechanisms that companies can implement in order to engage in society's development and the successful approach to be applied in order to achieve sustainable and long-term results.

Believing that the business sector can play a leading role in driving economic growth, while fostering social inclusion and cohesion and sustaining the natural environment,

## WE REMAIN COMMITTED TO:

- sustaining the adoption of an adequate legal framework, which will enhance and stimulate responsible business practices.
- establishing and fostering multi-stakeholder and cross-sector dialogue in addressing the most acute economic, social and environmental issues.
- acting as best practice examples of good corporate governance and transparency in all aspects of doing business.
- promoting and practicing transparent reporting on social and environmental impacts, in line with EU standards.
- supporting media in contributing to public awareness on CSR.
- advocating for introducing CSR in university curricula, in order to educate future generations of business leaders.

# INVESTMENT AND BUSINESS CLIMATE

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Accelerate the rate of transition reforms with the dual goal of improving business conditions and bringing Serbia closer to the European Union. | 2008 | | √ | |
| Increase the pace of macroeconomic fiscal consolidation. | 2014 | √ | | |
| Reduce and simplify bureaucratic procedures at both national and local level. | 2011 | | √ | |
| Increase the attention to implementation of regulations and rapid reaction if regulations are not implemented. | 2014 | | | √ |
| Promote exports as a key element of economic growth. | 2013 | | | √ |
| Create a facility within the Cabinet to assist investors. | 2014 | | | √ |

We have been through yet another difficult year. The recession or, at best, very weak growth have marked most of the global economy, including Serbia's main trading partners. Furthermore, Serbia's economy was also impacted by the need to alleviate the consequences of the great flood of May 2014.

The biggest success on the macroeconomic side of the business environment is fiscal consolidation, more precisely, the reduction of the fiscal deficit. This year, the fiscal deficit will be substantially lower than planned. The biggest contribution to the reduction of the deficit came from budget revenues, which is definitely positive. A sizable part of the deficit reduction is due to the reduction of pensions and salaries in the public administration sector, and to the deferment of planned investments into infrastructure. On the other hand, the national debt keeps growing and has reached 75% of GDP, with the tendency to continue growing until 2017.

The general expectation is that the GDP will grow moderately, by about 0.5%, which is positive and better than projected. This can be considered as a success, given that in the previous year the emphasis was on fiscal consolidation. The expected GDP growth is mostly based on the growth of industrial production, which is expected to reach 6% by the end of the year.

The inflation rate, just under 2%, is the lowest in the last twenty-five years. The general liquidity is satisfactory, but what causes some concern is the rise in non-performing loans (NPLs).

Unemployment was reduced in the last year and now stands at around 19%. The high youth (up to 35 years) unemployment rate of around 30% is of particular concern. On the other hand, the number of employed is slowly growing. However, the Government has adopted a program to downsize the number of civil servants that was recently set into motion. Expectations are that the number of civil servants will be reduced by 30,000 by the end of the year, mostly through natural attrition, rather than forcing cuts through layoffs.

The foreign trade sector registered some positive trends. In the previous year exports grew by 9%, while imports grew by 3.2%, which resulted in the reduction of the foreign trade deficit. The current account balance is presently set at only EUR 208 mln, i.e., 2.6% of GDP.

The value of the dinar (RSD) has been remarkably stable over the last 12 months: around 120 dinars for the euro. However, a number of renowned economists maintain that, at this rate, the dinar is overvalued, which makes exports more difficult. The credit rating is unchanged, in spite of positive developments, meaning that Serbia still pays more for loans than others, at a time when global interest rates are at a low. This does not stimulate foreign investment.

The share of investments in GDP is still low, so that it is unrealistic to expect a sizable growth of GDP in the near future. As already mentioned, some of the investments planned through the budget did not materialize. The tendency of decrease of foreign investment continues. The expectation is that by the end of the year they will reach around EUR 800 mln.

Regarding the EU integration process, nothing significant has happened in the course of the last year. Serbia acquired the status of candidate country, the membership negotiations process was formally announced and opened last

year, but the actual negotiations on individual chapters have been postponed time after time. The current expectation is that negotiations will start in early 2016.

Improving competitiveness remains one of the key challenges for next year. According to the Global Competitiveness Report of the World Economic Forum, Serbia's composite competitiveness index is still at the bottom of the list: ranking 94th out of 144 economies. In some important elements of the composite index Serbia fared even worse. Serbia's competitiveness index scores in development of institutions (122nd), goods and services market efficiency (128th) and labour market efficiency (119th) indicate that the Government should pay a lot more attention to these elements in order to improve the country's overall competitiveness.

In the past period the Government has set a number of important initiatives in motion that are bound to lead to a better investment and business climate. Some of these initiatives are yet to yield results. What the FIC recommends at this time is to pay a little more attention to the enforcement of laws and by-laws, i.e. the implementation of initiatives that are already in motion.

## FIC RECOMMENDATIONS

We need to repeat some of the recommendations that have already been tabled in the previous White Books and stress their importance:

- Accelerate the rate of transition reforms with the dual goal of improving business conditions and bringing Serbia closer to the European Union.
- Reduce and simplify bureaucratic procedures at both national and local level.
- Increase the attention to implementation of regulations and rapid reaction if regulations are not implemented.
- Promote exports as a key element of economic growth.
- Create a facility within the Cabinet to assist investors.

# PILLARS OF DEVELOPMENT

## TRANSPORT

This significant pillar of development, and in particular railway transport, was marked by the continuation of efforts to remedy the effects of the catastrophic floods of May 2014. The past year was also marked with the continuation of approximation of the legal system to that of the European Union. There has been some progress in road, water and air transportation. The railway is getting set to use a USD 800 million dollar Russian loan, and a World Bank loan intended for a major restructuring overhaul. Air transportation continues to improve and in the latest period has managed to fulfil all necessary conditions for the launch of direct flights to the USA early next year.

The previous White Book contained 20 recommendations. In 2 cases there was significant progress, in 13 there was some progress, and 5 registered no progress at all. One of the 5 has not seen any progress since 2009. The current issue of the White Book offers 22 recommendations

## ENERGY

The energy sector also recovered from the great flood of last year. The great Tamnava open mine pit was only recently drained of water. A positive development is that the Energy Law was passed last year, along with a number of by-laws, bringing the legal framework in this sector much closer to that of the European Union. This is particularly true of electricity, gas and renewable energy sources. The restructuring of two key energy companies, EPS and Srbijagas, has only just started so there are no visible results yet. The price of electricity has been increased and now offers a better position for business and investments.

The previous White Book offered 6 recommendations. In 5 cases there was some progress while in one case, first recommended in 2009, there was no progress at all. The current issue of the White Book offers 7 recommendations.

## TELECOMMUNICATIONS AND THE IT SECTOR

The indicators in the sector of electronic communications, according to data released by the Regulatory Agency for Electronic Communications and Postal Services (RATEL), point to a state of stagnation. Total investments are at their lowest in the last ten years at EUR 186 million. The total income was at the same level as in the previous year. However, behind these stagnant figures there were some qualitative changes such as the finalization of the digitalization process, for example.

The information technology industry registered a number of positive changes and accomplishments. The big IT companies keep expanding their portfolios of products and services while, at the same time, the number of small companies is on the increase. The regulatory framework keeps changing in the direction of liberalization and transparency. E-Government is expanding to include new areas and sectors.

The previous White Book had 22 recommendations, 12 for telecommunications and 10 for IT. The success rate is as follows: in telecommunications 3 recommendations achieved significant progress, 5 registered some progress and 4 no progress at all. In the IT sector there was no significant progress, in 3 cases there was some progress and in 7 cases no progress at all. The current edition of the White Book offers 24 recommendations: 14 for telecommunications and 10 for the IT sector.

## REAL ESTATE AND CONSTRUCTION

A major step in the last year is the passing of the Law on Conversion of the Right of Use to Ownership. Until now this has been a major hurdle to the expansion of the construction industry. Furthermore, the integration of procedures (one-stop-shop), which includes the issuance of location requirements, the issuance of the construction permit and certificate of occupancy, as well as the registration of the right of ownership with the cadastre has made the whole process much quicker and more efficient.

In the previous White Book there were 16 recommendations. In one case significant progress was made, in 9 cases some progress was made and in 6 cases none at all. This White Book offers 6 new recommendations.

## LABOUR FORCE AND HUMAN CAPITAL

In the previous year there were major changes in the labour legislation, partially owing to the need for aligning national legislation with the EU acquis, but more importantly the need for creating a more favourable business environment and attracting investments, local and foreign. It is still too early to judge whether these changes are a success, particularly since the effect will significantly depend on the reforms that are expected to occur in the judiciary.

The human capital is underutilized in times of economic stagnation. The Government is trying to introduce incentives and is involved in a number of international projects with a view to effectively employ human capi-

tal. Still, a large segment of the unemployed are young, educated people and Serbia remains on the global list of countries facing the biggest human capital flight, also known as “brain drain”.

In the previous White Book there were 31 recommendations, 27 in the labour market area and 4 in the area of human capital. The success rate in both cases is rather low. No significant improvement was registered in the implementation of recommendations concerning labour related issues, some progress was registered in 2 cases and no progress at all in as many as 25 cases. In the area of human capital there was one case in which some progress was registered and 3 with no progress at all, in spite of the fact that these recommendations were first published in 2008. The current issue of the White Book offers 18 recommendations, 14 regarding labour relations and 4 regarding human capital.

top

# INFRASTRUCTURE

## TRANSPORT

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Efficient, quality, reliable and sustainable services contributing to a comprehensive and safe transport system in the Republic of Serbia as an integral part of the Trans-European Transport Network (in accordance with EU transport policy - Chapters 14 and 21). Increasing the effectiveness of the transport system by strengthening the policy and institutional framework, management capacities and implementation mechanisms. | 2014 | | √ | |
| Improving the capacity and quality of transport infrastructure and services within the Pan-European Transport Corridors and the South East Europe Core Regional Transport Network. | 2014 | | √ | |
| Promoting sustainable urban and suburban transport. | 2014 | | | √ |
| Repair the existing damages, which are a consequence of the floods, with high-quality materials, in order to diminish the frequency of subsequent repairs. | 2014 | √ | | |
| Increase funding of maintenance and rehabilitation of major roads in order to stop the long-term deterioration of the road network. | 2009 | | √ | |
| Increase the quality control and inspection of materials when performing the works. | 2014 | | √ | |
| Further strengthening of the capacities, particularly in the field of enforcement of regulations and inspections. | 2014 | √ | | |
| Increase efforts to boost institutional reform and capacity building in the area of infrastructure, with an emphasis on transport. | 2009 | | √ | |
| Introduce quality of the national road administration in order to enable it to provide an adequate institutional framework in this area. | 2009 | | √ | |
| Increase efforts in private sector development and private sector participation in the construction of major roads and railways in Serbia. | 2009 | | √ | |
| Enter public-private partnerships in the vital transport areas that the state cannot fit, restructure or modernize independently. | 2014 | | √ | |
| Invest additional efforts in opening the railway traffic market, in order to establish the necessary institutional structures. | 2014 | | | √ |
| Increase efforts to minimise the public costs of the reforms by charging users wherever reasonable and through increased private sector participation wherever there is sufficient scope for competition. | 2009 | | √ | |
| Set up an efficient road user toll system in Serbia and decrease road tolls in order to bring back transit traffic (passenger and cargo) to Serbian roads. | 2009 | | | √ |
| Creation of conditions for sustainable development of the transport system through stable sources of financing. | 2013 | | √ | |
| Increase efforts towards more efficient manner of conducting of expropriation proceedings. | 2013 | | | √ |

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Restructure public enterprises working in the transport sector, with a focus on railway transportation and introduction of result-oriented management. | 2014 | | | √ |
| Introduction of cost-effective working methods which should contribute to better quality of transport infrastructure performance based on maintenance principles. | 2014 | | √ | |
| Implementation of measures to improve intermodality features within the Serbian transport system. | 2014 | | √ | |
| Introduction of purposeful infrastructure investment planning, taking into account spatial planning features and consequently effective modernization of transport infrastructure. | 2014 | | √ | |

## CURRENT SITUATION

In view of Serbia's geographical position as a crossroads and transit zone linking southern parts of the EU, the Middle East and other non-EU countries in the Balkan region, the Serbian transport networks require comprehensive modernization. Timely investment in obsolete and used transport infrastructure would result in tangible benefits not only for Serbian citizens, but also for EU citizens, and inevitably lead to the improvement of transport services. Otherwise, without investments and timely overhaul, Serbia could easily degrade from transit to alternative detour route.

The main transport infrastructure in Serbia comprises of about 43,838 km of roads; 3,809 km of railways; 1,680 km of navigable waterways; two international airports; 12 ports; and three partially constructed terminals for intermodal traffic. This is certainly a basis for further development, but it could not be considered as a stable foundation for further progress. A state of the size of Serbia should possess much larger capacities, to be able to match, or at least approximate, the level of EU Member States in this domain.

The development of rail, road, water, air and intermodal transport in Serbia should be reflected in the rebuilding, reconstruction, modernization and construction of the aforementioned transportation modalities. The Strategy for the Development of Railway, Road, Water, Air and Intermodal Transport in the Republic of Serbia was prepared in the year 2008, with the aim to provide a plan for improving transport in the period from 2008 to 2015. The implementation of the aforementioned Strategy is in its final stage, however, no tangible results were obtained in the previous years, considering that the strategy does not define goals clearly, but only provides general directions for the potential development of transport.

A General Master Plan for Transport in Serbia was adopted within the European Union Programme for the Western Balkans - Albania, Bosnia-Herzegovina, Croatia, The Former Yugoslav Republic of Macedonia, Serbia and Montenegro. The final report was produced in October 2009. The Master Plan defines itself as a living tool that should be updated periodically according to political, institutional, social and economic developments in Serbia and neighbouring countries and provides a general framework and forecasts for the period until the year 2027.

Inefficient implementation of land acquisition procedures is still one of the main reasons for the delay in the construction of Corridor 10. Due to poor appraisal of the value of the expropriated property on the Belgrade-Niš highway – specifically, on the borderline with Macedonia, a section of the Manajle–Vladičin Han tunnel (Lot 6) – a large number of appeals have been lodged against the decisions on expropriation in the administrative proceedings. Because of this, the Roads of Serbia Public Enterprise (JP Putevi Srbije), as a performing contractor, had to form a special committee in order to deal with the appeals. The major problem arising from to the inability to finalize the land expropriation process is that the EUR 1 billion worth loan, approved by the EBRD, the EIB, and the World Bank, has not been withdrawn, i.e. the conditions were not met to begin using the loan. This hampers work, jeopardizing three sections: Vladičin Han, the Bancarevo tunnel on the eastern branch from Niš to the Bulgarian border and

Čiflik-Pirot. The entire road infrastructure on Corridor 10 is scheduled to be completed by the end of 2016.

Waterways and ports in Serbia are insufficiently used and significant financial means are needed for their modernization and reconstruction. It is estimated that EUR 300 million are needed for the reconstruction and modernization of the port system, plus EUR 3 million a year for maintenance.

## POSITIVE DEVELOPMENTS

Some progress has been made in the field of transport policy, particularly in road, inland water and air transport. Progress in harmonization with the acquis communautaire in the field of transport policy is noticeable, though moderate.

It is expected that the Russian loan in the amount of USD 800 million, intended for the modernization of Serbia's railways, along with the World Bank's support, should contribute to the restructuring of the Serbian Railways, increasing its market orientation and the further rationalization of its networks and services.

The Russian loan was approved for the reconstruction of 112-kilometres section of Corridor 10, and for the reconstruction of 200 kilometres of railways on the Stara Pazova-Novi Sad and Belgrade-Bar route through Serbia, damaged in the May 2014 floods, while part of the loan was used for the purchase of 27 new diesel trains.

Also, in the railway sector, Hungary and Serbia are preparing a feasibility study for the modernization and construction of a double track railway line between Belgrade and Budapest. The high speed line (320 km/h) will be fully compliant with the EU standards and norms, and would allow for commuting between Belgrade and Budapest in less than 3 hours. Chinese partners are interested in this project, which could be funded through a build-operate-transfer (BOT) agreement regime.

In 2014, Serbia was granted Category 1 rating by the US Federal Aviation Administration (FAA), which is a confirmation of compliance of standards for the establishment of direct flights to the US. It was announced that by the end of 2015 or beginning of 2016 the Air Serbia will have direct flights from Belgrade to three destinations in North America, specifically: New York, Chicago and Toronto.

Regarding inland water transport, the River Information Services (RIS) were enabled for Danube and Sava in March 2013. More than 160 commercial boats and 50 civil boats were equipped with Automatic Identification System (AIS) technology for tracking and locating vessels.

The General Master Plan for Transport 2009-2027 provides an overview of the transport infrastructure needs in Serbia. Total costs of the public investment required have been estimated at over EUR 22 billion for investments and maintenance. Significant amounts of national, donor and International Finance Institutions (IFI) funding have already been committed to transport infrastructure, particularly in Corridor 10 (road and rail).

Over the 2007-2013 period, nearly EUR 150 million IPA funds were committed to the transport sector, mainly for the harmonization of legislation with the acquis; the implementation of the European Common Aviation Area (ECAA) agreement; construction and supervisory works on Corridor 10 (in connection with IFI loans), and to the development of River Information Services and river training and dredging on Corridor 7. Serbia also benefited from the Western Balkans Investment Framework (WBIF) and IFI funding, loans from EIB (around EUR 905 million), EBRD (around EUR 430 million) and the World Bank (around EUR 388 million). Bilateral donors, especially the Hellenic Plan, the Czech Republic and China provided support to this sector as well.

The overall goal of the Transport Master Plan for Serbia is to contribute to the realization of a larger, better, and safer transportation network that will attract new investments in less developed areas; improve the quality of life in these areas and promote trade; and contribute to the improvement of relations with neighbouring countries.

Although disaster relief can hardly be called a "positive development", it needs to be stressed that the government clearly understands the importance of developing transport infrastructure, and that it is investing utmost efforts to remediate the consequences of last year's floods. A good example of that is the restoration of rail freight transport between Serbia and the Republika Srpska on the Ruma-Šabac-Zvornik section of the railway, which was destroyed by the floods.

In the road sector, the most significant project planned is the construction of Highway E 80 (SEETO Route 7), through the administrative crossing Merdare–Doljevac via Kuršumlija, by-passing Prokuplje and Zitorađa. This project

is a part of the integrated project pipeline that Serbia submitted to the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) and the Western Balkans Investment Frame (WBIF).

In 2015, a set of legal amendments were passed, which did not have any direct effect on the improvement of the transport infrastructure in Serbia,, including the Law on Amendments to the Law on State Affiliation and Registration of Vessels (Official Gazette of RS No. 10/2013 and 18/2015), the Law on Amendments to the Law on Maritime Navigation (Official Gazette of RS No. 87/2011, 104/2013 and 18/2015), the Law on Transport Agreements in Railway Traffic (Official Gazette of RS No. 38/2015). A particularly important act within this set of newly adopted acts is the Law on Amendments to the Law on Navigation and Inland Waters (Official Gazette of RS 73/2010, 121/2012 and 18/2015), which abolished the previous categorization of ports into international and domestic ports. As a result, all ports are now open to international traffic, and only nominally categorized as ports of national importance, of provincial interest, and ports of importance for the local government.

On 21 May 2015, the National Assembly of the Republic of Serbia adopted the Law on Amendments to the Law on Air Transport, which among other things also foresees the establishment of the National Security Committee. The National Security Committee is established as a temporary working body of the Government of the Republic of Serbia with the task to coordinate the activities of the bodies, organizations and air operators who are responsible for aviation security. This law also strengthens the role of the Civil Aviation Directorate as an independent regulatory body, which is in line with the European Commission recommended practices and standards.

## REMAINING ISSUES

The European Commission (EC) Serbia 2014 Progress Report confirms that further alignment with the EU acquis is still necessary, mainly in the fields of road safety and accident investigation procedures. Also, the railway reform process should be strengthened with special focus on fair market access.

The restructuring of the transport sector public enterprises so far mainly involved railway transportation enterprises. The railway subsector is defined by directives and regulations commonly referred to as Railway Packages. So far, activities related to the introduction of EU standards resulted in the transformation of the Serbian Railways from a public enterprise to a joint stock company (JSC), and the enactment of the new Law on Safety and Interoperability of Railways in November 2013.

The average speed of trains in Serbia is 42 km/h, and the speed of trains in Serbia exceeds 100 km/h on only 3.2% of the tracks. For about 50% of the railway network, the technical conditions of the tracks allow a maximum speed of 60 km/h, while on some tracks the speed of trains is limited to 20 km/h due to the outdated technical parameters. Hence, the logical conclusion is that serious reforms must be undertaken in the railway subsector that should go hand in hand with investments in railway infrastructure. Investments in railway infrastructure should be driven by cost-effectiveness and based on a realistic investment plan.

As regards Corridor 10, construction works are not progressing as planned due to ineffective investment planning, slow preparation of technical documentation and unresolved land property issues, and in some of the sections they haven't commenced yet. The construction of Route 4 (so called Corridor 11) has started, and investments in the road transport infrastructure in Belgrade are under way, which should contribute to a better interconnectivity with the transport corridors in the proximity of Belgrade. The quality of roads has deteriorated due to lack of investment and maintenance.

The total length of Serbian inland waterways is about 1,680 km which allows for highly cost-effective transportation of goods in an ecologically sustainable manner. The most important ports on the Danube River are: Belgrade, Pančevo, Smederevo and Prahovo. Only the Belgrade and Pančevo ports are equipped for container transhipment, despite many difficulties caused by inadequate equipment and no opportunities for expansion.

The navigation conditions on the Danube River in Serbia are influenced by the critical sections (bottlenecks) on the fairway, unexploded ordnances (UXOs), sunken vessels dating back to World War II, and the necessity for an overhaul of the navigation locks Iron Gate I and Iron Gate II (Đerdap Dam). According to the Danube Commission's recommendation, the minimum depth of the fairway needed for safe navigation is 2.5 m below the low navigation level (ENR - Etiage navigable et de régularisation). The majority of the bottlenecks occur on the stretch between km 1,430 and 1,250. On this stretch, of a length of 180 km, 24 bottlenecks have been identified that restrict an efficient and safe navigation of standard convoys, due to sharp

bends or narrow cross-sectional profiles. Navigation is especially difficult on section of the Danube that belongs to Serbia. In addition to improving navigation on the Danube River, navigation conditions should also be improved on the Sava River, in accordance with the Sava River Basin Master Plan defined in consultation with the Sava Commission.

Serbia has four airports that can be used for commercial flights: Belgrade, Niš, Vršac, while Kraljevo airport is currently undergoing a reconstruction, after which it should also be used for commercial purposes. The Nikola Tesla Belgrade Airport and Konstantin Veliki Niš Airport, which are a part of the Core Regional Transport Network, are used for international flights. According to the Civil Aviation Directorate of Serbia there are 22 certified airports. Several military airports operated by the Serbian Armed Forces also have potential for further network development as civil or civil-military category airports.

In general, there is a particular need for greater multimodality, better interconnectivity with other river basins and modernizing and extending infrastructure in transport modes. Implementation of competitive and environmentally-friendly transport solutions will efficiently combine road, rail and inland water transport modes. There are only three partly developed intermodal terminals in Serbia: the Railway Integral Transport - RIT (with a capacity of 10,000 TEU a year) near the central railway station in Belgrade; in the port of Belgrade (12,000 TEU a year), and in the port of Pančevo (5,000 TEU a year). In accordance with what has been said, better interconnectivity between transport corridors and routes with urban and suburban transportation systems should be ensured in the future.

Aside from upgrading functional road and railway infrastructure, repair of the significant damages to a major part of the road and railway infrastructure must be accelerated, until the complete normalization of transport in the flood-affected areas.

In addition, there was a significant lack of private investments in the transport sector, due to the underdeveloped legislation. Although the Law on Public-Private Partnership was enacted in 2011 to regulate and provide clear guidelines for private investments in this area, there were no significant private investments so far.

The Roads of Serbia Public Enterprise has pointed out that revenues from tolls and funds from foreign loans are not even sufficient for winter damage repairs, and that additional financial means must be provided for road maintenance; hence the proposal for an increase of already expensive tolls.

Finally, prioritization and planning of transport sector development should be based on the main principles for integration of the SEE transport market into the European Union transport market. Those principles could be summarized through the continuation of the adoption of the transport EU acquis, the harmonization of technical standards of interoperability, safety, and security in respect of public procurement principles and environmental issues. Also, implementation of transport sector social policy principles should be specified and respected.

## FIC RECOMMENDATIONS

- Efficient, quality, reliable and sustainable services contributing to a comprehensive and safe transport system in the Republic of Serbia as an integral part of the Trans-European Transport Network (in accordance with EU transport policy - Chapters 14 and 21). Increasing the effectiveness of the transport system by strengthening the policy and institutional framework, management capacities and implementation mechanisms.
- Improving the capacity and quality of transport infrastructure and services within the Pan-European Transport Corridors and the South East Europe Core Regional Transport Network.
- Promoting sustainable urban and suburban transport.
- Repair the existing damages, which are a consequence of the floods, with high-quality materials, in order to

diminish the frequency of subsequent repairs.

- Increase funding of maintenance and rehabilitation of major roads in order to stop the long-term deterioration of the road network.
- Increase the quality control and inspection of materials when performing the works.
- Further strengthening of the capacities, particularly in the field of enforcement of regulations and inspections.
- Increase efforts to boost institutional reform and capacity building in the area of infrastructure, with an emphasis on transport.
- Improve the quality of the national road administration to enable it to provide an adequate institutional framework in this area.
- Increase efforts in private sector development and private sector participation in the construction of major roads and railways in Serbia.
- Establish public-private partnerships in the vital transport areas that the state cannot fit, restructure or modernize independently.
- Invest additional efforts in opening the railway traffic market, in order to establish the necessary institutional structures.
- Increase efforts to minimize public costs of reforms by charging users wherever reasonable, and through increased private sector participation wherever there is sufficient scope for competition.
- Set up an efficient road user toll system in Serbia and decrease road tolls in order to bring back transit traffic (passenger and cargo) to Serbian roads.
- Create conditions for sustainable development of the transport system through stable financing sources.
- Increase efforts to improve expropriation proceedings.
- Restructure public enterprises in the transport sector, with a focus on railway transportation and introduction of result-oriented management.
- Introduction of cost-effective working methods, which should contribute to better quality of transport infrastructure performance based on maintenance principles.
- Implementation of measures to improve intermodality features within the Serbian transport system.
- Introduction of purposeful infrastructure investment planning, taking into account spatial planning features and consequently effective modernization of transport infrastructure.

# ENERGY SECTOR

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Allowing for the continuation of the efficient and transparent public discussion on the draft new Energy Law, taking into consideration the questions, comments and suggestions that have already been submitted by the relevant market players and other stakeholders, as well as new queries and suggestions resulting from the discussion to date, and the adoption of this law within a reasonable time period, and by the end of 2014 at the latest. | 2014 | | √ | |
| Continuation of the existing pace of adoption and, where necessary, amendment of by-laws necessary for the practical implementation of the new Energy Law (bankable PPA models, model agreements for the construction of grids, harmonization of real estate and energy related regulations, etc.), with special attention to avoiding not only unnecessary mistakes due to short deadlines but also unnecessary delays that would prevent the implementation of projects that are already in the process of construction or where the necessary permits were already obtained. | 2011 | | √ | |
| Engagement of interested parties, i.e. investors, financiers and advisors in the sector (primarily the RES sector), in the procedure for the adoption of by-laws. | 2011 | | √ | |
| Simplification of procedures for issuing permits and approvals necessary for the development of energy projects. | 2011 | | √ | |
| Closer co-operation between the government and potential investors and actively promoting investment opportunities in the renewable energy sector. | 2013 | | √ | |
| Increasing public awareness of the efficient usage of electricity. | 2009 | | | √ |
| The prices of electricity need to be re-evaluated, since it is necessary to ensure investments in new capacities and the rehabilitation of existing capacities. | 2012 | | √ | |

## CURRENT SITUATION

In December 2014, following a one-year-long though still limited public debate, Serbia finally adopted the new Energy Law, bringing the country's primary energy legislation much closer to full compliance with the Third EU Energy Package (which is the country's obligation under the Energy Community Treaty), notably in the sectors of electricity, gas and renewable energy.

The Energy Law introduces a new licence for wholesale electricity supply relating to trading with electricity on the wholesale electricity market, save for the sale of electricity to end-consumers.

The Energy Law replaced the previous term "public supply" with "guaranteed supply", setting out the procedure for the choice of guaranteed suppliers and of the reserve supplier in the tender. Households and small buyers will be able to choose electricity and gas suppliers, and also have the possibility of guaranteed supply.

Households and small buyers are guaranteed supply at reasonable, transparent and non-discriminatory prices. Pursuant to the Energy Law, the regulated price of electricity may be subject to change depending on the regulator's report, which will be published by 1 May 2017 at the latest.

The natural gas market has been liberalized, and all buyers,

including households, are entitled to purchase gas on the open market.

In the area of renewables, the improvements introduced by the new Energy Law are noteworthy, including those related to clearer incentive schemes and the ones allowing the investor to control the grid construction process.

In relation to the planned construction of the South Stream gas pipeline, the entire project was abandoned on a global level in December 2014 due to well-known shifts in geopolitical relations, notably as a result of the Ukrainian crisis and the overall Russia-EU/US relations. This could have an enormous impact on Serbia's economy, as expected investments in this project in Serbia were estimated at more than EUR 2 billion. Consequently, Serbia is now seeking an acceptable source of long-term gas supply, and significant diplomatic activity has been spotted on that front in 2015, particularly regarding the prospects for securing gas supply from Azerbaijan and/or becoming involved in the new Turkish Stream project. However, it still remains to be seen whether these new developments will result in major shifts in Serbian energy policies.

The key energy sector actors – Serbian energy company EPS and Serbian gas company Srbijagas – both have long-term sustainability issues, partly because of their inefficient management system and partly due to the old and outdated infrastructure. This situation was aggravated by the floods that hit Serbia in May 2014 and caused significant damage to core EPS facilities. It is worth noting that these two public companies are currently undergoing financial and corporate restructuring, which entails optimizing subsidiaries, increasing efficiency, cutting operational costs, downsizing the workforce and improving the bill collection system.

As regards electricity prices, which were significantly below the market levels for a long time, Government officials recently pledged publicly to increase prices and impose additional excise taxes on electricity, and put these measures into effect as of 1 August 2015. These two measures combined will reportedly result in a 12% overall increase of electricity prices, approximately. Aside from the obvious commercial reasons, the price increase is also a requirement under the existing arrangement with the International Monetary Fund.

The energy efficiency market is currently underdeveloped, but is expected to experience notable growth in the immediate future, now that the necessary regulations relevant for the projects' feasibility are place.

## POSITIVE DEVELOPMENTS

The positive legislative trend of the previous years continued, so, in addition to the adoption of the new Energy Law, a notable number of by-laws were adopted by July 2015, enabling the implementation of the Energy Law and Law on Energy Efficiency.

We note that a major by-law was finally adopted in May 2015, the Rulebook on Model Energy Service Performance Contracts for the Implementation of Energy Efficiency Savings in the Public Sector ("ESCO Model By-Law"), which is the result of the year-long work of the national working group of the Ministry of Mining and Energy, with the support of the European Bank for Reconstruction and Development. The ESCO Model By-Law sets out two models of energy performance contracts, one for public buildings and another one for public lighting, and generally allows for long-term public-private partnerships (PPP) to be established between the relevant public partner (e.g. a municipality, a public company, the state) and the relevant private partner (i.e. ESCO company), wherein the implementation and management of the energy efficiency measures by a private partner are financed from the cost savings achieved, to avoid incurring public debt. It is worth noting that the receivables of the private partner on account of the savings achieved under the contract are transferable to third parties, which will hopefully boost the overall bankability of ESCO projects in Serbia.

In the area of renewables, the new Energy Law introduced significant improvements. Some of the most important ones are the following:

a. the status of a preliminary privileged power producer in case of wind power projects is now valid for a period of three years (instead of two years, as stipulated under the previous law), and may be extended for an additional period of one year. The same rule was introduced for hydroelectric power plants with up to 30 MW installed capacity, as well as for biomass, biogas, waste, and geothermal power plants;
b. a so-called preliminary privileged power producer is now allowed to conclude a power purchase agreement ("PPA") with the off-taker, provided that the preliminary privileged power producer subsequently obtains the

(final) status of a privileged power producer, within a prescribed deadline. In essence, this means that the concept of a single PPA has now been introduced to replace the previous concept of a 'Preliminary PPA', which had brought significant uncertainties for investors and financiers under the previous regulations;

c. a clearer incentives-entitlement scheme and a slightly more comprehensive demarcation between the privileged producers' categories, which are the preliminary privileged power producer, the (final) privileged power producer and the renewable energy producer;
d. clearer rules as to priority dispatch and the corresponding obligation of transmission system operators (TSO) and distribution network operators (DSO) to ensure the priority of renewable producers' access to the grid and off-take of the total generated electricity, unless the safety of the system operations is endangered; and last but not least;
e. the possibility for investors, i.e. future energy producers, to construct the grid connection point themselves on behalf of the operator. The investor has sole discretion to exercise this option, which is a rather important novelty, as it effectively allows the investor to control the grid construction process, and very important for prospective financiers too (not just investors), especially in large-scale projects.

Finally, the increase of electricity prices (as of August 2015) and the ongoing re-organization and consolidation of the state actor EPS that appears to be close to completion at the beginning of the fourth quarter of 2015, resulting in a significant decrease of the relevant subsidiaries and optimization of the entire system, should also be mentioned as positive developments on the energy market, overall.

### New Projects

In 2014 and 2015, Continental Wind Partners, an international company – through its Serbian subsidiary Vetroelektrane Balkana d.o.o. – is still working to obtain the permits required for the construction of the largest wind farm in Serbia with an overall capacity of more than 100 MW and an investment amounting to a couple of millions of euro. The construction is expected to start in 2015, once the necessary permits and documents are obtained.

Company MK-Fintel Wind a.d., through its two subsidiaries Vetropark Kula doo and Energobalkan doo, intends to start the construction of two small wind farms on the territories of Kula and Vršac by the end of autumn 2015, with approximately 16 MW of installed capacity and an investment of about EUR 25 million. The same company is also engaged in the preparation of a significantly larger project in Serbia, reportedly with approximately 100 MW of installed capacity.

There are other large-scale renewables projects in Serbia that are either in the early stages, applying for permits, or, in some instances, close to commencing construction. This also brought large global producers of facilities and equipment, such are Vestas and General Electric, to the Serbian market.

## REMAINING ISSUES

There are still many areas where the laws are not specific enough and for which by-laws arising from previous energy laws are still in force. This should be the focus of legislative activity, especially bearing in mind that energy and environmental protection have a significant place, not only in the plans and projections of the Government, but also of the local authorities. This is especially important for areas that were not regulated in earlier versions of the Energy Law, which is the reason why their application has not commenced yet.

More importantly, the novel solutions adopted under the Energy Law in the area of renewables require significant sub-legislative activity by relevant state bodies in order to become fully applicable, most notably the ones relating to (i) the model PPA; (ii) the incentives (an updated feed-in tariff scheme and clear rules for its implementation); and (iii) the detailed procedure for obtaining the privileged producer status.

## FIC RECOMMENDATIONS

- Allowing for the efficient and transparent public discussion on the by-laws to be adopted under the new Energy Law (including bankable PPA models, model agreements for the construction of grids, harmonization of real estate and energy related regulations, etc.), taking into consideration the questions, comments and suggestions

submitted by the relevant market players and other stakeholders, and their adoption within a reasonable time period, and by the end of autumn of 2015 at the latest.

- Engagement of interested parties, i.e. investors, financiers and advisors in the sector (primarily the RES sector), in the procedure for the adoption of by-laws.
- Simplification of procedures for issuing permits and approvals necessary for the development of energy projects.
- Closer co-operation between the government and potential investors and active promotion of investment opportunities in the renewable energy sector.
- Increasing public awareness of the efficient usage of electricity and the prospects for development of the ESCO market.
- Even with the increases initially planned, the prices of electricity still need to be re-evaluated to ensure investments in new capacities and rehabilitation of existing capacities.

# TELECOMMUNICATIONS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Implement the revised Law on electronic communications adopted on 21 June 2014 as soon as possible with regard to implementation of technology neutrality on current spectrum bands. | 2014 | √ | | |
| Adoption of the new Assignment Plans for Radio-Frequency Bands at 900 and 1800 MHz for public mobile services, including re-distribution of the existing spectrum and release and sale of additional spectrum. | 2010 | √ | | |
| It is necessary that the regulatory body re-examine the business conditions in the fixed telephony wholesale markets and internet access. The relationship between wholesale and retail markets has to be based on a clear economic rationale. | 2013 | | √ | |
| In order to achieve market effects of the introduction of number portability service in fixed telephony, the regulatory body needs to check whether operators are meeting their obligations. Similarly, in order to develop the wholesale broadband access markets, and facilitate the selection of operators with continuity of services provided across fixed infrastructure, it is necessary that the wholesale market offer be improved by introducing the "naked DSL" service. | 2011 | | | √ |
| Strengthening capacities of the Government and of the independent regulatory authority to enable growth of the electronic communications market. | 2011 | | √ | |
| Participation of the sector in the strategic decision-making process. | 2012 | | √ | |

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| RATEL should continue with building the capacities and reputation of an independent and competent regulatory authority, simplify processes, increase the efficiency in providing support to operators with full transparency and establishment of equal standards for all players on the Serbian telecommunications market. | 2014 | | √ | |
| Providing predictability of the legislative frameworks so as to create predictable business conditions for telecommunications operators. | 2013 | | | √ |
| Recommendations specific for sector: | | | | |
| Stimulating the development of new telecommunications infrastructure and enabling the use of the existing alternative infrastructure for all types of electronic services. | 2007 | | | √ |
| Adoption of the new Allocation Plans for Radio-Frequency Bands at 900 and 1800 MHz for public mobile services. | 2010 | | √ | |
| Support of the responsible Ministry to enable the sale of digital contents and their payment through monthly mobile service bills (operator billing) – this is currently impossible due to restrictive interpretation of the Law on Foreign Exchange Transactions. | 2014 | | | √ |
| Urgent release of frequencies used for public mobile services in Europe – decision on the allocation of digital dividend at 800 MHz and expansion to 900, 1800, 2100 and 2600 MHz. | 2010 | √ | | |

## CURRENT SITUATION

In 2014, the telecommunications sector in the Republic of Serbia was faced with new challenges, including greater consumer protection and telecom operators' obligations, regulation of roaming charges, more efficient use and sale of the radio frequency spectrum, as well as greater user requirements and needs concerning the new trends and possibilities enabled through modern technology.

The need was recognized to shift the focus of business operation from basic telecommunications services (voice calls, SMS) to the supply of digital services and, consequently, create the conditions for finding new revenue sources necessary for further progress and development of the telecommunications industry, which is currently characterized by stagnation and even decline.

With a view to the Serbia's future accession to the European Union (EU), a bilateral screening meeting on Chapter 10, Information Society and Media was held in July 2014. Consequently, the relevant institutions can be expected to keep stepping up their efforts and activities in the forthcoming period to align the regulatory framework of the Republic of Serbia with the EU legislation.

According to figures released by the Regulatory Agency for Electronic Communications and Postal Services (hereinafter referred to as "RATEL"), industry indices show a certain degree of stagnation. In 2014 the total investment in the telecommunications sector hit its lowest level in ten years, at EUR 186 million. In the same year, electronic communications services total revenues stood at about EUR 1.5 billion, (relative to EUR 1.55 billion reported in 2013), and their share in the GDP amounted to 4.5% (relative to 4.48% in 2013).

Amendments to the Law on Electronic Communications (Official Gazette of the Republic of Serbia No 62/14) were adopted in June 2014. This enabled the further rational and cost-effective use of the radio-frequency spectrum on a technologically neutral basis, even though the principle of technological neutrality went into force as late as 2015, specifically in January and March for the 900 & 2100 MHz spectrum and the 1800 MHz spectrum, respectively.

In late November 2014, the Ministry of Trade, Tourism and Telecommunications held public consultations on the draft Rules on Minimum Requirements for Issuing Individual Licences for the Use of Radio Frequencies following a Public Bidding Process for the 1710-1785/1805-1880

MHz Radio Frequency Band. These Rules defined the minimum requirements for issuing individual radio frequency licences, creating conditions for organizing a public bidding process for the 1800 MHz radio frequency band in February 2015. The outcome of the public bid was that each of the three operators purchased two 5 MHz blocks in the 1800 MHz band, after which they all launched the 4G LTE service enabling a data transfer rate of up to 100MB per second.

The digitalization process in the Republic of Serbia was completed in June 2015, creating room for the sale of the digital dividend (800 MHz radio frequency spectrum), used up to now for analogue television. It is expected that the minimum requirements for the use of these radio frequencies following public bidding will defined in the second half of 2015, and that the bidding process will be completed by the end of 2015. The sale of the digital dividend to the mobile phone operators will help develop the mobile broadband internet and ensure better mobile network coverage across Serbia.

In December 2014, Serbia's National Assembly passed a new Law on Payment Services, creating the legal basis for the establishment and operation of electronic money institutions. While operators, i.e., providers of electronic communications services, are of the view that some issues regarding payment services and electronic money institutions still require clarification, the fact is that some headway has been made, signalling a new chapter in the mobile operators' business operation. The new Law on Payment Services is due to enter into force in October 2015.

A major decision on market regulation is by all means the state's decision to join what is referred to as the roaming union of the Balkan countries. In late September 2014, the Ministry of Trade, Tourism and Telecommunications signed an agreement on the reduction of roaming charges in public mobile communications networks. Besides Serbia, the agreement was also signed by Bosnia-Herzegovina, Montenegro and Macedonia. The agreement provides for cuts in roaming charges on both wholesale as well as retail levels over a three-year period commencing in late June 2015. The decision came as quite a surprise to the operators, jeopardizing their 2015 and 2016 investment plans, while its implementation was not backed by any clear guidelines on the part of the regulatory body.

Other market regulation measures taken by RATEL include a decision to charge the termination of SMS traffic among mobile phone operators. Thus, for the first time since the launch of mobile phone services (and in particular the SMS service), this new wholesale service was introduced in June 2015.. The decision, contrary to the current trend in the EU, where termination rates are being reduced, introduced termination to the areas where it previously did not exist, intensifying pressure to increase retail charges for SMS users.

In June 2015, the operators suggested that the draft Law on Amendments to the Penal Code should also include an article to efficiently regulate the criminal prosecution of persons involved in the illegal termination of international telephone traffic, which is damaging to both the operators as well as the domestic economy.

The operators' joint efforts to help create a predictable and encouraging business environment also included activities against the introduction of parafiscal taxes for the telecommunications industry. This primarily refers to the initiative by the Ministry of Internal Affairs to transfer the financing and implementation of the 112 emergency line to telecom operators, since the draft Law on Amendments to the Law on Emergency Situations proposed the introduction of a separate fee through fixed-line and mobile phone subscribers' bills (this proposal had already been under consideration in the past but was blocked through the operators' joint action).

In 2015, FIC informed the Ministry of Finance, presently occupied with drafting a new Law on the Financing of Local Government, about the negative effects of the municipal business signage tax, and suggested that the Law be amended to improve the way in which the tax is calculated.

New, reduced wholesale call termination rates in fixed-line telephone network were applied in May 2015, as a result of a market analysis of the wholesale market for call termination on the public telephone network (Market 3). The analysis, conducted by RATEL in late 2014, revealed that in the 2011–2013 period Telekom Srbija had a market share of over 99% in the total number of terminated calls. It is expected that the analysis of all markets subject to the previous regulation will be completed and released in due course.

## POSITIVE DEVELOPMENTS

Significant headway has been made with regard to:

- activities concerning the regulation of more efficient use of the radio frequency spectrum and spectrum use on a technologically neutral basis;
- the analysis of the wholesale market for call termination in the fixed public telephone network (Market 3) and reduction of fixed-line termination rates as a result of the analysis.

## REMAINING ISSUES

Stability and predictability of the business environment and transparency in decision making process by the governmental and regulatory stakeholders is the key expectation from the telecommunications industry in 2015.

Very important decisions, crucial for the future sector development, have already or will be made in 2015: a successful auction of spectrum in the 1800 MHz band took place in February 2015; a decision on the reduction of roaming prices was made in December 2014, and the distribution of new frequencies in the 800 MHz band has been announced by the Serbian government.

The one common denominator in all three initiatives is the need for greater inclusion of electronic communication operators in the decision-making process should. Public consultations should be held well in advance before making important decisions. Spectrum management, development of new services and prevention of attempts to impose parafiscal fees on the telecom sector remain high priorities for the FIC's Telecom & IT Committee agenda.

Despite efforts of market players, the development and introduction of new innovative services remains an issue. Current legislative framework in Serbia still does not allow offering direct operator billing service to its customers for content downloaded from Google Play and Windows Store. The main barriers are non-alignment between law on Foreign Exchange, VAT law and Corporate Income Tax Law (Withholding Tax issue).

The new Law on Consumer Protection, applicable since September 2014, greatly aggravated the position of electronic communications operators. Article 4 stipulates that this is a lex specialis also for electronic communications services, defined as services of general economic interest. There are two problematic provisions of the Law on Consumer Protection from the point of the telecom industry:

1. First of all, suspension of electronic communication services is only possible 2 months after the bill falls due, if the bill still hasn't been paid (Article 86), which makes temporary disconnection impossible. This provision lacks any grounds when it comes to electronic communications since the 112 toll-free line has been introduced for emergencies, and service users can call most public services free of charge and receive calls in case of temporary deactivation, which means that users are sufficiently protected from the permanent suspension of the service and are provided with minimum services. On the other hand, in the two-month period, which must expire before the operators can temporarily/permanently disconnect the users who did not pay their bills, there user is likely to accumulate large debts, which the operator will not be able to collect. Our proposal is to amend Article 86 of the Law by specifying that service suspension means permanent, not temporary service disconnection.

2. Secondly, it is impossible to hire third parties (agencies) for the collection of claims without the user's explicit consent. We propose that paragraphs 6 and 7 of Article 86 be deleted, bearing in mind that these provisions prevent operators from trying to collect their claims by hiring professionals, which means that the only way to settle the claim is through the courts, whereby users and operators are both subject to additional, often high costs of executive and court proceedings.

There were several initiatives that jeopardized telecom operator's revenues: the reduction of roaming prices which was made without prior amendments to the Electronic Communications Law that are necessary to provide legal grounds for any price reduction.

In addition, there were a few attempts to introduce parafiscal duties on telecom operators: the proposal to finance introduction of the 112 emergency line through monthly bills for telecom services, made by the Ministry of Interior in the draft Law on Emergency Situations and the proposal by the city of Subotica for operators to pay a special fibre construction fee for the city of Subotica. This kind of initiatives should be closely monitored and prevented as they severely discriminate against the telecommunications industry.

## FIC RECOMMENDATIONS

Special emphasis should be placed on the following:

- Predictability of frequency distribution should stay very high on the Government's and RATEL's agenda, since this is of critical importance to market development.
- Full independence of regulatory bodies, including financial independence is the EU standard and should be fully implemented in Serbia as a top priority for further sector development.
- Transparent allocation of frequencies in the 800 MHz band, based on regional price benchmarks.
- Enable timely and active participation of all electronic communication operators in Serbia in the preparatory process for spectrum auctions in 2015.
- Free up 900 MHz bands from military presence.
- Further development of e-Government.
- Decrease VAT for IT Equipment to previous level.
- In the area of cable TV and fixed telephony, the recommendation is to discontinue administrative retail price control as it is not in line with EU practices.
- Amend Law on Foreign Exchange Operations, operator billing service to enable operator billing of digital content through monthly mobile service bills.
- Refrain from the introduction of any parafiscal duties on the telecom sector.
- Additional round of market regulation in a transparent and predictable manner. Market regulation should follow the market maturity and should include implementation of EU best practices, and not simple transposition of regulations from the matured EU markets. Further harmonization with the EU acquis should contribute to a level playing field within the digital environment.
- In the roaming area harmonize implementation of regulations at regional level, in order to maintain reciprocity/ enable the application of regulated prices as an additional tariff, and not the only tariff.
- It is necessary that the regulatory body re-examine the business conditions in the fixed telephony wholesale markets and internet access. The relationship between wholesale and retail markets has to be based on a clear economic rationale.
- Strengthening capacities of the Government and of the independent regulatory authority to enable growth of the electronic communications market.
- Achieve better coordination between state institutions, with the Ministry of Trade, Telecommunications and Tourism taking a leading role in all sector specific issues requiring the intervention of other state institutions and authorities.

# IT INDUSTRY

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The government should be committed to further development of an IT regulatory framework which would in turn enhance the country's appeal to foreign investors over the long term. Furthermore, the effects of legislative changes already introduced should be closely monitored and effectively implemented. | 2012 | | √ | |
| Quick wins and tangible results already achieved in the area of e-Government should be continued, especially in the following areas: administrative fees, applications for various documents, and tax applications. | 2012 | | √ | |
| The government should refrain from introducing any measures approaching online censorship and remain committed to an open Internet as that which is most conducive to innovation, social development and commercial interest. The government should keep an open ear and regular contact with the e-community and initiatives coming from this sector. | 2012 | | | √ |
| In order for the sector to continue growing in crisis times, the government should refrain from imposing any burdensome taxes and encourage the development of start-ups and high technology companies. Accordingly, VAT for IT equipment should be decreased from 20% to 8%. | 2012 | | | √ |
| The new government should pay special attention to the area of e-health as a major area for improvement especially in terms of electronic records. Educating the citizens and health workers on the implementation and usage of those systems would be equally important. | 2012 | | √ | |
| There should be further networking of administrative bodies, agencies and Ministries, e.g. the Ministry of Interior, the Tax Administration, the Ministry of Labour, the Ministry of Justice, etc. | 2012 | | | √ |
| Attention should be given to further development of e-school programmes through active dialogue between all relevant stakeholders, principally the Ministry of Education and the ministry (or agency) responsible for ICT and IT Community. | 2012 | | | √ |
| With regard to Serbia's membership in the Open Government Partnership, special emphasis should be placed on the transparency of the functioning of administrative bodies and the use of new technologies by these bodies. | 2012 | | | √ |
| There is a need for better coordination of software and hardware acquisition procedures among the different government bodies (ministries, agencies, directorates) both within the public tender procedure and prior to it in the context of investment planning. This would help with reduction of needless duplication of IT capacities; it would help with optimization of the spending of tax payers' money, and would as a result help state bodies perform their duties in a more efficient way. Hopefully, the new Law on Public Tenders, which has introduced a centralized model of the tender procedure, should have a positive impact in this sense and its application should be followed closely. | 2013 | | | √ |

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The application of the withholding tax (WHT) in the IT industry must be clarified because the current legislation leaves room for arbitrary interpretation by tax and other authorities. Due to the unclear legal framework, domestic IT companies find themselves in a less favourable position than foreign suppliers especially in the context of public tenders. In practical terms, this means that domestic companies' software prices are generally 10-20% higher than the prices offered by foreign companies for the same software. Since it is the government bodies who are involved in public tenders, it should be in everybody's interest for the playing field to be levelled and to help IT companies with a registered seat in Serbia to be competitive. To that end it is desirable that the international tax treaties with other countries better define software as such as is the case with the tax treaty between Serbia and the Czech Republic. | 2013 | | | √ |

## CURRENT SITUATION

Despite the fact that the Serbian IT market continues its moderate growth on a yearly basis and is currently worth around USD 650 million, it is still not saturated and has plenty of room for further development. With a structure consisting of 70.1% hardware (HW), 17.1% services, and 12.8% software (SW), it is one of the most vital industries in Serbia. Large local IT companies began to expand IT service offerings of their business portfolios, and a small, yet thriving start-up culture seems to be developing. Hardware distribution is still a major source of revenue for local companies, but the IT services segment (e.g. SW export) is gaining its share and creating new revenue streams for companies, with strong potential for the enhancement of Serbian exports.

## POSITIVE DEVELOPMENTS

There have been quite a few positive developments in the IT sector in Serbia in recent years. The most notable examples include the adoption of the Strategy for the Development of Information Society in Serbia until 2020; the introduction of an e-Government program in various state bodies, such as courts, municipalities, and police administrations; the introduction of the possibility to file and pay VAT online, followed by the gradual transition to mandatory online filing of other taxes; and Serbia's membership in the Open Government Partnership (which implies the fulfilment of multiple requirements, such as improving the transparency of public finance, adequately regulating data protection issues, and free access to information). Also, other segments of the broader information and communications technology (ICT) sector have seen significant changes of regulatory framework; these changes have mostly been to the benefit of liberalization and competition in the sector. Decisions adopted by the state Regulatory Agency for Electronic Communications (RATEL, now: Regulatory Agency for Electronic Communications and Postal Services) have introduced nine ex-ante regulated electronic communications markets in Serbia, as well as the determination of appropriate significant market power (SMP) operators. The companies established as SMP operators have seen an increased regulatory burden, including stricter oversight, price controls, requirements concerning public and transparent offers for certain services, etc.

The e-Government programme in Serbia has significantly progressed over the past five years, though further improvements are necessary. Whilst significant tools were developed, in practice the availability of online forms and information is still limited, and paper correspondence is often still required (even for trivial matters, such as information-gathering). However, the e-Government portal now hosts a variety of services and the Tax Administration seems to have made decisive steps in streamlining and expanding its IT infrastructure, so there are numerous positive developments. E-Government is a key element of Serbia's state administration reform. It will make administration more efficient, which will in turn attract more foreign investment. The e-Government initiative should be strengthened by setting up a government council to coor-

dinate activities of the various government bodies. This is necessary so that all new e-Government services can be implemented in a more efficient way. Additional coordination is in line with the new government's intention to better coordinate various activities across the ministries. In the context of e-Government this may include joint projects on integration of the various disparate information systems in different ministries, better interoperability and shared human resources from individual IT departments.

The Law on Payment Services was adopted in December 2014 and will apply as of October 2015. This law provides incentives for prompt introduction of e-money, which is of great significance, and (along with the amendments to the Law on Foreign Exchange Operations) introduces the concept of electronic money for the first time in Serbia's legal history. The legal framework for e-money is based on the Second Electronic Money Directive (2EMD), and it allows for the establishment of e-money institutions and issuers. This would be a huge boost for the digital economy, since legalizing e-money as a form of payment would open up exciting opportunities for new e-businesses and allow the introduction of new Government-to-Customer (G2C) and Government-to-Business (G2B) e-services in the context of e-Government.

When it comes to electronic trade and the relevant law, improvements are related to the expansion of the definition of information society service provider. Thus, the latest amendments to the Law on Electronic Trade (Official Gazette of RS No 41/2009 and 95/2013), pursuant to the definition of trader under the Law on Trade, now apply not only to legal entities and sole proprietors, but also to natural persons acting in the capacity of traders. This step was taken in order to harmonize this law with the EU Directive on Electronic Commerce. However, the Directive gives an even wider definition, since it stipulates that an information society service provider is any person providing such services, regardless of his or her status as a "trader". Bearing this in mind, it is recommended that this definition be extended to natural persons, i.e. that the formulation from the said Directive be literally transcribed.

A positive development in legislative efforts is the introduction of the so-called "notice and take down" procedures envisaged by the EU Directive, which is the possibility for a person who considers that his or her rights were violated by illegal activity or content hosted by an online provider of hyperlinks or permanent storing/hosting services, to notify the provider so that the latter can disable access to the content or remove the content altogether. If the service provider fails to act upon notification and remove the content, it can be sued by the person whose rights were violated. On the other hand, if the service provider unduly removes the content, it can also be sued by the person whose content it removed. Since this is still a heavy burden for the service provider and since the service provider arguably has too much decision-making power, this is an issue that should be addressed in some future amendments.

Recent years have also seen the introduction of less restrictive and clearer legal requirements for e-invoicing, provided by the Law on Accounting, and of the rules for the keeping of electronic medical records, provided by the Law on Medical Documentation and Medical Records.

Despite the successful implementation of various digitalization projects pertaining to the educational system in Serbia, overall results remain fairly limited. Without a systematic approach, including the development of proper educational applications and adequate training of teaching personnel, such programmes will only have a narrow impact on bringing the IT skills of young Serbian generations to a higher level.

The competent Ministry apparently recognized the possibility of electronic business and trade over the Internet as an opportunity for the citizens of Serbia to perform their transactions on much easier, faster, safer and less expensive terms. The Ministry also recognized the e-trade's potential to improve the economy by providing better opportunities to residents, especially to entrepreneurs and small businesses, for marketing their goods and services in foreign markets through electronic offer and sale, which, as a rule, involves payment through an electronic money institution.

Considering that PayPal, available in Europe since 2004, and announced in Serbia on numerous occasions since 2010, has finally become partially available to the citizens of Serbia in April 2013, and has seen a certain expansion thereafter, this is a significant and long-awaited step in Serbia's harmonization with European standards. Domestically, this development is certainly a notable first step towards the meaningful liberalization and improvement of electronic business.

## REMAINING ISSUES

- IT spending is low (just 11.6% of the EU average), which is a critical sign that the Serbian Government should pay

more attention to this issue, which may influence the overall growth of the Serbian economy.

- Public-Private Partnership (in the IT area) is still at an early stage, despite the fact that it might offer significant success in areas of cost improvement, especially at the municipal level. Besides such benefits, it might also provide new revenue streams for government institutions at various levels.
- The adoption of the Law on Electronic Business, which would bring Serbian legislation in this area in line with the current EU legal framework, is pending. This law is scheduled to be adopted by the end of 2015, and will apply from early 2016.
- Data protection remains a sore issue in IT matters, as evidenced by several high-profile and publicized cases concerning the improper retention or use of data. Although the office of the Commissioner for Information of Public Interest and Personal Data Protection seems highly respected and active in the field, it appears that the judiciary and administrative organs are not entirely supportive of its efforts. The Model Law on Personal Data Protection, published by the Commissioner in June 2014, envisages the liberalization of cross-border data transfer in states that are not members of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, by removing the obligation to request a consent for transfer from the Commissioner in several cases. Furthermore, the Model Law explicitly stipulates that the consent for data processing can be provided either in writing, verbally, or by a conclusive action. The above is a positive development since it would facilitate business operations within the IT industry, and bring the national law closer to the EU acquis. Along with additional changes which also need to be transposed from the EU framework, this should be included in the final wording of the new Law on Personal Data Protection.
- There is a worrying trend for business and the freedom of expression concerning the behaviour of the Games of Chance Administration, which tried to pressure internet service providers (ISPs) to block foreign gambling websites (e.g. Bwin), so as not to jeopardize its legal monopoly. This, as well as a few other acts on the part of the government (another example – a high-profile minister demanded the takedown of a satirical Twitter account) could potentially signal steps towards Internet censorship.
- The VAT rate for IT equipment was increased from 8% to 20%.
- The procedures for the assessment of conformity of radio and telecommunications terminal equipment bearing a CE mark are still in place. The conditions for placing this equipment on the market, or its use, could be further simplified if the national assessment bodies gained access to the relevant EU databases.
- Distribution of digital content from services such as Google Play, Apple Store, Amazon, and others is still not possible, and this hampers the further development of the IT industry.

## FIC RECOMMENDATIONS

- The government should be committed to the further development of the IT regulatory framework, which would in turn enhance the country's appeal to foreign investors over the long term. Furthermore, the effects of legislative changes introduced so far should be closely monitored and effectively implemented.
- Quick wins and tangible results already achieved in the area of e-Government should be preserved and, whenever applicable, further developed, especially in the following areas: administrative fees, applications for various documents, and tax applications.
- The government should refrain from introducing any measures approaching online censorship and remain committed to an open Internet, as that which is most conducive to innovation, social development and commercial interest. The government should keep an open ear and regular contact with the e-community and initiatives coming from this sector.
- In order for the sector to continue growing in crisis times, the government should refrain from imposing any burdensome taxes and encourage the development of start-ups and high-technology companies. Accordingly, VAT for IT equipment should be decreased from 20% to 8%.

- The government should pay special attention to the area of e-health as a major area for improvement, especially in terms of electronic records. Educating the citizens and health workers on the implementation and usage of those systems would be equally important.

- There should be further networking of administrative bodies, agencies and Ministries, e.g. the Ministry of Interior, the Tax Administration, the Ministry of Labour, the Ministry of Justice, etc.

- Attention should be devoted to further development of e-school programmes through active dialogue between all relevant stakeholders, principally the Ministry of Education and the ministry (or agency) responsible for the ICT and IT community.

- With regard to Serbia's membership in the Open Government Partnership, special emphasis should be placed on the transparency of the functioning of administrative bodies and the use of new technologies by these bodies.

- There is a need for better coordination of software and hardware acquisition procedures among the different government bodies (ministries, agencies, directorates) both within the public tender procedure and prior to it in the context of investment planning. This would help with reduction of needless duplication of IT capacities; it would help with optimization of the spending of tax payers' money, and would as a result help state bodies perform their duties in a more efficient way. Hopefully, the new Law on Public Tenders, which has introduced a centralized the tender procedure model, should have a positive impact in this context and its application should be followed closely.

- The application of the withholding tax (WHT) in the IT industry must be clarified, because the current legislation leaves room for arbitrary interpretations by tax and other authorities. Due to the unclear legal framework, domestic IT companies find themselves in a less favourable position than foreign suppliers especially in the context of public tenders. In practical terms, this means that domestic companies' software prices are generally 10-20% higher than the prices offered by foreign companies for the same software. Since government bodies are the ones that are involved in public tenders, levelling the playing field and helping IT companies with a registered seat in Serbia be competitive should be in everybody's interest. To that end, it is desirable that the international tax treaties with other countries better define software as such, as in the case of the tax treaty between Serbia and the Czech Republic.

# REAL ESTATE AND CONSTRUCTION

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The Law on Planning and Construction impacts several very important fields: spatial planning, construction, and urban development land. All of these fields should be separately regulated as soon as possible through systematic legislation in co-operation with the NGO sector. | 2009 | | √ | |
| Conversion against compensation must be defined by the new law(s) in a different manner that would be constitutionally acceptable, politically sustainable and implementable in practice. The FIC recommends that the institute of conversion against compensation be abolished and that the conversion itself be executed without a fee. | 2013 | | √ | |
| Authorities must introduce transparency and consistency in their own work at all levels and ensure a high level of control of all relevant institutions. Authorities should publish all opinions and interpretations of regulations provided by them on their websites. | 2009 | | √ | |
| The permit issuing process should be further simplified, while the land development fee, along with other construction start-up costs, must reflect an effort to reduce the existing and subsequent operational costs in order to facilitate market expansion and accelerate the process of attracting further investments. | 2009 | √ | | |
| The penalty provisions under the Law on Planning and Construction should be amended to be more adequate and stringent, since they are currently limited only to pecuniary fines. | 2009 | | √ | |
| Penalty provisions for public authorities and public utility companies should be changed from non-pecuniary to pecuniary, especially in cases when investors pay a consideration for services and the services are not provided in due time. In such cases, the consideration for untimely services should be decreased. | 2012 | | √ | |
| In addition to the existing mechanisms for sanctioning a responsible person for the violation of the deadline for issuing a building permit, the Law should also envisage additional consequences, in the form of reduced fees for land development, as a form of accountability of the State or local government. | 2014 | | | √ |
| Allow construction of a facility on the basis of right of use, i.e. without previous conversion. | 2014 | | √ | |
| Adopt a Law on Real Estate Investment Trust (REIT), which would regulate this area and resolve the problem of double taxation. This Law, along with additional Government activities, should resolve the problems arising from the underdeveloped real estate market. | 2014 | | | √ |
| The legal framework defining the relationship between the investor and the main contractor should be improved in accordance with internationally recognized best practices (including, especially, the International Federation of Consulting Engineers - FIDIC legacy), by amending the Law on Contracts and Torts. | 2010 | | √ | |
| The Draft Law on Management and Maintenance of Residential Property should be developed and adopted following public consultations. The complete legislation defining ownership rights of residential owners and their obligations with regard to management and maintenance, indispensable for the proper functioning of residential property management and maintenance, should also be developed. | 2009 | | | √ |

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The Law on Financial Leasing must be harmonized with current real estate regulations, in particular where it pertains to the possibility of registering an existing real estate lease in the public real estate registry, which must be clearly prescribed by the Law on Cadastre and State Survey. | 2009 | | | √ |
| A new, modern Mortgage Law should be adopted. The Mortgage Law should be changed completely, as it contains too many omissions and ambiguous provisions and is not in line with the new Law on Planning and Construction. | 2010 | | √ | |
| The Law on Agricultural Land and the Law on Co-operatives should be amended in order to allow foreign investments in agriculture and the acquisition of agricultural land by foreign individuals and companies, as well as protect the acquired right of ownership of agricultural land. | 2012 | | | √ |
| Shorter time limits for registration within the Real Estate Cadastre need to be introduced and clearer guidelines in law implementation within the Real Estate Cadastre's activities need to be provided in a transparent manner, so that the cadastral procedures become swift and predictable. Online access to cadastral data should be unlimited and free, and the issuing of simple documents, such as title deeds and copies of cadastral plans, should be possible immediately on the spot. | 2012 | | | √ |
| Dialogue, communication and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other organisations dealing with real estate on the other, with respect to strategic issues, with the goal of improving the real estate market in the best interest of all. | 2009 | | √ | |

The Planning and Construction Law of 2009 remains the FIC's main area of interest.

# CONSTRUCTION LAND AND DEVELOPMENT

## CURRENT SITUATION

**Conversion of right of use on construction land into ownership**

It seems that Serbia faced slightly more difficulties than other post-communist countries in dealing with the privatization of state-owned land. During the 1950s, construction land had been taken away from private owners and become state-owned land, allowing the former owners to have a right of use on such land based on ownership of a building located on the land. Up to 2009, the state was the sole owner of urban construction land, and the maximum scope of rights someone could have on such land was a permanent right of use, or a long-term lease of 99 years.

One of the most important objectives of the Planning and Construction Law of 2009 was privatization of state-owned construction land through a conversion of right of use into ownership title. In principle, anyone who acquired the right of use on the land (or the long-term lease of 99 years) would be able to perform the conversion of such right into ownership.

The Law provides for two types of conversion, depending on when and how the land was acquired: conversion without a fee, as a general rule; and conversion for a fee, which is not applicable until the new law setting the specific procedure and determining the range of fee is adopted. Conversion of land for a fee applies to holders of use right that are:

- companies and other legal entities which were privatized under the law governing privatization, bankrupt-

cy and enforcement proceedings, as well as their legal successors;
- companies that acquired use right over undeveloped land owned by the state, and which was acquired for development before 13 May 2013 or based on the decision of the competent authority;
- sport and other associations;
- socially owned companies;
- entities incorporated in ex-Yugoslavia to which the Succession Treaty is applicable.

Provisions of said Law regarding conversion for a fee were questioned by the Constitutional Court of Serbia during 2013, a deliberation that resulted in the decision that the disputed provisions are unconstitutional in the part related to the manner for determining the conversion fee. In the meantime, due to the issue of conversion and legal uncertainty for investors, the Serbian construction industry suffered huge losses.

Finally, after more than two years of legal gap, the procedure of conversion of the right of use of construction land into ownership for a fee is now regulated in a completely new manner through the enactment of a new law.

### Construction

When the World Bank published in its Doing Business report for 2015 the information that more than 260 days are needed for an investor in Serbia to obtain a construction permit, placing the country in 186th position out of 189 economies, it was an obvious red flag for the Government.

In December 2014, the Planning and Construction Law (which was adopted in 2009) was significantly changed, introducing for the first time the so-called "integrated procedure" for obtaining documentation necessary for construction on a "one stop shop" basis.

### Legalization

The massive problem of illegal construction, i.e. construction without appropriate permits, has been especially pervasive over the past 20 years. The legislators tried to cope with this complex issue by enacting various regulations, although none of these attempts were successful. In June 2013, the provisions of the Planning and Construction Law related to the legalization of illegal structures were declared unconstitutional, and the already slow and ineffective process ground to a halt. Subsequently, a new Law on Legalization was enacted, which came into force in November 2013, and so far has fallen short of expectations.

## POSITIVE DEVELOPMENTS

### Construction Land and Development

**Conversion of right of use on construction land into ownership title**

In July 2015, a new Law on the Conversion of the Right of Use into Ownership on Construction Land for a Fee ("Law on Conversion for a Fee") was enacted, prescribing the conditions for conversion of the right of use into ownership over-developed and undeveloped construction land in public ownership, as well as the possibility of establishing a long-term lease on such land.

A conversion fee represents the market value of land at the moment of submitting the request for conversion, with a possibility of its reduction in accordance with the law.

The market value of land is to be determined on the basis of an act by the local government which determines the average price of the square meter of corresponding real estate by zones for the purpose of determining the annual property tax.

The authority for state aid control is involved in the procedure as well. Its role is to enact the decision by which it grants state aid in situations when the question of reduction of the conversion fee has been put forward.

As for the reduction of the conversion fee, it may be realized if the construction land is located on the territory of an "insufficiently developed" local government unit. Furthermore, the conversion fee could also be reduced in accordance with a report of the construction expert which determines the expenses regarding the acquisition of the land in question (expropriation, administrative transfer, expenses of remediation and revitalization and other existing expenses).

The most significant reduction of the conversion fee is the reduction for the developed construction land, regardless of its location. Namely, regarding developed construction land, the conversion fee is to be determined through deducting the market value of the land for the regular use of objects from the market value of the entire cadastre parcel.

A conversion fee may be paid in 60 equal monthly instalments, or the entire fee may be paid at once, in which case the applicant will be entitled to a fee reduction of up to 30%. In case the conversion fee is to be paid in monthly instalments, the law stipulates that the security in form

of an irrevocable bank warranty, mortgage, or registered pledge has to be provided by the applicant.

The law also provides the option to natural persons and legal entities which are entitled to the conversion for a fee to conclude the agreement on the lease of construction land with the owner of such land until the final acquiring and registration of the right of ownership on the construction land. The respective possibility has been introduced in order to enable such persons to obtain the construction permit on the basis of the right of long-term lease, i.e. before carrying out and paying the conversion fee – this has been introduced because of the fact that the right of use, after 28 July 2016, can no longer serve as legal ground for obtaining a construction permit.

### Construction

The so-called "integrated procedure" encompasses all actions from the issuance of location conditions, through the issuance of the construction and occupancy permits, up to the registration of ownership over the newly constructed facility with the Real Estate Cadastre.

Within the integrated procedure, the exchange of all relevant documents between public authorities is performed without any further involvement of the investor. The investor's role during the procedure is to procure and submit only those documents and/or evidence that cannot be procured ex officio by the relevant authority. Furthermore, the plan is for the exchange of all relevant documents to be performed electronically as of 2016. Within the integrated procedure, the authority examines only whether the formal conditions for construction are fulfilled. In addition to this, shorter legal deadlines for the authorities to take actions and stricter misdemeanour proceedings against the breaches of vested authorities, as introduced by the latest amendments of the Law on Planning and Construction, should bring more efficiency in the procedure of obtaining of the necessary permits.

Location conditions are issued on the basis of a corresponding planning document and they replace the former location permit. This is a public document containing all conditions necessary for the preparation of technical documentation for the construction project. More precisely, location conditions contain information on possibilities and limitations for construction on the specific land. In order to obtain location conditions, an investor is only obliged to submit a concept design along with the request.

If the detailed regulation plan has not been adopted within the legal deadline, location conditions are to be procured on the basis of the by-law on general rules on land division, development, and construction or on the basis of the existing planning document which contains the data on the regulation line (the line which separates certain public surface area from areas foreseen for other purposes).

Location conditions are not linked to land title, and therefore if the land is transferred to a new investor prior to the issuance of a construction permit, the new owner can rely on location conditions obtained by the previous investor.

In a situation when the planning document does not provide all required conditions for the preparation of technical documentation, the authority will issue a separate document on technical conditions for construction (Serbian: "separat o tehničkim uslovima izgradnje") containing relevant conditions and other information required for the preparation of technical documents.

A significant improvement set under the rules of integrated procedure is the clear methodology for setting the land development fee. This is the fee paid by an investor to the municipal authorities for the purpose of the development of land infrastructure. This means that the discretion of a municipal government, which posed a significant impediment in the past, is now decreased, if not completely eliminated as a factor. In addition, if an investor directly financed infrastructural development, the land development fee can be reduced for the value of such investments. If the investor chooses to pay the fee at once, a discount of 30% (or more in certain cases) applies. The maximum amount of the land development fee is now determined by the law. If paid at once, the amount is payable before commencement of construction; otherwise, if paid in instalments, only the first instalment should be paid before construction commencement (however, a collateral warranty for the payment must be provided). The land development fee is not payable for infrastructural and production facilities, warehouses, underground floors, etc.

The amendments of the Law on Planning and Construction further introduce a new term – "financier", who may be a holder of the construction permit along with an investor, provided they entered into an agreement. On the basis of such an agreement, the financier acquires the rights and obligations which originally belong to an investor under the law, except for the right to acquire ownership over the building being constructed.

The Law imposes an obligation for a company engaged in the preparation and control of technical documentation, professional supervision, technical inspection, as well as a contractor itself, to obtain professional liability insurance for damage caused to the other or a third party. This obligation is more thoroughly regulated by the new Rulebook on Conditions of Professional Liability Insurance which came into force in May 2015.

The Ministry of Construction, Transport and Infrastructure has established a call centre to improve the implementation of the Planning and Construction Law. The call centre should provide relevant information to all interested parties in order to improve understanding and proper application of the provisions of the Law. The telephone numbers of the call centre are: +381 11 40-43- 190; 40-43-191; 40-43-192. In addition, the Ministry has set up an internet site www.gradjevinskedozvole.rs where citizens can find answers to frequently asked questions regarding the provisions of the Law, as well as the consolidated text of the Law, by-laws and other documents relevant to the area of planning and construction. The launch of the call centre and special website should allow anyone easy and fast access to all information concerning the implementation of the Law. Needless to say, the efficiency of these new services will certainly depend on the expertise of the team engaged for the purpose. However, such services cannot be a substitute for an official opinion by the Ministry regarding interpretation of certain provisions of the Law, or interpretation of the Law by an experienced real estate lawyer.

The largest real estate project in Serbia at this moment is certainly the Belgrade Waterfront, with an alleged worth of EUR 3.5 billion, headed by the Serbian government with the support of investors from the United Arab Emirates (UAE). The Serbian Parliament has recently adopted a special law governing the expropriation procedure and construction permit issuance for this project only. The main reason for the enactment of this law was the fact that, according to the present Law on Expropriation, building a commercial-residential complex such as the "Belgrade Waterfront" may not be considered in the public interest. However, it is rather questionable from the constitutional point of view if the development of such a commercial project could be deemed to be in the public interest even with the enactment of a special law stating it is so. In any case, this special law will definitely provide a tailwind for all investors interested in this project.

### Legalization

It seems that a new Law on Legalization (expected to be adopted by final quarter of 2015) will be another attempt to finally put an end to illegal construction. Thus far, Serbian authorities have tried to solve the issue of approximately 1.5m of illegally built structures; however these attempts seem to have been in vain since the vast majority of these structures remained without a clear status.

## REMAINING ISSUES

### Construction

The missing pieces of secondary legislation are yet to be adopted. The implementation of the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders.

### Legalization

A new Law on Legalization with a simpler, but constitutionally acceptable, solution should be adopted as soon as possible.

## FIC RECOMMENDATIONS

- The authorities must introduce transparency and consistency in their own work at all levels and ensure a high level of control of all relevant institutions. The authorities should publish all opinions and interpretations of regulations provided by them on their websites.
- The missing pieces of secondary legislation regarding construction to be adopted as soon as possible.
- Implementation of the latest version of the Planning and Construction Law to be monitored by all relevant stakeholders.

- In addition to the existing mechanisms for sanctioning a responsible person for the violation of the deadline for issuing a building permit, the Law should also envisage additional consequences, in the form of reduced fees for land development, as a form of accountability of the state or local government.
- New Law on Legalization with a simpler, but constitutionally acceptable, solution to be adopted as soon as possible.
- The legal framework defining the relationship between the investor and the main contractor should be improved in accordance with internationally recognized best practices (including, especially, the International Federation of Consulting Engineers - FIDIC legacy), by amending the Law on Contracts and Torts.
- Dialogue, communication, and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other organizations dealing with real estate on the other, with respect to strategic issues, with the goal of improving the real estate market in the best interest of all.

# RESTITUTION

## CURRENT SITUATION

The Law on Property Restitution and Compensation was adopted in September 2011, and has been in force since 6 October 2011.

The priority of the restitution process is grounded in its tremendous potential for promoting security of ownership rights in a symbolic and exemplary manner, clearly showing that the state is returning what it has unjustly expropriated. The deadline for filing restitution or compensation claims has expired, and competent institutions have started processing some individual requests, however, so far, the impression is that this will take time.

The Law on Property Restitution and Compensation protects the acquired rights of individuals, while the obligation of restitution arises only in cases when individuals lack proper title deeds to a property subject to restitution. Even though the Law on Property Restitution and Compensation prescribes in-kind restitution (i.e. restitution of an unjustly expropriated property) as the primary mode of redress, there are numerous exceptions and it is, therefore, likely that compensation will be the most prevalent form of redress. In-kind restitution is the obligation of the Republic of Serbia, local government, public enterprises established by the Republic of Serbia and socially-owned companies and co-operatives, while the disbursement of compensation is the exclusive obligation of the Republic of Serbia.

The Restitution Agency of the Republic of Serbia started operating in 2012. So far, the Restitution Agency has taken a rigid position, especially with respect to foreign citizens. In practice, this is reflected in the inadequate interpretation of international treaties from the 1950s, as well as in requests for documentation unnecessary for decision-making in restitution procedures, and which is, in most cases, impossible to obtain.

Besides, the Law contains numerous ambiguities, and consequently the administrative rules and case law interpret its provisions in the most restrictive sense, thus limiting the possibility of exercising the right to restitution, even in cases where the right to restitution is irrefutable.

### Agricultural Land

The Law on Agricultural Land prohibits foreign legal entities and private persons from acquiring ownership of agricultural land. Foreign investments in Serbian agriculture are mainly realized through the privatization of agricultural companies, whereby foreign investors acquire a majority of shares in companies that own agricultural land. In some cases, companies face problems due to the misinterpretation of the provisions of the Law on Agricultural Land.

The provision of the Law on Co-operatives entitles newly founded agricultural co-operatives to claim agricultural

land formerly owned by co-operatives from its current owners. This provision was aimed at restitution of agricultural land to the original owners who were forced to transfer their ownership to agricultural co-operatives under socialist legislation enacted after WWII. In practice, this provision has been abused by newly founded agricultural co-operatives that do not even engage in agricultural activities, to claim high-value agricultural land from privatized agricultural companies. Even though decisions issued by the Ministry of Finance and Economy in 2013 seem to indicate that the abuse of the law is tolerated, the judiciary's standpoint is that the right to private ownership has to be protected.

## POSITIVE DEVELOPMENTS

### Agricultural Land

Court decisions rendered in 2014 and 2015 indicate that, in the future, any abuse of rights under the Law on Co-operatives will be prevented and the right of ownership of agricultural land will be protected. In 2014, the Ministry of Finance acted upon the orders of the judicial authorities and protected the assets of privatized agricultural enterprises.

## REMAINING ISSUES

The Law on Property Restitution and Compensation declaratively prescribes the basic principle of restitution, but numerous exceptions indicate that the most frequent model of restitution would be compensation. This model of restitution is an attempt to reconcile the conflicting interests of persons entitled to restitution and persons who have acquired rights to the seized property (mostly foreign investors).

In the processes of restitution, the Restitution Agency interprets regulations in a manner that hinders or even prevents foreign nationals' right to restitution or compensation, and such a restrictive viewpoint has been accepted by the administrative courts. The way certain provisions of the Law on Property Restitution and Compensation are applied is a violation of fundamental human rights, stipulated under the European Convention on Human Rights, specifically the right to equal protection, the right to remedy, and the prohibition of discrimination based on national origin.

## FIC RECOMMENDATIONS

- State authorities should lead transparent restitution procedures grant the right to restitution, redress the injustice perpetrated seventy years ago, taking due care to protect basic human rights of the parties to the proceedings.
- State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.
- Enable foreigners to exercise the right to restitution, equating them with national citizens in these proceedings, irrespective of their citizenship and nationality.

# MORTGAGES AND REAL ESTATE FINANCIAL LEASING

## CURRENT SITUATION

The Law on Mortgage has been adopted at the end of 2005 and its implementation began at the beginning of year 2006. At the time of its adoption, the Law on Mortgages was a huge step forward in this area as until then, real estate mortgage was regulated by only a couple of articles of the Law on Basis of Ownership and Proprietary Relations.

However, in nine years of application, the Law on Mortgage revealed clear shortcomings in practice, and the consequent dire need for a substantive revision of its provisions. The need for amending the Law on Mortgage was evident to the lawmakers, which resulted in the adoption of the Law on Amendments to the Law on Mortgage in July of the current year, with the primary goal to overcome the prob-

lems identified from the very beginning of the implementation of the law.

As the above mentioned changes were adopted only recently, their real effects are yet to be seen, and the Foreign Investors Council will, as usual, closely monitor the application of the amended law.

Financial leasing of real estate was introduced by amendments to the Law on Financial Leasing in May 2011. Nevertheless, this new legal frame has not been sufficiently developed and is not fully operational yet, with the exceptions of a few office buildings acquired through leasing. The main problems in the application of the Law on Financial Leasing are related to high costs and tax treatment of leasing.

## POSITIVE DEVELOPMENTS

The Foreign Investors Council supports the adoption of the Law on Amendments of the Law on Mortgage, which introduced significant improvements to eliminate the biggest problems in practice. This primarily refers to amendments to the provision which stipulates that the rights of the lower ranking mortgage creditors remain reserved in case of out-of-court mortgage settlement. Because of this, many mortgage creditors opted for the slower but more secure in-court foreclosure proceedings instead of for out-of-court settlement.

We also appreciate the introduction of the possibility to appoint a third party, as the "security agent", who may take legal action to protect and settle claims secured by a mortgage, although we emphasize that the proposed provision is not sufficiently elaborated and would probably require further changes.

A positive change is that the form and content of documents on basis of which a mortgage may be established and/or transferred are now clearly regulated, because certain aspects related to this issue were not clarified when the notary system was introduced in the Republic of Serbia.

We also praise the clearer rules on deadlines in which the competent cadastral authorities must decide on requests for registration of relevant annotations (as well as on requests filed before the requests for registration of such annotations) in out-of-court mortgage settlement procedure, although there is still a lack of clear sanctions in the event of failure to comply with defined deadlines.

The proposed amendments introduce a number of other technical improvements that will hopefully allow for overcoming the many doubts that arose in the application of the Law on Mortgage in practice.

## REMAINING ISSUES

The proposed amendments to the Law on Mortgage are not sufficiently far-reaching and the impression is that they lack additional clarifications, which could have been very useful. The proposed amendments also failed to introduce some new useful institutes, while some of the suggested solutions are not good enough, in our opinion.

In fact, the proposed amendments failed to explicitly regulate a situation that is not uncommon in practice, i.e., the registration of one mortgage as a collateral securing several claims on different grounds and also by several creditors, and regulate the terms of settlement of the claims of these creditors, which are practically treated as mortgage creditors of the same rank.

As already mentioned, the introduction of the institute of "third party" (practically the "the security agent") is positive, but the proposed provision does not elaborate the role of the security agent in relation to the relevant authorities, and we believe that in practice the security agent will probably need to obtain special authorizations for undertaking actions in favour of the mortgage creditors before the competent authorities (primarily the cadastral authorities).

In our opinion, the amendment stipulating that in the case the interest rate has not been registered with the real estate cadastre the mortgage only covers the statutory default interest rate from the moment of default is not good. In fact, in practice the contractual interest rate is often not registered, or is inadequately registered, due to a mistake of the cadastral authorities, so we deem that the creditor whose interest is clearly regulated, in the mortgage document, should not bear the negative consequences of errors in the registration process, especially bearing in mind that the procedure of correction of registration mistakes is sometimes very long and inefficient.

The opportunity was missed to amend Article 15 of the Law on Mortgage, which over-regulates the provisions that a mortgage document must contain in order to be recognized as an enforceable document. In fact, bearing in mind that the amendments stipulate that the enforce-

able mortgage document must be drawn up in the form of a notary deed (in itself an enforceable document), the legislator's requirements with respect to the exact wording of the mortgage document are unnecessary. On the other hand, bearing in mind that the only requirement for a real estate sale contract is that it should be solemnized by the notary public, there is no reason why the same practice should not be applied to mortgage documents as well.

Finally, the amendments fail to explicitly regulate some more flexible forms of mortgage that exist in comparative law, such as deposit mortgages, credits, continuing mortgages, as well as the (im)possibility and effects of annexing existing mortgage documents.

Regarding real estate financial leasing, we point out that it still does not work in practice as the legal framework has not been sufficiently developed.

### FIC RECOMMENDATIONS

- The Law on Financial Leasing must be harmonized with current real estate regulations, in particular where it pertains to the possibility of registering an existing real estate lease in the public real estate cadastre, which must be clearly prescribed by the Law on Cadastre and State Survey. Also, by elaborating the tax legislation, the state should create a more favourable climate for implementing financial leasing in the real estate sector.
- The effects of the latest amendments to the Mortgage Law need to be monitored, however, even at this point of time we are of the impression that the law needs to be amended and supplemented further in order to finally create a clear and modern regulatory framework for mortgages that would not be open to interpretation in practice and that would allow for flexible mortgages.

# CADASTRAL PROCEDURES

## CURRENT SITUATION

Cadastral procedures (procedures related to the real estate cadastre and cadastre of utilities) in the Republic of Serbia are regulated by the Law on Cadastre and State Survey, which was adopted in 2009 and partially amended in 2010 and 2013.

As the Law revealed certain deficiencies in practice, the competent Ministry prepared a draft Law on Amendments to the Law on Cadastre and State Survey, which should bring about more extensive changes in the regulatory framework of cadastral procedures. The justification of the draft Law explains that the main objective of the proposed changes is to accelerate the registration procedure in the real estate cadastre, enabling electronic office operations and elimination of certain deficiencies identified in the practical implementation of the law.

The Cadastre Project in Serbia was completed in May 2012, but there are still sporadic problems related to its completion, due to pending appellate procedures initiated at the time when the real estate cadastre was established. The formation of the cadastre of utilities is still in course.

## POSITIVE DEVELOPMENTS

The Foreign Investors Council generally welcomes the initiative for amending the Law on Cadastre and State Survey, and expects that the proposed changes will accelerate the efficiency of the proceedings before the competent authorities of the Real Estate Cadastre. We hope that the changes will be adopted quickly, and we will closely monitor the effects of the proposed amendments, as always.

Several organizational units of the cadastral authority of Belgrade have launched a project which foresees finalizing simple registration applications within 5 days. Also, the information centre of the Real Estate Cadastre in Belgrade was opened recently, which will hopefully further enhance the efficiency of the procedure before the real estate cadastre offices in Belgrade.

The accessibility of information on the web portal of the Republic Geodetic Authority has been significantly improved. In particular, a positive development that we welcome is the improvement of accessibility of data on prices of certain types of real estate in a given period of time, on the orthophoto lay-out, which has been updated with street names.

## REMAINING ISSUES

Inconsistent interpretation of the current law by the Real Estate Cadastre, often incompatible with other laws; slow registration procedure, and slow decision making on appeals are substantial problems that still occur in practice.

In particular, slow decision making has been noted in the Real Estate Cadastre offices of Belgrade, where the processing of an application in the first instance can take several months, on average, and in some more complex cases even more than a year.

It is unacceptable that obtaining simple documents, such as title deeds or copies of plans, can take days and simple registrations even months.

Cadastral plans have still not been fully digitalized, and in practice there are discrepancies between the data contained in the property deeds and the data in the cadastral plans. Because of this, investments involving large land areas, i.e., a large number of land plots, are significantly slowed down.

The utility cadastre has not been established yet, and this creates uncertainty in the domain of property rights, preventing registration of encumbrances on utilities.

## FIC RECOMMENDATIONS

- Shorter time limits and efficient action for registration within the Real Estate Cadastre should be introduced and clearer guidelines for the implementation of the law by the Real Estate Cadastre should be provided in a transparent manner, to make cadastral procedures swift and predictable.
- Online access to cadastral data should be unlimited and free, and the issuing of simple documents, such as title deeds and copies of cadastral plans, should be made possible on the spot.
- The formation of the cadastre of utilities has to be finalized, along with the remaining procedures related to the formation of the real estate cadastre.
- The Republic Geodetic Authority should ensure the harmonization of administrative practices among all local units of the Real Estate Cadastre.

# LABOUR

## A. LABOUR RELATED REGULATIONS

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The Labour Law: | | | | |
| Most international companies have a system of calculation of salaries which is applied throughout the world. Forcing these companies to accept a completely different system just for Serbia creates an additional barrier to foreign investments and increases investment costs. For example, we propose that work performance should not be a mandatory, but a discretionary portion of the salary. In this regard, the possibility of a free agreement between employees and employers on the structure of the salary and additional benefits, and the establishment of a salary system that will stimulate employees' work, is the basis for the functioning of the labour market. | 2009 | | | √ |
| We suggest that salary compensation during leave from work be equal to the amount of the base salary increased by seniority. | 2008 | | | √ |
| Employees protected from termination by reason of redundancy should have the right to consent to such termination, in which case they would be entitled to unemployment benefits. | 2009 | | | √ |
| We propose that the legal limit of 24 months for a fixed-term employment contract should be extended to 36 months. In addition, we propose that such an employment contract should not be conditional on the existence of a handful of predetermined reasons (such as work on a specific project, increase in the volume of work, seasonal jobs, etc.), which is currently the case. We propose that such limitations should be abolished and that the parties should be free to contract for whatever purpose they deem appropriate. | 2010 | | | √ |
| We propose to extend the limit for the duration of the suspension measure to one month. | 2010 | | | √ |
| It is necessary to envisage the possibility that the notice period in case of termination of employment by the employee may exceed 30 days, if the employee and employer so agree, and especially in case of directors and management staff. | 2014 | | | √ |
| The obligation of employers to keep employment contracts at an employee's place of work should be changed, so that it does not apply to employers who do not have business premises, or some other adequate place for keeping these documents. | 2014 | | | √ |
| Employers must be able to envisage in the Rulebook on Internal Organization and Job Classification several different levels of professional qualification as a condition for employment for a specific position. | 2014 | | | √ |
| Misdemeanour fines must be decreased. | 2014 | | | √ |
| The possibilities for the introduction of overtime work should be extended, i.e. should not be related to sudden and unexpected occurrences only. The employer and employees should be free to agree on the occasion and purpose of overtime work. Employers should have the right to introduce manager compensation that would include compensation for overtime work performed by managers in the company. | 2012 | | | √ |

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| Regarding the provisions on the protection of pregnant employees or employees on maternity leave, childcare leave or special childcare leave, the following should be defined: (i) that the decision on employment termination will not be void if the pregnancy commences after the delivery of this decision to the employee, and (ii) that the 90-minute daily break/working hours reduction for breastfeeding, encompasses the regular daily break during working hours, and that there is no right to an additional daily break. | 2013 | | | √ |
| A more precise definition is required as to what is considered a placement of trade union representatives into an "unfavourable position". | 2013 | | | √ |
| Industry-wide collective agreements: | | | | |
| The relevant legal provisions regulating the extended applicability of collective agreements should be repealed in full. Otherwise, the Government should provide for a more restrictive compliance check of the relevant industry-wide collective agreements with the Labour Law before introducing their extended application to all employers operating in the affected industries. The latter does not mean, however, that employers – members of the FIC – agree with the extended application of industry-wide collective agreements. | 2011 | | | √ |
| Law on Vocational Rehabilitation and Employment of Persons with Disabilities: | | | | |
| The working ability assessment and issuing of a decision on assessed working ability should be performed by the same body in order to accelerate the procedure. We suggest assigning the procedure to a competent body other than the FPDI, considering that the FPDI already has a significant workload. Also, the list of documents required by the authorities from the employee should be reasonably decreased. | 2009 | | | √ |
| We believe that a more efficient manner for achieving a higher employment rate of PWD would be stimulating employers to employ such persons by way of incentives. | 2009 | | | √ |
| The Law should enable the employer to initiate the procedure for the establishment of current employees' disability, rather than leave it to employees alone. | 2011 | | | √ |
| Law on Foreigners: | | | | |
| Obtaining temporary residence permits is an excessively complicated and time-consuming process. Enhance practical application of the Law, e.g. by shortening the period of time for issuing a residence permit; reduce the number of documents required during the procedure for acquiring a residence permit, etc. | 2009 | | | √ |
| Work permit term of validity should reflect the need of the employer officially confirmed by the term of the employment contract (which may be concluded even for an indefinite term). | 2013 | | | √ |
| Protection of the Citizens of the Federal Republic of Yugoslavia Working Abroad: | | | | |
| The Law should be renamed to begin with, updated, and harmonised with the terminology of the Labour Law and other relevant regulations and, above all, adjusted to the new business environment, with open possibilities for local companies to do business abroad through their employees. In addition, swift mobility of the labour force should be facilitated, with the aim of reducing administrative barriers and unnecessarily long procedures. | 2009 | | √ | |
| Alternatively, this Law should be repealed and the basic issues related to the protection of Serbian employees working abroad should be regulated by the Labour Law. | 2009 | | √ | |

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| Staff leasing: | | | | |
| The concept of staff leasing should be regulated by a separate regulation or possibly by the announced amendments to the Labour Law, which would govern all important issues with respect thereto (such as relation of employer and individual, employer and service user, employee and service user, occupational health and safety, etc.). | 2009 | | | √ |
| The concept of staff leasing should be regulated in such a manner that the relationship between the leased staff and the users of staff leasing services should not result in the creation of an employment relationship. | 2010 | | | √ |
| The conditions for the issue of operating permits and the content of general business conditions for staff leasing agencies (including the fee for issuing operating permits to staff leasing agencies) should also be regulated by the law. The law would thus create legal certainty, thereby removing the possibility of discretionary decisions being handed down (e.g. by ministries) with regard to these important issues. | 2010 | | | √ |
| Law on Prevention of Mobbing at Work: | | | | |
| The concept of the responsible person in a legal entity should be defined in a more specific way. | 2014 | | | √ |
| It would be of practical use to formally remove any doubts as to which lawsuit protects a person dissatisfied with the outcome of the procedure for determining the responsibility of the employee. | 2014 | | | √ |
| Finally, we recommend that Article 31 of the Law be amended so as to shift the burden of proof to the employee. | 2011 | | | √ |

# LABOUR LAW

## CURRENT SITUATION

After the labour legislation underwent significant and comprehensive structural reforms during the previous cycle, as presented in the White Book edition for 2014, no changes to the Labour Law (Official Gazette of the Republic of Serbia, no. 24/2005, 61/2005, 54/2009, 32/2013 and 75/2014; hereinafter: Labour Law) were made in the period that followed.

The Law on Amendments to the Labour Law (Official Gazette of the Republic of Serbia', no. 75/2014) incorporated practically 65% of the recommendations from the White Book 2013. The aim of the reform is to create conditions for the establishment of a business environment that will enable the growth of foreign and domestic investment and increase competitiveness and productivity of the economy; as well create new jobs, while preserving the necessary balance between the interests of employers and employees. Some of the most important innovations which represent the current situation in this area are the following:

- An extended circle of people who not only can conclude contracts, but also make the decision to terminate an employment contract;
- A reduction in the compulsory elements of an employment contract, so that certain data (such as elements for the determination of salary and wage compensation; deadlines on payment; daily and weekly working hours) shall be regulated only by a general act of the employer in order to reduce the obligations of annexing the contract and reduce obligations of additional administration;
- The procedure for amending an employment contract is simplified within the meaning that an annex is not necessary when it is required that a certain job has to be done without delay (an employee can be transferred to another job no longer than 45 working days in one year);
- The procedure for a contract amendment does not apply in the case of a conclusion of an annex at the initiative of the employee; change of the personal data shall be carried out directly, without an offer;
- The possibility of submitting a decision on annual leave in electronic form, as well as the possibility of bringing the decision and the publication of such on the notice board in the case of collective vacations;

- The maximum duration of paid annual leave or paid annual absence is reduced from 7 to 5 working days; also, the circle of persons considered close family members in case of paid absence is reduced;
- The first part of annual leave is at a minimum two, rather than three, working weeks,, while only the second part of annual leave can be used in chunks;
- An extension of the maximum period of a fixed-term employment contract;
- The abolition of payment of increased salary for shift work;
- Seniority compensation is valued only for the employer with whom an employment contract has been concluded, whereby work for a previous employer is equalized in the case of status changes and related entities;
- A change in the manner of calculating severance pay for redundant employees;
- A pay slip is an enforcement document and courts have already made a number of enforcement decisions whereby only due receivables are recognized after the enactment of the Labour Law, since the calculation of earnings has gained the status of enforcement document;
- Changing the basis for calculating salary compensation;
- Compensation of expenses for meals at work can be provided not only in money form but also by providing food otherwise;
- The introduction of disciplinary sanctions - fines and suspensions of up to 15 days;
- A suspension may be imposed if a criminal prosecution has commenced, instead of the previous solution which predicted that "initiated criminal proceedings" are needed, which led to different interpretations in practice; this disciplinary measure may last until the legally valid completion of the criminal proceedings, while under the previous decision it could have lasted up to three months. Of course, a period of three months was too short for the legally valid completion of any criminal proceedings;
- Shortening the period for bringing a claim against the decision of the employer;
- Union representatives lose their privileges - for protection against dismissal;
- The employee's inability to return to work in the event of termination during which only procedural norms were violated;
- Harmonisation with the Law on the Prohibition of Discrimination and the Law on the Prohibition of Workplace Harassment concerning the rule about the burden of proof; amendments to the Labour Law were made specifying that the burden of proof falls on the defendant employer in the case of probability that there was no discrimination;
- Changes in provisions of extended applicability of collective agreements.

After that, no new changes were made to the Labour Law, but practices were being developed in the application of new and changed institutes, which primarily includes practices in the employers' practical application of the Labour Law and the setting up of employment relations between employers and employees on different grounds. The general harmonization of the internal documents and employment contracts with the Labour Law then followed, and a legal deadline for compliance expired on 29 January 2015. In the period of harmonization, there appeared in the public different interpretations of the transitional provisions of the Labour Law with respect to the validity of the provisions that are in conflict with the law. However, given that the deadline for compliance has expired, the presumption is that all employers have harmonized their general acts. In case this is not done, we will briefly indicate the legal consequences of non-compliance of the collective agreement or employment by-law:

- If the collective agreement or employment by-law aligned with the updated Labour Law is not concluded with the employer, the previous collective agreement or employment by-law ceased to apply on 29 January 2015;
- If the employer is a signatory to the collective agreement binding said employer as a member of an association of employers, a special collective agreement which has been updated is applied;
- If a special collective agreement which complies with the updated Labour Law and which obliges the employer is not concluded, the Labour Law is directly applied;
- Employment agreements which have not been harmonized will remain in force in the part where they are not inconsistent with the Labour Law, in accordance with Article 111, Paragraph 3 of the Law on Changes and Amendments to the Labour Law.

One cannot ignore the activity of the line ministry and administrative bodies in the interpretation and application of these developments. It can be said that it is still too early to demonstrate new and reliable results for the judicial system, especially given the time limits within which trials take place and other obstacles that have emerged over the last 12 months.

## POSITIVE DEVELOPMENTS

The reform of the labour legislation is the result of harmonization with the legislation of the European Union, but also economic reasons - the need to revive the economy and attract the foreign investments - have created an urgent necessity for amending the law. The relevant institutes mentioned in Chapter I have certainly contributed to the creation of a favorable business environment. However, the positive effects of the new institutes cannot be evaluated yet, with the result that it can be said that in the last 12 months, there was no progress. We would particularly point out that improvements in the work of the courts, i.e. decision-making in labour disputes, are expected thanks to the change to the law according to which the court may in the course of the procedure adjudicate the employee an amount of six salaries if it determines that there were grounds for termination of employment, but that the employer acted contrary to the provisions of the Labour Law prescribing the procedure for employment termination. It can be said that this aforementioned change to the law is "revolutionary".

For the further development and implementation of the law, special attention shall be focused on the jurisprudence, as with any law, and it will take courts' official opinions and authentic interpretations to achieve full compliance in opinions, interpretations, and application of the certain institutes. It is inevitable that in order to observe the effects of the Labour Law, a certain period of time should be required. The conclusion is that no further improvements and changes were made comparing to the state from the previous edition of the White Book.

Nevertheless, while waiting for some future amendments which would improve this area, primarily in terms of recommendations from the Council, the courts and administrative authorities will continue to interpret its provisions and make the necessary practice.

## REMAINING ISSUES

Certain innovations in the recent amendments to the Labour Law continue to represent a potential problem for employers in the Republic of Serbia and this is primarily related to:

- The provision stipulating that the Rulebook on Internal Organization and Job Classification may envisage only two successive degrees of professional qualification as a requirement for work in certain positions is a problem in the case of positions wherein a number of employees with different educational levels are engaged and all can adequately perform the work required for such a position;
- The provision stipulating that the employer is obliged to keep the employment contract at the employee's place of work is a problem for employers who do not have adequate conditions for such (i.e. construction sites);
- The impossibility to contract a notice period exceeding 30 days in the case of termination of employment by an employee may also be problematic for employers, especially in the case of directors and other management staff when it is extremely difficult to find an adequate replacement in such a short period of time;
- The provision that a pay slip represents an executive document may be problematic in practice;
- Introducing high misdemeanor fines for employers may represent an obstacle to opening new positions.

Also, some of the already existing provisions of the Labour Law still require action by lawmakers, specifically:

- Salary structure and calculation are very complex;
- Salary compensation for sick leave, national holidays, annual leave, annual vacation, paid leave, etc., is calculated using a base representing the average salary over the 12 preceding months (Articles 114, 115, 116). In the case of high one-off payments in one month (such as annual bonuses), salary compensation could be higher than the salary itself if the employee had not been absent. Additionally, this results in employers' inability to plan their budgets;
- Generally, the employment-related paperwork and records that should be kept with each employer are overly voluminous;
- Certain categories of employees cannot unilaterally be made redundant by the employer even if they consent to it (pregnant women, women on maternity leave, childcare leave or special childcare leave, trade union representatives). On the other hand, if they sign an agreement on termination, they cannot enjoy entitlements under unemployment insurance;

Fixed-term employment's limitations include duration of up to 24 months, with extensions possible only in special cases, as well as quite restrictive terms under which such employment can be contracted; Despite the expansion of cases in which it is possible to conclude an employment agreement for a certain time after the statutory maximum, the Labour Law is still talking about "the same employee," so that it remains unclear and controversial in practice:(i) Whether the employer may conclude an employment agreement for a definite period of time with the same per-

son, but on some other job, different from the work previously performed beyond prescribed exceptions.

- Generally, provisions of the existing Labour Law reduce flexibility in certain forms of work (as it does not recognize staff leasing and limits the possibilities of non-employment work relationships), which has a negative impact on the employment rate and leads to the growth of unreported, illegal employment;
- Provisions regulating overtime work are quite restrictive and should be amended to allow employers more flexibility to decide on the introduction of overtime work and on the manner of compensating employees for overtime work (through increased salary or days off). This is especially relevant to employees in managerial positions;
- Provisions stipulating additional protection for pregnant employees or employees on maternity leave, childcare leave or special childcare leave are somewhat unclear, which may cause uncertainties in their practical implementation. In particular, it remains unclear:
  (i) Whether the right to protection is provided only to women who notify their former employer within 30 days following the delivery of the decision on employment termination that their pregnancy existed at the moment of termination, or if such protection is also provided to women whose pregnancy commences after the receipt of the decision on employment termination, but within the said 30 days' period after the delivery of the decision on employment termination; and
  (ii) Whether the right to a 90-minute break or reduced working hours for breastfeeding incorporates the regular daily break (30 minutes) provided to all employees, or is an additional daily break.
- The term "unfavorable position" in relation to protection of trade union representatives from dismissal is not clearly defined. It appears disputable if salary adjustment, appointment to another adequate position, and the like are considered as placement into an unfavorable position. We note that the need for a change in salary or internal reorganization of positions is often caused by real economic difficulties that employers face in the current business climate, as well as by the needs of the work process and organization: hence, it is not necessarily a way of hampering trade union activities.
- The Labour Law regulates the resolving of the issue of redundant employees in case that it is necessary to adopt a redundancy program, but the Labour Law does not regulate the procedure for the declaration of redundancy in cases when there is no obligation to adopt the program, which creates some uncertainty for employers, and the issue of redundancy is highly delicate and the source of a large number of litigations.
- For certain deadlines (and some other standards) in the Labour Law it is completely unclear whether they have a dispositional nature or they are in the form of the cogent norm, which in practice leads to many problems of interpretation.
- The Labour Law prescribes procedures when imposing disciplinary measures and / or termination of employment contract for violation of duties or working discipline, but it should also specify the following:
  (i) Whether after the warning issued to the employee prior to dismissal and the employee's response to the allegations from the warning, the employer has a specific deadline (an appropriate deadline) to issue a decision on termination or could do so within the subjective deadline of six months; and
  (ii) Whether after the warning issued to the employee prior to dismissal and the employee's response to the allegations from the warning, the employer has any obligation to inform the employee about his decision of not terminating the employment contract and/or not imposing a disciplinary measure after the statement of the employee, if such a decision is made.

## FIC RECOMMENDATIONS

- Most international companies have a system of salary calculation which is applied throughout the world. Forcing these companies to accept a completely different system just for the Republic of Serbia creates an additional barrier to foreign investment and increases investment costs. For example, we propose that work performance should not be a mandatory, but rather a discretionary portion of the salary. In this regard, the possibility of a free agreement between employees and employers on the structure of the salary and additional benefits, and the establishment of a salary system that will stimulate employees' work, is the basis for the functioning of the labour market.

- We also suggest that salary compensation during leave from work be equal to the amount of the base salary increased by seniority.

- Employees protected from termination by reason of redundancy should have the right to consent to such termination, yet still be entitled to unemployment benefits.

- We propose that the legal limit of 24 months for a fixed-term employment contract should be extended to 36 months. In addition, we propose that such an employment contract should not be conditional on the existence of a handful of predetermined reasons (such as work on a specific project, increase in the volume of work, seasonal jobs, etc.), which is currently the case. We propose that such limitations should be abolished and that the parties should be free to contract for whatever purpose they deem appropriate.

In addition, we propose that the provisions of the Labour Law should specify that the employment contract for a specified time can be concluded up to a legally specified time for performing "the same job", without putting the emphasis on the "same person / same employee" due to the fact that we believe that such a provision is contrary to the Constitution and the Law on the Prohibition of Discrimination. For example, why can't a business secretary who has concluded an employment agreement for a specified time by the end of the period for which the contract was concluded, work as a law graduate on some other job (the secretary having graduated, meanwhile) concluding a fixed–term employment contract again?

- We propose to extend the limit for the duration of the suspension measure to one month.

- The possibilities for the introduction of overtime work should be extended, i.e. not be related to sudden and unexpected occurrences only. The employer and employees should be free to agree on the occasion and purpose of overtime work. Employers should have the right to introduce management compensation that would include compensation for overtime work performed by managers in the company.

- It is necessary to envisage the possibility that the notice period in case of termination of employment by the employee may exceed 30 days, if the employee and employer so agree, and especially in case of directors and management staff.

- The obligation of employers to keep employment contracts at an employee's place of work should be changed, so that it does not apply to employers who do not have a business premises, or some other adequate place to keep these documents.

- Employers must be able to envisage in the Rulebook on Internal Organization and Job Classification several different levels of professional qualification as a condition for employment for a specific position.

- Misdemeanor fines must be decreased.

- Regarding the provisions on the protection of pregnant employees or employees on maternity leave, childcare leave or special childcare leave, the following should be defined:

  (i) That the decision on employment termination will not be void if the pregnancy commences after the delivery of said decision to the employee, and

(ii) That the 90-minute daily break/working hours reduction for breastfeeding, encompass the regular daily break during working hours, and that there is no right to an additional daily break.

- A more precise definition is required as to what is considered a placement of trade union representatives into an "unfavorable position".
- It is necessary that the Labour Law determine the topic of redundancy in those cases where there is no legal obligation to adopt a redundancy program.
- It is necessary to more closely determine the nature of certain deadlines (as well as some other provisions), i.e. those that are optional or mandatory norms, in order to avoid uncertainty and to clearly determine if an employer and employee can mutually agree therein.

## EMPLOYMENT OF FOREIGNERS

The long-awaited Law on Employment of Foreigners entered into force on 4 December 2014, with the exception of certain provisions on the employment of EU citizens, which will be applicable from the date of accession of Serbia to the European Union. This Law has provided to regulate the conditions and procedures for the employment of foreigners in the Republic of Serbia in a more comprehensive way, and also introduced certain novelties in this domain. One of the main goals of this Law was the simplification of procedures, and a more precise regulation of the procedure for the issuance, extension and expiry of a work permit, and the harmonization of these regulations with the European Union acquis.

The new legislative provisions envisage two types of work permits: (i) a personal work permit, which enables foreigners who have a permanent residence permit, refugees and other special categories of foreigners to work, to be self-employed and exercise unemployment rights in Serbia, and (ii) a work permit for employment, for self-employment and for special cases. A personal work permit is issued at the personal request of a foreigner, whilst a work permit (except for the work permits for self-employment) is granted at the request of the employer. A foreigner who works in Serbia can have only one of these two types of work permits at a time, and can only conduct the business activity for which he was issued the work permit.

All types of work permits have two things in common, they require a foreigner to have obtained a temporary residence permit in Serbia and they are issued for the period of validity of the temporary residence but not longer than one year. On the other hand, all permits also have specific requirements with regard to the necessary documentation and conditions that have to be fulfilled for their issuance.

Restrictions on employment of foreigners are regulated in accordance with the EU legislation, through the so-called quota system, i.e. by limiting the number of work permits that can be issued to foreigners. However, the law stipulates that such restrictions are not applicable to all foreigners, specifically, the quota system will not apply in the case of managers, and, exceptionally, trainees from a foreign company assigned to a branch office or subsidiary of that foreign company in Serbia.

The Law on Employment of Foreigners introduces new restrictions for employers, which do not contribute to the improvement of the working environment. Therefore, the law prescribes that a work permit will only be issued to the employer if that employer has not dismissed any employee working on the same position for which the work permit was requested as redundant prior to filing the request for the work permit, and provided that the employer was unable to find a suitably qualified employee among Serbian citizens, or persons who possess a personal work permit, or persons who have free access to the National Employment Service (so-called labour market test). One of the objec-

tions against the new Law on Employment of Foreigners is the impossibility of avoiding the labour market test, even when a director or other high-ranking manageris hired. Also, the maximum period of validity of the residence and work permit was not changed (up to 1 year), and the need to keep extending these still remains an additional administrative burden for foreigners and employers.

On the other hand, the Law on Employment of Foreigners also has its positive effects, which include a more comprehensive and precise regulation of issues related to the employment of foreigners, allowing not only employment, but also self-employment, exercising unemployment rights and harmonization of national legislation with the European Union acquis.

### FIC RECOMMENDATIONS

- Obtaining temporary residence permits is an excessively complicated and time-consuming process. Enhance practical application of the Law, e.g. by shortening the period of time for issuing a residence permit; reduce the number of documents required during the procedure for acquiring a residence permit, etc.
- A work permit's term of validity should reflect the need of the employer officially confirmed by the term of the employment contract (which may be concluded even for an indefinite term).
- The labor market test should be excluded in case of employment of directors or other high ranking management individuals.
- Central Registry's certificate regarding the fact whether the employer prior to filing the request for the work permit dismissed the employees due to the redundancy, should contain the exact job title of the redundant employee.

## LAW ON THE PROTECTION OF CITIZENS OF THE FEDERAL REPUBLIC OF YUGOSLAVIA WORKING ABROAD

The terminology of this Law is not fully harmonized with the Labour Law and other applicable regulations.

The prescribed procedure for hiring Serbian employees abroad is outdated, extraordinarily cumbersome, complicated, time-consuming and, as a whole, not adjusted to the requirements of a modern market economy, intercompany secondment, and the free movement of workers. As such, it defeats its main purpose – that of protecting Serbian citizens employed abroad. Furthermore, without the implemented procedure for notifying the Ministry of Labour, Employment, Veteran, and Social Policy ("Ministry") of the intention of sending an employee abroad to work and its conclusion that conditions for it have been fulfilled, health insurance for employees valid abroad cannot be obtained from the Republic Fund for Health Insurance (RFHI), in accordance with the regulations of the Republic of Serbia (RS).

In practice, the Ministry is known to inadequately interpret the Law in parts which are not explicitly regulated (the maximum duration of the period for which workers are temporarily seconded abroad; the content of the annex to the employment agreement; the content of the intercompany agreement on business and technical cooperation; etc.), which creates uncertainty and unnecessary delay in the implementation of the secondment procedure.

As positive progress compared to the previous year, the new draft Law on Terms of Referring Workers to Temporary Work Abroad and Their Protection has been proposed. The law simplifies the procedure of the second-

ment of workers abroad and strives to bring balance between the needs of the global labour market movements and the protection of domestic workers while on temporary work abroad.

### FIC RECOMMENDATIONS

- The new draft Law on the Posting of Workers and Their Protection has been proposed. The adoption of the proposed draft Law will reduce administrative obstacles and ensure harmonization with the provisions of the Labour Law, while the secondment procedure will be adapted to the global and intercompany needs for workers' mobility.Employees protected from termination by reason of redundancy should have the right to consent to such termination, and still be entitled to unemployment benefits.

## STAFF LEASING

The staff leasing practice of companies in Serbia, although somewhat tolerated in practice owing to a lack of formal regulation, may lead to certain problems for employers using this concept. Specifically, such employers may be fined on the grounds that leased staff working for them does not have any agreement with these employers. Also, there is a risk (in certain cases, evident in practice) that leased staff will claim that they were actually employed within the company where they performed work, although they did not have any agreement with said company. This is usually the case when they are dismissed as a result of termination of business co-operation between the staff leasing agency and the company that used its services.

The Republic of Serbia ratified in early 2013 the International Labour Organization's (ILO) Private Employment Agencies Convention (No. 181), committing to regulate staff leasing in the following 12-month period, as well as to enable the work of private employment agencies (which inter alia offer services of staff leasing). Although the deadline expired a year ago, staff leasing regulation has not been adopted yet.

### FIC RECOMMENDATIONS

- The concept of staff leasing should be regulated by a separate regulation or possibly by amendments to the Labour Law, which would govern all important issues with respect thereto (such as the relationship of employer and individual, employer and service user, employee and service user, occupational health and safety, etc.).
- The concept of staff leasing should be regulated in such a manner that the relationship between leased staff and the users of staff leasing services should not result in the creation of an employment relationship.
- The conditions for the issue of operating licences and general business conditions for staff leasing agencies (including the fee for issuing operating licences to staff leasing agencies) should also be regulated by the law. The law would thus create legal certainty, thereby removing the possibility of discretionary decisions being handed down (e.g. by ministries) with regard to these important issues.

## INDUSTRY-WIDE COLLECTIVE AGREEMENTS, LAW ON VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES AND LAW ON THE PREVENTION OF MOBBING AT WORK

Having in mind that there were no changes in the legislation in these areas, the FIC does not consider it necessary to re-define and explain these topics, but will only assess the progress made in implementing FIC recommendations through the Score Card.

# HUMAN CAPITAL

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Positive measures that stimulate job creation should be continued. | 2009 | | √ | |
| The education system should be improved. Regular contact between the FIC and the Government, the ministries of education and youth, as well as universities, is crucial. The business community and FIC members are ready to provide support and expertise. | 2008 | | | √ |
| Continue joint proactive engagement of the FIC and the Government in order to motivate highly skilled and educated workforce currently abroad to return to Serbia. | 2008 | | | √ |
| Improving the workforce is a key component of economic competitiveness; in that regard, we must continuously promote the development of human resources as the main driver of development of society and the state. | 2010 | | | √ |

## CURRENT SITUATION

The global economic crisis continued to influence the labour market significantly in 2015.

Reduced economic activity and consumption worldwide brought about a reduction in exports and economic activity in Serbia and the reduction in income of the Serbian population resulted in a decline in demand for domestic and imported goods. Such trends in the real sector inevitably led to reduced demand for labour, as a dependent variable derived from economic activity. In a market economy, reduced demand leads to a decline in employment, or to a reduction of wages, or to a reduction in the number of working hours or to some kind of a combination thereof.

According to the Statistical Office of the Republic of Serbia, the unemployment rate in Serbia in 2015 is 19.2%.

The labour market in Serbia shows the same trend as the rest of the economy – that of decline. To cut expenses, many companies have decided to reduce their headcount. This trend continued in 2015 – employers downsized their workforce in order to reduce costs. The Government has tried to balance the growing budget deficit and the needs

of the economy for tax incentives to slow down the downsizing process.

In such circumstances, unlike in years past and due only to a decrease in labour demand, the supply of qualified workforce has improved, in particular the supply of recent college graduates.

In times of economic crisis, human capital becomes increasingly important. Although labour market demand has decreased, resulting in fewer job opportunities, the retention of key personnel, as a vital factor for surviving the crisis, is in the focus of HR professionals more than ever. Therefore, mature companies put even more effort into defending their best talent, and it is still difficult to find both suitable and immediately available candidates to take over important strategic positions in companies.

There have been certain changes in the education system. Most universities and colleges are aware that they are in a competitive market. Because of competition, they have started with changes in order to position themselves better. Still, not many faculties are able to provide practical knowledge, which imposes the need for companies to invest significant funds in the additional education and training of hired fresh graduates.

## POSITIVE DEVELOPMENTS

The Government of Serbia and its ministries have undertaken some measures in the times of crisis. The Government endorsed the National Employment Action Plan for 2015, which is a tool for the implementation of active employment policy. This employment plan defines the targets and priorities of the Government's employment policy and identifies programmes and measures to be realized in order to achieve the set targets and enable sustainable employment growth.

The Government of Serbia has adopted an education development strategy for the period until 2025. This strategy is concerned with identifying goals, objectives, directions, instruments and mechanisms of development of the education system in the Republic of Serbia in the next ten years; in other words, it attempts to shape the development of this system in the best way known to us. The circumstances in which this strategy developed are almost entirely different from those in which education in Serbia developed in the modern era. Two centuries ago, Serbian education thrived on the waves of the Enlightenment, shaped by scientific advances and the emerging industrial revolution. Today, education in Serbia faces a number of challenges of scientific, humanistic, social and other development, with great technological changes, the real revolution, globalization and general mobility of everything that can move, from capital to cultural patterns. In this context, the strategy itself was made to set the main education sector development priorities as well and as accurately as possible.

Research shows that low educational level is one of the key problems of unemployment in Serbia and that the overall population's education level has to be improved, so in this respect the activities of the Ministry of Education, Science and Technological Development play a very important role. In 2012, as in 2011, this Ministry made major contributions to the development of scientific staff. These activities were especially aimed at encouraging young people to engage in scientific research. In this regard, the Ministry co-financed various programme activities, awarded scholarships to students, and provided a variety of programmes and documents, such as a personnel training program for scientific research for the period 2012–2015 and a scholarship programme to encourage young and gifted researchers for the period 2012–2015, etc.

In 2014 the Ministry of Labour began the implementation of a training project, Social Dialogue Improvement, financed by the European Union within the framework of the IPA 2012. The main beneficiaries are the Ministry of Labour, Employment, Veteran and Social Affairs of the Republic of Serbia, the UGS Independence trade union, the Union of Employers of Serbia and local social and economic councils.

This training project aims to strengthen social dialogue and turn it into an instrument which will help Serbia accomplish its economic development goals and improve working conditions by fully harmonizing international and European Union labour standards. Experts from Slovakia will assist the Ministry and its social partners in developing their capacity to harmonize national labour legislation with EU standards, and implement effective social dialogue at national and local level.

In 2015, the Ministry of Labour continued activities aimed at improving the status of persons with disabilities through various projects. A number of activities and projects for the economic empowerment of women were also implemented.

In 2012, the Ministry of Labour and Social Policy launched the Twinning project "Preparation of Serbian Labour Market Institutions for the European Employment Strategy", aiming to accelerate labour market reforms in line with European standards and enhance the impact of the national employment policy.

The project was funded by the EU IPA 2011 funds and implemented with partners from the EU – Ministry of Labour, Employment and Health of the Republic of France and the French National Employment Service, Ministry of Labour, Family and Social Affairs of the Republic of Romania and the National Employment Agency of Sweden.

In addition to employees and managers of the Employment Department, the National Employment Service (NES) and local employment councils, representatives of social partners and other stakeholders were involved in project implementation.

The project commenced in May 2012, lasted for 24 months and its total cost was EUR 2 million.

The project experts, representatives of the French, Romanian and Swedish labour market institutions, helped to enhance the knowledge and skills of employees in labour market institutions in Serbia, both at the national and local level. The support will be continued in order to complete the process of harmonization of the Serbian employment legislation and prepare the administration for cooperation instruments used during the pre-accession process.

## REMAINING ISSUES

Owing to the impact of the economic crisis, an increase in the grey labour market can be expected. Since there are a number of companies that fail to pay their dues to the state, the Government occasionally announces new taxes on wages in order to cover the budget deficit. This measure would affect precisely those employees whose companies settle their liabilities regularly. Instead of additionally burdening them, it would be more effective to reduce the grey and black labour market by enhancing on-site Labour Inspection activities.

The education system still has to be improved and better linked with the business community to reduce the gap between education and employers' competency requirements, and to improve Serbia's image as a potential investment location.

Negative demographic trends should also be mentioned. The population of Serbia is ageing, and Serbia is ranked sixth among the countries with the oldest populations in the world. Also, the population is increasingly concentrating in the northern parts of the country. The Government has recognized these trends, but the situation has not improved. This situation will further reduce the chances of certain parts of Serbia to attract new foreign investments.

The development of human capital is one of the most important tasks, as it has a very broad impact on the country's progress, which is why all stakeholders should be committed to it. A company's decision to invest in a certain country is guided by the quality and structure of the workforce in the market.

## FIC RECOMMENDATIONS

- Positive measures that stimulate job creation should be continued.
- The education system should be improved. Regular contact between the FIC and the Government, the ministries of education and youth, as well as universities, is crucial. The business community and FIC members are ready to provide support and expertise.
- Continue joint proactive engagement of the FIC and the Government to motivate highly skilled and educated workforce currently abroad to return to Serbia.
- Improving the workforce is a key component of economic competitiveness. in that regard, we must continuously promote the development of human resources as the main driver of development of society and the state.

# LEGAL FRAMEWORK

The intensification of legislative activity on amending and adopting new legislation has been evident in the previous period, in parallel with the harmonization of national legislation with the European acquis in the process of Serbia's accession to the EU and in view of the expected opening of the first negotiation chapters on its European integration path.

The said activity has triggered intensive work, not only of government bodies but also of the Foreign Investors Council (FIC), notably its legal committee, since the joint goal of the government and the FIC is further improvement and long-term predictability of the legal framework in Serbia, which is equally in the interest of the state and of private sector entities.

Numerous laws and regulations in various areas of relevance for the general legal framework were adopted or amended since the last edition of the White Book.

Some of the most notable amendments and/or new laws are:

- Amendments to foreign exchange regulations enabling residents to perform international payment operations in e-commerce, i.e. buying or selling goods and services online, through local payment institutions or electronic money institutions, which contributed to further liberalization, and encouraged competitiveness in this field by authorizing other entities, aside from banks, to perform international payment operations;

- Law on Inspection Oversight as the umbrella law in this field, establishing the coordination of inspection oversight, cooperation among inspectorates, as well as cooperation between inspectorates and other government bodies and private sector entities, which is expected to significantly contribute to eliminate or substantially diminish arbitrariness, inconsistencies, corruption and other possible abuse, i.e. establish effective mechanisms for suppressing the grey economy and ensuring legal certainty;

- Law on Payment Services, with the aim of regulating this field in a new manner, in line with the EU acquis;

- Law on Whistleblowers establishing efficient and effective protection of persons reporting suspected corruption, as one of the objectives to be achieved in line with the international treaties Serbia has ratified;

- The new Energy Law and numerous by-laws in the energy field, introducing significant improvements in the area of renewables, among other.

Notwithstanding the fact that we have seen a trend of steady progress in legislative reform in the previous period, some important areas have registered no progress at all.

For instance, the Law on Capital Markets and the Law on Personal Data Protection, which are both undoubtedly significant for doing business, were not amended as previously announced.

In addition, we point out that the amendments to regulations on foreign exchange operations related to e-commerce were not sufficiently comprehensive, i.e. they have not liberalized this field significantly in the last years, despite continuous calls for changes by the business sector. Government bodies announced that a working group will be established to amend foreign exchange regulations, so we hope that we can soon expect in-depth changes and further liberalization of this Law, and also that the legislator will use this opportunity to amend not only foreign exchange regulations, but also the Law on Capital Markets and the Law on Investments, in order to fully harmonize these areas.

Finally, as noted in the last edition of the White Book, we emphasize the need for changes in the legal framework for public private partnership, as well as the need to further intensify activities on improving the judiciary, which lags far behind European tendencies and is the most criticized area by both domestic and foreign business entities.

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# LAW ON BUSINESS COMPANIES

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Limited liability partnerships (LLPs) should be expressly permitted. | 2013 | | | √ |
| The provisions in the Company Law that deal with limitations to the authority of a company's representatives should be harmonised with the provisions of the Law on Contracts and Torts. | 2011 | | | √ |
| Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies, and provide clear procedures and competencies. | 2013 | | | √ |

## CURRENT SITUATION

The Law on Companies (Official Gazette of the Republic of Serbia, Nos. 36/2011, 99/2011, 83/2014 and 52015) (hereinafter: the Company Law) came into force on 4 June 2011 and is applicable as of 1 February 2012, except for the provisions relating to electronic voting at the general meeting of the public joint stock company, which are applicable as of 1 January of the current year. The last Law on amendments to the Company Law was adopted on 19 January 2015.

The Company Law represents a continuation of the harmonization procedure of the corporate law with legislation of EU, primarily with its directives and with the newest solutions in comparative law of countries with developed market economies. The Company Law also represents harmonization with other laws of the Republic of Serbia, such as the Law on the Capital Market and others. Also, it was necessary to remove some of the deficiencies of the Company Law from 2004.

Now, after more than three years of implementation of the Company Law, we can conclude that its main characteristics are: (i) application of standards that are harmonized with the legislation of the European Union; (ii) harmonization with the Law on the Capital Market; (iii) overcoming of certain problems that were a characteristic of the previous Law on Companies; (iv) precise determination of certain legal concepts; (c) distinction between joint stock companies and other forms of business organization; and (vi) single-tier and two-tier management systems.

However, despite the progress made in these segments, the necessity for further adjustments of the Company Law is indisputable, so that it can meet the needs of the market and companies participating in the market.

## POSITIVE DEVELOPMENTS

In general, the Company Law is a step forward compared to the previous Law on Business Companies. It introduced a number of useful developments in the legal system of the Republic of Serbia, among which one of the most important ones is a significantly different way of regulating the corporate governance system. Both limited liability companies (LLCs) and joint stock companies (JSCs) may choose to have either a one-tier (shareholders' assembly and directors) or two-tier (shareholders' assembly, supervisory board and directors) corporate governance structure.

Positive developments are related to the provisions dealing with the legal form changes and status changes, where some of the solutions are simplified making their application in practice significantly easier.

The changes to the provisions on share capital have also been helpful, since share capital may now be denominated only in RSD, which resolved the problem of having a company's share capital expressed in various currencies (e.g., RSD for financial statements as compared to EUR for the Company Register). Also, the fact that it prescribes a minimum initial capital of RSD 100, instead of EUR 500 in RSD equivalent as prescribed by the previous Law on Companies, greatly facilitates the process of incorporation of companies.

Furthermore, an LLC may now be registered with the Company Register even before the initial capital has been paid in, which simplifies the registration process. However, although generally perceived as a positive development, the provisions of the Company Law on denominating the company's share capital in Serbian dinars created some uncertainties, especially at the beginning of the application of the Company Law. Some of these problems have been solved in practice, due to the fact that both the banks and the Serbian Business Register Agency (hereinafter: the SBRA) have eased the requirements,

thus facilitating a smooth company registration process.

The Company Law now clearly gives shareholders the possibility to make additional payments without raising the basic capital. Furthermore, it has clarified that additional contributions provided under the previous Law on Companies are to be treated as shareholder loans. As for the provisions on applicable jurisdiction, the Company Law now clarifies that its jurisdictional provisions do not mean that such jurisdiction is exclusive. Therefore, parties are free to agree to jurisdictions of other courts, as well as arbitration bodies. A new set of rules for squeeze-out and buy-out procedures was introduced. Also, the market value of the shares of a public JSC is now precisely defined (compared to the calculation formula contained in the previous Law on Companies).

An important innovation, introduced by the Law on changes and amendments to the Company Law from 2015, is related to joint stock companies which are not public in the sense of provisions of the Law on the Capital Market. It is stipulated that the total value of a company's own shares which a company can keep after the expiration of three years from the day of acquisition cannot exceed 20% of its core capital, which is an improvement compared to the previous provision by which the total value of own shares cannot exceed 10% of the core capital. New provisions are also applicable to own shares acquired before this Law on Companies had come into force, which certainly contributes to legal certainty.

Although there were no adequate legislative changes to the Company Law in 2014, there have been some positive developments in the practice of the SBRA. For example, the SBRA has done away with its previous practice of allowing the registration of restrictions on a corporate representative's authority to sign, other than the notation of a requirement of a co-signatory. The new practice is now fully in accordance with provisions of the Company Law providing that representation restrictions other than the requirement of a co-signatory's signature are not binding on third parties. Another positive development was that SBRA managed to establish a solid practice and has adopted guidelines in dealing with certain situations which were not well regulated under the Company Law.

## REMAINING ISSUES

Although the Company Law was amended to fix a few technical errors, it still contains a certain number of technical flaws that are likely to cause confusion in their application. Therefore, further clarifying legislative changes are needed.

The Company Law still contains a number of inconsistencies. Certain general provisions contained in the first section of the law titled "Initial Provisions" are not fully aligned with the more specific provision contained in the section of the law dealing with the particular form of a company. As a result, certain competences of corporate bodies and the procedures that they must follow still remain somewhat unclear; e.g. it is still not clear which corporate body in a JSC may grant a procura and which body decides in cases of conflict of interest of shareholders. Also, the process and deadlines for payment of initial capital for a JSC are still ambiguous.

One of the newly introduced institutes by this Law is "lifting the corporate veil". When stating the reasons for application of this institute, legislators made a clumsy formulation creating a dilemma on whether those reasons are enumerated or are given exempli causa.

There are other drafting inconsistencies, such as the provision prohibiting a single-member LLC from acquiring own shares, which is contrary to the Company Law's provisions on status changes.

Some of the corporate procedures do not have clearly defined procedures, making their application extremely difficult and in certain cases even impossible. For example, the procedure of a forced buyout of shares has created many practical uncertainties. It is unclear what the moment of the valuation of the share price is and who the valuator should be. Also, it is unclear what the term of a decision on a forced buyout is. Furthermore, a frequent problem in practice of the SBRA arises in situations when additional payments have to be returned to a person who, since making the additional payment, has left the company.

Another practical problem can arise from the application of the Article 221, paragraph 4 of the Law, which stipulates that if a company remains without a director, the company will be bound by all declarations of intent given to any member of the supervisory board or, if all seats on the supervisory board are vacant or the company does not have a supervisory board, to any member of the company.

As discussed earlier, although generally perceived as a positive development, the provisions of the Company Law on denominating share capital in RSD created a number of problems concerning implementation. The SBRA converts all the amounts of the paid-in capital from EUR into RSD at the exchange rate valid on the value date. Due to fluctuations of the exchange rate, this

practice has led to a situation where the amounts of registered, paid-in capital contributions did not match the total amounts of the paid-in capital. It also happened that the amounts of capital contribution did not proportionally correspond to the size of the shares held by other shareholders. Another innovation introduced by Law on Companies is a significantly lower amount of minimum share capital of a limited liability company, which now amounts to 100 RSD instead of 500 EUR, set by the previous Law. This provision can be interpreted both as an advantage, and flaw of the new law. The advantage is that this is making it simpler to start a business and encourages economic development, but on the other side such low basic capital does not fulfill its purpose to finance business operations and guarantee the fulfillment of obligations.

The deficiency of the previous law was the absence of rules which are regulating forced liquidation. The Company Law has introduced new rules on forced liquidation, but these new rules also left some uncertainty and loopholes. For this reason the former Ministry of Economy and Regional Development issued an opinion stating that the application of these provisions of the Company Law should be postponed. Although such opinions of ministries are not binding, the SBRA has been abiding by this opinion thus refusing to apply the provisions of the Company Law on forced liquidation. The FIC has on many occasions also pointed out the inadequacy of the provisions dealing with forced liquidation. These shortcomings should be fixed by amendments to the Company Law to prevent the line ministry, since by its decree certain provisions will not be applied.

The provisions of the Company Law restricting the powers of representatives to represent the company are still inconsistent with the relevant provisions of the Law on Contracts and Torts, which is sedes materiae for this area. Furthermore, the application of the Company Law provision that states that a procurator's authority can be limited by the requirement for co-signature with another authorized representative has proven problematic in practice, as it is not clear whether it requires the co-signature of one of the procurators/more procurators in addition to co-signature of a legal representative, or just one of the above mentioned representatives. Furthermore, it is not clear whether the limitation of the procurator's representation powers by co-signature is considered as a joint or single procura. In some cases the SBRA considered this issue as a collective procura and in others as a single procura.

Another disadvantage of the Law on Companies is the absence of the institute of limited liability partners in a partnership. The existence of such an institute would be particularly relevant for partners in professional partnerships, since they should be allowed to enjoy limited liability protection, while third parties' risks could and should be covered by liability insurance. The FIC noted this deficiency and emphasized the necessity of change as described.

The Company Law still leaves uncertainty when a company's Charter enters into force. Specifically, whether the opinion of the Constitutional Court in its Decision IUo No. 328/2009 from 29 April 2010, applies to the company's Charter. According to that decision a company's general acts enter into force no earlier than eight days after publication.

The previous Law on Companies had a number of defects, so it seems that the new Law on Companies clarifies several matters that have proven to be problematic in the implementation of the previous Law on Companies. Also, it has evidently introduced several new concepts and regulated certain matters differently, thus it can be considered as big step forward. However, it is also obvious that several issues, such as financial assistance rules, are unnecessarily stringent.

An integrated, holistic approach is required to reconcile discrepancies between the Company Law and the various other laws that regulate business operations, finance, securities, real property and other related areas.

## FIC RECOMMENDATIONS

- Limited liability partnerships (LLPs) should be prescribed by the Company Law.
- The provisions in the Company Law that deal with limitations to the authority of a company's representatives should be harmonised with the provisions of the Law on Contracts and Torts.
- Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies, and provide clear procedures and competencies.

# CAPITAL MARKET TRENDS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The Government should take all necessary actions to increase activity on the capital market in Serbia, including motivating foreign investors to issue dinar-denominated bonds and initiating Serbia's first big IPOs. This means all legal and political obstacles should be removed in order to attract international financial institutions and other investors to issue dinar-denominated bonds. At the same time, the announced IPOs of big public (or former public) companies should finally be organized. In addition, state and municipal bonds could be issued for the financing of infrastructural and other large communal projects. | 2012 | | √ | |
| Improvement in the cooperation of the capital market participants is visible. Also, formation of the Financial Stability Committee is welcomed as acknowledgement of the importance of closer coordination between all the relevant institutions whose work affects the market. We strongly encourage such a positive change and wish to emphasize that this cooperation must be continued and enhanced. | 2012 | | √ | |
| The Working Group which was formed in March 2013 with the aim of harmonizing all regulations related to securities has carried out material and comprehensive analysis of the respective regulations by autumn 2013. The work of this Working Group should be materialized as soon as possible by formulating proposals for changes of specific laws. | 2014 | | | √ |
| The Draft Law on Securitisation should be prepared and submitted to the National Assembly for immediate adoption. | 2009 | | | √ |

## CURRENT SITUATION

The regulatory framework of the capital market in Serbia underwent material changes four years ago. In May 2011, the National Assembly of the Republic of Serbia adopted a new Law on the Capital Market, replacing the criticised Law on the Market of Securities and Other Financial Instruments. At the same time, amendments to the Law on Investment Funds (which was later again amended in 2014) and the Law on Voluntary Pension Funds and Pension Schemes were passed. In December 2011, amendments to the Law on the Takeover of Joint-Stock Companies were adopted. In addition, the Securities Commission has adopted a number of by-laws required for the implementation of the Law on the Capital Market.

Generally, the regulatory changes may be evaluated as positive since they are directed towards harmonisation with EU regulations and the International Organization of Securities Commissions' (IOSCO) principles, making the Serbian capital market more attractive to both domestic and foreign investors.

Unfortunately, four years after a thorough legislation reform, the new regulatory framework has yet to find a practical use, even though that would be the only appropriate measure of success. The Serbian capital market is still too small to evaluate numerous innovations introduced by the new regulatory framework, especially the Law on the Capital Market.

However, in practice, certain problems were identified in the implementation of legislation governing the capital markets due to the non-compliance of a number of separate regulations that directly or indirectly regulate the capital market, which were adopted at different times. This problem was recognized by the relevant ministry which, in 2013, started a thorough preparation of amendments to the regulations governing the capital market with the aim of completing their harmonization. However, at the time of writing, this process has not been completed and it is uncertain when and whether it will be finished.

So, the general conclusion regarding the capital market in Serbia remains the same this year, meaning that it takes more than just regulatory reform to stimulate capital market growth in Serbia. Nevertheless, we are of the opinion

that the regulatory reforms were necessary, and hope that the new regulatory framework, accompanied by economic measures that are to be introduced, will eventually result in the improvement of the Serbian capital market and an increase in foreign investments.

The idea of adopting the Law on Securitisation seems to have been completely abandoned, and comparing to the previous year, there have been no improvements regarding the adoption of the Law on Securitisation.

## POSITIVE DEVELOPMENTS

The Law on the Capital Market, which started applying in November 2011, introduced numerous changes which, in general, may be interpreted as positive. The new law regulates the procedure for the public offering of securities in a clearer way, which will hopefully result in Serbia's first major initial public offerings (IPOs). Also, it is expected that the innovations introduced by the Law could reduce the costs of security issuance.

In addition, the Securities Commission adopted required by-laws for the implementation of the Law on the Capital Market.

The amendments to the Law on Investment Funds also introduced several important positive innovations. Namely, investment restrictions for investment funds have been reduced, and the assets of investment funds may now be invested in securities issued by an investment fund's custody bank, as well as by a broker-dealer company and the bank representing the managing company in relation to securities trading. In addition, the recent amendments to the Law on Investment Funds from November 2014 have further expanded the circle of states in which investment funds can invest their assets, and have in more detail regulated limitations on the investment of investment funds' assets.

The amendments to the Law on the Takeover of Joint-Stock Companies were also aimed at rectifying certain shortcomings of the law noticed in practice.

The legal framework for trade in financial derivatives is also beginning to take shape. The National Bank of Serbia has issued, and already once amended, its Decision on Performing Activities with Financial Derivatives, in accordance with its authorizations, set out in the Law on Foreign Exchange Operations, to prescribe conditions for performing payments, the collection of payments, transfers, netting (set-off) and reporting on activities with financial derivatives. This put certain legal rules in place that should make transactions with financial derivatives possible, but it should be noted that the current legislative framework is still insufficiently developed and does not provide clear rules as to some aspects of derivative transactions, which makes investors very cautious and practice scarce. Also, certain legal rules set out in the above mentioned Decision are still somewhat rigid and should be liberalized. For instance, non-residents may not enter into derivative transactions (being traded and/or transactions made on over-the-counter market) with non-bank residents, involving payments or collections in dinars. This rule prevents non-residents to hedge currency risk for non-bank Serbian borrowers in local currency.

In March 2012, the Association of Serbian Banks formed a Working Group for the development of standardized bank agreements for performing financial transactions. The Working Group has opted to first develop a Frame Agreement on the Repurchase of Securities. The work on the development of that agreement lasted for over two years, with banks recommended to start with the application of the Frame Repo Agreement on 1 December 2014. It is expected that this Working Group will continue its work and focus its activities on the development of a standardized agreement on performing operations with financial derivatives.

The enactment of the Law on Factoring is, in principle, a step forward in the regulation of the financial market, though the law's real effects on the market remain to be experienced in practice.

As a final point, we have to commend the constitution of the Financial Stability Committee, which was formed in December 2013 as a body founded by the Government of the Republic of Serbia, the National Bank of Serbia, the Deposit Insurance Agency, and the Securities Commission.

## REMAINING ISSUES

Identifying all remaining issues that may occur during the implementation of the new Law on the Capital Market is still very difficult as there were no significant developments in the capital market since the beginning of implementation, and therefore its provisions could not be thoroughly assessed through practical application.

So it now becomes clear that more than just harmonising regulations with international standards will be required to improve the Serbian capital market, which lacks high-quality securities.

The capital market in Serbia is still a narrow and insufficiently liquid market. Municipal bonds are still rare (despite all the advantages of municipal bonds, only four municipalities have issued municipal bonds so far: Novi Sad, Pancevo, Sabac, and Stara Pazova), with not a single initial public offering conducted four years since the adoption of a law that brought a clearer legal framework for IPOs.

Unfortunately, it seems that the Working Group formed in March 2013 with the aim of amending regulations on securities in order to ensure the harmonisation of regulations in the field and eliminate identified problems occurring in practice because of discrepancies has stopped or delayed its work, since the Foreign Investors Council has not been informed on any activities of this Working Group since autumn 2013. As for the regulatory framework, we reiterate that Serbia still lacks the regulatory framework for securitisation. Securitisation might be a good instrument to stop further negative developments in the banking sector.

Furthermore, we believe that it would be useful to deliberate on adopting a law which would regulate the creation of pledge / means of security on financial instruments and credit claims as was done in certain other countries in the region.

We would like to emphasize that the rules for determining fees for the issuing of shares are still regulated by the Company Law, which we do not consider to be the best solution. However, it is commendable that the new Company Law has provided for exceptions at least in cases of IPOs.

The regulatory framework and practice still seem not to be precise enough and developed enough to perform operations that include financial derivatives in accordance with the International Swaps and Derivatives Association's (ISDA) master agreement. The Working Group for the development of a standardized agreement on performing operations with financial derivatives has, as far as we know, not started its work.

## FIC RECOMMENDATIONS

- Foreign investors should be motivated to issue dinar-denominated bonds; i.e. all legal and political obstacles should be removed in order to encourage international financial institutions and other investors to issue dinar-denominated bonds.
- Announced IPOs of large public (or formerly public) companies should finally be organised.
- The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects should be stimulated.
- The Working Group formed in March 2013 with the aim of harmonisation of all regulations related to securities has carried out a material and comprehensive analysis of the respective regulations by autumn 2013. The work of this Working Group should be materialized as soon as possible by means of formulating proposals for changes to specific laws.
- The Draft Law on Securitisation should be prepared and submitted to the National Assembly for immediate adoption.
- It is necessary to improve the general legal framework for performing operations with financial derivatives, first and foremost by enabling the full implementation of standardized ISDA master agreements.

# JUDICIAL PROCEEDINGS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions. | 2012 | | | √ |
| Improve and justify the allocation of cases among courts and judges. | 2011 | | √ | |
| Establish online databases in the remaining courts, as well as amendments to the Law on Civil Procedure in order to assure flexibility of the timeframe and deadlines for certain actions. | 2011 | | | √ |
| Set the threshold for revision of a final judgment at a lower level. | 2012 | √ | | |
| Promote the possibilities and advantages of alternative dispute resolution (arbitration and mediation). | 2010 | | √ | |
| Adopt amendments to the Law on Arbitration in order to comply with the 2010 UNCITRAL Model Law on Arbitration. | 2011 | | | √ |

## CURRENT SITUATION

From 2011 to 2015 a series of legislative reforms were carried out, affecting the organization of the judiciary and judicial proceedings: the introduction of private bailiffs and notaries, the restructuring of the court system and the in-depth regulation of the right to a speedy trial.

The Law on Civil Procedure, (Official Gazette of RS No 72/2011, 49/2013 – Decision of the Constitutional Court, 74/2013 – Decision of the Constitutional Court and 55/2014), now applies to a substantial number of active judicial proceedings (proceedings that started after 1 February 2012, but also those remanded for retrial after this date). Only four years after its enactment, the Law on Enforcement and Security, (Official Gazette of RS No 31/2011, 99/2011 and 109/2013 – Decision of the Constitutional Court 55/2014 and 139/2014), requires substantial amendments, due to numerous issues arising in practice. The new Draft Law on Enforcement and Security is currently up for public debate with no completion date in sight. On 1 January 2014, a new network of courts was established by the Law on Seats and Jurisdictions of Courts and Public Prosecution (Official Gazette of RS No 101/2013), whereby the number of court units was significantly reduced from 102 to 29, while the number of first instance courts was simultaneously increased, from 34 to 66. This solution is justified by the economic unsustainability of the high number of court units, the costs of which were disproportionately higher in relation to the scope of their work. Amendments to the Law on the Organization of Courts of 2014 introduced another remedy that the citizens of Serbia can use (as of 21 May 2014) besides the constitutional appeal: file motion for the protection of the right to trial within a reasonable period. However, in practice, due to frequent demands for the protection of this right and its inadequate regulation, the need arose for detailed and more precise legislative regulation. This resulted in the adoption of the Law on the Protection of the Right to Trial within a Reasonable Period (Official Gazette of RS No 40/2015), which will apply as of 1 January 2016. This Law introduces such key changes as the differentiation of legal means available for the acceleration of the procedure from those that are used by parties for equitable relief when their right to trial within a reasonable period has been abused. The Law on the Protection of the Right to Trial within a Reasonable Period allows the parties the possibility to attempt to negotiate a settlement before the state attorney before filing a lawsuit. This "novelty" is not expected to have any significant effect in practice, bearing in mind that the previous Law on Civil Procedure imposed this as an obligation on the prosecutor, but because it was unconstitutional and proved ineffective in practice, it was subsequently changed into an optional right of the party.

In the largest courts, especially those of general jurisdiction, hearings are often scheduled twice a year per case. An appellate procedure usually takes more than a year to complete, despite the statutory maximum length of 9 months in the case when the appellate court does not remand for a hearing (which is the case in most appeal proceedings). Simply put, the Courts are still overloaded with cases.

## Dispute Resolution

Certain provisions of the new Law on Civil Procedure, such as simplified rules on the service of court documents; shortening of the evidence-producing procedure; equal treatment of the parties, i.e. setting the same deadline for the submission of and response to the legal remedy; expansion of the representatives of the parties in the proceeding and the reduction of the census for the submission of a revision were met with positive reactions from the courts and parties, and their application in practice is ample. On the other hand, some of the provisions of this Law are only theoretically possible or are not even acknowledged in practice. Thus, subpoenas and other information are still not delivered via email, the use of audio and video equipment in hearings is rare, and appellate courts do not comply with the nine-month deadline for making a decision on appeals. The new law envisages a deadline to hold the main hearing, (with the idea of grouping hearings at which evidence is produced in a time-efficient manner), but in practice judges do not comply with the set time frames or they set an unreasonably long time frame of two or more years.

In accordance with the Legal Practitioners Law (Official Gazette of RS No 31/2011 and 24/2012 – Decision of the Constitutional Court), besides the bar exam, an additional requirement for becoming a licensed attorney is the successful completion of the attorney's exam, introduced on 17 May 2012. Also, this Law introduced the Bar Academy, as a special body established by the Bar Association of Serbia, responsible for the professional education and specialization of attorneys and graduate lawyers. Since its establishment, the Bar Academy has only organized seminars, however, having in mind that the selection of lecturers and departments was only completed in 2015, it is expected that towards the end of 2015 the Bar Academy will truly start providing specialized education to lawyers and postgraduate law school students. The Legal Practitioners Law provides the possibility for foreign attorneys to register with the Bar Association of Serbia and, after three years of continuous practice of law in Serbia, to represent parties in Serbia.

Arbitration proceedings in Serbia are governed by the Law on Arbitration (Official Gazette of RS No 46/2006), adopted in 2006. This Law is fully compliant with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration of 1985. However, the Law on Arbitration does not completely conform to the 2010 UNCITRAL Arbitration Rules, which prescribed many amendments. On the other hand, the mediation procedure is governed by the Law on Mediation in Dispute Resolution the application of which started as of 1 January 2015, when the Law on Mediation ceased to be valid. Unlike the previous regulations, the Law on Mediation in Dispute Resolution introduced important novelties. A major one is the regulation of mediation proceedings in disputes with a foreign element, known as international mediation and trans-border mediation in civil and trade disputes. Unlike provisions on international mediation that can already be used in international arbitration by applying the law designated by the parties, the application of provisions that regulate mediation in trans-border disputes has been postponed until Serbia's accession to the European Union. Even if it is the intent of the Law on Mediation in Dispute Resolution to relieve domestic courts and provide efficient resolution of disputes in Serbia by mediation, it is clear that the fulfilment of this goal requires not only the adoption of a new law, but also a number of additional activities, such as the promotion of mediation and good cooperation at all levels of a mediation proceeding. Mediation and arbitration in some matters (such as labour law, activities of tourist agencies, etc.) are governed by separate laws or regulations. Both arbitration and mediation are rarely used in practice, primarily due to lack of their promotion as a more efficient and cheaper dispute resolution alternative.

## Enforcement

The Law on Enforcement and Security came into force on 17 May 2011, and its application started on 17 September 2011 (i.e. on 17 May 2012 in relation to private bailiffs). Unlike previous solutions, the current Law on Enforcement and Security explicitly prescribes that the enforcement may also be conducted based on a foreign credible document, which greatly facilitated enforcement proceedings in case of non-fulfilment of obligations in international trade in goods and services. Latest amendments to the Law on Enforcement and Security have changed the procedure for the determination of jurisdiction of private bailiffs in the settlement of involving public utilities and services. As of 3 January 2015 the jurisdiction of private bailiffs is not being determined only by the registered seat of the enforcement debtor, but also by the Chamber of Bailiffs based on alphabetical order from the list of bailiffs. The aim of this amendment was to equally distribute cases between private bailiffs. In practice the Law on Enforcement and Security faced certain issues, which caused the need for substantial changes to this law. The new Draft Law on Enforcement and Security is cur-

rently up for public debate with no date set for its adoption. The Draft Law on Enforcement and Security expands the authorities of bailiffs (which in the future should be called "public bailiffs"), increases their disciplinary liability and the requirements for their appointment and preservation of office in the case of already appointed bailiffs. Therefore, in accordance with proposed amendments, in addition to the exclusive authority to collect public claims and other similar services, private bailiffs will get exclusive jurisdiction for the enforcement of claims in which the creditor is the state, autonomous province and local government unit. The Draft Law on Enforcement and Security provides two separate legal remedies, appeals and complaints, and introduces the possibility for bailiffs to issue official decisions (and not only "conclusions"), since it is considered that for the same procedures no difference should be made between decisions issued by the bailiff and those issued by the Court.

## POSITIVE DEVELOPMENTS

Most courts of general jurisdiction, as well as commercial courts, established online databases showing the status of pending cases. While it is notable that the databases have been improved in the previous period, in terms of precision and functionality, they still do not warrant full confidence. However, not all the courts have online databases such as the Administrative Court and the Constitutional Court of Serbia, Appellate Courts, Misdemeanour Courts and the Supreme Court of Cassation. Although the use of online databases greatly facilitates the daily work of attorneys and lawyers, the Commissioner for Information of Public Interest and Personal Data Protection has meanwhile banned any processing of data contrary to the Law on Personal Data Protection. Hence, unlike previous solutions when the database could be searched by personal name of the parties, as of 24 February 2014, the online databases solely allow the search by case file number in the competent court, and the data on the parties in the proceedings are not publicly available any more. In our opinion, this solution is too general, because litigations before commercial courts involve legal and not natural persons. Thus, when it comes to proceedings before commercial courts, all data on the parties in the proceedings should be made publicly available, as the Law on Personal Data Protection pertains only to individuals.

### Dispute Resolution

The current Law on Civil Procedure introduced some promising improvements in terms of the summoning and notification of parties and other participants in the proceedings, to prevent present abuses by the parties. Amendments to the Law on Civil Procedure of 2014, expanded the possibility of filing a revision as an extraordinary legal remedy by prescribing new situations when the revision is always allowed, as well as by reducing the threshold to EUR 40,000.00, i.e. to EUR 100,000.00 for commercial disputes (the stated amounts are calculated according to the middle exchange rate of the National Bank of Serbia on the filing date of the lawsuit). Even if the amendments to the Law on Civil Procedure of 2014 stipulate that in the first instance litigation proceedings are conducted by a (non-professional) chamber, consisting of one judge and two lay judges. However, the law further explicitly lists and places the greatest number of court disputes within the jurisdiction of a single judge, leaving relatively little room for trial by a trial chamber. The integration of the main hearing and evidence-presentation procedure are also notable improvements to a certain extent. In this regard, the court has an obligation to render a time frame for the main hearing and for producing evidence. However, this time frame is not very flexible, given that the course of litigation cannot always be predicted, whilst in practice judges often fail to comply with the established time frames or they determine unnecessarily long time frames of two or more years. This law establishes the liability of judges for breach of discipline, and they can be faulted over delays in the procedure. The law also imposes higher fines for parties that abuse the proceedings. The appellate courts also have a deadline to render an appellate decision – within nine months from the moment they receive the case files (only in case that the appellate court does not hold the hearing), and it is noteworthy that the presiding judges may be held accountable for breach of deadline. Finally, parties are provided with equal rights in remedial procedures, so that the deadlines for submitting legal remedies are the same as the deadlines for responding to such legal remedies (15 days for appeal and response on appeal). The circle of the authorised representatives of the party is extended by the amendment of the Law on Civil Procedure of 2014, and according to the latest solutions, a natural person may be represented by a lawyer, blood relative in the direct line, brother, sister or spouse, as well as by a representative from the legal aid unit of the local government who has a law degree and has passed the bar exam.

The current Legal Practitioners Law introduced the Bar Academy, which has only organized seminars ever since it was established. However, bearing in mind that the selec-

tion of lecturers and formation of departments was completed only recently, it is expected that towards the end of 2015 the Bar Academy will finally start providing specialized education for lawyers and postgraduate law school students. The attorney's exam, which includes content from the Code of Professional Ethics, Attorneys' Fees, the Legal Practitioners Law, and the Statute of the Bar Association of Serbia, is being successfully administered in practice.

### Enforcement

One of the expected positive developments is the introduction of private bailiffs, who conduct their activity either as sole traders or within a partnership. Their role is to increase the efficiency of enforcement proceedings, and the first private bailiffs started to work on 31 May 2012. The creditor is required to decide, already in the motion for enforcement, whether the enforcement will be conducted by the Court or by a private bailiff. If the enforcement proceedings were commenced before a private bailiff, the creditor may still decide to transfer their execution to the court. In such cases, the enforcement proceedings before private bailiffs are suspended. The Law on Enforcement and Security does not regulate the reverse situation, i.e. for an enforcement commenced before the court to be continued before the private bailiff, and the practise of courts in this matter differs. With the introduction of private bailiffs, the number of cases decided before the court has decreased, which should contribute to a better efficiency of the courts. The bailiffs have to fulfil special requirements, such as passing the bailiff's exam, possessing the qualifications required by the Law (i.e., a degree in law), and having the required working experience (a minimum of 2 years). They have exclusive jurisdiction over cases arising from debts incurred as a result of unpaid bills for public utilities and services, whereas the enforcement of court decisions in family matters, as well as the reinstatement of employees, is in the exclusive jurisdiction of the courts. All other areas foresee the competitive jurisdiction of the courts and private bailiffs. As the Draft Law on Enforcement and Security at the time of the writing of this article is still open to public debate, we cannot yet discuss the expected improvements.

## REMAINING ISSUES

The specialization of the portfolio of judges should be introduced in an efficient and definitive manner. Also, case files should be made more accessible to all interested parties. The hearings should be set in shorter time periods, and the duration of the appellate proceeding in practice should be synchronized with legal provisions.

The Law on Civil Procedure is a significant improvement relative to previous regulations, but still has many flaws. It is still applied sporadically, since judges are mostly overwhelmed by a backlog of cases. The electronic communication between the parties and the court is still not possible due to the lack of clear regulations and by-laws in this field and the lack of funds necessary for the technological equipment of the courts. The time frame, although potentially very promising in terms of efficient completion of litigation, is not flexible enough, since litigation is often unpredictable, and legal possibilities for extending deadlines are insufficient. On the other hand, judges either fail to comply with the time frame, or set unnecessarily long time frames of two or more years, which again contributes to the prolongation of the proceedings. Some of the deadlines are unrealistically short, and the deadline for providing evidence is too strict, which may lead to abuse by the parties. This is especially evident in cases with a foreign element. The law will most likely come into collision with international treaties dealing with the service of court documents – i.e., the 1954 Convention on Civil Procedure and 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters – in terms of the provisions on serving court documents to parties. The deadline to submit evidence by the end of the preliminary hearing should also be more flexible. Therefore, the court must be allowed to postpone a preliminary hearing in order to provide the parties sufficient time to address/respond to all the evidence submitted by the other party. The impression is that the current Law on Civil Procedure aims to speed up the procedure with restrictive deadlines, and put the merits of the matters at a disadvantage compared to the short procedural time limits which may ultimately result in the obstruction of justice.

The Law on Enforcement and Security should provide third parties who have rights over an asset subject to enforcement or security with efficient legal remedies. Also, in case of enforcement on the basis of a directly enforceable instrument (e.g., invoice), the creditor is not provided with a legal remedy in the case when the court issues an enforcement order, but subsequently cancels it upon objection of the debtor. Although the conditions for exercising legal remedies in the enforcement procedure are now stricter, in practice courts behave as if the old law were still in force. In such an event, the case is simply transferred to litigation.

In order to free up the dockets of courts, the possibility of concluding an arbitration agreement or initiating a medi-

ation process should be promoted to a greater extent. These proceedings are often more cost-efficient and less time-consuming than ordinary litigation, and both are available to foreign and domestic entities alike. However, there is room for improving the Law on Arbitration, given that it has not been harmonized with the latest, and more detailed, 2010 UNCITRAL Arbitration Rules, especially pertaining to interim relief, the absence of written form and the possibility of having an even number of arbitrators. Specifically, the Law on Arbitration implicitly provides for the possibility of electronic arbitration agreements and for the jurisdiction of an arbitral tribunal in rendering interim measures. However, the 2010 UNCITRAL Arbitration Rules contain explicit rules on electronic arbitration agreements and more detailed provisions on interim measures. Also, in 2010 UNCITRAL abolished the requirement for the written form of the arbitration agreement and introduced the possibility to have an even number of arbitrators (and not just odd, i.e. one or three arbitrators, as before). On the other hand, the proposed improvements regarding interim measures would have to be carefully harmonized with the provisions of the Law on Enforcement and Security regulating the same matters, in order to avoid any possible difficulties, including conflict with the rules on exclusive jurisdiction of state courts. Therefore, reasonable amendments to the Law on Arbitration, in order to comply with the new 2010 UNCITRAL Arbitration Rules, would be welcome.

## FIC RECOMMENDATIONS

- Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.
- Improve and justify the allocation of cases among courts and judges.
- Establish online databases in the remaining courts, and (re)enable the search based on the names of the parties in the proceedings before the commercial courts.
- Enactment of new amendments to the Law on Civil Procedure in order to assure flexibility of the time frame and deadlines for certain actions.
- Promote the possibilities and advantages of alternative dispute resolution (arbitration and mediation).
- Adopt amendments to the Law on Arbitration in order to comply with the 2010 UNCITRAL Arbitration Rules.

# LAW ON BANKRUPTCY

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The provisions on automatic bankruptcy in cases of a debtor's permanent insolvency should be returned to the bankruptcy regulatory framework, but in a form which would be in accordance with the Constitution of the Republic of Serbia. | 2012 | | | √ |
| The procedures initiated on the basis of the pre-packed reorganization plans should be followed carefully in order to determine whether the amendments to the Law on Bankruptcy will succeed to reduce the length of the procedure and diminish noted abuses by bankruptcy debtors. | 2014 | | | √ |
| Encourage bankruptcy debtors to initiate bankruptcy proceedings and contemporaneously file a reorganization plan, providing the opportunity to more companies to stay active instead of being definitely wound up. | 2010 | | | √ |
| Judges should be further educated and encouraged to use available legal means in order to prevent the debtors to abuse reorganization plans for the purpose of damaging creditors. | 2013 | | | √ |
| Encourage creditors to take a more active part in the bankruptcy proceedings, by filing a proposal for opening bankruptcy proceedings, and in particular, by participating in creditors' bodies. | 2011 | | | √ |
| Encouraging mediation in bankruptcy proceedings, whenever possible, with the aim of ensuring cost-efficiency and overall efficiency of bankruptcy proceedings. | 2011 | | | √ |

## CURRENT SITUATION

The last amendments to the Law on Bankruptcy were adopted and enacted in August 2014 by the Law on Amendments to the Law on Bankruptcy (Official Gazette of the Republic of Serbia, no 83/2014), introducing significant changes for the first time since this piece of legislation came into force.

The goal of the amendments to the Law on Bankruptcy was an elimination of issues noted in practice as a result of an imprecise and incomplete regulatory framework on bankruptcy, and acceleration of the bankruptcy procedure and the enabling of a more transparent way of settling creditors' claims.

According to the currently applicable Law on Bankruptcy (Official Gazette of Republic of Serbia, no. 104/2009, 99/2011 – other law, 71/2012 – decision of the Constitutional Court and 83/2014) most of the claims of related entities fall within the fourth creditors' rank (introduced by the last amendments to the Law), the purpose of which is to prevent the abuse of rights related to the claims of related entities. Also, related entities may no longer be elected to the Creditors' Committee, and in case of reorganization, related entities have to be classified in a separate class with no voting rights. Related entities engaged in lending activity within their ordinary course of business are exempted from the application of these provisions with respect to their claims arising from the granted loans.

Aside from the aforementioned, creditors who hold a security over the assets of the bankruptcy debtor, but have no simultaneous claim against the bankruptcy debtor (the security was established to secure the creditor's claim towards a third party), constitute a separate category of bankruptcy creditors, which are not considered secured creditors in bankruptcy proceedings. Instead they are treated as pledgees or mortgagees of the bankruptcy debtor, and are not obligated to file their claims, but are obligated, however, to inform the court about the presence of collateral on the assets of the bankruptcy debtor and the amount of outstanding claims from the relevant third party.

The Law on Bankruptcy contains provisions, the goal of which is the prevention of potential abuses of the reorganization procedure, and whose provisions prescribe the limiting of length of the ban on enforcement against a bankruptcy debtor's assets, and determining the term within

which the bankruptcy debtor has to file a new extraordinary report of the auditor, etc. The goal of these aforementioned provisions is to disable the use of pre-drafted reorganization plans as a means for postponing bankruptcy, thus avoiding an appropriate settlement of creditors' claims.

Furthermore, the Law on Bankruptcy widely determines the group of persons who cannot be appointed as bankruptcy administrators or independent experts monitoring the implementation of the reorganization plan.

The Law on Bankruptcy prescribes strict deadlines for bankruptcy proceedings, and in accordance with that prescribes that the contesting of creditors' claims is allowed until the conclusion of the examination hearing at which their applications for recognition of claims are considered; then specifying the starting date of the reorganization plan implementation; the date of the enactment of the legal consequences of the opening of bankruptcy proceedings; etc.

We are pointing out that the Law on Bankruptcy prescribes the exclusive international jurisdiction of the Serbian court for conducting bankruptcy proceedings against foreign entities that have a centre of main interests in the Republic of Serbia.

According to data released by the Bankruptcy Supervision Agency, on 4 May 2015 there were a total of 1,902 bankruptcy proceedings under way in the Republic of Serbia, with the exception of bankruptcy proceedings conducted under the Law on Enforced Collection, Bankruptcy, and Liquidation; and bankruptcy proceedings against banks, which are within the jurisdiction of the Deposit Insurance Agency.

During 2015, within the territory of the Republic of Serbia, 20 bankruptcy proceedings on average were being initiated each month, which is above the 2013 and 2014 average (about 10 bankruptcy proceedings per month), but still far below the average of 2012 (about 80 bankruptcy proceedings per month).

As mentioned in previous editions of the White Book, the decrease in the total number of proceedings over the last three years can partly be attributed to a minor recovery of the economy. However, this situation is primarily a result of the decision passed by the Constitutional Court on 12 July 2012 declaring the provisions of the Law governing "automatic bankruptcy" (a specific procedure in cases where a legal entity suspends all payments over a certain period of time) unconstitutional. The Law on Bankruptcy currently enacted does not contain provisions on automatic bankruptcy.

In February 2015, a new Law on Bankruptcy and the Liquidation of Banks and Insurance Companies was adopted and came into force. The new Law was adopted as part of a provisional change package with the goal of preservation of the financial and banking system of the Republic of Serbia; but also for the elimination of flaws of previous provisions, due to which bank bankruptcy proceedings lasted for years, thus generating high procedural costs.

## POSITIVE DEVELOPMENTS

In the period between the two editions of the White Book there were no new amendments to the Law on Bankruptcy. However, amendments to the Law on Bankruptcy that came into force in August 2014 introduced numerous improvements that emphasize transparency and the efficiency of bankruptcy proceedings, as well as the solution to many problems noted in practice that will hopefully be resolved with said amendments. Still, keeping in mind that amendments to the Law were adopted relatively recently, a longer practice regarding these amendments will be needed in order to see the results.

The adopting of the new Law on Bankruptcy and the Liquidation of Banks and Insurance Companies is also generally considered to be positive, but as with the amendments to the Law on Bankruptcy, given that the regulation has only recently been adopted, the actual range of this Law will be seen in the upcoming future.

## REMAINING ISSUES

As mentioned in the previous edition of the White Book, it seems that the scope of the amendments related to the reorganization procedure, and especially the reorganization procedure on the basis of a pre-drafted reorganization plan, where the abuse of loopholes by bankruptcy debtors is very common, will not be sufficient to avoid such abuse entirely.

In addition, the currently applicable Law on Bankruptcy does not regulate the automatic opening of the bankruptcy procedure in the case of a debtor's permanent insolvency.

Also, the Law on Bankruptcy does not clearly regulate

whether the fourth creditors' rank will receive payment before or after sub-ordinate creditors (that is, creditors who have agreed, before the opening of the bankruptcy proceedings, to be settled after a full settlement of claims of one or more bankruptcy creditors).

We also consider the provision treating the failure of a creditor to inform the court about the collection of its claim from the guarantor or main debtor within eight days as a criminal offence to be too strict. Specifically, the nature of such a failure to act corresponds more to that of a misdemeanour or commercial offence.

Finally, many other questions arise with regard to improving and elaborating upon corresponding regulations in practice; such as the possibility and method of enjoying secured-creditor rights from a pledge on claims; the possibility of disposing with the subject of an excluding request during a dispute regarding such a request; the status of foreign arbitration proceedings in the case of an opening of bankruptcy proceedings towards the respondent; and others.

In any case, the hope remains that these remaining issues will be resolved by the planned comprehensive amendments to the Law scheduled for this year.

## FIC RECOMMENDATIONS

- The provisions on automatic bankruptcy in the case of a debtor's permanent insolvency should be returned to the bankruptcy regulatory framework, but in a form that would be in accordance with the Constitution of the Republic of Serbia.
- The procedures initiated on the basis of the pre-drafted reorganization plans should be followed carefully in order to determine whether the amendments to the Law on Bankruptcy will succeed in reducing the length of the procedure as well as diminish noted abuses by bankruptcy debtors.
- Bankruptcy debtors should be encouraged to simultaneously initiate bankruptcy proceedings when filing a reorganization plan, providing an opportunity for more companies to stay active instead of being definitely wound up.
- Judges should be further educated and encouraged to use the available legal means in order to prevent debtors from abusing reorganization plans for the purpose of damaging creditors.
- Creditors should be encouraged to take a more active part in bankruptcy proceedings by filing a proposal for the opening of said proceedings, and in particular, by participating in creditors' bodies.
- Mediation should be encouraged in bankruptcy proceedings whenever possible, with the aim of ensuring cost-efficiency as well as the overall efficiency of bankruptcy proceedings.
- An overall analysis of actual problems arising over the course of the application of the Law on Bankruptcy is needed; and, with respect to the opinions and judgments of the Appellate Commercial Court, when they occur, preparation of the appropriate amendments to the Law on Bankruptcy is needed as well.

# INTELLECTUAL PROPERTY

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| State authorities should continue and enhance efforts to combat online copyright infringements, especially with respect to the software, music and film industries. | 2010 | | √ | |
| Inspection of companies' compliance with software licensing requirements, which the Tax Administration has been conducting for several years with significant results, should be continued and intensified, especially by the special unit within the Tax Administration. | 2009 | √ | | |
| More efficient and prompt implementation of regulations for the protection of IP rights. | 2008 | | √ | |
| State authorities should offer more incentives to intellectual property owners in their creative sphere. | 2010 | | √ | |

## CURRENT SITUATION

The intellectual property legal framework has generally remained the same as it was a year ago, with the exception of the enactment of amendments to the Law on Legal Protection of Industrial Design. This framework mainly consists of the substantive laws enacted in 2009 and afterwards, which regulate legal relations pertaining to inventions, topographies of semiconductor products, literary, scientific and artistic works, computer programmes, symbols, names and images used in commerce. Hence, the following laws, which are to a large extent harmonized with the relevant international conventions, with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and EU standards, contain the principal substantive provisions regulating intellectual property in Serbia:

- Law on Trademarks (2009, amended in 2013);
- Law on Indications of Geographical Origin (2010);
- Law on Copyright and Related Rights (2009, amended in 2011 and 2012);
- Law on Legal Protection of Industrial Design (2009 amended in 2015);
- Law on the Protection of Topographies of Semiconductor Products (2013);
- Law on Patents (2011);
- Law on Protection of Business Secret (2011).

The Law on Trademarks governs the acquisition and protection of rights with respect to marks used in the trade of goods and/or services. A trademark is defined as a right that protects a mark used in the course of trade to distinguish goods and/or services of one individual or legal entity from identical or similar goods and/or services of another individual or legal entity. The text of the current law is in accordance with the Madrid Agreement Concerning the International Registration of Trademarks, as well as with the Protocol to the Madrid Agreement.

The Law on Indications of Geographical Origin regulates the acquisition and legal protection of indications of geographical origin (appellations of origin and geographical indications), in accordance with the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The Law on Copyright and Related Rights stipulates the rights of authors of literary, scientific and artistic works, computer programmes, as well as rights related to copyright: rights of performers, producers of phonograms, videograms, broadcasts and databases, and publisher's rights (rights of the first publisher of a free work and rights of the publisher of printed editions).

The Law on Legal Protection of Industrial Design governs the acquisition of the rights to the external appearance of an industrial or handicrafts product, (defined as the overall visual impression the product makes on an informed consumer or user), and the protection of those rights.

The Law on the Protection of Topographies of Semiconductor Products regulates the subject matter and requirements for the protection of topographies of semiconductor products; the rights of creators and ways to exercise them; the rights of companies and other legal entities in which the topography was created; and the limitations in relation to the protection of such rights.

The Law on Patents regulates the legal protection of inventions in the field of technology, which are new, involve an inventive step and are subject to industrial application.

Finally, the Law on Protection of Business Secret regulates the legal protection of information which constitutes a business secret (especially financial, economic, business, scientific, technical, technological and production data, studies, tests, research results etc.) from all acts of unfair competition.

The enforcement of the substantive laws listed herein depends on several important laws setting forth the procedural and organizational provisions for the protection of intellectual property rights and the prosecution of infringers, the most important ones being the following:

- Law on Organization and Competencies of State Authorities in Combating High-tech Crime (2005, amended in 2009);
- Law on Special Powers for Efficient Protection of Intellectual Property Rights (2006, amended in 2009);
- Criminal Code (2005, amended in 2009, 2012, 2013 and 2014);
- Customs Law (2010, amended in 2012 and 2015); and
- Law on Optical Discs (2011).

The institutions that protect intellectual property rights are the Intellectual Property Office (hereafter referred to as "IP Office"), as well as the relevant ministries and other state bodies (with courts being the most important ones).

## POSITIVE DEVELOPMENTS

The most notable positive development since the last edition of the White Book is the enactment of amendments to the Law on Legal Protection of Industrial Design. The amended version of the Law came into force on 22 May 2015, and was adopted to eliminate certain shortcomings related to terminology, and improve accuracy of interpretation and efficiency of implementation of the Law. One of the major changes concerns the duration of the period for which the rights are granted, which has now been extended from one to five years. In addition, changes in the part regulating civil protection now provide a more detailed definition of the rights which can be exercised by filing a lawsuit, initiating preliminary injunctions and securing evidence, all with the aim of establishing a more efficient system of protection of industrial designs.

In addition, certain amendments to the Law on the legal protection of industrial designs were created as an expression of the need to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, as well as with the Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs.

It is worth mentioning that significant improvements were registered with regard to the length of court proceedings, i.e. attempts to accelerate proceedings by creating special court councils for intellectual property within the existing courts. Specifically, in line with similar practices in the European Union, new laws in relevant areas have consigned matters involving intellectual property rights to the exclusive jurisdiction of certain courts. With respect to that, the Law on Seats and Territories of Courts and Public Prosecutors (2013) stipulates the exclusive jurisdiction of the Commercial Court in Belgrade over disputes concerning copyright and related rights and protection and use of inventions, industrial designs, models, samples, trademarks, geographical indications, topographies of integrated circuits, or topography of semiconductor products and plant breeder, when the parties to the dispute are legal entities. Similarly, following amendments to the Law on Courts (2008, amended 2013), the Higher Court in Belgrade was given jurisdiction over disputes concerning copyright and related rights and protection and use of inventions, industrial designs, models, samples, trademarks, geographical indications, topographies of integrated circuits, or topography of semiconductor products and plant breeders, except in cases that fall under the jurisdiction of another court when one of the parties in the proceedings is a natural person.

The purpose of having specialized courts is to standardize judicial practices in the field of intellectual property rights, to ensure further specialization of judges and to generally accelerate proceedings.

## REMAINING ISSUES

Despite the fact that the relevant intellectual property legislation has been in place in Serbia for several years already, and is generally in line with European Union and international standards, the efficiency of its enforcement is still not satisfactory. The latter is also a matter of effective co-operation between the competent state authorities and the owners of intellectual property rights (a positive example is the successful co-operation between the Tax Administration within

the Ministry of Finance and the Market Inspection within the Ministry of Trade, Tourism and Telecommunications with the Business Software Alliance). However, internal organizational and possibly personnel changes within the state authorities in charge of intellectual property infringement seem necessary to lower the infringement rate further.

## FIC RECOMMENDATIONS

- State authorities should enhance efforts to combat online copyright infringements, especially with respect to the software, music and film industries.
- Inspection of companies' compliance with software licensing requirements, which the Tax Administration has been conducting for several years with significant results, should be intensified, especially by the special unit within the Tax Administration.
- More efficient and prompt implementation of regulations for the protection of IP rights.
- State authorities should offer more incentives to intellectual property owners in their creative sphere.

# PROTECTION OF COMPETITION

## COMPETITION LAW

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The Commission should apply EU rules when assessing competition issues to avoid inconsistencies in its application of the Law. When applying such rules, exact cases are to be mentioned in the Commission's decision. | 2008 | | √ | |
| In order to enhance transparency and legal certainty, clear guidelines and notices interpreting the Commission's understanding of certain terms should be drafted by the Commission. This applies to the necessity of guidelines and notices relating to restrictive agreements, notifying obligations and the concept of "implementation of a concentration", etc. The FIC and other interested stakeholders should have the opportunity to participate in the drafting process. | 2010 | | √ | |
| For legal certainty, aside from the Guidelines, the Commission needs to adopt by-laws defining certain categories core to the anti-trust framework, e.g. dominant position, the leniency procedure in more detail, and excluding certain types of agreements with respect to specific industries, i.e., insurance and the auto industry. | 2011 | | √ | |
| Judges of the Serbian Administrative Court should complete advanced training in both competition law and economics. All rulings of the said court should be publically available. | 2010 | | √ | |
| The Commission should make its practice consistent towards all undertakings. Competition advocacy certainly represents one of the strongest means for achieving such a goal. | 2008 | | √ | |
| The Fee Schedule must decrease fees to a reasonable level in line with comparable jurisdictions in Central and South East Europe. | 2009 | | | √ |
| All the Commission's instructions, notices and guidelines should be published in the Official Gazette of the Republic of Serbia and/or the Commission's website. In addition, non-confidential versions of all decisions of the Commission, as well as the Administrative Court rulings related to competition issues should be publically available. | 2011 | | √ | |
| The right balance between the Commission's role to sanction illegal behaviour and to promote competition rules is to be determined, i.e. competition advocacy should not be overlooked and the Commission should promote competition law principles more effectively. | 2013 | | √ | |

### CURRENT SITUATION

At the end of 2014 the Serbian Parliament appointed Professor Miloje Obradović, PhD, as the new President of the Commission for Protection of Competition (the "Commission"), and the four remaining members of the Commission's Council. Certain improvements in the Commission's work are already visible.

The positive developments are mostly related to the necessary legal clarifications of the existing competition rules regulating the so-called "binding" proposals, as well as relations between competitors in the public procurement proceedings. It is worth mentioning that in November 2014, for the first time, the Commission implemented the "binding" procedure introduced by the 2013 amendments to the Law on Protection of Competition.

However, the Commission's still lacks public support for the implementation of the leniency programme, and due to the lack of clear interpretation of the existing rules the business community is not widely open to the use of this institute. Also, in several new decisions, the Commission made a reference to EU practices, but without specifying any relevant cases.

Formalistic approach of the Commission when deciding on merger notifications remains an issue. Nevertheless, the Commission published the new draft Decree on the Form and Content of Merger Notifications (the Merger Control Regulation) and invited the legal and business community to provide comments. The Foreign Investors Council submitted 32 comments on the draft Merger Control Regulation and the Commission accepted 90% of the Council's comments (75% were accepted in their entirety and 15% partially). We are very pleased to see such a positive development, which signals a long-awaited shift to an open and transparent dialogue between the Commission and the business community. We expect the new Merger Control Regulation to simplify the merger control proceedings and to introduce the so-called summary proceedings (Form CO, the official form for standard merger notifications in the EU), especially in cases which do not raise any competition concerns on the Serbian market.

While most of the Commission's decisions are entirely publicly available (in particular the merger control clearances), which was praised as a positive development, not all relevant second instance court rulings on the Commission's decisions, and the Commission's official opinions and decisions on individual exemptions, are publicly available, and this remains a major impediment to ensuring transparency and wide access to the information related to and the reasoning behind certain key decisions.

The Commission's fees have not changed and they are still very high.

## POSITIVE DEVELOPMENTS

Changes in the composition of the Commission's Council are yet to be evaluated, but the Commission's work has already visibly improved since the appointment of the new chairman and members of the Commission's Council. These changes certainly brought the protection of competition back in the focus of the business community, including foreign investors.

Successful implementation of the binding procedure by the Commission can be considered as a good sign that the Commission is following the EU path, and that it could become an important instrument in the enforcement of the Serbian competition laws.

Another really positive development is the Commission's public call to inviting relevant stakeholders to submit their comments on the draft Merger Control Regulation. The Commission has clearly shown, during the public debate on the draft Regulation, that it is ready and willing to openly and transparently discuss new laws and by-laws with the business community, and consequently to acknowledge or accept the comments on its draft laws.

In addition, even though the periodically published opinions and decisions of the Commission generally improve the current legal framework and ensure a better understanding of competition rules, greater effort should be invested in the publication of current (and comprehensive) guidelines and recommendations by the Commission.

## REMAINING ISSUES

The proceedings before the Commission still do not provide for a sufficient guarantee of all procedural rights of the parties. The Commission's serious lack of requisite economic knowledge and related methods is still apparent, but this situation is expected to improve as the Commission has hired several economists in the past year. This will, hopefully, also motivate the Commission to use economic tests confirmed in competition protection practices, and put more effort into conducting a proper analysis of market conditions.

This is of particular importance as the Competition Protection Law bestows significant powers on the Commission, so legal certainty and due processes are of the essence. On the other hand, judges of the Administrative Court still need comprehensive knowledge in the areas of competition law and economics to be able to interpret the Commission's arguments and decisions properly. Still, decisions by the Administrative Court often lack a proper statement of reasons, limiting their scope to repeating the Commission's findings, without analysing the arguments of the parties. This is a severe shortcoming, as it prevents proper argumentation and development of practice and jeopardizes proceedings in cases when an extraordinary legal remedy is lodged. This is of considerable importance for establishing judiciary oversight of the Commission's work. Otherwise, the Commission would be in the position to misuse its powers and independence.

A dialogue among all relevant stakeholders, including a proper dialogue between the private sector and the Commission, still requires certain improvements. The Commission's website, as a potentially valuable source of information and a means of communicating with all stakeholders, is still not well organized and often does not provide updated information. Undoubtedly, greater transparency would ensure consistent practices and increase predictability for all market participants. The same applies to the general legal opinions issued by the Commission. Furthermore, while the Commission is particularly active in targeting the private sector, it would appear that it is much more tolerant of state-owned or public enterprises, opting for an "educational", instead of a "fine first" approach in the case of the latter.

## FIC RECOMMENDATIONS

- The Commission should apply EU rules when assessing competition issues, to avoid inconsistencies in its application of the Law. When applying such rules, concrete cases should be mentioned in the Commission's decision.
- In order to enhance transparency and legal certainty, clear guidelines and instructions for interpreting the Commission's understanding of certain terms should be drafted by the Commission. This applies to the need for guidelines and instructions relating to restrictive agreements, notifying obligations and the concept of "implementing a concentration", etc. The FIC and other interested stakeholders should have the opportunity to participate in the drafting process.
- For legal certainty, aside from the Guidelines, the Commission needs to adopt by-laws defining certain categories core to the anti-trust framework in more detail, e.g. dominant position, the leniency procedure, and excluding certain types of agreements with respect to specific industries, i.e., insurance and the auto industry.
- Judges of the Serbian Administrative Court should complete advanced training in both competition law and economics. All rulings of the said court should be made publically available.
- The Commission should make its practice consistent towards all undertakings. Competition advocacy certainly represents one of the strongest means for achieving such a goal.
- The Fee Schedule must decrease fees to a reasonable level in line with comparable jurisdictions in Central and South East Europe.
- Non-confidential versions of all decisions and official opinions of the Commission, as well as the Administrative Court rulings related to competition issues should be made publically available.
- The right balance must be found between the Commission's role to sanction illegal behaviour and to promote competition rules, i.e. competition advocacy should not be overlooked and the Commission should promote competition law principles more effectively.

# STATE AID

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Consistent and effective application of regulations with respect to state aid, i.e. practical application of standards and practices of the European Commission in state aid control. | 2011 | | | √ |
| Strengthening of independency and transparency of the Commission for State Aid Control. | 2009 | | √ | |
| Drafting a strategy and programme for granting state aid – reduction of sectorial and regional aid in comparison to horizontal aid. | 2014 | | | √ |
| Pressure by the Commission for State Aid Control (and the professional community) on public authorities to file notifications timely, so that the Commission is able to promptly commence with reviewing process. | 2011 | | √ | |
| Effective state aid control – utilizing different mechanisms in order to monitor state aid allocation, and also imposition of sanctions for prohibited granting of state aid. | 2014 | | √ | |
| Education of state authorities and beneficiaries of state aid with respect to the procedure and purpose of granting state aid - raising public awareness on the abuses of state aid, and its positive effects, in cases of grants compliant with the relevant regulations. | 2014 | | √ | |

## CURRENT SITUATION

The legal framework regulating the granting of state aid in the Republic of Serbia consists of the Law on State Aid Control, the Regulation on the Rules for Granting State Aid, and the Regulation on the Rules and Procedure for State Aid Notification. In 2013, the amendments to the Regulation on the Rules for Granting State Aid were notable, concerning the rules on granting de minimis state aid and state aid granted for services of general economic interest.

According to the last publicly available edition of the Commission for State Aid Control's Annual Report, the value of state aid granted in 2013 amounted to EUR 720 million, which is a decrease of 7% in comparison to the total state aid granted in 2012; i.e. a decrease of 1% in comparison to the same parameter from 2011. State aid as a percentage of GDP in 2013 amounted to 2.25%, which is lower than in 2012 and 2011, when this figure amounted to 2.60%.

The most represented instrument of state aid in the last publicly available report of the Commission for Control of State Aid is subsidies, with a participation of 63.6% in the sectoral state aid (agriculture, mining, and traffic). The second were tax incentives with a participation of 32.3%, while favourable loans were third with a participation of 4.1%.

## POSITIVE DEVELOPMENTS

The amendments to the Regulation on the Rules for Granting State Aid from November 2013 stipulate that de minimis state aid may be granted as compensation for performing services of general economic interest, up to a maximum amount of EUR 500,000. Services of general economic interest are activities wherein the quality, manner of providing services, or their pricing is regulated or controlled by a public authority (e.g. communal services). An example of a service of general economic interest could be the construction of a broadband network infrastructure to provide Internet access in sparsely populated areas; i.e. areas where the construction of such infrastructure would not be profitable for private investors. The aforementioned changes were made in order to harmonize Serbian law with the European Commission Regulation of 25 April 2012, concerning de minimis state aid for services of general economic interest.

The European Commission stated in its report on Serbia's progress in 2014 that headway was made in state aid con-

trol. The strengthening of the capacities of the Commission for the Control of State Aid, as well as the development of the mechanism for tracking the accumulation of de minimis aid, were especially highlighted. The necessity for strengthening the Commission for the Control of State Aid is still needed in order to gain more effectiveness of the control of state aid.

Continuous reporting of the Commission for State Aid Control on their work, as well as on the general situation in Serbia regarding state aid granting and control, in the form of annual reports available on the website of the Ministry of Finance, is a positive step towards greater transparency, accessibility of information, and control of state aid in the Serbian market.

## REMAINING ISSUES

As the Republic of Serbia is closing in on EU membership, improving the situation in the field of state aid becomes imperative, in terms of full implementation of the relevant legislation. Currently, the state not only contributes a substantial amount of budgetary funds to keep certain state-owned companies running, but also provides other benefits, such as tax write-offs and debt write-offs for various communal services, even going so far as to directly fund employee salaries in these companies. Such treatment of state-owned companies significantly restricts competition in the market and places other market participants at a disadvantage.

Among other problems, the European Commission highlighted in its report on Serbia's progress in 2014 that it is necessary to harmonize the programs of fiscal aid with the EU acquis communautaire. The European Commission also stated that it is necessary to abolish the practice of exempting companies in restructuring and privatization processes from the rules for granting state aid.

With respect to granting state aid, the European Commission highlighted as a specific omission the lack of the allocation of resources for stimulating research and development, employment, training, and other types of horizontal state aid in 2012. Instead of allocating resources for horizontal state aid (which, according to the Commission for State Aid Control's Annual Report amounted to 13.6% of total state aid granted), sector state aid is still prevailing (amounting to 22% of total state aid granted). Regional state aid accounts for the most significant part of state aid granted, with a share of 35.8% of total state aid.

The European Commission recommended that EU member states enhance their efforts in reducing total state aid granted, and to additionally focus on discontinuing support to individual companies and sectors, and instead encourage horizontal goals, such as employment, regional development, environmental protection, training, research and development. However, in Serbia, the biggest disbursements are intended for individual companies and sectors; for example, in 2013 EUR 0.1 million was allocated for research and development (as subsidies), which is less than in 2012 and 2011.

Vertical state aid (direct granting of state aid to individual enterprises) is a significant challenge for the Serbian budget and market competition, in particular in the case of companies that cannot successfully compete on the market, even with such aid. Such allocation of state aid not only places other market participants in an unequal position (directly distorting competition), but also wastes limited budgetary resources (i.e., the contributions of taxpayers). The issue of controlling state aid is further complicated by ad hoc state aid where, under unclear conditions and without a transparent system, the state decides to grant aid to specific companies. For example, notable criticism has been levied on the governmental decision to subsidize the purchase of Serbian-made cars, regarding the economic justifiability and equal treatment of car production and sale market players by the state.

The Commission for State Aid Control is facing the problem of a large number of state aid notifications decided in ex post control proceedings. This additionally complicates a prompt response of the Commission for State Aid prior to such aid being granted, which causes additional pressure on the Commission. While the importance of the timely filing of state aid notifications is undeniable, state institutions violate the regulations and further hamper an adequate response by the Commission. It is noticeable that the Commission for State Aid Control never imposed any measure for returning the granted state aid, which brings the independence and integrity of the Commission itself into question. From the institutional side, the status of the Commission for State Aid Control as a governmental body primarily composed by representatives of different ministries rather than an independent authority can still bring its decision-making independence into question. Although certain steps have been taken, the Commission's current capacity is still not sufficient for its important role.

The use of state aid as a tool for strengthening the competitiveness of the economy and to improve the economic structure of society is necessary. State aid policy must become predictable and consistent. Clear plans and programmes, based on which companies and the public can be informed, have to be adopted. Investments in the development of underdeveloped regions, as well as pinpointing areas to strengthen competitiveness, are essential starting points for achieving the clear and cost-effective granting of state aid. A lack of transparency regarding contracts and negotiation procedures in relation to capital infrastructure investments enables potential misallocation of budgetary funds and a distortion of competition on the market; i.e. produces legal uncertainty regarding the role and responsibility of the state on the Serbian market. The inclusion of both state aid beneficiaries and the general public is of great importance in drafting state aid policy, so as to be able to jointly reach specific, predictable, and effective solutions. The general public has to be involved primarily through an extensive public discussion of strategic policies and tailored solutions. Certainly, the most important thing in building an efficient state aid system is the control of state aid granting, to prevent abuse, and increase transparency. An independent Commission for State Aid Control is the key for the realization of the goals set forth.

## FIC RECOMMENDATIONS

- Consistent and effective application of regulations with respect to state aid, i.e. practical application of standards and practices of the European Commission in state aid control.
- Strengthening of independency and transparency of the Commission for State Aid Control.
- Drafting a strategy and programme for granting state aid – reduction of sector and regional aid in comparison to horizontal aid.
- Pressure by the Commission for State Aid Control (and the professional community) on public authorities to file notifications timely, so that the Commission is able to promptly commence with reviewing process.
- Effective state aid control – utilizing different mechanisms in order to monitor state aid allocation, and also impose sanctions for the prohibited granting of state aid.
- Harmonization of the fiscal policy with the EU acquis communautaire.
- Abolish the practice of exempting companies in restructuring and privatization from state aid rules.
- Education of state authorities and beneficiaries of state aid with respect to the procedure and purpose of granting state aid - raising public awareness on the abuses of state aid, and its positive effects, in cases of grants compliant with the relevant regulations.

# CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

## CONSUMER PROTECTION

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Adoption of by-laws within 6 months of the date of entry into force of Law. | 2014 | | √ | |
| Further efforts towards the harmonization with international and EU principles. | 2011 | | √ | |
| Establishment of a Sector for Consumer Protection within the Ministry, as the main governmental body in charge for consumer affairs. | 2013 | √ | | |
| Enlargement of membership within the National Council for Consumer Protection. | 2014 | | √ | |
| Building the capacity, expertise and role of consumer NGOs. | 2014 | | √ | |
| Continuing work on consumer education and the implementation of the provisions of the Law concerning the inclusion of topics related to consumer protection in the curriculum for primary and secondary education. | 2014 | | √ | |
| Promoting consumer protection rights and interests through local level institutions with the aim to educate, inform, consult and involve the consumers in the decision-making process. | 2013 | | √ | |
| Continuation of professional staff training within the ministries and inspections, non-judicial and judicial bodies, consumer associations and other market participants. | 2014 | | √ | |

### CURRENT SITUATION

In June 2014 the Serbian Parliament adopted a new Law on Consumer Protection (the "Law") effective from September 2014. This is the third consumer protection piece of legislation aimed at further improving the protection/position of consumers and strengthening the so-called positive discrimination in favour of consumers related to the purchase of goods and services, and reducing difficulties in terms of realization of consumers' rights in practice.

In this respect, the findings and recommendations in this edition of the White Book cannot be seen as final, because less than one year of practical application of the Law is too short a period for traders to fully comply with its provisions and for consumers to utilize its full potential. As a result, it is expected that the period ahead of us will show to which extent policy makers have succeeded in their intention.

The starting point for the adoption of the Law is the 2013-2018 Consumer Protection Strategy. Apart from elements of the acquis communautaire, the provisions of the Law are inspired by and based on Article 78 of the Stabilization and Association Agreement, which stipulates that the contracting parties will promote and provide, inter alia, supervision in the implementation of rules by competent authorities and enable simple and efficient consumer disputes resolution.

The Law has been effective since September 2014, but the legislator has not yet adopted all the prescribed by-laws necessary to regulate in more detail certain matters, amongst others the conditions for an out-of-court settlement of consumer disputes, as well as the rules and operational criteria for bodies resolving such disputes. It is essential that all market participants promote an alternative consumer dispute resolution, in order to raise the awareness of consumers about this possibility and its practical use.

### POSITIVE DEVELOPMENTS

We have seen a significant legal novelty, and that is the introduction of the concept of protection of the collective interests of consumers, which aims to sanction unfair business practices and unfair contract terms. Under the Law, if

the consumer protection associations duly registered with the Ministry of Trade, Tourism and Telecommunications (the "Ministry"), establish that a certain trader has breached the collective interests of consumers by unfair business practices or by contracting unfair terms, they are entitled to approach the Ministry with a request to initiate proceedings in order to protect such interest. On the basis of such a request, or by virtue of its office, (if it determines in the inspection process that an act or omission of market participants endangers or threatens to endanger the collective interest of consumers), the Ministry may initiate administrative proceedings, or require the trader to cease violation of collective interest of consumers. This seems to be a significant improvement in comparison to the previous law.

In accordance with EU guidelines on active consumer protection policy, with the acquis communautaire, and the Stabilization and Association Agreement, the Law introduces significant innovations relating to effective resolution of consumer disputes. Court fees are waived for consumer disputes with a value not exceeding RSD 500,000, to encourage consumers to "fight for their rights" through the courts, which has not been the case until now (the court fees were disproportionate to the value of the dispute and often a reason for the reluctance of consumers to protect their rights in court). As for the out-of-court settlement procedure for consumer disputes, the Law stipulates that the Ministry publicize a list of bodies that meet the requirements for such a procedure. An out-of-court procedure for the settlement of consumer disputes is subject to the provisions of the law governing mediation, arbitration, as well as other appropriate rules. The Law introduces a stronger role for the autonomous province and local government, which, among other, reflects support for the establishment and operation of bodies for out-of-court settlement of consumer disputes in the territory of the autonomous province and local government.

The Law further abolishes the possibility to impose repair of goods on the consumer within the first 6 months of purchase, which means that repair is possible only with the express consent of the consumer. In case of lack of conformity of the goods or services, within 6 months of purchase, the consumer is entitled to choose between a replacement, a corresponding price reduction, or a refund. A significant improvement introduced by the Law is the expansion of misdemeanour liabilities of traders, to include cases when the trader does not resolve a complaint within the term and in a manner acceptable to the consumer. Likewise, unfair business practices are now included in the misdemeanours provisions.

Traders are required to keep records on received complaints, and there is also a rule prescribing that the inability of consumers to deliver the packaging of the goods to the trader cannot be an obstacle for resolving a complaint or a reason for refusing to remedy the lack of conformity. The deadline for responding to a complaint has been reduced from 15 to 8 days, whereby a deadline for the resolution of a complaint acknowledged by the retailer cannot exceed 15 days from the date of filing of the complaint, or 30 days for technical goods and furniture.

The trader is obliged to deliver the goods to the consumer, or a document that entitles the latter to take possession of the goods without delay but no later than 30 days from the date of conclusion of the contract, unless otherwise agreed. If the trader fails to fulfil this obligation within the stipulated/agreed time and where performance within the deadline is a significant contractual element, or when a consumer has notified the trader that the delivery within the agreed deadline is of vital importance to him, the contract is terminated by force of law. The consumer may (but not necessarily) give the trader additional time to fulfil the contract, and if the goods are not delivered even by that date, again, the contract will be terminated by force of law. In the event of termination of the contract, the trader must immediately, and no later than three days from the date of termination of the contract, reimburse the consumer for the full amount paid under the contract.

The Law creates the basis for a higher level of consumer protection in certain fields, e.g. contracts for the sale of goods and services of general economic interest. Providers of services of general economic interest are required to form a committee for resolving complaints, partly consisting of representatives of consumer organizations registered with the Ministry.

An important novelty within the Law prescribes the inclusion of education on the role and the basic principles of consumer protection in the elementary and secondary school curricula, and the anticipated cooperation of the Ministry and consumer organizations with schools in educating students on consumer rights and responsibilities.

In relation to the previous law, this Law introduces new and expands current powers of market/tourist inspectors, aiming to resolve problems that occurred when most of the powers were transferred to consumer organizations whose capabilities were insufficient for the effective resolution of consumer complaints at that point.

## REMAINING ISSUES

Although the Law formally established greater balance in the relationship between traders and consumers, the question is how and how well the Ministry will be able to reconcile their interests in practice, without discriminating the position of one in favour of the other. Since the Law has been in effect for a relatively short period of time, any practical problems in its implementation are yet to become manifest in the future, and will therefore be analysed in detail in the next edition of the White Book.

### FIC RECOMMENDATIONS

- Adoption of the remaining by-laws within 6 months of the date of entry into force of Law.
- Further efforts towards the harmonization with international and EU principles.
- Enlargement of membership within the National Council for Consumer Protection.
- Building the capacity, expertise and role of consumer NGOs.
- Continuing work on consumer education and the implementation of the provisions of the Law concerning the inclusion of topics related to consumer protection in the curriculum for primary and secondary education.
- Promoting consumer protection rights and interests through local level institutions with the aim to educate, inform, consult and involve the consumers in the decision-making process.
- Continuation of professional staff training within the ministries and inspections, non-judicial and judicial bodies, consumer associations and other market participants.

# PROTECTION OF USERS OF FINANCIAL SERVICES

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Further harmonization of regulations on the protection of financial services consumers with international and EU principles. | 2012 | | √ | |
| Timely adoption of remaining by-laws required under the Law. | 2012 | √ | | |
| Further education of users of financial services regarding their rights. | 2014 | | √ | |

## CURRENT SITUATION

The Law on Protection of Financial Services Consumers (hereinafter: the "Law") became applicable on 5 December 2011 (save for certain provisions, which became applicable on 1 January 2012). The Law governs the rights of users of financial services provided by banks, financial leasing providers and vendors, as well as the terms, conditions and manners of exercising and protecting such rights. All aspects of protection of financial services consumers not regulated under the Law are governed by other laws applicable to consumer protection, operations of banks and leasing providers, as well as

in the areas of payment transactions and contracts and torts, while starting on 1 October 2015 the aspects of consumers protection not regulated under the Law will be governed by provisions and regulations regulating operations of banks, financial leasing and protection of personal data, as well as the provisions of the law regulating contracts and torts.

Namely, more than three years after the Law became applicable, 18 December 2014, the Act on amendments and supplements of the Law on Protection of Financial Services Consumers became applicable on 27 March 2015, save for certain provisions related to the Law on payment services, which shall become applicable on 1 October 2015 as well as the provisions of Article 34 which will become applicable from the date of accession of the Republic of Serbia to European Union.

The evident intention of the legislature in enacting this Law in 2011 was to protect individuals as consumers of financial services, i.e. individuals who use or have used financial services (or have addressed the financial services provider in that respect) for purposes other than their business or other commercial activity. To that end, the Law did not initially apply to legal entities or sole proprietors. Amendments and supplements to the Law have widened the definition of a financial services consumer, in the way that apart from individuals, the entrepreneurs and farmers (holders or members of the family economy) are introduced so are subject to this Law.

According to the Law on amendments and supplements of the Law, banks and financial leasing providers are obliged to apply the exchange rate used at the moment of granting the loans, leasing respectively (buying, middle, selling exchange rate) or to apply the type of the currency exchange rate which is more favorable for the financial services consumers than the one used at the moment of granting the loans for the amortization of liabilities of financial services consumers, being mature as at 27 March 2015 under the loan contracts denominated in foreign currency, or under the leasing contracts denominated in a foreign currency concluded before the application of the Law (before 5 December 2011).

Additional novelty is that, should a financial services consumer require to be provided/approved a service in the way to be denominated in a foreign currency or RSD counter value, the provider and financial service consumer are not allowed to define freely the foreign currency but the National Bank of Serbia shall prescribe the List of foreign currencies to be applied in the named situations.

The provisions related to the mandatory content of financial contracts have been detailed as well as the manner of notifying financial services consumers, the adopted amendments have also facilitated and shortened the procedure for dissatisfied financial services consumers cutting down the term defined for the bank to respond to a complaint from 30 to 15 days, after which the complaint shall be forwarded to the National Bank of Serbia. Enacting the amendments and supplements of the Law the National Bank of Serbia has been given a role of a mediator in solving out-of-court disputes between the providers and users of financial services, and the significance of the National Bank of Serbia at protecting rights of financial services consumers has been broaden additionally.

However, one of the major aspects of the Law that it does not allow a bank to assign claims stemming from loan contracts, overdraft contracts, credit card issue and use contracts and account opening and maintenance contracts, to anyone other than another bank, was left unchanged even after the adoption of the amendments and supplements to the Law.

## POSITIVE DEVELOPMENTS

The effects of application of the amendments and supplements to the Law are yet to be seen, and certain positive developments regarding relation providers – users of financial services was noticed even before their adoption. Namely, according to the Annual Report of the Centre for Financial Consumer Protection and Education of the NBS (for the period from 1 January 2013 to 31 December 2013), this body received a total of 2,201 complaints and early complaints in connection with the business activities of financial institutions (84.6% of which concerned banks). Even though these figures are lower compared to the same period in 2013, they are still an indication of the awareness of the public about the matter. However, a large number of early notifications (32%) indicates that there still exist a significant number of users of financial services who are not familiar with the procedure to file a complaint.

Of all complaints against business activities of financial institutions received in 2014 (1,454), according the aforementioned Report, 1,337 (or 92%) were processed by the NBS Centre for Financial Consumer Protection and Education of which 998 (or 74.6%) were assessed as unfounded and 339 (or 25.4%) as founded. By comparison, in 2012, out of all processed complaints, 36% of them were assessed as founded, and in 2013, 28.05% of them.

Further on, the NBS Centre for Financial Consumer Protection and Education received 1,245 user queries (i.e. 108.45% more than in the previous year) concerning financial services. In addition, the NBS call centre received 19,391 phone calls and 1,110 queries sent by e-mail. Additionally, the NBS held 39 educational workshops in 35 cities and villages round Serbia for approximately 200 citizens pertaining to various financial matters, and 1.613 citizens visited the NBS regional offices to acquire information on various financial services.

It is important to point out that on 31 May 2013 the NBS issued a recommendation for banks on how to resolve the problem of users of Swiss Franc-denominated housing loans, as well as a recommendation for banks to appropriately regulate the relationship with loan users in relation to the excess amounts already collected on the basis of the increase of variable indeterminable interest rate elements for loans approved before the date of application of the Law, i.e. to calculate that amount as an early loan settlement, following which at the beginning of 2015 the National bank of Serbia brought a Decision on measures for sustaining the stability of the financial system in connection with the loans denominated in a foreign currency (hereinafter: the "Decision") entering into force on 5 March 2015. It is included in the announcement of the National Bank of Serbia published in connection with bringing of the decision that its bringing aims to sustaining and strengthening of the financial system of the Republic of Serbia, an adequate risk management in banks, as well as to achieve better protection of the financial services consumers, which have been primarily affected by the adverse consequences of the current trends on International foreign exchange markets.

The Decision is comprised of two parts. The first one relates to each individual loan contract under repayment that a bank had concluded before the Law became applicable, i.e. before 5 December 2011, regardless the currency the loan had been denominated in. That part of the Decision prescribes the mandatory manner for banks to calculate the excess amounts already collected on the basis of the increase of variable indeterminable interest rate elements. Banks are obliged to calculate the excess amounts as an early loan settlement and to notify each individual user about the changed loan settlement schedule within 30 days from entering into force of this Decision. The second part of the Decision relates only to Swiss Franc-denominated housing loans. Banks are obliged to offer to the users of these loans four annex frameworks to the contracts which would change the conditions for loan settlement keeping the existing security instruments. The prescribed term for sending of these offers shall be 30 days from entering into force of this Decision and the term for its acceptance by the loan users is defined to be not less than 3 months from the date of receipt of the offer so that the loan user may accept the offer at any time during the defined period. Banks are obliged to notify the National Bank of Serbia once a month, and not later than 25th day of a month with the data status as at the last calendar day of the previous month, about the outcomes of the measures and activities applied and performed in accordance with this Decision, as well as about the data on those activities and especially about the number of debtors having been notified and the debtors who did not accept the offered solutions. The official data on former effects of the second part of the Decision application have not been announced yet, and according to unofficial data published by the Citizens Association "Effectiva" at the end of June 2015, only 5% of citizens out of 21,000 users of Swiss Franc-denominated loans have accepted one of the four offered frameworks for these loans settlement.

## REMAINING ISSUES

Even after the amendments and supplements to the Law were adopted, contrary to the practice in EU countries, the Law does not allow banks and financial leasing providers respectively, to assign claims stemming from loan contracts, leasing contracts, overdraft contracts, credit card issue and use contracts and account opening and maintenance contracts, to anyone other than a bank, this being a solution non-intrinsic to comparative law and regulations governing contracts and torts.

As far as the application of the Law is concerned, key issues that still seem to require further improvement are those pertaining to the professional training of employees of consumer protection institutions and the strengthening of the administrative capacity to protect consumers, as well as further education of the financial services consumers. Growth trend of early and unfounded complaints respectively regarding business activities of financial institutions clearly indicates that financial services consumers have still not been educated enough about their rights as well as about the obligations of financial institutions.

## FIC RECOMMENDATIONS

- Further harmonization of regulations on the protection of financial services consumers with international and EU principles.
- Timely adoption of remaining by-laws required under the Law.
- Further education of users of financial services regarding their rights.

# PUBLIC PROCUREMENT

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Synchronised action of the Public Procurement Office and Anti-Corruption Agency for the purpose of developing an applicable plan for combating corruption. | 2013 | √ | | |
| Expansion of the administrative and expert capacities of the Public Procurement Office and State Audit Institution in order to effectively control the contracting authorities in terms of planning and execution of public procurements and combat corruption. | 2013 | | √ | |
| Amending the provisions of Law regulating the unusually low price. | 2014 | | | √ |
| Amending the provisions of the Law in a manner that the contracting authorities shall be obliged to provide internal plans and acts for combating the corruption to the Public Procurement Department | 2015 | | | √ |
| Amending the Law in relation to the Public Procurement Office's and the Commissions' competence in cases of suspected "bid rigging", (the ability to implement special procedures for to control the implementation of executed contracts and the submission of the application for determination of the nullity of a public procurement contract). | 2014 | | | √ |
| Active cooperation of the Public Procurement Office, the Ministry of Finance and Economy, Anti-Corruption Agency, Budget Inspection, the State Audit Institution and the Government of the Republic of Serbia on the implementation of Law on Public Procurement and Memordandum of Cooperation date on April15, 2014. | 2015 | | | √ |

## CURRENT SITUATION

The general impression is that the adoption of the new Public Procurement Law (Official Gazette of RS" No 124/2012, hereinafter: the "Law"), which is in application since 1 April 2013, improved the legal framework for reforms in this area. The systematic application of the new Law's favourable solutions and relevant amendments to the Law could lead to a higher level of control of the planning and implementation of public procurements, the implementation of anti-corruption measures and the protection of the rights of interested parties.

In August 2015 the National Assembly of the Republic of Serbia adopted Amendments to the Law, which apply as of 12 August 2015. These amendments introduced novelties in respect of reducing formalities, publishing a large number of documents on the Public Procurement Portal, reducing deadlines for the submission of bids to raise the efficiency and effectiveness of public procurement procedures.

On the other side, the ten-year trend of non-compliance with the anti-corruption rules under Articles 21-30 of the Law has continued. There are still no clear indications that the anti-corruption measures will be implemented. However, the number of open procedures has increased and the number of negotiated procedures was significantly reduced. The administrative capacities of the Public Procurement Office, as the institution with a key role in law enforcement, were slightly increased.

## POSITIVE DEVELOPMENTS

According to the Report of the Public Procurement Office in the Republic of Serbia for 2014, the number of open competitive bidding procedures was increased to 85% which is the standard in EU countries. In addition to this, the share of negotiated procedures without prior publication of a call for competition was reduced to 5% in relation to 2013 when the share of negotiated procedures without prior publication of a call for competition was 17%. The number of contracting authorities that submitted reports to the Public Procurement Department increased to 51%, i.e. 4,933, in relation to 2013 when 3,264 reports were submitted.

The recommendation from the previous editions of the White Book has been implemented, through the adoption of a set of measures for the prevention of corruption and

conflict of interest. Furthermore, the Public Procurement Office enacted the Model Internal Plan for Combating Corruption that contracting authorities which spend more than RSD 1 billion per year on public procurements are obliged to enact. The Public Procurement Office recommends that contracting authorities which spend less than RSD 1 billion per year on public procurements also enact such plans. The purpose of the said plans is to audit the rational planning of procurements based on the needs and activities of the contracting authority, technical specifications criteria, market research methods, the validity of contract award criteria, contract execution, and especially the quality of delivered goods and services or works, the supplies status and the use of goods and services. A special service will submit a report on the audit, along with recommendations to the head of the contracting authority and to the authority supervising the operations of the contracting authority.

A novelty is the introduction of the institute of civil supervisor, responsible for supervising procurements exceeding RSD 1 billion. The civil supervisor has constant access to procedures, documentation and the contracting authority's communication with interested parties and bidders. We specifically underline here that the Law requires the contracting authority to request an opinion from the Public Procurement Office on the justifiability of applying a negotiated procedure, before launching the negotiated procedure. In 2014, the Public Procurement Office issued 4,338 opinions on the adequacy of the negotiated procedure within the statutory term of ten days upon receipt of a proper request.

The Law also requires the contracting authority to adopt an act to regulate the public procurement procedure, in particular the planning of procurement, responsibility for planning, aims of the public procurement procedure, the fulfilment of obligations from the procedure, guarantees of competition, implementation and control of public procurement, monitoring compliance with the public procurement contract. Furthermore, if the Public Procurement Office identifies discrepancies between the enacted internal act and the Law, it is obliged to notify the contracting authority thereof, with a proposal on and deadline for harmonization. If the contracting authority fails to comply with the required actions and deadline, the Public Procurement Office will notify the authority that supervises the operations of the contracting authority and the State Audit Institution and initiate proceedings before the Constitutional Court. The latest Amendments to the Law have introduced the obligation of contracting authorities to publish their internal acts on their website which enables the control of the enactment and implementation of these acts.

In addition, Amendments to the Law have introduced the institute of mixed procurement and rules for the determination of the main object of procurement in cases when the procurement involves several categories of objects and stipulate the manner in which such procurements are conducted.

Furthermore, it is explicitly stated that in case of violation of competition rules in the public procurement procedure, contracting authority may continue the procedure but that the contract will be annulled by force of law if the, if the organization competent for protection of competition determines a violation of competition in contracting.

The amount of low-value public procurements was increased from RSD 3,000,000 to RSD 5,000,000. In addition, the possibility was introduced to conduct a low-value public procurement procedure regardless of the estimated value in case of procurement of health and social services, legal services, hotel and restaurant services, education and professional training services, as well as procurement in the fields of recreation, culture and sport.

Amendments to the Law expanded the types of public procurement notices, which should contribute to the greater transparency of the procedure.

## REMAINING ISSUES

It remains to be seen how the new Law will be implemented in the field of prevention of corruption. The Public Procurement Office, in cooperation with the Anti-Corruption Agency, Republic Commission for Protection of Rights in Public Procurement Procedures, the Ministry of Finance, the Ministry of Trade, the State Audit Institution, the Anti-Corruption Council and the Commission for Protection of Competition are expected to implement the Memorandum of Cooperation of 15 April 15 2014, which should result in the application of adequate procedures and the sanctioning of responsible persons in cases of corruption, i.e. bid rigging, restrictive agreements and unusually low bids.

A remaining issue is the application of the "unusually low price" institute. The contracting authority has the discretionary right to assess whether the offered price is unusually low, i.e., whether the offered price differs from the compa-

rable market price and raises doubts as to the ability of the bidder to execute the procurement in accordance with the offered terms. The lack of clear criteria that would oblige the contracting authority to demand a detailed explanation of all the elements of the bid brings uncertainty in the public procurement procedures. In most cases, the contracting authorities accept low prices justifying their decisions by the need to save budget funds and by the bidder's right to offer a lower price for the purpose of gaining a competitive position on the market. In case the other bidders participating in a public procurement procedure have doubts as to whether the contract was awarded to a bidder that has offered an unusually low price, they may submit a request for protection of rights to the Commission for the Protection of Rights in Public Procurement Procedures. The position of the Commission is that the contracting authority has discretionary rights to assess whether the price is unusually low and consequently it rejects requests for protection of rights on these grounds. The Commission is not authorized to question the merits of such requests since the parties to the procedure for the protection of rights are the Commission, the contracting authority and the applicant, and not the bidder to whom the contract was awarded. The rendering of a decision to annul the contract award decision on grounds of an unusually low price would be contrary to the principle "hear the other side too", since the bidder that was awarded the contract would not have the possibility to plead to the allegations of the applicant. The question is whether the Commission has the human resources and technical capacities needed to execute complex analyses to determine the facts. The Public Procurement Office and the Commission are not authorized to initiate the procedures for the annulment of the decision on awarding the contract, thus, bidders have no legal remedies for the protection of their interests, except for filing criminal charges. Based on the content of the reports submitted to the Public Procurement Office by the contracting authorities it is not possible to determine whether the contracting authority is truly implementing the contract stipulated with the bidder suspected of offering an unusually low price. The other bidders may request the contracting authority to provide documentation on the implementation of the executed contract, pursuant to the Law on Free Access to Information of Public Importance, but the question is what kind of documentation they will get from the contracting authority.

The mechanisms for the enforcement of the Law in cases when the public procurement eligibility criteria in a particular procedure are changed with respect to the previous year's criteria are also at issue. This particularly relates to the amendment of criteria with respect to financial indicators in cases when framework agreements of significant importance for the state are awarded. In this particular case, filing a request for the protection of rights due to the criteria set in the tender documentation is not an efficient legal remedy.

On the other hand, an unusually low price is known to be one of the main indicators when assessing whether a public procurement procedure was subject to "bid rigging" or not. For the aforementioned reasons it is advisable to amend the Law in the part regulating the issue of unusually low price as soon as possible and to determine the criteria when the contracting authority is obliged to determine whether the price is unusually low.

The Law is selectively applied in the part that regulates the centralized public procurements of medicines. It is not clear whether centralized public procurement is applied to the procurement of all types of medicine, i.e. whether the National Health Insurance Fund is implementing the centralized public procurement procedures for all types of medicine, or whether these procedures are implemented for specific types of medicines by hospitals.

Bearing in mind the limited capacities of the Public Procurement Office, it is questionable whether it will be able to control public procurement plans and amendments to such plans.

Latest amendments expanded the scope of public procurements on which the Law is not applicable and those are, among others, procurements related to obtaining of loan, obtaining of legal services, acquisition or lease of land, current buildings or other real estates and rights. This expansion of procurements on which the Law is not applicable may be subject to abuse.

In accordance with the Law, contractor can initiate a public procurement procedure if such procurement is predicted in an annual plan of public procurements. However, amendments to the Law introduce the novelty that leaves the possibility of abuse by prediction that in some extraordinary cases, when it is not possible to plan public procurement in advance or from the reason of urgency, contractor can initiate public procurement procedure even if such procurement is not predicted by annual plan of public procurements.

## FIC RECOMMENDATIONS

- Synchronized action of the Public Procurement Office and Anti-Corruption Agency with the aim of developing a feasible plan for combating corruption.
- Expansion of the administrative and expert capacities of the Public Procurement Office and State Audit Institution to effectively control the planning and execution of public procurements by contracting authorities and combat corruption.
- Amending the provisions of the Law regulating the unusually low bids.
- Amending the provisions of the Law to oblige contracting authorities to deliver anti-corruption internal plans and acts to the Public Procurement Department.
- Amending the Law in relation to the Public Procurement Office's and the Commissions' competence in cases of suspected "bid rigging", (the ability to implement special procedures to control the implementation of awarded contracts and submit proposals for the annulment of a public procurement contract).
- Active cooperation of the Public Procurement Office, the Ministry of Finance, the Ministry of Economy, the Anti-Corruption Agency, the Budget Inspection, the State Audit Institution and the Government of the Republic of Serbia on the implementation of the Law on Public Procurement and implementation of Memorandum on Cooperation of 15 April 2014.

# PUBLIC - PRIVATE PARTNERSHIP

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Amendments of the Law on Public-Private Partnership and Concessions so as to fully enable contractual PPPs: i.e. realization of PPP projects without the establishment of SPV, in accordance with comparative examples (e.g. Green Paper on public-private partnerships and Community law on public contracts and concessions [COM (2004) 327 final]). | 2013 | | | √ |
| Issuance of adequate guidelines of the PPP Commission or amendments to the Law on Public-Private Partnership and Concessions, in respect of the governing law of the public contract. | 2013 | | | √ |
| Amendments to the Law on Public Property to enable the encumbering of publicly-owned real estate, as well as enforcement proceedings thereon, for the purpose of realizing direct financing agreements related to PPP projects. | 2013 | | | √ |
| Activities of the PPP Commission on adoption of proper templates of public contracts and direct financing agreements. | 2013 | | | √ |
| Activity of the PPP Commission on the building of capacities of potential public partners for the realisation of PPP projects, and exchange of good comparative practices which might enable the better realisation of PPP projects in the Republic of Serbia. | 2012 | | √ | |

## CURRENT SITUATION

The adoption of the Law on Public-Private Partnership and Concessions (Official Gazette of RS No 88/2011) in late 2011 marked a significant progress within the legal framework for public-private partnership (hereinafter: the "PPP") and concessions in the Republic of Serbia, given that the matter is regulated for the first time by a single piece of legislation. In addition to this law, the Law on Public Utilities (Official Gazette of RS No 88/2011) and the Law on Public Property (Official Gazette of RS Nos 72/2011, 88/2013 and 105/2014) were also adopted in the same period, while the Law on Public Procurement (Official Gazette of RS Nos 124/2012 and 14/2015) was adopted in 2012, thus changing the legal framework for PPPs and concessions in its entirety, with a significant level of mutual cohesion of these laws.

In addition to the clearly regulated procedure for awarding public contracts (PPP contracts with or without elements of concession) in the Law on Public-Private Partnership and Concessions, as well as the procedure for the entrustment of the supply of utility services in the Law on Public Utilities, the most important changes for PPP in these laws relate to the definition of principles for the formation of prices of utility services (Article 25 of the Law on Public Utilities), and to the establishment of the Commission for Public-Private Partnership (hereinafter: the "PPP Commission"). In the Decision on the Establishment of the Commission for Public-Private Partnerships (Official Gazette of RS Nos 13/2012, 108/2012, 44/2013, 64/2013, 104/2013, 115/2013, 20/2014 and 15/2015), the PPP Commission has been designated as the body that must issue a positive opinion in order for a particular PPP project to be realized, a significant departure from its responsibilities set in the law.

However, a greater practical application of these changes only just started in 2014 and 2015, and there are announcements for several major projects by the end of 2015 and during 2016, such as the treatment and waste disposal at the Vinča dumpsite, public transportation services in Belgrade, and others. According to publicly available information, 27 projects were approved by the PPP Commission until today.

It is also worth mentioning that the adoption of the Rulebook on Model Energy Service Performance Contracts for the Implementation of Energy Efficiency Savings in the Public Sector (ESCO contracts) in May 2015 now allows for the development of the energy performance contracting market (to be realized through PPP arrangements). It appears that there are a couple of PPP projects involving ESCO arrangements that are in the pipeline in several Serbian municipalities.

## POSITIVE DEVELOPMENTS

The Law on Public-Private Partnership and Concessions prescribed the adoption of two by-laws, regulating oversight of enforcement of public contracts, as well as their registration in the Register of Public Contracts. In addition, it envisages the adoption of the "value-for-money" methodology (hereinafter: the "Methodology") by the PPP Commission.

Accordingly, but with a significant delay, the Decree on the Oversight of Enforcement of Public-Private Partnership Contracts (Official Gazette of RS No 47/2013), the Rulebook on the Keeping and Content of the Register of Public Contracts (Official Gazette of RS No 57/2013 and 110/2013) and the Methodology were adopted in 2013.

The Decree on Oversight of Enforcement of Public-Private Partnership Contracts provides for exceptionally wide powers of the line ministry for finance (currently the Ministry of Finance), or of the equivalent authority of the autonomous province, in respect of the supervised entity. In addition, both the public and private partner are obliged to compile a report on the enforcement of a public contract, (in the form prescribed by the Decree), that the public partner is required to submit to the competent authority semi-annually. In case of identified irregularities in the enforcement of the public contract, the competent authority prepares a notice with recommendations for remedying these irregularities that the contracting parties (the public and private partner) have to comply with, within 15 days of receipt. It is very important to note that any deviation from contracted rights and obligations of the public and private partner in the implementation of the public contract is deemed as irregular. It remains to be seen how the competent authorities will exercise such wide discretionary powers in supervising the enforcement of public contracts.

The Rulebook on the Keeping and Content of the Register of Public Contracts is fairly simple as it prescribes the forms and deadlines for registration of public contracts, and contains rules of an administrative nature. However, it initially contained a provision stipulating that free public access to the public contract will not be provided if it could significantly jeopardize the economic interests of public and private partners. This provision was criticized by the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner challenged it before the Constitutional Court of the Republic of Serbia. In December 2013, the Ministry of Finance harmonized the Rulebook with the law, hence, the Rulebook now stipulates that public contracts and other documents from the Register of Public Contracts can be accessed in accordance with the law governing access to information of public importance, and that access may be restricted only under the conditions prescribed by that law.

In addition to legislative activity, it should be noted that the website of the PPP Commission became operational in the second half of 2012 (although without much content), finally making the PPP Commission visible to the general public.

In June 2012, the PPP Commission became a member of the European PPP Expertise Centre (EPEC), which gathers PPP authorities from 39 states, and functions with the support of the European Investment Bank, the European Commission, and EU member and candidate states. Membership in EPEC is of exceptional importance for the building of administrative capacities of the PPP Commission, as well as for the identification and implementation of the comparative best practices in PPP.

Also, in late 2014 the Serbian government adopted the Strategy for Development of Public Procurement in the Republic of Serbia for the Period from 2014 to 2018 (Official Gazette of RS No 122/2014). The main objective of the Strategy is the continued reform of the public procurement system, which will be realized through the construction and development of a unified public procurement system, strengthening of public procurement competition, reducing irregularities in the public procurement system, strengthening of the existing institutional framework, modernization, increase in cost-effectiveness and efficiency, promotion of environmental and social aspects of public procurement, participation of small and medium-sized companies, promotion of innovative partnerships, and full harmonization of the domestic legislation with the EU legislation and its full enforcement.

## REMAINING ISSUES

The Register of Public Contracts, envisaged as a sub-portal of the public procurement portal, is not operational yet, although the new public procurement portal has become operational in accordance with the Law on Public Procurement.

Additional activity of the PPP Commission is required with regard to the adoption of the model public contract and direct agreement (which could be concluded between the financier

of a PPP project and the private partner), so as to facilitate the implementation of PPP projects for potential partners.

Finally, major potential problems that might arise in practice are the following:

- Article 15 of the Law on Public-Private Partnership and Concessions seems to prescribe, although it could be argued otherwise, the mandatory establishment of a special purpose vehicle (hereinafter: the "SPV") by the private and public partners for the implementation of a PPP project, although in comparative practice a PPP project can usually be realized even without the establishing the special company (the so-called contractual PPP, which, without further normative elaboration, is recognized in Article 8 of the Law on Public-Private Partnership and Concessions). The mandatory establishment of the SPV for the implementation of PPP projects creates additional costs for potential private partners and further complicates an already complex procedure;
- Inconsistency within Article 46 of the Law on Public-Private Partnership and Concessions does not allow for definitely concluding whether a foreign law could govern a public contract, which is particularly important for foreign investors;
- Restrictions under Article 16 and 17 of the Law on Public Property, which prescribe that immovables entirely or partially used by the authorities of the Republic of Serbia, autonomous province and local government for the fulfilment of their rights and obligations cannot be subject to foreclosure, be mortgaged, or encumbered in any other way. Such a broad definition defeats the purpose of the provisions of the Law on Public-Private Partnership and Concessions on financing, which are otherwise very favourable for potential financiers, and which refer to the application of the law regulating public property, as practically no immovable in public ownership can be encumbered or be subject to foreclosure.

## FIC RECOMMENDATIONS

- Amendments to the Law on Public-Private Partnership and Concessions so as to fully enable contractual PPPs: i.e. implementation of PPP projects without the establishment of an SPV, in accordance with comparative examples (e.g. Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions [COM (2004) 327 final]).
- Issuance of adequate guidelines of the PPP Commission or amendments to the Law on Public-Private Partnership and Concessions, in respect of the applicable law to public contracts.
- Amendments to the Law on Public Property to enable the encumbering of publicly-owned real estate and the foreclosure thereof, for the purpose of enforcing direct financing agreements related to PPP projects.
- Activities of the PPP Commission on the adoption of model public contracts and direct financing agreements.
- Activity of the PPP Commission on building the capacities of potential public partners for the implementation of PPP projects, and exchange of good comparative practices, which might improve the realization of PPP projects in the Republic of Serbia.

# TRADE

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Devote more attention to by-laws because the lack of by-laws makes the trade law largely inapplicable in practice. | 2011 | | | √ |
| Harmonisation with EU regulations is needed. | 2012 | | √ | |
| Providing training for state authorities in relation to the implementation of the regulations in day-to-day business. | 2012 | | | √ |
| Simplification of the importation procedure. | 2012 | | | √ |
| Allowing aggregate shipments from the export registered warehouse of the trader. | 2013 | | | √ |
| Providing clear guidelines on the contents of the documents accompanying goods. | 2012 | | | √ |
| Providing special regulation for private brand products. | 2012 | | √ | |
| Enabling harmonisation through policies, standards and guidelines. | 2012 | | | √ |
| Any limitation of entrepreneurship and sale of certain products should only be possible through the Law. | 2013 | | √ | |
| Taking a uniform position on the interpretation of regulations. | 2012 | | | √ |

## CURRENT SITUATION

The Law on Trade regulates the overall market and the conduct of market participants, and as such it occupies a central place among the rules governing trade in goods and services. This area of the law was improved at the beginning of 2013 by amendments to the Law on Trade (Official Gazette of the Republic of Serbia No 53/2010 and 10/2013). The improvement of the Law on Trade was followed by amendments to other trade-related regulations at the end of 2013 and first half of 2014, and this primarily refers to the Law on Electronic Trade and Law on Consumer Protection. This resulted in the much-needed simplification of regulations, thus providing the basis for solving some practical problems from the past. Nevertheless, those who should apply these regulations in their everyday business, primarily traders, and those on the opposite side, acting as control entities, primarily inspection bodies, still face some practical problems. The absence of by-laws to provide guidance for the application of the laws remains the main problem inherited from the past, i.e. by-laws did not keep pace with the changes of regulations, thus preventing the consistent implementation of the laws in practice. However, this is not particularly surprising because, as a rule, the development of a modern market and trade structure is the biggest problem of countries in transition, since it causes the greatest resistance. Serbia's experience confirms this rule, because a modern market and trade structure is slow to develop, and because relevant institutional by-laws are still missing, for the most part.

We will merely point out a few specific problems that traders encounter when it comes to the implementation of relevant trade-related regulations.

In relation to imports of food of animal origin (particularly meat/meat products, fish/fish products), we are still facing (in the first phase of importation) the problem that certificates issued in most countries of the European Union (EU), as is the case with Belgium and Greece, do not correspond to the certificates required for certain groups of products in Serbia. Such seemingly minor defects sometimes hinder the import of these products. Veterinary certificates are harmonized for certain product categories; however, a practical problem is the unavailability of harmonized certificates, i.e. the form of these certificates. Specifically, a simple and effective solution would be, first and foremost, to post these forms on the website of the competent ministry, so that people who need it can download it.

Even in cases when we have properly issued certificates, the next problem arises with data that must be specified on the product or its packaging. Specifically, Serbian regulations stipulate that among other, packages must contain

a veterinary control number and manufacturer data. If such information is missing, it must be added to the packaging of a product prior to its transfer across the border. This seemingly simple problem slows down and complicates the importation procedure, making imports sometimes almost impossible (e.g. the import of wine, where the process of obtaining veterinary numbers is extremely long). This problem would not exist if Serbian regulations were harmonized with the EU acquis, which does not require this data to appear on the product or its packaging. Still, we would like to point out that the same issue applies to other areas of trade as well (not just food).

The importation procedure is complicated and burdened with formalities. The procedure still takes, on average, 10 to 15 days. Its length is very problematic, especially for items with a limited shelf-life. The procedure is the same even when the same importer imports the same products, produced in the same manner, by the same manufacturer, at regular, short intervals (e.g., every week). A solution that would offer a certain degree of flexibility is to enable risk analysis for a small number of imports, i.e. the issuance of a permission to trade before receiving the results of the analysis, would be an important step forward.

Furthermore, each import item must be subject to laboratory analysis and it has to be classified under a specific category in accordance with the applicable rulebooks on product quality. However, if a product has such a composition that makes it impossible to classify that product under any of the categories recognized under a particular rulebook, despite the fact that it is freely sold in the EU territory (e.g. the presence of a higher percentage of cadmium in dark chocolates, various additives the use of which is permitted in the EU, etc.),, then the sale of that product will be prohibited. In that situation, the importer is faced with a dead end – ordered articles remain trapped and may neither be imported nor returned to the supplier. Another variation of this problem is unclear criteria for classifying goods as goods of animal origin, or goods of mixed origin, which is the first step in determining whether an import permit is required. When it is clear that an import licence is required for certain goods, an additional step has to be made to simplify the process which would also reduce the administrative burden on the state administration, and that is to extend the duration of issued licences, with the corresponding proportional increase of the fees.

Additionally, new amendments to the Trade Law entitle local authorities to decide on working hours of traders on their territory and to limit the hours of sale of certain products the consumption of which may affect public order (for alcoholic beverages). This provision limits the constitutional freedom of entrepreneurship and discriminates the selling of certain products without proper cause, and without any frame set by the law, which may lead to discretionary decisions by the local authority.

There are other differences between the legislative requirements in Serbia and in the countries of the EU, as is the case with specifying the approximate shelf-life (i.e. the length of time a product may be consumed after opening), as opposed to the exact expiration date that must be specified in line with our regulations, with the last day inclusive, i.e. the exact date by which the product can be consumed. Furthermore, there is also a difference in provisions related to international payment transactions (which stipulate as a mandatory prerequisite the signing of an agreement between a resident company obliged to effect a payment and a non-resident company receiving the payment). These are some of the differences that slow down, burden and sometimes completely disable the performance of a trade activity involving an international element.

In addition, we must deal with certain absurdities in the field of exports of domestic products, even though increasing domestic exports should be a priority when it comes to the promotion of the national economy. Specifically, organizing an aggregate shipment of foods of animal origin produced by a variety of local producers and collected in the warehouse of the trader is impossible in practice, even if the warehouse is properly licenced for export and supervised by a competent veterinary inspector. We would like to emphasise that the activity described herein was feasible in the past, until mid-2010, that is, until the adoption of amendments to the Law on Veterinary Medicine, to be more precise. The fact that exporting aggregate shipments of products that have been imported into Serbia by a trader (so-called re-export) is perfectly legal, adds to the absurdity. This problem has been pending for too long, especially given the importance of this issue and the benefits that small local producers would reap if it was resolved.

At the beginning of October 2013, a new Rulebook on Labelling and Advertising of Food (Official Gazette of RS No 85/2013) was adopted and came into force in January 2014. The new Rulebook regulates in a more detailed and more adequate manner not only labelling, but also advertising of

packaged food and food in general. However, interpretations are divided on the issue of the transition period for compliance, for products whose original packaging was manufactured before this Rulebook entered into force, as the relevant transitional provision is insufficiently precise.

## POSITIVE DEVELOPMENTS

The currently applicable Law on Trade introduced the category of Private Label products in the Serbian legislation for the first time. This was not done explicitly, but rather by expanding the definition of producer. By specifying that "a producer is a legal entity, a sole trader, or a natural person that manufactures a product, or declares itself as the producer, by putting its business name, logo, or other recognizable mark onto the product or otherwise," the legislation has actually made it possible to consider a trader of private label products who sells these products under its own brand putting its name or trademark on the products, as the manufacturer of those products.

The business environment was improved by providing the possibility of transporting goods accompanied only by the documents related to the transportation of goods, which certainly contributes to the simplification of this business segment and significant cost savings. We hope that this provision will be concretized in the near future, since this issue has to be elaborated in the accompanying by-laws, the adoption of which is expected in due course.

Some improvements were made in the area of sales incentives. Specifically, it is no longer necessary to state the period of validity of the previous price of items on sale.

The obligation of providing an impact analysis no longer exists, and neither does the Centre for Development of Trade as a separate state body. The previous competences of the Centre, related to the monitoring of trade and the market, were transferred to the authority of the Ministry of Trade, Tourism and Telecommunications.

A special instrument is available to corporate entities – lawsuit for unfair competition – which arguably provides for an additional layer of legal certainty. In that regard, legal entities whose business reputation has been tarnished e.g. by defamatory statements, may file a lawsuit seeking compensation for both tangible and intangible damages and request that the defamatory statements be labelled as unfair competition and, as such, further prohibited, and that the consequences thereof be eliminated. It is noteworthy that, until the adoption of the Trade Law, courts were of the view that business entities, i.e. legal entities, as injured parties in cases of defamation, may only seek compensation for tangible damages and that compensation for intangible damages can only be granted to a natural person. With the adoption of the Trade Law, this disputed situation was explicitly regulated, so that from now on courts will impose pecuniary fines for any intangible damages caused to the traders, if it finds that the circumstances of the case justify such a decision.

The commitment to enable free and undisturbed trade and boost its growth is clearly evident. The amendments to the Law on Trade described herein certainly made a difference and are a significant step towards the achievement of that objective.

One of the significant developments that occurred in April 2015 was the adoption of the Law on Inspection Oversight. Until the adoption of this Law, the various areas related to inspection oversight were regulated by approximately 1,000 laws, rules, and other regulations, which often led to inconsistencies and conflicts of legislative rules, and even to different outcomes in the same or equivalent situations. A significant number of inspection services even denied their jurisdiction because their authorities were not explicitly or sufficiently regulated. This legal uncertainty allowed the blossoming of the grey economy, businesses without a license and illegal/unregulated labour, which also had a strong adverse effect on the public budget and consequently the entire economy of the country. The adoption of an umbrella law in this field resulted in better coordination of inspection oversight and cooperation among the inspectorates, as well as better cooperation between inspections and other government bodies and private sector entities, which is expected to significantly contribute to eliminating or substantially diminishing arbitrariness, inconsistencies, corruption and other possible abuse, i.e. lead to the establishment of effective mechanisms for suppressing the grey economy and ensuring legal certainty.

## REMAINING ISSUES

The elimination of defects regarding the import of products as described in the "Current Situation" section would enable the efficiency and speed needed, saving time and money both to businesspeople and the government. It would be enough to enable products to cross the border without a label containing the veterinary control number and manufacturer info, provided that the label, containing all relevant information (including the ones previously mentioned), be

put on the products after their import but prior to their placement in stores. Also, when importing goods, the question of the justification of the number of collected samples arises, where it would be useful to define the sampling frequency, in relation to a specific product over a defined period of time. Although it is up to the customs authorities to define/suggest the possible terms for this procedure, its definition has a big influence on trade and goods flow. Then again, if the pallet is opened/unstrapped for sampling, the goods recipient will have it declared as "damaged upon receipt", causing further negative impact.

One of the incentives prescribed by the regulation is the "recognition of documents" (foreign laboratories, test reports and certificates, declarations of conformity), but the problem is that there are too few laboratories in Serbia cooperating with counterparts in the EU to cover such a vast business area, as trade certainly is. In the home furnishing business, for example, there is only one laboratory in Serbia (and it doesn't recognize any foreign documentation).

Finding the simple solutions in order to overcome possible differences in the practice of Serbia and its neighbouring countries may be achieved through the conclusion of bilateral agreements at the relevant state institution level (i.e. the Ministries), or through the issuance of appropriate instructions by the same authorities.

Last but not the least, we must point out that not enough has been done in the field of secondary legislation. The obligation to make the Law applicable through its implementing by-laws still has to be fulfilled, to provide clear guidelines to the state authorities and business community and ensure legal safety in this area. This leads to a situation where in different parts of the country, inspection services apply different criteria in controlling and disciplining traders, due to a lack of uniformity in the interpretation of regulations. The newly enacted Law on Inspection Oversight should resolve this problem to a significant extent, but since the beginning of its full implementation is delayed to 30 April 2016, the real effect of this law remains to be seen.

## FIC RECOMMENDATIONS

- Devote more attention to by-laws because the lack of by-laws makes the trade law largely inapplicable in practice.
- Harmonization with EU regulations is needed.
- Providing training for state authorities in relation to the implementation of the regulations in day-to-day business.
- Simplification of the importation procedure.
- Allowing aggregate shipments from the export registered warehouse of the trader.
- Providing clear guidelines on the contents of the documents accompanying goods.
- Providing special regulations for private brand products.
- Enabling harmonization through policies, standards and guidelines.
- Any restrictions on entrepreneurial activities or on the sale of certain products should only be possible through the Law.
- Taking a uniform position on the interpretation of regulations.

# ILLICIT TRADE FIGHT AND INSPECTION CONTROL

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Recognition of high-level illicit trade as organized crime and/or the introduction of specialized prosecutors and police officers (e.g. re-establishing the Anti-Smuggling Department) for illicit trade cases. | 2014 | | √ | |
| Allocation of adequate resources and funds to legal enforcement bodies. | 2014 | | | √ |
| Enhancing the cooperation between the public and private sector in fighting illicit trade by establishing a regular system of monitoring results and appointing a person responsible for monitoring anti-illicit trade activities at Government level. | 2014 | | √ | |
| Establishing a risk assessment system and preparing an overall plan for the control of industries associated with a higher estimated risk of illicit trade. | 2014 | | | √ |
| Empowering a wider number of inspections to confiscate illegally traded goods and penalize the offenders on the spot. | 2014 | | √ | |
| Accelerated adoption of the Law on Inspection Surveillance that would regulate centralized coordination of inspections following a comprehensive and effectively driven public debate. | 2014 | √ | | |
| Establishing of permanent Secretariat for inspection bodies within GoV RS with clear responsibilities: adoption of binding rules for the inspections, establishment of the working group composed of relevant inspections which would coordinate specific activities of common jurisdiction, resolving of conflicts of jurisdiction of inspections, approval of the work plans and training of inspections and proposing to the GoV allocation of funds for inspections according to the priorities based on risk analysis. | 2014 | | √ | |
| Adequate and timely education of inspectors with the purpose of applying all parts of the law properly and equally. | 2013 | | √ | |
| More co-ordinated activities and higher interactivity between different inspections with the purpose of fast reaction and a more efficient tackling of problems which the economy is dealing with (the grey economy, the overlapping of accountability of different inspections, lack of accountability, transferring accountability to other inspections and similar). | 2013 | | √ | |
| Regulating the system of performance assessment and incentives for officials engaged in fighting illicit trade. | 2014 | | | √ |
| Prescribing regulatory impact analyses that would require any legislation change to include assessment of potential effects on illicit trade. | 2014 | | | √ |
| Establishing an Excise Inspection, specialized for analysing and monitoring the implementation of regulations on import, production, and trade of excise goods. | 2014 | | | √ |
| Amend the legal framework with the aim of extending the authorization, competencies, and available measures of competent state bodies in fighting illicit trade, as well as strengthening the penalty policy, including the increase of pecuniary fines. | 2014 | | √ | |
| Within the Law on Tax Procedure and Tax Administration, amend the treatment of entities conducting illegal activities in terms of revising the terms on payment deadlines, reimbursement of seized goods etc., and introduce the possibility for seizure of goods manufactured from illegally procured goods and equipment including parts that are used for performing such production. | 2014 | | | √ |

## CURRENT SITUATION

With the grey economy accounting for over 30% of Serbia's GDP, there is hardly a company whose business hasn't been affected by illicit trade, especially in the fast-moving consumer goods sector. Illicit trade is, in economic terms, the most devastating aspect of the grey economy and one of the key factors in preventing the improvement of the investment climate in Serbia. Due to a lack of consolidated regulatory enforcement and deteriorating purchasing power, pressures for further expansion of illicit trade are not expected to weaken in the near future.

It is important to stress that the relevant inspection bodies often lack a clear division of responsibilities and coordinated engagement due to the absence of an adequate legal framework. The upcoming period of implementation of the Law on Inspection Surveillance will be crucial for eliminating these deficiencies. Certain forms of illicit trade cannot be controlled effectively due to the lack of empowerment of the relevant bodies (e.g. internet sales, limited authorizations to confiscate illicitly traded goods and penalize on the spot), while in a significant number of cases filed charges are not processed by the prosecutors and courts. Despite the evident need for further improvement of legislation, it is clear that the insufficient level of enforcement and utilization of the authorizations provided by the current legal framework remains the main problem.

## POSITIVE DEVELOPMENTS

The adoption of the Law on Inspection Surveillance in April 2015 is outlined as major progress in fighting illicit trade. The increased trend of on-site inspections and recorded seizures is noticeable, but still insufficient to result in a suitable business environment and cover the budget gap created by illicit trade. The fact that the Government established special inter-ministerial working groups dedicated to fighting particular aspects of illicit trade (e.g. illicit tobacco trade) certainly contributed to the positive trend.

The lower level of the grey economy is outlined as the major cause of improved collection of VAT and excise taxes, which consequentially resulted in more than double the amount of collected public revenues in the first quarter of the current year, according to announcements by the Ministry of Finance. The Ministry of the Interior formed the Department for the Suppression of Illicit Trade in Excisable Products within the Criminal Police Directorate, thus formally forming a permanent team to deal with illicit trade in this field.

## REMAINING ISSUES

Due to the lack of consolidated enforcement, and deteriorating purchasing power, pressures leading to the further expansion of illicit trade need to be taken into consideration, especially since the level of risk of conducting illicit trade is still perceived as significantly lower than the level of potential earnings for perpetrators. A stricter penalty policy is necessary to close the gap between fines and the opportunity for profit in illegal channels. However, such a policy will have no effect unless it is applied by prosecutors and courts. Currently, cases of illicit trade processed before relevant courts are disproportionally few, with minimum fines meted out in the majority of cases and often characterized as misdemeanours, although there is a basis for criminal charges. Consequently, this sends the wrong message to potential perpetrators and additionally incentivizes illicit trade. Furthermore, no database coordination exists among applicants, prosecutors, and courts; and therefore neither can processing effectiveness be traced properly.

The relevant law enforcement bodies have insufficient resources to systematically fight illicit trade, although their engagement is aimed at protecting budget revenues.

In addition, inspection authorities have insufficient capacities for the storage of seized goods, which is a factor that limits their performance.

The problems of the overlapping of competences - i.e. a lack of clear distinction with regard to the competence of a certain inspection body in a specific case - will still have a negative impact on the work of inspections and the subject of supervision until special regulations are harmonized with the Law on Inspection Surveillance. Also, the level of law coordination between inspection bodies and the implementation of new solutions from the law is expected by the time when first instructions and guidelines by the Coordinating Board established by the law are brought; therefore, a timely formation and commencement of the work of this body are requisite conditions for raising the effectiveness of inspection control and improving the business environment.

The Law on Tax Procedure and Tax Administration still envisages a 45-day deadline for the settlement of tax liabilities for entities performing illegal activities, while the aforementioned deadline for entities that have miscalculated their tax payments, but are otherwise doing business in accordance with the law, is 15 days. By imple-

menting such a solution, the law is actually 'rewarding' illegal entities with a longer payment deadline. Also, if the entity performing illegal activities settles its tax liabilities within 45 days, it is entitled to the reimbursement of seized goods, which is yet another 'incentive' for the continuation of an illegal modus operandi.

Current legislation also lacks in possibilities of rewarding the staff of legal enforcement bodies for their performance in fighting illicit trade and protecting public revenues.

## FIC RECOMMENDATIONS

- Introduction of specialized prosecutors for the processing of illicit trade; i.e. economic crime related cases.
- Preparation and timely enforcement of changes in sector laws towards their harmonization with the framework envisaged by the Law on Inspection Surveillance.
- Allocation of adequate resources and funds to law enforcement bodies.
- Establishing a risk assessment system and preparing an overall plan for the control of industries associated with a higher estimated risk of illicit trade.
- Regulating the system of performance assessment and incentives for officials engaged in fighting illicit trade.
- Promotion of public administration capacities in the area of enforcement of regulations by relocating surplus staff from administration to bodies engaged in controlling enforcement of regulations, as well as the further specializing of such staff.
- Introduction of integrated control of border crossings by all the involved departments, in order to prevent the illegal transit of goods across the border into Serbian territory and its further distribution through grey trade flows.
- Prescribing regulatory impact analyses that would require any legislation change to include assessment of potential effects of such changes on illicit trade.
- Within the Law on Tax Procedure and Tax Administration, amend the treatment of entities conducting illegal activities in terms of revising the terms on payment deadlines, reimbursement of seized goods, etc.; and introduce the possibility for the seizure of goods manufactured from illegally procured goods and equipment including parts that are used for performing such production.
- Enhancing the efficiency in processing cases associated with illicit trade before judicial bodies and pronouncing statutory fines for entities involved in illicit trade, thus achieving the purpose of preventative actions on other entities on the market.
- Coordinate methods of maintaining databases between applicants and courts and prosecutors, so as to monitor the efficiency of application processing in an adequate manner.
- It is necessary to pass a Rulebook on the manner and terms of sale, cession without compensation, and destruction of goods, the adoption of which is prescribed by Article 65 of the Trade Law (Official Gazette of RS, No. 53/10 and 10/13).The Foreign Investors Council is ready to provide expert support in the process of adopting this rulebook.

# CUSTOMS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Increase efficiency on all levels of administration, especially in terms of resolving customs payer's appeals; | 2011 | | | √ |
| Passing by-laws to enable the proper application of laws and avoid ambiguities in interpretation; | 2009 | | √ | |
| Improvement or replacement of Customs IT system (ISCS); | 2011 | | | √ |
| No further trade liberalisation should be pursued without industries' consent and positive impact assessment of relevant sectors; | 2012 | | | √ |
| Continuous education and training of customs officers; | 2010 | | | √ |
| Better online system of information and introduction of online services within the customs procedure; | 2011 | | √ | |
| Minimising usage of paper documentation and transferring to available electronic communication; | 2012 | | √ | |
| Increase efficiency of resolution of claims that are in the customs administrative procedure; | 2013 | | | √ |
| Change the date of issuance of the customs invoice – it is recommended that this be the final date of clearance of goods, and not the date of declaration. | 2013 | | | √ |

The legal framework governing customs procedures in Serbia consists of the Customs Law (Official Gazette of the Republic of Serbia No 18/2010), the Customs Tariff Law (Official Gazette of the Republic of Serbia No 62/2005, 61/2007 and 5/2009), related by-laws and applicable Free Trade Agreements.

## CURRENT SITUATION

### The Customs Law

The Customs Law was enacted in 3 April 2010, regulating customs procedures, while the organization of the Customs Administration is mostly still governed by the provisions of the old Customs Law (Official Gazette of the Republic of Serbia, No 73/2003, 61/2005, 85/2005, 62/2006, 63/2006, 9/2010 and 18/2010).

Old decrees, rulebooks and decisions apply to the extent to which they do not oppose the new Customs Law. However, it is still expected that the new Customs Law will be further elaborated by decrees, rulebooks and decisions that should follow the logic of EU Implementing regulations. Specifically, the areas of Authorized Economic Operator and customs valuation will require detailed secondary legislation. The Government has already enacted several implementing regulations related to duty exemptions for certain imports, however, additional regulations are expected to be issued for other areas as well.

### The Customs Tariff

Since the Serbian Customs Tariff is harmonized every year with the EU Combined Nomenclature, the current one is valid for the year 2014. In Serbia, there are several tariff regulations that are binding:

- Decisions on Tariff Classification published in the Official Journal of the EU;
- Decisions on Tariff Classification issued by the World Customs Organization (WCO);
- Binding Tariff Information issued by the Serbian Customs Administration, at request, regarding the classification of certain goods, in case of ambiguity or uncertainty.

As regards the EU and World Customs Organization (WCO) decisions, official translations are regularly published in the Official Gazette of the Republic of Serbia.

### Free Trade Agreements

Serbia entered into Free Trade Agreements with the following entities/countries:

- Agreement on Trade and Trade Related Matters with the European Community;
- Central European Free Trade Agreement (CEFTA), stipulated between Albania, Bosnia and Herzegovina, FYR Macedonia, Moldova, Montenegro, Serbia and UNMIK Kosovo;
- Russia/Belarus/Kazakhstan (October 2010);
- Turkey;
- European Free Trade Association (EFTA), a trade association consisting of Iceland, Liechtenstein, Norway and Switzerland.

The Interim Agreement on Trade and Trade Related Matters between the European Community and the Republic of Serbia that came into force on 1 February 2010 provides for the abolishment of customs duties on industrial products originating in Serbia and imported into the European Community.

## POSITIVE DEVELOPMENTS

### The Customs Law

Every alignment of customs regulations with EU regulations is a move in the right direction. With the introduction of the institute of Authorized Economic Operator, a step forward was made and goodwill was expressed to facilitate trade, with additional emphasis on exports. A company granted this special status is now able to conduct customs clearance on its own premises, within a regulated time frame. The clearance is processed through automated two-way data exchange minimizing personnel involvement and increasing predictability and efficiency.

Also, one of the steps towards the harmonization with the European Union acquis is the simplified clearance procedure, resulting in the acceleration of the movement of goods and the simplification of customs formalities.

The exemption from customs duties on imports of new production equipment is an important customs incentive that should stimulate investments in production and new technologies. The requirements that the equipment has to meet to qualify for customs exemption are the following:

- the equipment has to be new;
- it cannot be produced in Serbia (i.e. no adequate substitute for these goods is produced in Serbia). In practice, it may happen that a certain piece of equipment is not produced in Serbia, but that the accessories (cables, pipes...) are. The Chamber of Commerce may issue a certificate of exemption from payment of the machine itself and deny exemption for the ancillary equipment (cables, etc.);
- it has to be used in production, to expand and/or modernize existing production facilities.

These requirements are much more liberal and less restrictive than those provided under the old Customs Law, which is why they are expected to improve production and contribute to overall economic development.

There is also a possibility of exemption from payment of customs duty for used and new equipment through foreign investment. In this case, the parent company (the founder and owner registered with the Serbian Business Registers Agency - SBRA) sends equipment to the subsidiary company in Serbia without obligation to pay the equipment. Goods are sent based on a pro forma invoice. Based on the company's decision to increase the stake, an increase in company capital for the value of equipment is registered with the SBRA. Upon receipt of the SBRA's decision, the certificate of capital increase is submitted to the Customs Administration, entered into the customs system, after which the equipment may be imported free of duty, for a value not exceeding the specified amount of the foreign stake. Goods imported on this basis must not be disposed of for a period of 3 years from the date of their release for free circulation. If there is a need for their disposal, the importer files a request for the calculation of customs duties and after these are paid, the goods can be disposed of.

### The Customs Tariff

The harmonization of the Customs Tariff with EU legislation allows the monitoring of all currently applicable customs duty rates in a comprehensive and transparent way. Occasionally, there are difficulties in interpreting the tariff classification. However, progress is evident and can be seen from the volume of requests submitted to the Serbian Customs Administration, as well as from the Customs Administration's approach in dealing with these issues in strict compliance with the principles of the European Commission and WCO practice.

### Free Trade Agreements

Free Trade Agreements signed by Serbia bring predictability to trade relations and facilitate trade with large trading partners, who are also important potential investors.

## REMAINING ISSUES

### The Customs Law

Generally speaking, the Customs Administration is expected to increase its efficiency by passing customs by-laws in accordance with international customs rules, as well as to deal with issues related to the application of laws that can emerge from trade practice. There are still difficulties in the application of the existing provisions of the Customs Law, as well as problems related to activities that have not been regulated yet. For example, the new Customs Law effectively excludes the possibility of having customs documents corrected if excesses or shortages are determined upon customs clearance (usually these are a consequence of errors in delivery, during loading). Thus, importers are automatically in violation of the law if there is a subsequent inspection by customs authorities. Clearly, relevant by-laws should be enacted in order to provide practical solutions for these situations.

The software applications of the Customs Administration have exhausted their potential and are now a major obstacle to increasing import and export. Transition to the new IT platform is crucial and needs to happen as soon as possible.

The import of pharmaceutical products for personal use is forbidden for private individuals as of June 2011. This restriction was implemented without regard to the physicians' recommendations and patients' needs, which led to the dissatisfaction of patients who cannot find the prescribed medicines on the local market.

On 29 February 2012, the Customs Administration announced new rules for issuing customs guarantees for bonded transport, which caused delays. According to the new regulations, the prerequisite for issuing a guarantee is an analysis and written permission from the Customs Administration, which can take more than three months to acquire.

The transition to the New Computerized Customs System (NCCS) was planned for June 2015. NCCS is used as a common transit system in member states of the EU, EFTA and Turkey. Following the access of Serbia and Macedonia/FYROM to NCCS in June 2015, transit documentation won't be needed anymore. The NCCS transit issued in EU/EFTA/Turkey will be valid at the border when entering Serbia, and likewise, when entering the EU, the NCCS transit issued in Serbia will also be valid.

Although the new Customs Law was enacted four years ago, its implementation and interpretation are still a challenge and can lead to a variety of issues and different interpretations, which is why increased quality and efficiency should be the main goal for the future.

### The Customs Tariff

The Serbian Customs Tariff still applies a specific classification of certain tariff codes in addition to the implemented EU Combined Nomenclature. Occasionally, there are import issues caused by this ambiguity.

### Free Trade Agreements

Free Trade Agreements are usually applied without major difficulties. The issue sometimes pointed out as an impediment to Free Trade Agreements' practical effects is the procedure of determining the origin of goods. It should also be noted that rules on determining the origin of goods provided by agreements with Russia, Belarus and Kazakhstan differ from the rules laid out by CEFTA and the Interim Trade Agreement with the EU, so the criteria are not unified.

Additionally, it should be taken into account that any further liberalization at times of crises may lay an additional burden on the weak Serbian economy and remaining production facilities. Therefore, any new trade liberalization of particular sectors planned by the Government should be clearly communicated with the industry stakeholders, pursued only with industries' consent and based on a positive impact assessment of the relevant sectors.

## FIC RECOMMENDATIONS

- Increase efficiency on all levels of administration, especially in terms of resolving customs payers' appeals.
- Passing by-laws to enable the proper application of laws and avoid ambiguities in interpretation.

- Improvement or replacement of Customs IT system (ISCS).
- No further trade liberalization should be pursued without the industries' consent and a positive impact assessment of relevant sectors.
- Continuous education and training of customs officers.
- Better online information system and introduction of online services within the customs procedure.
- Minimizing usage of paper documentation and conversion to available electronic communication.
- Increase the efficient resolution of claims in the customs administrative procedure.
- Change the date of issuance of the customs invoice – it is recommended that this be the final date of clearance of goods, and not the date of declaration.

# SIMPLIFIED PROCESS FOR EXPRESS SHIPMENTS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Efficient Customs information system development to enable and ensure the implementation of simplified procedures, secure interconnection with companies and automated clearance. | 2011 | | √ | |
| Enable full implementation of the simplified procedures provided by the legal framework. | 2011 | | √ | |
| Introduction and definition of de minimis shipments for which customs duties and VAT will not be collected, up to the defined value. | 2013 | | | √ |
| Further develop simplified export clearance procedure for shipments up to EUR 1,000 and consider increasing the value threshold to EUR 5,000. | 2012 | | | √ |
| Provide more efficient and standardised education to customs personnel to ensure focus on the full new legal framework implementation in practice, thus creating a predictable environment for trade and investments facilitation. | 2011 | | | √ |
| Switch customs officers' focus from practices developed in the past to full implementation of the current legal framework, reduction of their discretionary rights and introduction of accountability if a consignment is held and/or inspected without any real reason derived from risk analysis. | 2011 | | | √ |

## CURRENT SITUATION

As previously mentioned the new Customs Law was enacted in March 2010 (RS Official Gazette No 18/2010) and elaborated by the new Customs Decree (RS Official Gazette No 93/2010). Expectations from the new legal framework for customs are high on the market, in terms of aligning operations of Serbian companies with EU companies as their major foreign trade partners. Also, it is very important to ensure further progress in the implementation of the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention ratified in July 2007 – RS Official Gazette No 70 / 2007), and World Customs Organization's (WCO) Guidelines for the Immediate Release of Consignments by Customs (applicable to the Serbian Customs Administration, as a WCO member). All these activities are an integral part of overall efforts for alignment with the EU.

## POSITIVE DEVELOPMENTS

The new Law and Decree cover all areas relevant for the simplification of procedures, such as simplified declaration procedure (e.g. use of invoice instead of standard declaration), Authorized Economic Operator status, simplified process for express shipments and other.

Chapter VII, Article 520 of the Decree defines the following types of express shipments:

- items intended for personal use (luggage), personal gifts, medicines for personal use, low-value non-commercial shipments are exempt from customs duty and partially VAT;
- items containing promotional materials and samples received free of charge are exempt from customs duty, but not from VAT;
- items for which the customs debt may arise, without value limit, but that are not subject to restrictions or additional inspections;
- all other items including imports.

Article 521 enables a simplified clearance procedure for the first three groups.

Additionally, the Customs Decree (RS Official Gazette No 48/2010) introduced simplified procedures and duty relief for all shipments with value not exceeding EUR 25 (de minimis) and for personal gifts with value not exceeding EUR 45. Following a recommendation given in the White Book 2011, the value thresholds were increased to EUR 50 for low-value, non-commercial shipments and to EUR 70 for shipments containing gifts (Official Gazette of RS No 74/2011).

Also, following recommendations given in the White Book 2012, in accordance with Article 179, paragraph 4 of the Customs Decree (RS Official Gazette No 93/2010), the Customs Administration Head Office issued an Explanation about the export procedure for shipments with low economic impact (Customs Administration Head Office document 148-03-030-05-3/2013 of 29 January 2013) enabling all postal operators to use a simplified customs export procedure for shipments with values up to EUR 1,000.

At the beginning of 2015 the Custom systems was modernized and harmonized with EU standards using the New Computerized Transit System (NCTS). The Regulation on Amendments to the Regulation on Customs Approved Treatment of Goods was passed (RS Official Gazette No 145/2014), which came into force on 25 January 2015. The aforesaid amendments and their enforcement have created the conditions for the submission of transit procedure documents by using electronic data exchange. Implementation of NCTS is compliant with the rules and procedures of the Common Transit Convention.

## REMAINING ISSUES

The new legal framework has not met expectations yet, since a major part of the real modernization is directly dependent on the development of the Customs Information System and has not been implemented yet. The simplified declaration, the Authorized Economic Operator status and simplified procedure for express shipments are still not operational. Implementation is pending until the Customs Information System is put into practice to support the processes. Interconnection of the Customs' and companies' systems with two-way data exchange is required to enable genuine trade facilitation, standardization and simplified procedures. In other words, express customs clearance of express shipments must be ensured, as currently, upon their arrival here, they are not "express" anymore. This is very important for further liberalizing trade and supporting foreign direct investments.

Introducing de minimis shipments for which no payments of either customs or VAT duties are required, up to a defined value, is also important. The current definition of low-value

non-commercial shipments is such that they are exempt from customs duties up to a value of EUR 50, but not from payment of VAT. De minimis has been introduced in Europe because the cost of collecting these duties is higher than their value. This is very important for further e-commerce development.

A simplified customs export clearance procedure is provided to all postal operators in a way that the solution designed for public postal operators is applied to private postal operators, too. This issue is very important for further export support.

## FIC RECOMMENDATIONS

To ensure further progress in the area of customs, we recommend:

- Efficient Customs Information System development to enable and ensure the implementation of simplified procedures, secure interconnection with companies and automated clearance.
- Enable full implementation of the simplified procedures provided by the legal framework.
- Exemption from VAT for the de minimis shipments to the prescribed value exempt from customs duties.
- Further develop simplified export clearance procedure for shipments of up to EUR 1,000 and consider increasing the value threshold to EUR 5,000.
- Provide more efficient and standardized education to customs personnel to ensure focus on the full implementation of the new legal framework in practice, thus creating a predictable environment for trade and investment facilitation.
- Switch customs officers' focus from practices developed in the past to full implementation of the current legal framework, reduction of their discretionary rights and introduction of accountability if a consignment is held and/or inspected without any real reason derived from risk analysis.

# GENERAL PRODUCT SAFETY

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The continuous and intensive enforcement of the Law, especially in regard to effective warning to the consumers, public engagement, and regular controls grounded in reliable analysis and hotspot identification, as well as the penalisation of infringers, is crucial. | 2011 | | | √ |
| Adoption of by-laws and guidelines to assist the daily enforcement of the law and at the same time ensure transparency of the work of inspections. | 2014 | | | √ |
| Public campaigns to increase awareness, and appropriate training for economic operators. | 2009 | | √ | |
| Development of a system for co-ordination, information exchange and co-operation of all relevant players on a permanent basis, with concrete and effective activities and results undertaken. | 2011 | | | √ |
| Proper development of the NEPRO portal and improvement of the administrative body's visibility in the public, as well as in its overall capacity. | 2011 | | | √ |
| Linking NEPRO portal with RAPEX notification system. | 2014 | | | √ |
| Abandoning direct market interference measures in favour of controlling competition infringements, general product safety, and information given to the consumers. | 2012 | | | √ |
| Harmonization of national standards with relevant EU standards. | 2014 | | √ | |

## CURRENT SITUATION

General Product Safety has been specifically regulated in Serbia since 2009, under a special law and corresponding acts for its implementation. Additionally, 2011 saw the adoption of the Law on Market Surveillance.

This legal framework, coupled with related legislation, (i.e., the Consumer Protection Law, Law on Contracts and Torts, etc.), prescribes significant obligations for producers and distributors related to product safety; information supply and publication; and administrative oversight and customs issues. Any breaches of the major provisions thereof are sanctioned with pecuniary fines. In essence, the aforementioned legal framework is a more-or-less direct transposition of the relevant EU regulations and standards.

## POSITIVE DEVELOPMENTS

The new Law on Market Surveillance regulates co-operation and information exchange with the European Union; the framework for market surveillance activities and measures; the general rules on controlling products entering the market and conformity requirements; and co-ordination between relevant stakeholders (including the establishment of the governmental Product Safety Council) – all of which should serve as the legal foundation for the implementation of the Serbian market surveillance strategy and the work of the appropriate inspection authorities.

The implementation of the new EU IPA project concerning consumer protection should also provide an overview and assessment of general product safety rules and practices.

## REMAINING ISSUES

The NEPRO online public information system was established with the aim of promptly alerting consumers about hazardous products. This web portal is managed by the Ministry of Trade, Tourism and Telecommunications, as the domestic equivalent of the EU Rapid Alert Point of Exchange (RAPEX), which is an alert system for unsafe consumer products and consumer protection. However, there is insufficient awareness of NEPRO's activities. It is not widely known or present in the media and it does not transmit RAPEX's announcements. NEPRO made only 9 announcements in 2012 and 13 in 2013. Therefore, it can be considered that the impact of this portal on the mar-

ket is relatively low. The system was not improved in terms of user-friendliness, availability of statistical data and data analysis. This failure is all the more evident when compared with other successful government portals, and the recently launched centralized consumer protection site.

The NEPRO public information system should be harmonized with the RAPEX system, which is far better known to the general public. Harmonization would help achieve the purpose of this system of information and improve its use.

There is a general lack of visibility and transparency of the activities of authorities responsible for product safety control. This leads to an erosion of trust in, and a negative perception of the authorities, often seen as corruptible and arbitrary. The different relevant players in this field, (NGOs, economic operators, Market Inspectorate, certified laboratories), do not seem to co-ordinate their activities despite several semi-formal venues, (like the aforementioned Council); nor do they work in a cohesive system as opposed to an ad-hoc basis. In particular, the lack of information exchange between the administrative body and the judiciary, which hinders the formation of a database on misdemeanours and proper follow-up activities, gives cause for concern. The most serious problem is the inefficiency of the Market Inspectorate, and the lack of clearly defined responsibilities of this state agency, at least concerning this segment of its activities

## FIC RECOMMENDATIONS

- Continuous and intensive enforcement of the Law, especially with regard to effectively alerting consumers, public involvement, regular inspections based on reliable analysis and hotspot identification, and the sanctioning of infringers, is crucial.
- Adoption of by-laws and guidelines to assist the daily enforcement of the law and at the same time ensure transparency of the activities of inspectorates.
- Public campaigns to increase awareness, and appropriate training of economic operators.
- Development of a system of co-ordination, information exchange and co-operation of all relevant players on a permanent basis, with concrete and effective activities and results.
- Proper development of the NEPRO portal, raising the administrative bodies' visibility, and building their capacities.
- Linking the NEPRO portal with the RAPEX notification system.
- Abandoning direct market interference measures in favour of controlling competition infringements, general product safety, and information provided to consumers.
- Harmonization of national standards with relevant EU standards.

# E-COMMERCE REGULATIONS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Further harmonization of e-commerce regulations with the relevant EU rules (e.g. the implementation of the principles of coordinated field and the internal market, amendments to the definition of information service providers in line with the Directive on Electronic Commerce 2000/31/EC, stipulating sanctions for the abuse of the institute of notification of illegal content). | 2013 | | | √ |
| Harmonization of secondary legislation relevant for e-commerce (e.g. the restrictive approach of the Foreign Exchange Act demanding proof of authenticity of the origin of money). | 2013 | | | √ |
| Organizing public workshops, campaigns and educational programs in order to spread awareness about the importance and benefits of e-commerce. | 2011 | | √ | |
| Changes to the relevant postal regulations, so as to allow for the delivery of mail with a digital signature from the recipient on the screen of courier scanners. | 2013 | | | √ |

## CURRENT SITUATION

E-commerce is regulated primarily by the Law on E-Commerce, the Law on Electronic Documents and the Law on Electronic Signatures. The National Bank of Serbia opened public consultations on a set of financial regulations governing specific aspects of e-business in May 2014, specifically the Draft Law on Payment Services and the amendments to the Law on Foreign Exchange Operations, which significantly impact the performance of payment transactions in e-business. In late 2014 the National Assembly of the Republic of Serbia adopted the Law on Payment Services, as well as the Law on Amendments to the Law on Foreign Exchange scheduled to enter into force on 1 October 2015. Additionally, in late 2014 the Amendments to the Financial Services Consumer Protection Law were adopted, also entering into force on 1 October 2015. The Consumer Protection Law, adopted in 2014, includes important aspects of the legal framework and, inter alia, regulates the protection of consumers in distance contracts.

The popularity of online shopping in Serbia has been recording a stable growth trend during the previous period. According to statements made by public officials, Serbian citizens spent approximately EUR 180 million making Internet purchases in 2013. Data of the Statistical Office of the Republic of Serbia show that approximately 1,160,000 people made online purchases last year, which accounts for 41.2% of Internet users. According to this indicator, Serbia is still well below the EU average, where nearly 60% of Internet users purchase goods online. In 2014, Internet access was available to 62.8% of households in Serbia; the number of subscribers increased by 7% compared to 2013. A significant difference in Internet access rates is evident in the urban and rural parts of Serbia. In fact, according to RATEL's latest report on the telecommunications market, in 2014, 68.9% of Serbia's urban households had internet connections, whereas in rural Serbia this percentage stands at 53.7%. According to data of the Statistical Office of the Republic of Serbia, 55.1% of households used broadband internet in 2014, which is an increase of 11.7% compared to 2013. Increased use of broadband Internet resulted in the growth of the share of Information and Communication Technologies (ICT) in the gross domestic product.

In 2014, 1,160,000 Internet users made online purchases in Serbia, which is an increase of 28% in comparison to the previous year (2013), when there were 900,000. Such a significant growth in e-commerce is equally the result of the development of local e-commerce services and of the increased availability of foreign payment services (PayPal).

## POSITIVE DEVELOPMENTS

Amendments to the Law on E-Commerce in 2013 introduced a few basic novelties. The introduction of measures for restricting information services, (services provided at a distance through electronic equipment, such as e-commerce, e- advertising, electronic search services, etc.), is a positive development. These measures were modelled on interim measures of the law governing enforcement and sureties. Such measures may be imposed on any information service provider transmitting,

storing or providing access to illegal content, at the request of a person (any natural or legal entity), whose rights the information service provider violated, e.g. in the case of infringement of intellectual property rights. The court can order the removal of illegal content, or the cessation of the infringing act. Since this is a temporary injunction, the petitioner must file a lawsuit in due time to resolve the disputed issue, otherwise the temporary injunction will be suspended. The importance of this measure is reflected in the efficient protection of third party rights and in the opportunity to remove content that violates the rights of third parties from the Internet.

Another change relates to a clearer and more accurate notification about illegal content (content infringing the rights of third parties). The new provisions provide for a formal notice on illegal content on the Internet, enabling a more effective response in the removal of potentially illegal content. A person who believes that his/her rights have been harmed by the publication of illegal content must send a notification of illegal content to the information service provider in order for them to remove such content. It is important to note that the amendment further strengthens the security of e-commerce, as it allows for a quick reaction of a person whose rights have been harmed by illegal content and of the information service provider, so that the latter can now effectively evaluate and eventually remove illegal content, based on the detailed information in the notification.

Concerning the adopted financial regulations relevant for regulating e-commerce, the Law on Payment Services introduces the definition of electronic money, electronic money institutions and services provided by such institutions. These clarifications are an important step forward from the perspective of financial regulations. The Law on Payment Services provides a useful solution in allowing foreign electronic money institutions to provide services on the Serbian market after a mere notification to the National Bank of Serbia. The adopted amendments to the Law on Foreign Exchange Operations do not significantly alter the requirements concerning the use of services for online billing and payments, meaning that such services can continue to function in Serbia without obstacles. At the same time, the number of local banks offering electronic payment services has increased in the previous period. The adoption of Amendments to the Financial Services Consumer Protection Law further complements the legal framework that has made the use of credit cards for online purchasing safer. This law clearly defines the mandatory content of a credit card payment agreement, which the user signs with the bank, and the rules on the credit card payments.

The overall situation in e-commerce in Serbia can be seen as a notable improvement. It is a fact that the number of households using the Internet (including broadband), and the number of people shopping on the Internet is on the increase in comparison to the previous years, and so is the turnover from e-commerce.

## REMAINING ISSUES

In relation to the new procedure for notification of illegal content mentioned herein, the Law does not provide for a solution concerning potential abuse of such notifications, and this is a serious flaw. Furthermore, the law does not include provisions enabling the party receiving a notification to respond, or address the consequences if the content reported as illegal was not, in fact, illegal. Therefore, additional amendments to the Law on Electronic Communications are necessary to further clarify and regulate the procedure for notification of illegal content, and thus effectively prevent abuse of such notifications.

While the significant improvement in the field of e-commerce regulation is undisputed, the legal framework's efficiency and the implementation of related regulations, particularly of relevant financial legislation, still remain at issue. The complicated procedure for authenticating receipt of money from abroad, and the provisions on the Law on Foreign Exchange operations, stipulating that Serbian residents cannot open foreign bank accounts, discourages the development of e-commerce.

Additional efforts in harmonizing national legislation with the EU acquis are necessary. A change that has been made in the Law on E-Commerce, limiting the definition of Internet service providers (the previous definition was in compliance with the EU Directive on E-commerce 2000/31/EC) to persons registered with the Serbian Business Registers Agency, potentially allows for a situation where a person operating a website, merely generating links, may be punished for doing so because he/she is not registered with the Serbian Business Registers Agency. Such an approach both restricts and potentially forces a considerable number of e-businesses to relocate to foreign-based domains.

In order to harmonize with Directive 2000/31/EC prior to Serbia's EU accession, the legislator must address the issues of coordinated field and principles of the internal market. The coordinated field is the sum of regulations governing the behaviour of information service providers in countries where they are registered for the provision of information

services (with respect to liability, quality of content and services, registration and commencement of activities etc.). The principle of the internal market allows for information service providers who are in compliance with the provisions of the regulation, including the coordinated field in their country of registration, to perform business in other EU countries without the competent authorities of that U Member State requiring the information service provider to align with the coordinated field of that country. The transposition of the aforementioned provisions into Serbian legislation is mandatory prior to EU accession; regardless, these provisions are very important, since one of the most important characteristics of e-commerce is its cross-border nature.

One of the most important issues regarding the financial regulations enabling e-commerce is whether the money charged through a foreign online payment service, (e.g. PayPal) in accordance with the Law on Foreign Currency Transactions, should be withdrawn to the country before it can be used for further purchases. These concerns could be avoided if the National Bank of Serbia were to issue clear instructions to regulate the use of foreign online payment services in accordance with relevant regulations.

Both citizens and the business community should be educated further with respect to the advantages of e-commerce, in order to further develop this economic sector. Security in using e-commerce services is satisfactory; however, further efforts to raise awareness and disseminate information on reliability are required. Progress will be made when local users of PayPal services are able to receive funds from abroad, which is currently impossible since this service does not offer users the possibility of payment in the national currency (the Serbian dinar), which is a requirement of the current legal framework.

The fact that the Regulation on the General Conditions for Providing Postal Services, which plays an important role in the shipment of items sold through e-commerce, does not allow shipment deliveries to be performed with a consignee's digital signature on the delivery scanner's screen, is an aggravating factor in the development of e-commerce. Consequently, printed copies of delivery sheets must still be produced, filled in and archived.

Lack of capacity and limited market scope is reflected in the continuous hesitation of large economic players to further engage in the e-market. Education and development of practices are the only solutions to issues of trust in the online environment, which is the key constraining factor in Serbia, as worldwide. The security and safety of personal information, which is currently a very important global issue, are still not at an adequate level in the practice of local online services. Furthermore, effective implementation of the legal framework is, in that respect, still at the development stage in Serbia.

## FIC RECOMMENDATIONS

- Further harmonization of e-commerce regulations with the relevant EU rules (e.g. the implementation of the principles of coordinated field and the internal market, amendments to the definition of information service providers in line with the Directive on Electronic Commerce 2000/31/EC, stipulating sanctions for the abuse of the institute of notification of illegal content).
- Harmonization of secondary legislation relevant for e-commerce (e.g. the restrictive approach of the Foreign Exchange Act demanding proof of authenticity of the origin of money).
- Adoption of appropriate guidance by the National Bank of Serbia which would specify the use of foreign services for electronic money in accordance with existing regulations.
- Organizing public workshops, campaigns and educational programs in order to spread awareness about the importance and benefits of e-commerce.
- Changes to the relevant postal regulations, so as to allow for the delivery of mail with a digital signature from the recipient on the screen of courier scanners.

# LAW ON PAYMENT TRANSACTIONS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Improving the efficiency of transfer orders by facilitating the adjustment of the transfer order's form (prescribed by the Decision on the Form, Contents and Manner of Use of Unique Payment Instruments) to the needs of SW programs, used for the orders' optical reading; | 2014 | | √ | |
| The Law should be amended further and harmonized with the legal framework of the European Union. | 2013 | | √ | |
| With respect to the announced adoption of the Law on Payment Services, the following is needed: | | | | |
| Specify the Law on Payment Services' provisions further to avoid difficulties in its interpretation. | 2014 | | √ | |
| Extend the time in which the banks are required to align their operations and internal acts with the Law on Payment Services to 1 January 2016. Specifically, according to Art. 221 of the Law on Payment Services, banks must align their operations and internal acts with the provision of this law by the date of its application. Further, according to the same law, banks and their clients have to enter into framework agreements no later than two months before the date of the law's application, which is 1 April 2015. In addition, Art. 230 of the Law on Payment Services prescribes that the National Bank of Serbia adopt related by-laws within six months from its entry into force, which has not happened so far. | 2014 | | √ | |

## CURRENT SITUATION

The Law on Payment Transactions (Official Gazette of the FRY No 3/2002 and 5/2003, Official Gazette of the Republic of Serbia No 43/2004, 62/2006, 111/2009 – as amended, 31/2011), (hereinafter: "the Law"), regulates payment transaction institutions, procedures, and restrictions.

The Law regulates the procedure for opening and maintaining a bank account, as well as payment transactions, payment orders, and executing credit and debit transfers. It determines liability, compensation for damage and the recovery of funds with regard to payment transactions, and the enforcement of claims from clients' accounts; and it envisages penalties for violations of the Law as well as a Register of Bills of Exchange.

According to the Law, all legal entities and individuals engaging in business activity are required to open a bank account for dinar payments, and to maintain funds and effect payments through this account, in accordance with the Law, and the agreement on opening and maintaining such an account concluded with the bank.

## POSITIVE DEVELOPMENTS

From 1 October 2015, only some articles of the Law on Payment Transactions which was previously in force remained applicable.

At the end of 2013 and in 2014, amendments to the applicable by-laws and some new by-laws were adopted:

Serbia, as a candidate country for membership in the European Union, will be obliged to harmonize its regulations on payment transactions with the legal framework of the European Union. In this regard, the Law on Payment Services entered into force on 26 December 2014, (Official Gazette of the Republic of Serbia No 139/2014, hereinafter: the "Law on Payment Services"). The Law will apply as of 1 October 2015, except for Art. 192 to 213, Art. 217 and Art. 218, paragraph 1, item 11), which will become applicable on the date of accession of the Republic of Serbia to the European Union. The Law on Payment Services will replace the existing Law in its prevailing part. On the date of its application, most of the provisions of the previous Law will cease to apply, except for provisions under Art. 2, Art. 47 to 49, Art. 50, paragraph 1, item 6) and paragraph 2 and 3, Art. 51, paragraph 1, item 18)

and 19) and paragraph 2, and Art. 57, paragraph 3 of the Law. These provisions, which remain valid even after the enactment of the new Law on Payment Services, will continue to govern the enforced collection from the client's account (Law on Payment Transactions, Official Gazette of the FRY No 3/2002 and 5/2003 and Official Gazette of the Republic of Serbia No 43/2004. .., 139/2014 – as amended).

The Law on Payment Service regulates the terms and conditions for the supply of payment services, e-money, the payment system and the monitoring of the implementation of its provisions. The new regulation provides that payment services may be rendered by a bank, an e-money institution, a payment institution, the National Bank of Serbia, the Treasury or other public authority in the Republic of Serbia, in accordance with their competence, determined by the law, or a public postal operator based in the Republic of Serbia and established in accordance with the Law on Postal Services. In this way, a wider range of business entities/institutions may provide payment services, which are the exclusive domain of banks under currently applicable regulations.

The following are some specific features of the Law on Payment Services:

- the Law on Payment Services creates a legal basis for an increasing competition in the market of payment services;
- the Law on Payment Services provides for the establishment of e-money institutions and payment institutions and creates a legal basis for their business operations;
- it provides and regulates modern and up-to-date payment services;
- payment service providers are required to execute local payment transactions in dinars (RSD) within the same business day;
- it specifies the information that must be provided by the payment service provider to the payment service user;
- a payment service provider is required to provide a statement of payment transactions once a month to a payment service user/individual, at his request and without charge;
- if a dispute arises between the payment service provider and payment service user, the burden of proof falls on the payment service provider - the latter needs to prove that he has provided all statutory information to the user and that the transaction was carried out in accordance with the request of the user;
- The currency debit/credit date, (i.e. the moment from which interest is accrued and calculated on funds debited or credited to the payment account), may be different from the date on which the funds were debited/credited to that payment account only if it is more favourable for the payment service user;
- the payment recipient (e.g. retailer) may offer a discount for the use of payment cards or other payment instruments;
- the payment service user is required to use the payment instrument in accordance with the prescribed and agreed conditions;
- the payment service user is required to take all reasonable measures to protect the personalized security elements of payment instruments. In case of loss, theft or misuse of the payment instrument the payment service user must immediately notify the payment service provider thereof;
- in case of unauthorized or improperly executed payment transactions, or in the case of authorized payment transactions of inaccurately determined amounts, the payer is entitled to a refund, provided that the transaction amount exceeds the amount which the payer could have reasonably expected;
- for losses caused by abuse of payment instruments, the Law on Payment Services establishes a presumption of liability of the payment service provider, unless the latter proves the fault of the payment service user (for damages exceeding RSD 15,000);
- The law also regulates the payment systems, which enables the interconnectivity with payment service providers for the timely processing of their customers' payment transactions;
- The National Bank of Serbia oversees the performance of all payment services providers, and e-money issuers with respect to supply of payment and e-money services, as well as operators of payment systems, thus expanding and strengthening its oversight.

Article 221 of the Law on Payment Services stipulates that banks are required to align their business operations and internal acts with the provisions of this Law by the date of its implementation, i.e. by 1 October 2015, and to deliver a draft framework contract (proposal) to payment service users, no later than one month before the application of this Law, to be applied from the date of implementation of this Law. Additionally, Article 230 of the Law on Payment Services stipulates that the National Bank of Serbia must pass the implementing regulations of this Law within six months from the date of its entry into force.

With regard to the Law on Payment Services, nineteen by-laws have been enacted so far, to be implemented at the same time as the Law on Payment Services. It is expected

that the National Bank will introduce more by-laws in the future to regulate in more detail the areas that are not currently regulated by the by-laws.

## REMAINING ISSUES

When adopting laws and by-laws, the practical application of certain rules is not always taken into consideration, which impacts the quality, efficiency and uniform practices in the implementation of activities prescribed by the Law (e.g. the Decision on Terms and Conditions for Opening, Maintaining and Closing Bank Accounts stipulates a new "OP" form, although the old "OP" form, certified by courts, can still be found on the market).

## FIC RECOMMENDATIONS

- Improving the efficiency of transfer orders by facilitating the adjustment of the transfer order's form (prescribed by the Decision on the Form, Contents and Manner of Use of Unique Payment Instruments) to the needs of software applications used for the orders' optical reading.
- The Law should be amended further and harmonized with the legal framework of the European Union.

With respect to the adopted Law on Payment Services, the following is needed:

- Further specify the provisions of the Law on Payment Services to avoid difficulties in its interpretation.
- Extend the time in which the banks are required to align their operations and internal acts with the Law on Payment Services to 1 January 2016.
- Regulate the areas that are not regulated by the by-laws, which is expected to happen in the forthcoming period.
- The good side of the Law on Payment Services will become apparent only once its practical implementation begins.

# FOREIGN EXCHANGE OPERATIONS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Modernise codes of payment and adjust them to today's transactions. | 2012 | | √ | |
| Adopt the remaining by-laws in the statutory term, as these are necessary for the full implementation of the Law. | 2013 | | √ | |
| Allow cash-pooling between affiliated companies. | 2012 | | | √ |
| Enable cross-border inter-company invoicing in order to simplify cross-border payments and further regulate netting operations in Serbia, which are not sufficiently regulated at present. | 2011 | | | √ |
| Enable the issuance of guarantees and other forms of warranties based on the order and in favour of a non-resident, in all non-credit transactions between two non-residents. | 2011 | | | √ |
| Enable residents-individuals to give warranties and other security instruments by order and in favour of non-resident creditors. | 2013 | | | √ |
| Simplify as much as possible the by-laws regulating set-off when participants in the transaction are affiliated parties, in order to enable global netting between affiliated companies. | 2013 | | | √ |
| Ease reporting obligations (from the opening of a simple bank account to facilitated communication with the NBS regarding reporting, through less formal procedures). | 2012 | | | √ |
| Regulate the provisions on the transfer of debts from realised foreign trade of goods and services of residents from Article 7 of the Law, by prescribing the requirement of the creditor's consent in the debt transfer, in order to protect the interests of creditors in the underlying transaction. | 2013 | | | √ |
| Adjust and harmonise applicable legislation in this area, and resolve issues that are still unclear. | 2012 | | | √ |
| Harmonize the various financial laws and regulations (e.g. the Law and the Law on Capital Market) in order to avoid ambiguity in the application and interpretation thereof. | 2014 | | | √ |
| Amend the Law in order to ensure that the competent authority (especially the NBS) interpret it based on the regular interpretation standards e.g. by considering all types of transactions as permitted under the Law, unless they are explicitly prohibited. | 2014 | | | √ |

## CURRENT SITUATION

After year 2012, when the Law on Foreign Exchange Operations (the "Law") was thoroughly amended, aiming for the liberalization of foreign exchange (forex) operations, there were no material changes of the Law and expected further liberalization. Namely, certain by-laws were adopted in the preceding period; however, key institutes, highlighted by the Foreign Investors Council for a number of years, have not been amended; i.e., have not been further liberalized. The aim of the changes and amendments to the Law adopted at the end of 2014 was to harmonize provisions of the Law with provisions of the newly adopted Law on Payment Services. These amendments will enter into force on 1 October 2015, when the Law on Payment Services will become applicable. Based on the latest information that we have received, the Government has formed a working group that should work on a proposal of amendments of the Law with the aim of further liberalizing forex operations in certain areas, given that complete liberalization is not currently planned due to protection of macroeconomic stability.

## POSITIVE DEVELOPMENTS

Apart from the adoption and amendments of certain by-laws (such as the Decision on reporting on transactions with securities and minor amendments to the Decision on reporting on foreign credit transactions), there have been no material changes of the Law and/or the by-laws, and thus significant positive developments in this area have not been made.

Application of the changes and amendments to the Law adopted at the end of 2014 will allow residents to perform foreign payment transactions for online buying and selling of goods and services in foreign countries through local payment institutions and local electronic money institutions as well. Furthermore, residents-individuals may perform foreign payment transactions through local payment institutions and postal operators which offer payment services. It contributes to certain additional liberalization and encourages competitiveness in the field of foreign payment transactions since other entities, in addition to banks, will be authorized to perform foreign payment transactions. Since the amendments have not entered into force yet, their practical contribution to the solution of the problem of inadmissible payments through online payment services is to be seen.

## REMAINING ISSUES

Despite partial liberalization in the field of forex operations over the past few years, applicable regulations in Serbia are still restrictive, aiming to protect and maintain macroeconomic stability. However, we consider it necessary to expand the list of liberalized transactions, whenever justified and possible, especially when it comes to groups of affiliates, when such tends to simplify financial relations within the group. Therefore, liberalization of foreign credit and deposit operations remains crucial for enabling the delivery of more sophisticated banking services, such as full "cash management" packages. Also, the Law still does not envisage the issuance of guarantees and other forms of warranties upon order, and in favour of a non-resident, under non-credit transactions between two non-residents. Furthermore, we consider that in order to liberalize forex operations there are grounds for the National Bank of Serbia (NBS) to revisit the Law in terms of allowing non-residents to buy short-term securities in Serbia.

When it comes to transactions in securities, we remind that the NBS has not yet adopted/amended the supporting regulation for enabling the banks in Serbia to trade in foreign short-term securities denominated in RSD, thus practically blocking the full application of Article 15 of the Law. Additionally, it is noticeable that the relevant authorities, with their interpretation in some matters, narrowed the scope of application of certain rules, and thus limited the activities of the participants in the area of forex operations.

Therefore, policies in this area should focus on further liberalizing current and capital transactions, whenever sustainable and in line with the Stabilization and Association Agreement, in order to harmonize the applicable Serbian regulations with EU legislation and international standards in this area. Furthermore, it is necessary to ensure that the application and interpretation of the regulations by the relevant authorities follow adequately adopted amendments.

## FIC RECOMMENDATIONS

- Modernize regulations on payment operations and adjust them to modern-day transactions.
- Adopt the remaining by-laws in the statutory term, as these are necessary for the full implementation of the Law.
- Allow cash-pooling between affiliated companies.
- Enable cross-border inter-company invoicing in order to simplify cross-border payments and further regulate netting operations in Serbia, which are not sufficiently regulated at present.

- Enable the issuance of guarantees and other forms of warranties based on order and in favour of a non-resident in all non-credit transactions between two non-residents.
- Enable resident individuals to provide warranties and other security instruments by order and in favour of non-resident creditors.
- Simplify the by-laws as much as possible, regulating set-off when participants in the transaction are affiliated parties, in order to enable global netting between affiliated companies.
- Ease reporting obligations (from the opening of a simple bank account to facilitated reporting communication with the NBS, through less formal procedures).
- Regulate the provisions on the transfer of debts from realized foreign trade of goods and services of residents under Article 7 of the Law, by prescribing the requirement of the creditor's consent in the debt transfer, in order to protect the interests of creditors in the underlying transaction.
- Adjust and harmonize applicable legislation in this area, and resolve issues that are still unclear.
- Harmonization of the various financial laws and regulations (e.g. the Law, the Law on Capital Markets and planned Law on Investment)) in order to avoid ambiguity in the application and interpretation thereof.
- Ensure that the competent authority (especially the NBS) interpret the Law based on the regular interpretation standards; e.g. by considering all types of transactions as permitted under the Law, unless they are explicitly prohibited.

# PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Develop a system that would enable better communication between the Administration for the Prevention of Money Laundering and liable parties, as well as the government, and better co-operation with the Ministry of Foreign Affairs and the courts. | 2009 | | √ | |
| Influence public opinion on the necessity for more decisive and efficient action against money laundering and financing of terrorism. | 2009 | | √ | |
| Organise adequate seminars and workshops in order to conduct relevant training for entities subject to the Law with a view to increasing effectiveness of its implementation. | 2011 | | √ | |

## CURRENT SITUATION

The Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of the Republic of Serbia No 20/2009, 72/2009, 91/2010, 139/2014, hereafter referred to as the "Law") provides definitions of money laundering, financing of terrorism and other key terms; establishes the obligation of state authorities, lawyers and other legal entities to take action; and stipulates measures for the detection and prevention of money laundering and financing of terrorism.

The Law establishes the Administration for the Prevention of Money Laundering and stipulates its jurisdiction. If the Administration suspects that a particular transaction or party are related to money laundering and financing of terrorism, it collects, analyses and reports information and documents obtained from liable parties to relevant state authorities. Besides the Administration, other state authorities are obliged to monitor the application of the Law and notify the Administration of potential cases of money laundering.

In accordance with this Law, the Government adopted the Rulebook Setting the Methodology, Obligations and Actions for Performing Transactions in Conformity with the Law on the Prevention of Money Laundering and Financing of Terrorism.

Article 21 of this Rulebook defines the list of countries that do not apply standards in the area of prevention of money laundering and financing of terrorism (e.g. Uzbekistan, Pakistan, and Azerbaijan). However, the fact that a country is on that list does not mean that no business should be conducted with clients from that country; only that precautionary measures should be taken. Furthermore, Article 19 stipulates that a liable party is not under obligation to report every money transaction totalling EUR 15,000 or more in RSD counter value to the Administration, in the case of daily cash takings for goods and services.

Article 7 of the Law prescribes that liable parties should conduct a risk analysis whenever taking necessary measures. According to the Law, there are three risk groups:

- customer risk (e.g., a transaction with no economic basis: politically exposed persons and businesses that undertake large cash transactions);
- service risk in connection with a business activity (possibility of money laundering in performing a business activity);
- country risk (e.g. countries with high crime rates and count-ries that do not apply internationally recognized standards).

The Law establishes the responsibility of liable parties (legal entities and sole traders) to undertake actions and measures for detection and prevention of money laundering and financing of terrorism. The lawmakers made a special distinction between lawyers and other liable parties due to the nature of their profession and relationships based on confidentiality with their clients.

In 2014, the Administration for Prevention of Money Laundering worked intensively on the preparation of the draft Law on Amendments to the Law. A Working Group was formed for this purpose, to ensure in this area, and to introduce the obligation of payment service providers to collect

certain information on payers and recipients of electronic transfers.

According to the Law, all authorized persons must be licensed, but the Administration for Prevention of Money Laundering did not organize professional licensing exams for entities subject to the Law in 2014 and 2015 as in previous years, only workshops and seminars to inform and train/advance the skills of authorized persons and employees who work on the prevention of money laundering and financing of terrorism.

The Administration for the Prevention of Money Laundering compiled a list of indicators for identifying suspicious transactions related to money laundering or financing terrorism that serve as guidelines for the following entities subject to the Law: lawyers and law partnerships; accountants; entities providing money transfer services; entities providing forfeiting services; postal services; tax advisors; issuers of guarantees; organizers of games of chance; auditing companies; certified auditors; insurance companies and banks. Additional guidelines were adopted in 2014 and 2015 with an updated list of indicators.

The Administration for the Prevention of Money Laundering adopted Guidelines for the Assessment of Risk of Money Laundering and Financing of Terrorism for most entities subject to the Law. All legal entities are required to adopt internal acts on risk assessment, based on the guidelines mentioned above.

In addition, the Government of the Republic of Serbia, at its session of 31 December 2014, adopted the National Strategy for Combating Money Laundering and Financing of Terrorism with an Action Plan for its implementation.

The overall objective and purpose of the National Strategy is to strengthen particular parts of the system for combating money laundering and terrorist financing, contributing to the full protection of the financial system and economy of the country from the threat caused by money laundering and financing of terrorism and proliferation of weapons of mass destruction. The National Strategy puts emphasis on cooperation of all relevant state authorities, through exchange of information and expertise, access to databases and formation of working teams.

In March 2014, the Law on Restrictions on Disposal of Property with the Aim of Preventing Terrorism was adopted (Official Gazette of the Republic of Serbia No 29/2015, hereinafter referred to as the "Law"). The aim of the Law is to restrict the disposal of property by persons designated as terrorists and persons associated with them. The list of designated persons is compiled by the Government on the basis of the list of designated persons determined by the United Nations and other international organizations of which the Republic of Serbia is a member.

## POSITIVE DEVELOPMENTS

The Law on the Prevention of Money Laundering and Financing of Terrorism introduces innovations in the domestic legal system aligning this field with European Union directives and international standards and conventions.

Furthermore, the Law restricts receipt of cash amounts exceeding EUR 15,000 for any person selling goods or services in the Republic of Serbia, and such transactions must be conducted through the institutionalized banking system. Whenever there are reasons to suspect money laundering or financing of terrorism, the liable party must report any cash transaction amounting to or exceeding EUR 15,000 to the Administration, immediately or no later than three days from the date on which the reason for suspicion first arose.

Additional laws and by-laws were enacted in 2014 and 2015, which should contribute to the improvement of the prevention and detection of money laundering and terrorist financing, and amendments to the Law are being drafted.

## REMAINING ISSUES

The application of the Law primarily depends on the actions of the Administration and other bodies responsible for its implementation. Most of the standards and rules that apply in the European Union member states have been incorporated into the Law and the next step should be to find mechanisms for their implementation. The Administration for the Prevention of Money Laundering increased its activities and demands toward entities subject to the Law in 2013 and 2014, but there is still lack of co-operation. In addition, the Administration has not organized any regular licensing exams for liable parties in the past months, so these should be organized as soon as possible to enable adequate professional training of employees for every liable party.

## FIC RECOMMENDATIONS

- Develop a system to enable better communication between the Administration for the Prevention of Money Laundering and liable parties, as well as the government, and better co-operation with the Ministry of Foreign Affairs and the courts.
- Influence public opinion on the necessity for more decisive and efficient action against money laundering and financing of terrorism.
- Continue organizing adequate seminars and workshops to train entities subject to the Law, with a view to increasing effectiveness of its implementation.

# LAW ON PERSONAL DATA PROTECTION

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Provide the Commissioner with better working conditions, equipment and staff. | 2009 | | | √ |
| Determine the supervisory bodies that would monitor the implementation of the Law in co-operation with the Commissioner. | 2009 | | | √ |
| To adopt a new law as soon as possible, i.e. support the Model Law drafted by the Commissioner. | 2014 | | √ | |
| Adopt by-laws or issue precise instructions and standardised forms necessary to improve the implementation of the Law (particularly in relation to the coordination of existing databases and applying for data export permits). | 2009 | | | √ |
| Establish better communication between the Commissioner and other state authorities, non-governmental organisations (NGOs), and international organisations. | 2010 | | | √ |
| Conduct workshops and seminars in order to educate citizens and raise their awareness of the protection of their rights. | 2009 | | √ | |
| Amend the provisions of the Law in relation to areas that are not regulated and fully harmonise the provisions of the Law with long-established and accepted European standards. | 2013 | | | √ |

## CURRENT SITUATION

The Personal Data Protection Law (hereinafter: "DP Law") came into force on 1 January 2009 and was designed to introduce significant innovations and changes, all in accordance with the relevant European Union (EU) rules and international standards, such as freedom from interference with privacy, family, home and correspondence provided under Article 8 of the European Convention on Human Rights; and protection of the processing and free movement of personal data within the EU provided under the Data Protection Directive (Directive 95/46/EC).

The DP Act provides that personal data may be collected and processed (with a limited number of exceptions) only if the data subject has given his consent, either in writing or as an oral statement entered into the data controller's records. The consent must be given in written form in the case of "particularly sensitive" personal data such as one's race, creed, ethnic origin, political affiliation, trade union membership, sexual identity, etc. Even though the Government should have enacted a separate by-law detailing how personal data should be protected and stored within six months from the date of entry into force of the DP Law, no such by-law has been enacted yet.

The DP Law provides a broad definition of processing of personal data, as any operation undertaken in relation to personal data, including collection, classification, recording, use, copying, transfer, storage, disclosure, dissemination, search, concealment, etc. Upon expiry of the purpose for which the data was processed and maintained, further processing is explicitly prohibited if, inter alia, at such time the data subject is identified or identifiable. The DP Law also prohibits taking decisions with potential legal consequences on such characteristics as a person's working ability, creditworthiness, etc., solely based on automated processing of personal data pertaining to that person.

The data subject now has extensive rights to request information on a number of issues related to processing, such as where the data is transferred; to whom it is transferred; the purpose of the transfer; and the legal grounds for the transfer. Furthermore, the data controller is required to submit such information in writing. In fact, according to statistics published on the website of the Commissioner for Information of Public Importance and Personal Data Protection ("the Commissioner"), the Commissioner carried out 76 inspections in May 2015, and 33 of these resulted in a warning to controllers regarding irregularities in the processing of personal data. During the first five months of 2015, the Commissioner carried out 375 inspec-

tions, compared to 436 supervisions in the same period in 2014. The number of warnings issued to controllers due to irregularities in the processing of personal data increased from 83 in the first five months of 2014 to 203 in the same period in 2015.

As for cross-border transfers of personal data, the DP Law states that personal data may be freely transferred to parties of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. As almost all European states are members of the Council of Europe, this provision of the DP Law actually means that personal data may be freely transferred from Serbia to other European states. The DP Law further prescribes that personal data may be transferred to non-European countries (i.e., to countries not parties to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data), provided that they have in place the same level of personal data protection as that established by the Convention and subject to prior approval issued by the Commissioner. According to the DP Law, this level of protection is established either by a regulation or on the basis of a contract. If the intention is to transfer personal data outside of Serbia, the local entity must first register a personal data filing system ("zbirka podataka") and then obtain a data transfer authorization from the Commissioner. Issues related to transferring data outside of Serbia are gaining momentum in practice, and therefore an improvement in this area is necessary. As a minimum, it would be advisable for the Commissioner to publish a list of countries that are not members of the Convention but are considered to provide an adequate level of personal data protection according to the criteria set forth in Article 44, paragraph 1, item 6. The procedures for rendering a decision allowing transfer of data to countries that are not Parties of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data are not governed by the DP Law, and this generates great legal uncertainty. As there are no rules for the Commissioner to follow, the applicants for the transfer of data do not know how to prepare their request and which evidence to submit. The meagre Commissioner's practice in that regard discourages companies from submitting a request to the Commissioner. This particularly applies to cases of transfer of data to companies within a multinational company or group of companies whose headquarters are located on different continents.

## POSITIVE DEVELOPMENTS

In the first five months of 2015, the Commissioner resolved a total of 973 cases pertaining to personal data, compared to 860 cases resolved in the same period in 2014. Also in the first five months of 2015, the Commissioner issued 374 opinions pertaining to the application of the DP Act, a substantial increase when compared to 227 opinions issued in the first five months in 2014. According to the monthly report for May 2015, the total number of registered data controllers has increased to 1,484, in comparison to the same period in the previous year when 1,260 data controllers were registered.

In 2014, the Commissioner acted upon 19 requests for the transfer of personal data from Serbia. The Commissioner issued 14 decisions, authorizing the transfer in eight cases, suspending the proceedings in five, and rejecting one request.

In May 2014, the Commissioner made public a Model Data Protection Act. The Model Law is an improvement in comparison to the current Law. The Model Law provides solutions for the substantial harmonization of Serbia's legislation in this area with the Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) and with the EU Data Protection Directive (Directive 95/46/EC).

According to the most recent draft of the Serbian Government's Action Plan for Chapter 23 (on Judiciary and Fundamental Rights) of the EU acquis communautaire, released on 8 May 2015, a new Personal Data Protection Law should be enacted in the third quarter of 2015. According to the Action Plan, the new law should be based on Model Law drafted by the Commissioner. Furthermore, the Action Plan pledges adoption of relevant by-laws for the implementation of the Personal Data Protection Law in the first quarter of 2016. This would be a major step towards harmonization with the EU standards.

## REMAINING ISSUES

The number of filing systems registered in the Central Registry, despite the significant increase in percentile points compared to last year, is still noticeably below the number of filing systems that should be registered in accordance with the Law. The total number of filing systems in May 2015

was 7,622, compared to 6,702 in May 2014, but the number of filing systems maintained by various data controllers in Serbia likely numbers hundreds of thousands.

In practice, even though the Commissioner's staff has shown eagerness, substantial knowledge, and professionalism in assisting data controllers fulfil their obligations under the DP Law, there is also a growing sense that the DP Law is sometimes applied rigidly, which often turns an application for personal data transfer into a months-long negotiations process with the office of the Commissioner. While the length of the procedure also depends on the complexity of the case and agility of the applicant, the Commissioner's rigidity in applying the DP Law contributes to slowing down the process. As a result, data controllers face significant administrative and legal costs whilst attempting to fulfil their obligations under the DP Law and conduct business in the same manner as their counterparts in the EU.

Likewise, bearing in mind the implementation of the DP Law in practice, the need for more precise and comprehensive legislative regulation in this area has become increasingly more evident. Specifically, the DP Law lacks provisions governing or regulating certain areas and issues, such as video surveillance, biometric data, direct marketing, use of citizen's unique identification number, online data processing, photocopying and scanning of documents, organizational technical measures for the protection of data, the relationship between the controller and the processor of data, etc. In the absence of adequate normative solutions, difficulties arise in the implementation of the DP Law, related to personal data processing in these areas. There is also a need to further harmonize the relevant legislation with international standards, as embodied, in particular, in Directive 95/46/EC, in matters such as the form of the data subject's consent and exemptions to the general rule that lawful data processing requires consent.

## FIC RECOMMENDATIONS

- Provide the Commissioner with better working conditions, equipment and staff.
- Determine the supervisory bodies that would monitor the implementation of the data protection statute in co-operation with the Commissioner.
- Adopt a new data protection law as soon as possible, i.e. support the Model Law drafted by the Commissioner.
- Adopt by-laws or issue precise instructions and standardized forms necessary to enable effective implementation of the data protection statute.
- Establish better communication between the Commissioner and other state authorities, non-governmental organizations (NGOs), and international organizations.
- Conduct workshops and seminars in order to educate citizens and raise their awareness of the protection of their rights.

# DISQUALIFIED PERSONS' ACT

## CURRENT SITUATION

The adoption of the Law on the Temporary Restrictions of the Rights of Business Entities (the "Law") is expected in the upcoming weeks/months, given that the working group has finalized its work and has forwarded the Law to the Parliament.

Having in mind that the Law is the subject of rather high interest of both legal entities and the general public, we present below the positive developments as well as the remaining issues we foresee in case the Law is adopted in the form as presented by the working group.

## POSITIVE DEVELOPMENTS

The goal of introducing additional discipline in the operations of legal entities in Serbia and to minimize the possibility of misuse and causing damage to third parties - that is, to introduce sanctions for those who misuse their functions in legal entities - is a highly positive approach and is fully supported by the FIC, which has advocated for just that since its incorporation.

The co-ordination of various authorities (the Ministry of Interior, other ministries, the NBS) in the sense of a timely exchange of data on legal entities and their members and bodies, who do not respect applicable legislation related to operations of legal entities in any way, is also a positive signal of the Law.

## REMAINING ISSUES

On the other hand, the FIC (being a member of the working group for the Law) is of the view that the wording of the Law forwarded to Parliament for adoption will not contribute to a better business climate, and may even have the opposite effect, thus leading to the punishment of entities/persons who triggered one of the events set out in the Law on disqualified persons without their fault or influence.

Namely, the Law sets out four main criteria due to which there may be a restriction of rights – (i) Account blockage for more than 120 days; (ii) Initiation of bankruptcy proceedings; (iii) Forced liquidation; and (iv) The enforcement of irrevocable or enforceable court injunctions and security measures in court and other proceedings, the legal consequence of which is the restriction of the acquisition or exercise of rights of legal entities in a company or the carrying on of business activity.

The aforesaid criteria, save for the last one, are rather questionable, since none of the aforesaid grounds has to be a consequence of abuse of rights by the party/person whose rights would be restricted. Namely, there are numerous situations in practice of legal entities having their accounts blocked, or undergoing bankruptcy proceedings, where such account blockage or bankruptcy are not the consequence of any fraudulent or other activity: i.e. that both the members and bodies of legal entities have fully acted bona fidae. As an example of such a situation, we point out the case of legal entities being in one of the said situations due to debts by the state or local authorities not performing their duties, as well as the case of a cooperate chain (notably in the construction industry) where account blockage or bankruptcy over one of the entities in the chain triggers a domino effect for other members in the chain below.

As regards the criteria related to forced liquidation, the same is also questionable, since this institute is not implemented in practice, and thus it is not possible for it to have an entire rationale on these grounds.

The FIC deems that only the last criteria above is fully appropriate for the temporary restrictions of right, but only if its legal consequence would be the restriction of concrete business activity.

In addition, we are of the view that a number of persons encompassed by the Law is too wide, and that it is necessary to envisage that only persons (members/shareholders and members of bodies) who undertook actions or supported actions that lead to misuse may be subject to the restrictions of the Law.

Finally, we point out that if the Law is adopted, it would be necessary, prior to its adoption and implementation, to fully align it with the Law on Data Protection.

## FIC RECOMMENDATIONS

- It is not necessary to adopt the Law, given that through application and implementation of existing legal solutions (e.g. the full implementation of the prohibition of business activity, application of the institution of piercing the corporate veil, and the like). It is thus possible to achieve the goals of the Law and reduce misuse and damaging of third parties.

- In case the Law is to be implemented, we are of the view that before its adoption, it is necessary to perform significant changes and make certain provisions more precise (as elaborated in Remaining Issues above) in order, to the extent possible, to minimize the possibility that the Law applies to legal entities and their members/bodies which fully operate bona fidae.

# LAW ON WHISTLEBLOWERS

## CURRENT SITUATION

The National Assembly of the Republic of Serbia adopted the Law on the Protection of Whistleblowers (Official gazette of the Republic of Serbia, no. 128/2014, hereinafter: the Law), on 25 November 2014, and the law subsequently entered into force on 4 December 2014 and started applying on 5 June 2015. This Law regulates whistleblowing, a whistleblowing procedure, the rights of whistleblowers, obligations of the state and other bodies and organizations, and legal and natural persons in connection with whistleblowing, as well as other issues of importance for whistleblowing and the protection of whistleblowers (Article 1 of the Law).

As defined by the Law, whistleblowing is the disclosure of information about the violation of law, the violation of human rights, the exercise of public authority contrary to the purpose for which it was entrusted, danger to life, public health, safety, the environment, and to prevent major damage; while the whistleblower is a natural person who performs whistleblowing in connection with his work, recruitment process, using the services of the state and other authorities, holders of public authorities or public services, business co-operation, and the right of ownership of a business enterprise.

The Law prohibits the prevention of whistleblowing. It protects whistleblowers from adverse actions, which is every act or omission in connection with whistleblowing that threatens or violates the rights of a whistleblower or a person entitled to protection as a whistleblower, or places such persons in unfavorable positions. Entitled to protection are all persons engaged in work, i.e. persons employed, persons who work under non-employment contracts, volunteers, persons holding positions, as well as persons who perform every other actual work for the employer. Besides whistleblowers, under certain conditions, the Law protects persons connected with the whistleblower, as well as any person wrongly labeled as a whistleblower, person who performs official duties, and person seeking information regarding the case of whistleblowing.

Abuse of whistleblowing is expressly prohibited. The Law prescribes the protection of the personal data of whistleblowers. Certain conditions are set, under which a person is entitled to protection, and one of the conditions is regarding the deadline: the whistleblower is protected if he/she exposes information within one year from the date of learning of the action for which whistleblowing is performed , and no later than ten years from the execution of said action.

Whistleblowing can be internal (disclosure to the employer), external (disclosure to an authorized body) and whistleblowing in public (disclosure of information to the media, through the Internet, at public meetings or in any other manner in which information can be made available to the public). The employer and the authorized body are also obliged to act based on anonymous tips regarding the information, within their authority.

Internal whistleblowing surely takes the central place in the Law. The Law obliges the employer to protect whistleblowers, within the framework of their powers, from adverse actions, as well as to take necessary measures in order to eliminate adverse actions and the consequences of adverse actions. Article 21 of the Law more closely regulates what constitutes putting persons engaged in work in an unfavorable position, inter alia relating to: employment, work under non-employment contracts, career advancement, working conditions, termination of employment, salary, severance pay, transfer to another place of work, etc. (therefore it is not numerus clausus).

The Law stipulates that the employer is obliged to provide all persons engaged in work with written information about the rights covered by the Law. The employer is also required to appoint a person authorized to receive the information and the conduct of proceedings in connection with whistleblowing. On the other hand, employers that have more than ten employees are obliged to regulate the general act of an internal procedure of whistleblowing. They are also obliged to make this general act public, in a visible place accessible to every person engaged in work, as well as on the website of the employer, if technically possible. The deadline for the adoption of a general act is one year from the Law's date of entry into force, i.e. the deadline is 4 December 2015.

The Law generally regulates the procedure for internal whistleblowing initiated by the submission of information to the employer. Employers are obliged to act according to the information without delay and no later than within 15 days of receipt of the information. They are obliged to inform a whistleblower about the outcome of the conclusion thereof, within 15 days after completion of the procedure. An employer shall also, upon the request of a whistleblower, provide the whistleblower with information on the progress and actions undertaken in the proceedings, as well as allow the whistleblower to review the case files and attend procedural actions.

External whistleblowing starts with providing information to an authorized body, although the Law does not specify which body. As for whistleblowing in public, the public can be alerted, without prior notification to the employer or the competent authority in the case of imminent danger to life, public health, safety, the environment, the occurrence of large-scale damage, or if there is an immediate risk of evidence being destroyed. When alerting the public, whistleblower is bound to respect the presumption of innocence of the accused, the right to protection of personal data, as well as not to endanger the conduct of judicial proceedings.

The judicial protection of whistleblowers is also envisaged. Accordingly, a whistleblower subjected to adverse action taken in connection with whistleblowing has the right to judicial protection. The claim must be filed within six months from the date of learning of the undertaken adverse action (subjective term), and the objective term is three years from the date when the adverse action toward the whistleblower was taken.

Subject matter jurisdiction belongs to the Higher Court, and territorial jurisdiction to the court in whose territory the adverse action was taken or the place of residence of the prosecutor (elective jurisdiction). The procedure is urgent and revision is always permissible. In the first instance, an individual judge is acting; in the second, a council of three professional judges. The Law clearly refers to the application of the provisions of the Code of Civil Procedure, specifically labor disputes as separate civil proceedings. The court is also obliged to urge parties to dispute to resolve said dispute through mediation.

A lawsuit seeking protection in connection with whistleblowing may call for the following:
- Determining that adverse action was taken against the whistleblower;
- Prohibition of committing and repetition of adverse action;
- Removal of the consequences of adverse action;
- Pecuniary and non-pecuniary damage;
- The decision passed in the lawsuit filed for the above-mentioned reasons to be published in the media, at the expense of the defendant.

We draw particular attention to the following provisions of the Law. If during the proceedings a plaintiff has made it credible that he/she had been subject to adverse action n connection with whistleblowing, the defendant has the burden of proving that the harmful action is not causally related to the whistleblowing. It is possible to adopt interim measures. The proposal for an interim measure may be required for the court to postpone the legal effect of the act that prohibits the performance of adverse action, as well as to avert the consequences caused by adverse action.

The Law also prescribes the obligation of the Minister of Justice to bring two by-laws pursuant to the Law.

The Ministry of Justice adopted the By-Law on the Program for the Acquisition of Specific Knowledge concerning the Protection of Whistleblowers (Official Gazette of the Republic of Serbia, no. 4/2015), in accordance with the Law, which was enacted on 24 January 2015. This By-Law regulates the program for the acquisition of specific knowledge concerning the protection of whistleblowers, which aims at judges receiving additional theoretical and practical knowledge in the area of whistleblowing and protection of whistleblowers and acquiring the skills required for professional and efficient trials in proceedings relating to the protection of whistleblowers, as well as obtaining the necessary expertise in other areas that will help them better understand the concept of distress and adverse consequences suffered by a whistleblower or a person who is entitled to protection as a whistleblower. The program is envisaged to be divided into three thematic sections, after offering practical exercises in the form of a simulated case for the application of acquired knowledge.

Another regulation is the By-Law on the Method of Internal Whistleblowing, the Method of Determining the Person Authorized by the Employer, as well as Other Issues of Importance for the Internal Whistleblowing at an Employer who has more than Ten Employees, which was adopted by the Ministry of Justice and enacted 13 June 2015, after its publication in the Official Gazette of the Republic of Serbia, no. 49/2015. The very title of this By-Law shows which particular matter is more closely regulated by it, in accordance with the Law.

This By-Law shall apply to employers in the Republic of Serbia who have more than ten employees, and these employers are required to make a general act governing the whistleblowing by 4 December 2015 at the latest. The By-Law also focuses on specific elements of internal whistleblowing, such as written and verbal whistleblowing; issuing confirmation upon receipt of information; the sending anonymous information; reports on actions; and the like.

## POSITIVE DEVELOPMENTS

The National Strategy for the Fight against Corruption for the Period from 2013 to 2018, and the accompanying Action Plan envisage establishing efficient and effective protection of whistleblowers or persons reporting suspected corruption as one of the objectives that need to be achieved. In addition, the obligations of the Republic of Serbia to regulate the issue of the protection of whistleblowers arise from international treaties which the country has ratified. The above clearly shows the importance of adopting this Law.

Formerly, whistleblower protection was regulated by the Law on Civil Servants, the Law on Free Access to Information of Public Importance, and the Law on Agency for the Fight Against Corruption, as well as the Rulebook on the Protection of Individuals who report suspicions of corruption. This protection was extremely limited in scope (definition of persons enjoying protection - civil servants or persons employed in the public authorities, the scope of protection, cases in which protection is granted, non-regulated area of sanctions for those who carry out reprisals, etc.). Therefore, and because this matter cannot be set up without proper legislation in a compre-

hensive way, the Minister of Justice in September 2013 formed a working group, which resulted in today's Law.

Therefore, the adoption of the Law itself is a big improvement over the situation that has existed so far. In addition to domestic experts, the most eminent world experts in this field participated in the drafting of the law, while many non-governmental organizations and associations also gave their opinions and proposals, primarily during the public hearing, and so it is expected for this Law to have an impact in almost every segment of society. In most countries this kind of law is mainly related to labor disputes, while a whistleblower may be any person, including persons engaged in work, and not only persons who are employed. By the adoption of this Law, the Republic of Serbia is ranked among the very limited circle of European countries having specific legislation regulating whistleblowing (the United Kingdom, Luxembourg, Romania, and Slovenia).

## REMAINING ISSUES

Bearing in mind that the Law is basically new, it is necessary to have a certain amount of time in order for it to be practiced, primarily for the employer, then the state organs, the courts, the authorized bodies and the like. Only then will it be possible to give a clear assessment of the remaining problems that need to be faced, which then would contribute to solving the improvement of the protection of whistleblowers in the Republic of Serbia. To begin with, it is necessary that employers comply with the Law, especially by informing people working for them on their rights as defined by the Law; then the appointment of an authorized person for receiving information and conducting of proceedings in connection with whistleblowing; and the adoption of a general act by the employer in connection with the internal whistleblowing (in particular where there is a legal requirement, as in employers with more than ten employees).

As already noted, the mere adoption of this regulation represents an important step for the Republic of Serbia and its society, although there is room for improvement in the Law.

The Law does not specify more closely the nature and function of the authorized body, and does not define the relationship between internal and external whistleblowing, which leaves room for doubt. In addition, the Law does not provide the same protection from criminal offenses in connection with whistleblowing, as well as specific offenses in cases of serious violations of the rights of whistleblowers and other persons under the same protection. Although there were plans to regulate the foregoing, up to the moment of the writing of this text, there have been no developments. There were also no amendments to the Criminal Code, which would, as an alternative to the above-mentioned option, prescribe those criminal offenses in Criminal Code, which is sedes materiae in this area. We believe that this can be extremely important, especially in whistleblowing related to corruption and a threat to the environment and human health.

The Law contains other deficiencies, primarily in terms of vagueness of certain provisions or predictions of modalities of violation of the rights of whistleblowers and their protection. For example, the situation whereby retaliation for whistleblowing is made by a third party, and not the employer - the law in this situation remains powerless. In addition, the Law does not provide the rules on remuneration or the right of whistleblowers to require fair compensation instead of the annulment of the act constituting adverse action.

## FIC RECOMMENDATIONS

- In order to implement the Law, it is necessary to take measures of education (especially citizens and employers), as well as the necessary administrative/technical measures;
- It is necessary to specify the concept of an authorized body and the relationship of internal and external whistleblowing;
- It is necessary to appropriately predict criminal offenses in connection with the whistleblowing, as well as any special penal responsibility for grave violations of the rights of whistleblowers;
- It is necessary to regulate a situation whereby retaliation for whistleblowing is made by a third party, and not the employer; and to protect the whistleblower in such a situation, in an appropriate manner;
- To consider the introduction of rules on remuneration.

# LAW ON NOTARIES

## CURRENT SITUATION

If we disregard the brief period of time in which the 1930 Law on Public Notaries applied in some parts of present-day Serbia, then the public notary is a new legal profession within the national legal system, which was introduced by the new Law on Public Notaries (Official Gazette of RS No 31/2011, 85/2012, 19/2013, 55/2014 – as amended, 93/2014 – as amended, 121/2014 and 6/2015). This Law was scheduled to enter into force in May 2011, but its implementation was delayed twice, and it only entered into force on 1 September 2014.

Public notaries were introduced for the purpose of reducing the workload of courts, expediting notarial procedures, introducing legal security in activities and acts entrusted to public notaries, i.e. notaries, and ensuring the protection of certain categories of persons. The purpose of public notaries is to improve the efficiency of the legal system, the aim of which is to ensure the implementation and protection of rights.

A notary is a legal professional vested with public authority. To be appointed by the Ministry of Law, a notary must fulfil certain professional criteria and pass a bar and notarial examination, and have the required number of years of experience in the profession. The introduction of obligatory professional liability insurance for notaries and the possibility for notaries to refuse to perform a notarization for reasons stipulated by the law, was essential from the aspect of legal security. The law stipulates that every local government unit in Serbia should have its own notary public, while populous municipalities or cities are required to appoint one notary for every 25.000 residents.

With the entry into force of the Law on Public Notaries, a set of accompanying laws has been amended to regulate certain activities and acts which are now entrusted to public notaries. Consequently, the following laws have been amended: the Inheritance Law, the Family Law, the Law on Extrajudicial Proceedings, the Law on Verification of Signatures, Manuscripts and Transcripts and the Law on Real Estate.

Three groups of legal activities have been entrusted to the authority of public notaries: the drafting and notarization of documents, activities delegated by the courts, and depository transactions.

Documents drawn up and notarized by public notaries can be divided into public and private ones. Public documents are notarial records and notarial minutes, which are legally effective documents, provided that they include all elements required by the law.

A lien statement has the mandatory form of a notarial record, meaning that it must comply with legal requirements on the content and form of a notarial instrument that the notary is responsible for. Therefore, a lien statement, as a public document authenticated in the form of a notarial record, is a legally effective document. This means that in case of enforced sales of real estate, which is the subject of a lien statement, the lien creditor may execute the settlement under the rules of extrajudicial proceedings in accordance with the Mortgage Law. Any notary appointed for the territory of the Republic of Serbia can draw up a lien statement, regardless of the place where the mortgaged real estate is located. Alimony agreements, contracts for the management of real property of a legally incapacitated person by a trustee, and testaments must also be drawn up in the form of a notarial record before a notary public.

Real estate contracts concluded between capacitated persons, such as contracts of sale, exchange and endowment of real property, as the grounds for the transfer of title deeds, must be notarized in the form of a notarial solemnized document. This means that the notary public is obliged to explain the purpose of the legal transaction to the parties, identify whether the parties are authorized, capacitated persons to conclude such a legal transaction, and examine the content of the contract in order to determine its compliance with binding regulations, public order and good practices. The exclusive authority to solemnize a real estate sale contract is vested in notaries that have jurisdiction over the territory in which the real estate, which is the subject of the sale contract, is located.

A major positive development from the aspect of legal security of real estate transactions is the introduction of a single registry of real estate contracts, kept by the basic courts with jurisdiction over the territory in which the real estate which is the subject of the contract is located. The single registry includes contracts notarized by the court and those notarized by the notaries, all for the purpose of preventing the seller from selling the same property to other buyers. Regarding the above, having notarized (solemnized) the real estate contract, a notary is required to deliver the authenticated transcript of the contract immediately to the court competent for keeping records on real estate contracts. In order to prevent tax evasion, the notary public who notarized (solemnized) the real estate contract

is also required to deliver the authenticated transcript of the contract to the competent tax authority within ten days from the date of stipulation of the contract.

Therefore, a notarial solemnized document, which is a private document, notarized (solemnized) by a public notary, ensures that private documents observe the concept of freedom to negotiate, and the right of the parties to stipulate the kind of content they want, while the notary public merely notarizes, i.e., solemnizes it.

The amendments to the Law on Verification of Signatures, Manuscripts and Transcripts stipulate that signatures, manuscripts and transcripts are to be notarized by a notary public, and that the basic courts and municipal administrations, respectively, will keep notarizing signatures, manuscripts and transcripts, by the power with which they are entrusted, until 1 March 2017. After this date, the notary public will have exclusive authority for notarization of signatures, manuscripts and transcripts. This decision was made to ensure a gradual and not immediate transition to the exclusive authority of a notary public.

## REMAINING ISSUES

The professional community criticized the legislative decision to appoint one notary public for every 25,000 residents, pointing out that this is an insufficient number of notaries. If we look at neighbouring countries, for example Croatia one notary is appointed for every 15,000 residents, plus one notary for every 200 registered legal entities. In the first few months of implementation of the law it became apparent that the number of notaries was insufficient, so paradoxically, the notarization system was slowed down due to the fact that the few notaries that were appointed scheduled the notarizations within unacceptably long terms.

The extremely high prices of services provided by public notaries faced severe criticism from the public, so notarial fees were reduced. Also, the adopted amendments to the law require notaries to pay 30% of the fee collected, exclusive of VAT, to the public revenues account. These amendments are a significant burden for notaries, while citizens and legal entities do not benefit from the reallocation of a part of their funds to public revenues either, considering they are faced with a legal solution that restricts their choice in matters pertaining to everyday legal transactions. Additionally, some notarizations are now more expensive than was the case with the court notarizations.

Due to the on-going dispute between lawyers and public notaries, months after the lawyers called off the strike citizens are still not sure whom they should approach in order to notarize their real estate contracts in accordance with the law. Lawyers contest the right of public notaries to draw up a real estate contract in the form of a notarial record. In fact, as already mentioned, the Law on Public Notaries requires that real estate contracts between capacitated persons be concluded in the form of a notarial (solemnized) document, and the parties are given the option to either draw up a contract by themselves or commission a lawyer to do it, provided that they have the contract notarized (solemnized) by a notary. The remaining disputed issue is whether such a contract, or any other contract that requires a less strict form than the form of a notarial record, may also be drawn up by public notaries themselves in a stricter form, i.e., in the form of a notarial record. According to the notaries' interpretation, the law prescribes the form of a notarial (solemnized) document, as a minimum, and therefore, in accordance with Article 69 of the Law on Contracts and Torts, the parties may choose the stricter form – the form of a notarial record. The Real Estate Cadastre carried out registrations on the basis of notarial records, however, after lawyers had filed complaints concerning this issue, the Real Estate Cadastre stopped carrying out registrations on the basis of notarial records, but did not issue any decision rejecting them either. This has slowed down transactions and compromised the reliability of the Real Estate Cadastre. Although both parties have their own arguments concerning the interpretation of the disputed provisions of the law, citizens and businesses are the ones to suffer the consequences, as usual.

The introduction and implementation of rules on public notaries, which are a new legal institution in our legal system, is a comprehensive process of great importance. It is crucial that all participants be educated: the notaries themselves, the judges so that they know which competences are left to the courts and which have been transferred to public notaries, and of course the lawyers and other legal professionals working within companies, who should be well acquainted with the scope of activity of notaries. Citizens must be informed about where and how to fulfil their rights, and all other issues that the professional community already knows. Users of notarial services must understand all the advantages of introducing public notaries and accept this legal institution not as a state institution imposed upon them, but as an institution they are to address for their very own interests.

## FIC RECOMMENDATIONS

- Amend legal provisions stipulating the number of public notaries that can be appointed, for the purpose of increasing the availability and quality of their services.
- Decrease the fees for services provided by public notaries, to match the economic purchasing power of the citizens.
- Resolve all disputed competence-related issues between lawyers and public notaries, to achieve a higher level of legal security.
- Continue implementation of regulations on public notaries and comprehensive training of all participants, especially users of notarial services.

# TAX

## A. CORPORATE INCOME TAX (CIT)

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Many of the existing problems in corporate taxation are related to the practical implementation of the CIT Law provisions. These problems should be dealt with in the by-laws of the Ministry of Finance to introduce greater flexibility in this area. Primarily, by-laws should provide guidelines with respect to taxation of permanent establishments; | 2010 | | | √ |
| Aligning domestic practice with respect to the definition of royalties for withholding tax purposes in line with the best international practice and definitions applied in the relevant tax treaties (especially related to the treatment of acquiring the right to use software for one's own purposes); | 2012 | | | √ |
| Some of the problems require amendments of the CIT Law: | | | | |
| Provisions of the CIT Law regulating deductibility of marketing expenses should be amended in a way to allow a full deductibility of marketing expenses. | 2010 | | | √ |
| Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose the payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account. | 2010 | | | √ |
| Taxation of corporate reorganisations, as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganisations. Provisions regulating this area should be introduced in the CIT Law. | 2011 | | | √ |
| Introducing a system of new tax incentives for investments into fixed assets amounting to less than RSD 1 billion, in the form of a tax credit or a reduced corporate income tax rate for a certain period, and in proportion to the investment made. | 2014 | | | √ |
| Regulate in more detail recognition of long-term provisions expenses for cases when they are being reversed or used, to ensure that these expenses are not permanently non-deductible. | 2014 | | | √ |
| Regulate tax depreciation calculation in a manner that does not lead to expenses of tax depreciation being permanently unrecognized. | 2014 | | | √ |

### CURRENT SITUATION

Taxation of companies in Serbia is governed by the Law on Corporate Income Tax (CIT Law) and ratified international agreements. The CIT Law is supplemented by several by-laws governing the implementation of its provisions.

The CIT Law underwent three sets of amendments since December 2013. The most notable change was the abolishment of the general tax credit for investments into fixed assets and development as non-material assets as of 1 January 2014, which has had far reaching implications. Still, companies that acquired the right to such a tax credit by the end of 2013 were able to use it in the period and manner previously prescribed. Other amendments relate to tax offences, which are now regulated by the Law on Tax Procedure and Tax Administration, and to tax deductibility of certain specific categories of expenses.

Additionally, the new international treaty on avoidance of double taxation was ratified in 2014 with the Republic of Armenia, and entered into force on 11 July 2014.

## POSITIVE DEVELOPMENTS

Amendments to the CIT Law, made since December 2013, did not introduce significant improvements. Principally, the main amendments that can be highlighted are:

- The penalty of prohibiting the conduct of business from three months to one year for failure to file a tax return and tax balance sheet, or file them with incorrect data resulting in tax base erosion or unfounded right to use a tax incentive, has been abolished;
- Amendments to the Rulebook on Transfer Pricing and Methods Applied for Determining Prices in Related Party Transactions in Accordance with the Arm's Length Principle have introduced the possibility to file a short-form report for transactions, except loans and credits, if one of the two following requirements have been met: 1) the transaction with a related party is a one-off transaction in the year for which the tax balance sheet is submitted and its value does not exceed RSD 8,000,000 (approx. EUR 70,000); and 2) the total value of all transactions with a related party in the year for which the tax balance sheet is submitted is not greater than RSD 8,000,000. This amendment reduces the administrative burden for taxpayers with non-substantial transactions, as well as the Tax Administration;
- Increase of tax deductibility threshold for donations for scientific, cultural, educational, health, social security, sports, environmental and religious purposes to 5% of total revenue. Also, expenses incurred for humanitarian aid for national emergencies are recognized as tax deductible in full.

## REMAINING ISSUES

- The provisions governing taxation of permanent establishments continue to be scarce and vague, and do not provide sufficient guidance as to what constitutes a permanent establishment; a methodology for establishing taxable income; and the filing and payment of CIT in situations when a foreign business is not registered in Serbia, etc.;
- Deductibility of marketing expenses is limited to 10% of a taxpayer's total revenues. The nature of certain industries is such that it requires significant investments in marketing. This often results in non-deductible marketing expenses. Such treatment is unjust toward taxpayers as such expenditures are necessary for their business activities;
- Occasionally, the interpretations of the Ministry of Finance pertaining to withholding tax differ from provisions of the relevant double tax treaties and the best international practice. This is especially true in the case of proprietary software licensing. Such interpretations result in a higher tax burden for taxpayers, which is not in line with the rights provided in the relevant double tax treaties;
- The CIT Law does not contain a single provision governing the taxation of investment funds. The result is a distortion of the tax neutrality of investment funds and different forms of investment funds, in particular closed-ended and open-ended funds;
- Taxation of corporate reorganizations remains unclear as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganizations;
- The recognition of expenses for long-term provisions in the tax balance sheet still remains at issue. Long-term provisions are not recognized as an expense in the tax balance sheet in the year in which the expense was entered in the business records, except for the provisions for which the Law prescribes differently. Income resulting from the reversal of long-term provisions is not taxed. However, in the case where a provision is used in a subsequent tax period it is not clear whether the provision is recognized as an expense in the tax balance sheet for the tax period when the provision was used;
- The provisions of the law pertaining to the method for calculating tax depreciation create continuing discrepancies and permanently unrecognized expenses in the tax balance sheet in cases where, at the moment of disposal of an asset, the current accounting value is lower than the current tax value of the asset, as well as in cases when a fixed asset is being disposed of, where that asset was not previously depreciated for tax purposes, as its cost value at the moment of purchase was lower than the average salary in Republic of Serbia.
- Tax depreciation is not calculated on fixed assets that are purchased before changes of CIT Law from the beginning of 2013, and whose individual value was below average gross salary at that time.
- The CIT Law does not make clear difference between impairment of assets and decrease of fair value of assets (e.g. investment property), for which IFRS prescribes different rules and treatment. As a result, the decrease of fair value of assets is interpreted as impairment expense which is non-deductible until the assets are sold. On the other hand, every increase of fair value of assets is immediately taxable. This results in unfair increase of taxable income for taxpayers;
- The CIT Law does not specify treatment of losses arising from the liquidation, or bankruptcy estate, which is less than the capital invested in a company that ceases to exist in the process of liquidation or bankruptcy.

## FIC RECOMMENDATIONS

Many of the existing problems in corporate taxation are related to the practical implementation of the CIT Law. These problems should be dealt with in the by-laws of the Ministry of Finance to introduce greater flexibility in this area.

- Primarily, by-laws should provide guidelines with respect to taxation of permanent establishments.
- Aligning domestic practices with respect to the definition of royalties for withholding tax purposes with the best international practices and definitions applied in the relevant tax treaties (especially related to the treatment of proprietary software licensing).

However, some of the problems require amendments to the CIT Law:

- Provisions of the CIT Law regulating deductibility of advertising and marketing expenses should be amended in a way to allow a full deductibility of such expenses.
- Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose the payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account.
- Taxation of corporate reorganizations, as the currently applicable legislation completely lacks provisions on the taxation of such reorganizations. Provisions regulating this area should be introduced in the CIT Law.
- Introducing a system of new tax incentives for investments into fixed assets amounting to less than RSD 1 billion, in the form of a tax credit or a reduced corporate income tax rate for a certain period, and in proportion to the investment made.
- Regulate in more detail recognition of long-term provisions expenses for cases when they are being reversed or used, to ensure that these expenses are not permanently unrecognized.
- Revise Rulebook that governs regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes in order to implement proportional tax rate for groups II to V, as well as determine more realistic estimations for useful life of fixed assets (for example, tax rate of 20% or 30% is more appropriate for company cars, nowadays).
- Regulate tax depreciation calculation in a manner that does not lead to expenses of tax depreciation being permanently unrecognized.
- Change the rules regarding tax deductibility of impairment expenses, so that it is clear that decrease of fair value of assets does not represent an impairment expense. In this way the increases and decreases of fair value of assets would be treated in a fair way.
- Introduce a rule stipulating that the difference between liquidation remainder and invested share capital is regarded as capital loss.
- Tax recognized depreciation expense should be allowed for fixed assets acquired before 2013 (present in the accounting records on 01.01.2013) and whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in the Republic. We suggest that this change should be implemented in Rulebook that governs regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.

# B. PERSONAL INCOME TAX

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The application of the cedular system of taxation of personal income remains a problem of the Serbian system, to which there is no adequate solution. This system was abandoned as unclear and unjust by criteria of many advanced tax jurisdictions, and the Serbian government should consider the introduction of a synthetic system which would enable Serbian tax legislation to keep up with advanced tax systems. | 2008 | | √ | |
| The provision that stipulates subsidiary guarantee of adult members of a household with their own property in the case of a sole proprietor failing to fulfil their tax obligation should be deleted from the PIT Law. | 2013 | | | √ |
| Article 85, paragraph 7 of the PIT Law should be amended in order to equalize the position of other legal entities with the position of the banks in tax treatment of write-off of receivables. | 2014 | | | √ |

## CURRENT SITUATION

Taxation of individuals is governed by the Personal Income Tax Law (the "PIT Law"), last amended in June 2013, as a continuation of the tax reform that started at the end of 2012. The newly adopted amendments introduced new incentives for hiring new employees through the right to a refund in the amount of 65-75% of paid taxes and contributions, depending on the number of newly employed workers.

Sole proprietors paying tax on actual income are given the opportunity to opt to pay themselves a salary. Sole proprietors who choose to pay themselves a salary are required to do so for the entire tax period and to pay the corresponding payroll tax and social security contributions. The paid personal salary is recognized as expenditure in the income tax return. Also, since January 2014, paid contributions are recognized as expenses for sole proprietors who do not opt for the payment of a personal salary.

The new provisions of the PIT Law define the tax base for individuals resident in Serbia posted abroad by a legal entity resident in Serbia. The tax base is the amount of wages paid for the performed work, in dinars and in foreign currency, if any.

Refund of mandatory social security contributions, made in accordance with the law governing mandatory social security contributions, are recognized as revenue and as such are included in the tax base for the annual income tax.

## POSITIVE DEVELOPMENTS

The introduction of incentives for hiring new employees, pursuant to the foreign direct investments by-law, is a positive development.

## REMAINING ISSUES

Amendments to the PIT Law treating employees' profit participation as other income for taxation purposes is not in line with the economic nature of such income. This income should be treated as salary since this income is made in connection with the work that employees perform for their employers.

A specific problem is the compensation of expenses to individuals for business travel abroad, which is not regulated either in terms of the procedure, stipulating that these expenses need to be documented by Serbian companies, or in terms of the thresholds that are "exempt" from tax. In the absence of relevant by-laws regulating this matter, the Serbian tax authorities have continued to apply the Decree on the Compensation of Expenses and Severance Pay to Employees in State Bodies. The Ministry of Finance and the Ministry of Labour and Social Policy issued several opinions in the past confirming that the Decree should be applied by all companies and not only by state bodies. However,

we are of the opinion that, like the Decree itself, the instructions are not in line with Serbian legislation.

The introduction of subsidiary guarantees for adult members of the household of a sole proprietor for the tax liability of the sole proprietor; i.e., stipulating that they are liable with their own property for the tax liabilities of a sole proprietor is not in line with provisions of the Company Law and the Law on Enforcement and Security.

In 2015, the Ministry of Finance issued an opinion qualifying "team building" expenses as fringe benefits of an employee, which entirely changes the tax treatment of these expenses from the point of the PIT Law, as well from the point of the Corporate Income Tax Law. With this opinion, the Ministry of Finance changed its current practice in respect of this issue, which has additionally impacted legal certainty. We are of the opinion that this opinion is not justified from the legislative and economic perspective of these expenses as, in most cases, the purpose of this investment is to increase the productivity of employees by organizing joint activities.

In practice, taxpayers encounter difficulties in exercising their legal right to use the tax credit for taxes paid in another state, considering that tax authorities did not unify their position or practices with respect to this matter. Such a conduct of the tax authorities generates legal uncertainty and is questionable as to its constitutionality.

The PIT Law stipulates that an employee's personal income also includes securities granted to that employee by the employer, or by the employer's related party, as well as securities granted by the employer or its related party to an employee as a bonus (stock options and similar). These securities will be taxed as the employee's personal income, i.e. salary, as soon as the employee has acquired the right to dispose of these securities. If the cost is borne by the employer, taxation will be triggered at the moment when the cost is accounted for in the employer's bookkeeping system. Problems arise in practice when the cost is covered by the employer, as the because the IAS require that the employer account for this cost in its bookkeeping system, and when the date on which the cost is accounted for does not correspond with the date when the employee has acquired the right to dispose of these securities. In other words, the expense will be accounted for in the employer's business books for a given fiscal year, and taxed accordingly, even though the employee has not actually earned this income yet. To make things worse, these securities are sometimes never transferred to the employee (e.g. because the requirements for the bonus were not met, which might take a few years sometimes), and so they are taxed for income that they never actually received.

## FIC RECOMMENDATIONS

- The application of the schedular system of taxation of personal income remains a problem of the Serbian system, to which there is no adequate solution. This system was abandoned as unclear and unjust by criteria of many advanced tax jurisdictions, and the Serbian government should consider the introduction of a synthetic system which would enable Serbian tax legislation to keep up with advanced tax systems.
- The provision that stipulates subsidiary guarantee of adult members of a household with their own property in the case of a sole proprietor failing to fulfil their tax obligation should be deleted from the PIT Law.
- Change the general opinion of Ministry of Finance in respect of "team building" expenses, as these expenses should be treated on a case by case basis.
- Standardize the position and practices of the tax authorities in order to facilitate the taxpayer's legal right to use tax credit for taxes paid in another state.
- Amend the PIT Law while observing the IAS rules, all with the aim to eliminate taxation of income not yet received i.e. to ensure that the tax liability correspond with the moment of acquisition of the right to dispose of the securities by an employee.

# C. VALUE ADDED TAX

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Provisions of the VAT Law dealing with the position of foreign entities within the Serbian VAT system should be revisited and amended so as to allow foreign businesses without a registered office in Serbia to register for VAT purposes. | 2007 | | √ | |
| The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks that treat only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc. | 2007 | | | √ |
| The VAT Law should be revised to ensure that any change of data maintained by the Serbian Business Registers Agency including data specified in the VAT registration form, identified upon VAT payer registration, is reported by the Serbian Business Registers Agency to the tax authorities within five days from the day of issue of the decision on data amendments. In other words, a VAT payer should not be required to inform the tax authorities about changes of data maintained by the Serbian Business Registers Agency. | 2011 | | | √ |
| The rule for the place of supply of services should be revised in accordance with the EU VAT Directive. | 2011 | | | √ |
| With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier. | 2013 | | √ | |
| Amendments to the VAT Law should specify that interest in the case of financial leasing should not be included in the taxable amount (i.e., that it should be VAT exempt). | 2013 | | | √ |
| VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies to decrease their administrative costs. | 2014 | | | √ |

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The provision of the VAT Law that deals with correction of output VAT needs to be amended and adapted to suit present economic conditions. The recommendation is for a correction to be allowed when there is proof of initiation of liquidation or bankruptcy proceedings, or in the event of an out-of-court settlement. | 2014 | | | √ |
| The rulebook that regulates provision of small value gifts, advertising materials and samples needs to be reviewed. The limits specified for small value gifts and advertising materials are unrealistically low, especially in view of the fact that the limit in terms of the market value of individual goods provided as advertising material or a small value gift was set at 2,000 dinars in 2004. The application of the rule with respect to the provision of samples for analysis purposes, as required by regulations, needs to be further clarified. | 2014 | | | √ |

## CURRENT SITUATION

Value Added Tax is governed by the Law on Value Added Tax (RS Official Gazette No 84/2004, 86/04 – correction, 61/05, 61/07, 93/12 and 108/13; hereinafter the "VAT Law").

The Law on Amendments to the Law on Value Added Tax was adopted in October 2015. The major changes are effective as of 15 October 2015.

In the Law on Amendments to the Law on Tax Procedure and Tax Administration of July 2014, provisions related to penalties were deleted from the VAT Law and prescribed by the Law on Tax Procedure and Tax Administration.

## POSITIVE DEVELOPMENTS

- The October 2015 amendments to the VAT Law allow for a foreign entity performing taxable supplies in Serbia to register for VAT.
- Also, amendments to the VAT Law clarify the procedure in the event of change of the tax base and of deduction of input VAT.
- The amendments to the Law on Tax Procedure and Tax Administration of July 2014, whereby tax offences are exclusively regulated by this law, eliminate ambiguities in the application of penalty provisions in the VAT Law and the Law on Tax Procedure and Tax Administration.

## REMAINING ISSUES

- Amendments to the VAT Law allow non-Serbia established foreign companies to register for VAT when they make taxable supplies in Serbia. However, the statutory obligation to register for VAT applies to all entities that make taxable supplies in Serbia. The only exception to that are entities performing electronically supplied services and to entities providing bus transportation services for which customs authorities calculate the VAT. This is not in line with best practices in other countries, both in the EU and non-EU countries. In fact, the VAT registration requirement should not apply to services that are taxable at the place of the recipient and for which the recipient, as the taxable entity, is required to account for the VAT liability, or to any other cases of supply of goods and services where the recipient of goods or services, as the taxable entity, is required to account for the VAT liability. The requirement to register for VAT, envisaged in the VAT Law will pose an undue administrative burden and will increase costs for companies making taxable supplies of goods and services to recipients that, as the taxable entities, are required to account for the VAT liability. The aforementioned is also suspect from the perspective of VAT administration by the Tax Authorities, as it will introduce a significantly higher number of companies into the VAT system than is justified by economic and tax considerations. This will also impose additional costs on the tax administration, including risks of abuse. Besides, the solution adopted by the Law results in situations where certain services are not taxed at all, for instance services provided electronically to end customers.
- Relevant rules for applying the VAT Law are still scattered throughout various by-laws, which are frequently not sufficiently detailed and do not provide

adequate explanations for application of specific provisions of the Law in different situations, instead of being integrated into a single piece of legislation (currently there are 21 rulebooks and 3 decrees).

- The VAT Law prescribes the obligation for the VAT payer to notify the Tax Administration of any changes in identifying information about the taxpayer within five days of the occurrence of these changes, although such information is kept by the Serbian Business Registers Agency, and the Agency is required to notify the Tax Authority about these changes.
- To reflect the changes in the European Union VAT Directive, the provision related to the place of supply of services should be amended. As a general rule, it is stipulated that the place of supply of services to another taxpayer is the place where the service recipient performs its commercial activity. There are also exceptions to this general rule. These amendments were adopted by all EU countries and went into effect on 1 January 2010. Harmonization with the European Union VAT Directive is of great importance, as existing provisions result in double taxation or double non-taxation of services traded between Serbian and European Union taxpayers.
- In the case of financial leasing, the interest is included in the tax base for VAT calculation. Financial leasing is a financial service and this places an additional burden on financial leasing compared to other forms of financing, above all bank loans.
- VAT is accounted for by the recipient of goods and services performed by a foreign supplier (applying the so-called reverse charge mechanism) at the moment when the supply takes place or at the moment when the advance payment is made, depending on which occurs earlier. In case there is no advance payment, VAT should be accounted for at the moment when the service is rendered, which is often unfeasible in practice, especially in the case of services for which the price in the contract was not specified as a fixed amount, but depends on a contractually specified calculation. At the moment of supply, or up to the deadline for filing a tax return, the VAT payer frequently does not have the supplier's invoice or information on the amount of the compensation, and cannot know what the taxable amount is.
- VAT legislation provides that in cases when the taxable amount has changed after the supply of goods and services has taken place (e.g. subsequently approved discounts), the supplier should issue a document (credit note) that contains certain obligatory items. VAT legislation does not provide the possibility for the recipient of goods/services to issue this document, as is the business practice in other countries. Because of this, additional costs are imposed on companies since they have to change their business practice due to Serbian VAT rules.
- The VAT law specifies the possibility for correction of output VAT only in the event of an enforceable court decision on completion of bankruptcy proceedings and based on a certified copy of the court settlement record. In the present economic situation, in view of the duration of bankruptcy proceedings, such a provision appears overly restrictive.
- VAT regulations specify that VAT is not calculated on small value gifts and advertising materials. Small value gifts and advertising materials, after all other conditions are met, are considered to be goods whose individual market value is below RSD 2,000, exclusive of VAT. The total value of advertising materials and other small value gifts in a tax period cannot exceed 0.25% of the taxpayer's sales in that tax period. The RSD 2,000 limit was specified back in 2004. In view of the depreciation of the value of the dinar, the appropriateness of this limit is questionable. Also, the threshold amount, in terms of the total value of advertising materials and small value gifts is also questionable.
- A VAT refund to a foreign taxpayer is possible, under conditions of reciprocity and fulfilment of other prescribed conditions. The list of countries with which there is reciprocity has been expanded, but not sufficiently. Serbia continues to have reciprocity with a relatively small number of countries. This also negatively affects Serbian companies, given that due to lack of reciprocity they are unable to exercise their rights to a refund of VAT paid in other countries which also apply the reciprocity rule.
- In practice, there is an issue with VAT treatment of in-kind contribution of goods and services and status changes. Specifically, in such instances the VAT accounted for by the transferor of assets is income for the transferor and an expense for the transferee, and consequently in-kind contribution and status changes are not neutral from the perspective of the income statement, as they should be, essentially. For this reason in such instances the transferee should be the one to account for the VAT (applying the reverse charge rule).

## FIC RECOMMENDATIONS

- Provisions of the VAT Law which relate to the status of foreign entities within the Serbian VAT system should be reconsidered and amended in order to achieve compliance with best practices, such as abolishing the requirement to register for VAT for foreign suppliers of goods and services for which the recipient, as the taxable entity, is required to account for the VAT, including services that are taxable at the place of recipient.
- The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks that treat only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.
- Changes in the VAT Law should exempt the taxpayer from the obligation to notify the Tax Authority about changes in data that are kept in the records of the Serbian Business Registers Agency and which the Agency is required to report to the Tax Authority.
- The rule for the place of supply of services should be revised in accordance with the EU VAT Directive.
- With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity, or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.
- Amendments to the VAT Law should specify that interest in the case of financial leasing should not be included in the taxable amount (i.e., that it should be VAT exempt).
- VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies to decrease their administrative costs.
- The provision of the VAT Law that deals with correction of output VAT needs to be amended and adapted to suit present economic conditions. The recommendation is that a correction be allowed when there is proof that liquidation or bankruptcy proceedings were opened, or in the event of an out-of-court settlement.
- The rulebook that regulates provision of small value gifts, advertising materials and samples needs to be reviewed. The limits specified for small value gifts and advertising materials are unrealistically low, especially in view of the fact that the limit in terms of the market value of individual goods provided as advertising material or a small value gift was set at RSD 2,000 in 2004. The application of the rule with respect to the provision of samples for analysis purposes, as required by regulations, needs to be further clarified.
- The Ministry of Finance and the Tax Authority should take the initiative for establishing reciprocity with all European countries in respect of VAT refunds to all foreign entities.
- The Law should specify that the obligation to account for VAT lies with the transferee of goods and services in the following instances: 1) in the case of in-kind contributions, when the supply of goods and services as an in-kind contribution is subject to VAT and 2) in the case of change of status, when the supply of goods and services in a change of status is subject to VAT.

# D. PROPERTY TAX

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Provisions of the Property Tax Law dealing with the method of calculation of property tax base using the zoning method should be revisited before the end of this year to avoid the negative consequences of the current regulations in the next fiscal year in a timely fashion. | 2014 | | | √ |
| In particular, it is recommended that the implementation of corrective factors in the determination of the market value of real estate be considered. | 2014 | | | √ |
| Further to this, it is advisable to institute a greater level of monitoring in the zoning of each municipality and organize training of personnel in order to avoid situations in which neighbouring properties that are territorially spread out in different municipalities are taxed differently. | 2014 | | | √ |
| Forming a working group consisting of members of the FIC and competent Ministry to devise an effective set of amendments is recommended. | 2013 | | √ | |

## CURRENT SITUATION

Property tax is governed by the Law on Property Taxes (Official Gazette of the Republic of Serbia No 26/2001, Official Gazette of FRY, No. 42/2002 – decision CC; and Official Gazette of the Republic of Serbia No 80/2002, 80/2002 – as amended, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 - decision CC, 47/2013 and 68/2014 – as amended) (hereinafter: the Law).

Since its adoption in 2001, the Law was amended several times, with significant changes adopted in 2013. These changes refer to the method for determining a real estate property's tax base and introduction of the property tax self-assessment principle. Namely, the companies that keep business records determine the tax base for property tax based on the real estate's market value (except in cases prescribed by the Law). The market value of a real estate represents the fair value stated in business records for those taxpayers using the fair value method according to the International Accounting Standards (hereinafter: the IAS), International Financial Reporting Standards (hereinafter: IFRS), and their accounting policy; and if the fair value method is not used, the market value represents a value calculated in a way prescribed by the Law, taking into consideration average market prices determined by the local tax authorities.

One of the main reasons for amendments to the Law in 2013 was the integration of the building land use charge into property tax, since the building land use charge was abolished on 31 December 2013.

Compared to the previous year, the only amendments to the Law in 2014 referred to the elimination of misdemeanours for bodies performing the verification of signatures of the contractual parties to an agreement, which is now governed by the Law on the Transfer of Property (Official Gazette of the Republic of Serbia, No. 93/2014, 121/2014 and 6/2015).

## POSITIVE DEVELOPMENTS

Compared to the previous year, there have been no significant improvements in this area.

## REMAINING ISSUES

The amendments to the method for the calculation of the property tax base cause problems in practice for those business entities that do not express the value of their real estate in their bookkeeping records on the basis of fair market value according to IAS / IFRS.

Bearing in mind the above, it should be noted that the Law on Accounting (Official Gazette of the Republic of Serbia No.

62/2013) entered into force after the adoption of amendments to the Law of 2013, and that the Law on Accounting provides that small and medium-sized enterprises apply IFRS for small and medium-sized enterprises (hereafter: IFRS for SME), as well as that micro businesses may opt for the application of the aforementioned standards. Article 7 of the Law does not specify whether this article refers to the companies that apply IFRS for SME and it remains unclear whether the property tax base for these companies amounts to the fair value of the property, expressed in accordance with IFRS for SME on the last day of the financial year of the taxpayer in the current year.

One of the main parameters for the calculation of the value of property is now the zone to which the property belongs, as determined by the relevant municipality. The municipalities are granted discretionary authorization in the determination of zones in the process of ascertaining the market value of real estate.

The zoning is not mutually co-ordinated between municipalities. Specifically, each local municipality enacts a decision on zoning for their territory and there are already cases in which property tax for neighbouring real estate bordering zones of different municipalities differ drastically even though there is practically no difference in the level of utility development. It should also be noted that no criteria for value adjustments are envisaged regarding the quality/age of a particular property. In practice, this means that the tax base of a newly-built real estate and one that may be 50 years old will not differ at all (depending on their respective surface areas).

Prices of construction land that certain local tax authorities published for the purpose of determining the property tax base for 2014 are twenty times higher than the prices they used for the calculation of transfer tax in the period before the last amendments to the Law (in this particular case, in 2012) for the land in the same zone. Prices of construction land published for the purpose of determining the property tax base for 2015 are six times higher than the abovementioned. Big fluctuations of the published prices of construction land within a short period of time indicate that the sample, based on which local tax authorities calculated the average market prices, is not representative and cause doubt as to whether the rules for the calculation of average market prices prescribed by the law are respected.

As the result of the abovementioned issues, the market values of properties assessed by certified appraisers significantly differ from their market values calculated by using the average prices published by local tax authorities. Therefore, those taxpayers who evaluate real estate in their business records at fair value and those who use some other method of evaluation are in an unequal position.

The method of calculation of the property tax base for real estate classified in the business records of the taxpayer as assets held for sale in accordance with IFRS 5 (after expiration of the period in which they are exempted from property tax) or as inventories, according to IAS 2, is unclear, taking into account the method of their valuation prescribed in the abovementioned standards. Namely, according to IFRS 5, non-current assets held for sale are initially measured at the lower of their carrying amount (purchase price) and fair value less costs to sell. Subsequent measurement requires adjustment to fair value, if the fair value is lower than the carrying value; or recognition of gains from the increase in fair value, up to previously recognized impairment loss. The measurement method of real estate classified as inventories is similar to the previously described one. As the result of measurement of real estate according to IFRS 5 and IAS 2, they can be carried at fair value in one tax period, and at the value which is not equal to the fair value in the other.

The tax authorities have been given exclusive rights regarding the determination of property transfer tax.

## FIC RECOMMENDATIONS

- The provisions of Article 7 of the Law should be harmonized with the provisions of the Law on Accounting.
- Provisions of the Property Tax Law which determine the method of the calculation of property tax base using the zoning method should be revisited in order to avoid the negative consequences of the current regulations in the next fiscal year in a timely fashion.
- In particular, it is recommended that the implementation of corrective factors in the determination of the market value of real estate be considered.

- Furthermore, it is advisable to institute a greater level of monitoring in the zoning of each municipality and organize training of personnel in order to avoid situations in which neighbouring properties that are territorially spread out in different municipalities are taxed differently.
- It is recommended to impose, by the Law, the obligation of the local tax authorities to publish data on all real estate sales per zone, as well as data used for the calculation of the average market prices.
- Prescribe in the Law the method of calculation of the property tax base of the real estate classified as held for sale, or inventories, according to IFRS 5 and IAS 2, respectively. It is recommended to calculate the property tax base of such real estate based on their fair value assessed by a certified appraiser on the last day of the year preceding the year for which the property tax is calculated, whether the fair value is stated in the business records of the taxpayer or not. In case the fair value of the real estate is not assessed by a certified appraiser, the tax base would be calculated by using the average prices published by the local tax authorities.
- It is recommended that data by which the tax authorities determine property transfer tax be made available to the public, to ensure the transparency of work of the tax authorities.
- Forming a working group consisting of members of the Foreign Investors Council and the relevant Ministry to devise an effective set of amendments is recommended.

# E. TAX PROCEDURE

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Amending Article 80 of the Law on State Administration to remove the legal uncertainty of whether the opinions of the ministries are legally binding if so prescribed by a separate law. In addition, introducing an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance. | 2014 | | | √ |
| Introducing provisions to the PTA Law which would govern liability of competent persons and adequate penalties for failure to issue binding opinions within the 30-day deadline prescribed by Article 80 of the Law on State Administration. | 2014 | | | √ |
| Amending the PTA Law to allow taxpayers to file the amended tax returns an unlimited number of times, in connection with tax returns that are filed electronically. | 2014 | | | √ |
| Abolishing the provision of the PTA Law by which the Business Registers Agency is prohibited to erase a taxpayer from the register, register status changes or amend information for the duration of a tax audit. | 2014 | | | √ |
| Regulating the provisions of the Criminal Code concerning tax crimes in more detail to allow taking into account the size of the legal entity and the volume of taxable activities. | 2014 | | | √ |
| The introduction of a presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the statutory deadlines. | 2011 | | | √ |

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Special tax departments should be established within the Administrative Court with judges exposed to more training with regard to the understanding of tax issues. | 2011 | | | √ |
| Abolishing provisions that require banks to control settlement of tax liabilities. Amending provisions requiring banks to notify the Tax Administration of incoming and outgoing payments in a way that would limit such a requirement only to cases of a tax audit, upon request of the Tax Administration. | 2014 | | | √ |
| Until the time of complete transition to the electronic filing of tax returns, enable taxpayers who wish to file tax returns electronically to do so. | 2014 | | | √ |

## CURRENT SITUATION

The regulatory framework for tax procedure in Serbia is governed by three principal laws:

- The Law on Tax Procedure and Tax Administration, RS Official Gazette No 80/2002, last amended in October 2014, (PTA Law);
- The Law on General Administrative Procedure, RS Official Gazette No 33/97, last amended in May 2010, (GAP Law);
- The Law on Administrative Disputes, RS Official Gazette No 111/2009, (AD Law).

The tax procedure is a special type of administrative procedure governed primarily by the PTA Law which regulates in detail the organization and functioning of the Tax Administration, as well as the procedures for the assessment, control and collection of tax. Starting from July 2014, the PTA Law comprehensively regulates all tax misdemeanours. The general rules of the GAP Law apply to the tax procedure where a certain issue is not regulated by the PTA Law. The AD Law regulates the judicial review of administrative decisions issued by the Tax Administration as an additional taxpayer protection system (e.g. deciding on actions filed against second-instance decisions of the Tax Administration).

There were no amendments to the PTA Law in 2015, but provisions of the PTA Law governing electronic filing of two more types of tax returns started to apply in 2015. In 2014, it was possible to electronically file the VAT Return and the Withholding Tax Return for personal income tax. From April 2015 taxpayers are also obliged to electronically file the Corporate Income Tax Return (except withholding tax returns) and Annual Income Tax Return. The Minister of Finance issued a new rulebook governing the procedure of electronic filing of Corporate Income Tax Return and the Tax Administration published the instruction with this regard. The rulebook governing the procedure of electronic filing of the Annual Income Tax Return was also amended.

## POSITIVE DEVELOPMENTS

There were no significant changes in the legal framework in 2015.

Further implementation of the tax returns electronic filing system contributed to reducing taxpayers' costs, to harmonized interpretation of tax laws, and thereby to greater legal certainty, accuracy of the Tax Administration's data, and easier access to various certificates issued by the Tax Administration. Full transition to electronic filing of tax returns is expected by the end of 2016.

## REMAINING ISSUES

The existing regulatory framework governing tax procedure still does not provide sufficient protection to taxpayers against discretionary decisions of tax authorities. The fact that the fines for failure to submit a tax return, calculate and pay taxes were raised as of July 2014 makes this issue even more significant.

Rules on tax-related criminal offences still do not take into consideration the size and volume of taxable activities of taxpayers and apply the same threshold to both small-sized and the largest companies in the Republic of Serbia.

The tax authorities routinely fail to comply with the dead-

lines for the issuance of decisions on appeals filed by taxpayers.

The statutory 30-day deadline for issuing binding opinions upon request of taxpayers is usually not observed, so in practice taxpayers wait on the opinions for more than a year. Moreover, the number of issued opinions has decreased compared to previous periods. Along with frequent changes in tax laws and insufficiently clear legal framework, this issue contributes to legal uncertainty and uncertainty of doing business in Serbia.

Limiting the filing of amended tax returns to two times is not justified. In fact, in most cases the mistakes are made unintentionally, especially in case of large taxpayers who have large-scale and complex internal organization systems. Given that a taxpayer cannot amend a tax return in the event of a tax audit for a specific period, the abolition of the aforementioned limitation would not create an additional burden for the Tax Administration, while it would contribute to more efficient tax collection.

In the period starting from the receipt of the Tax Administration's notification about the planned tax audit of the taxpayer until receipt of the notification that the audit has been completed the Business Registers Agency cannot erase a taxpayer from the register, register status changes or amend information referring to a shareholder, name, seat, share capital or form of organization. As there is no statutory limit for the tax audit duration, this provision may cause numerous issues in practice for reorganizations, capital increase, withdrawal or expulsion of a shareholder, etc. In addition, considering that certain tax liabilities become due regardless of whether a company is actually doing business (e.g. mandatory social security contributions, municipal taxes), the imprecision of this provision may prohibit termination of a company due to initiation of a tax audit, creating additional tax liability for the company regardless of the results of the audit, constituting de facto a form of an arbitrary punishment of taxpayers without any grounds.

The PTA Law should be aligned with provisions of new Law on Inspection Supervision ("LIS") that will become fully effective in April 2016. The LIS provides that inspectors are required to act not only in order to find illegal activities and penalize entities that violate the law, but also to prevent irregularities and provide advice to controlled entities in order to minimize risks from illegal acts.

The competent authority that decides upon the appeals of taxpayers against the first instance decision is the Tax Administration, same as in the first instance. This does not provide certainty to the taxpayer that the decision of the second instance will be unprejudiced and that the second instance will act as an independent authority that will consider the arguments of the first instance and the arguments of the taxpayer with the same level of attention.

Serbian courts do not have a sufficient level of specialization and expertise to decide on tax disputes. The time needed to issue a court decision is too long - typically a tax-related court case takes more than one year to resolve. Considering that the procedure before the court does not postpone tax liability, i.e. that the taxpayer still has to settle the disputed tax previously, even if he eventually wins the case, the litigation and legal costs, inflation and fluctuations of the foreign exchange rate usually result in taxpayers receiving refund of the disputed tax of a realistically lower value. In addition, courts almost never decide on the merits of the case. They usually remand the case back to the Tax Authority or simply confirm the decision without giving sufficient reasoning for such a ruling. Under these circumstances, judicial control of the Tax Administration's decisions is completely meaningless, as it fails to properly protect taxpayers.

Serbia did not yet sign an Intergovernmental Agreement with the U.S. related to the Foreign Account Tax Compliance Act (FATCA) and there is no publicly available information about the intentions of the Serbian Ministry of Finance concerning current compliance with FATCA reporting requirements by Serbian financial institutions.

## FIC RECOMMENDATIONS

- Amending Article 80 of the Law on State Administration to remove the legal uncertainty of whether the opinions of the ministries are legally binding if so prescribed by a separate law. In addition, introducing an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance.

- Introducing provisions to the PTA Law which would govern liability of competent persons and adequate penalties for failure to issue binding opinions within the 30-day deadline prescribed by Article 80 of the Law on State Administration.
- Amending the PTA Law to allow taxpayers to file the amended tax returns an unlimited number of times, in connection with tax returns that are filed electronically.
- Abolishing the provision of the PTA Law by which the Business Registers Agency is prohibited to erase a taxpayer from the register, register status changes or amend information for the duration of a tax audit.
- Regulating the provisions of the Criminal Code concerning tax crimes in more detail to allow taking into account the size of the legal entity and the volume of taxable activities.
- The introduction of a presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the statutory deadlines.
- Special tax departments should be established within the Administrative Court with judges exposed to more training with regard to the understanding of tax issues.
- Abolishing provisions that require banks to control settlement of tax liabilities. Amending provisions requiring banks to notify the Tax Administration of incoming and outgoing payments in a way that would limit such a requirement only to cases of a tax audit, upon request of the Tax Administration.
- Until the time of complete transition to the electronic filing of tax returns, enable taxpayers who wish to file tax returns electronically to do so.

# F. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Continue the reform of parafiscal levies and consistently implement the Law on Budget System. In this regard, the FIC believes that it is necessary to review all of the remaining parafiscal levies and financial burden on businesses for which businesses receive no adequate benefit in the form of certain rights, services or goods. | 2013 | | | √ |
| Thorough preparation and adoption of the Law on fees for use of public goods. | 2014 | | | √ |
| Apply the business signage tax ceiling to the obligation of one taxpayer, who has one or more facilities with displayed business signs in the territory of one municipality. | 2014 | | | √ |
| The FIC believes that any new tax burden to businesses and individuals in Serbia should be pre-announced to taxpayers, and should be introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies or other ministries. | 2013 | | | √ |

## CURRENT SITUATION

According to the World Bank's Doing Business 2015 ranking, Serbia ranked 91st out of 189 economies. In the area of tax payment Serbia ranked 165th, which is a drop compared to Doing Business 2014 in which Serbia ranked 161st. Payment of taxes, and dealing with construction permits are the two worst-ranked areas.

The ranking of tax payment is based on three indicators: 1) number of tax payments per year, 2) time required, as total number of hours per year and 3) total tax rate, as a percentage of profit.

The FIC is of the view that the tax system is suffering negative reviews due to, among other things, the existence of a number of parafiscal levies in parallel with the existing tax forms in Serbia, which increases the effective burden on the economy under conditions that are often non-transparent and unfair. As a kind of public levy, parafiscal levies actually impose an obligation which does not provide (at all or n adequate proportion) a specific service, right, or good in return.

The authorities recognize this fact, which is why a parafiscal reform was carried out in late 2012, abolishing 138 parafiscal levies. The reform also envisioned the adoption of the Law on Fees for Use of Public Resources. In fact, the Ministry of Finance prepared a draft Law which was the subject of a public debate that was concluded in March 2013, in which the FIC actively participated. However, the reform subsequently entered a period of stagnation in which no further steps were taken to adopt this Law, abolish or review particular parafiscal levies, or seek solutions to curb the practice of uncontrolled parafiscal levying.

## POSITIVE DEVELOPMENTS

At the start of 2015, a working group was set up by the Ministry of Finance to draft the Law on Fees, which revived the issue of reform of parafiscal levies.

The draft Law on Fees for the Use of Public Goods is grounded in Article 18 of the Law on the Budget System, and its primary aim is to prevent the unjustified and arbitrary introduction of fees, imposed by the holders of public authority on the economy. According to this draft, the law would include all the basic elements related to the payment of fees (taxpayer, tax base, criteria for setting the fees and terms of payment, etc.), and a provision allowing the introduction of new types of fees only under this law.

## REMAINING ISSUES

In practice we continue to witness the introduction of new parafiscal levies through various non-tax regulations, while existing parafiscal levies have not been abolished yet.

According to NALED and USAID, the economy is paying 384 non-tax levies, of which 247 are parafiscal levies, and this number is on the increase.

Having this in mind, the adoption of the Law on Fees is a priority for the reform of parafiscal levies.

A particular problem that we deem should be emphasized concerns the local utility tax for business signs display (business signage tax). Business signage tax costs for the remaining taxpayers significantly increased since the regime for payment of the business signage tax changed. The burden is substantial particularly for companies that, due to the nature of their business activities, carry out their operations in a number of different facilities, selling points and similar, spread across different municipalities (e.g. retail, telecommunications, etc.). The overall liability of a business entity for the business signage can reach significant amounts among other due to diverse practices among municipalities as to whether the prescribed business signage tax ceiling applies to the total amount of signage taxes payable by one taxpayer within one municipality or only to each individual business sign. The FIC considers that the business signage tax ceiling should be interpreted as the maximum amount of liability of one company/taxpayer in the territory of one municipality, regardless of the number of business signs displayed in a given municipality.

The FIC reiterates that the introduction of new taxes and duties during the fiscal year, without prior notice to taxpayers that would enable them to adapt their business to the new fiscal burden, adversely affects the predictability of the business environment and the operating results of companies.

## FIC RECOMMENDATIONS

- The FIC holds that reforms need to be continued by ensuring consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues.
- The FIC holds that the draft Law on Fees for Use of Public Resources should be completed with a comprehensive analysis and alignment with solutions and tendencies of sectorial laws. The original concept of integrating all fees, and introducing new ones only under this law, proposed and implemented by the Ministry of Finance, should not be abandoned.
- Continuation of the reform of parafiscal levies by reviewing all other parafiscal levies which place a financial burden on legal entities, and for which they do not get any corresponding benefits in return, in terms of specific rights, services or resources.
- Adoption of the Law on Fees for Use of Public Goods.
- Apply the business signage tax ceiling to the obligation of one taxpayer, regardless of the number of facilities with displayed business signs that he has in the territory of one municipality.
- The FIC believes that any new tax burden to businesses and individuals in Serbia should be pre-announced to taxpayers, and should be introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies or other ministries.

# ENVIRONMENTAL REGULATIONS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Support new and accelerate existing procedures for IPPC waste management licensing, and the training of employees in local authorities regarding the licensing process. | 2011 | | √ | |
| Support the establishment of new and development of existing companies engaged in the production and/or services in the field of environmental protection, and in the production of energy from alternative sources. | 2009 | | √ | |
| The introduction of economic incentives for investment in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, eco-innovation, etc.). | 2010 | | | √ |
| Support public-private partnerships that will work with local authorities in order to help the implementation of the Government's waste management policy as a necessary condition for the implementation of any program that is related to investments and growth of the private sector. | 2010 | | √ | |
| Encourage the establishment of partnerships between public and private participants, together with local authorities to help the implementation of the Government's waste management policy, which is a necessary precondition for the establishment of an appropriate program that will provide a framework for further investments and growth in the private sector. | 2010 | | √ | |
| Reinforce cooperation with operators licensed for thermal treatment of waste to solve the issue of permanent waste disposal and significantly reduce quantities deposited in landfills. | 2014 | | | √ |
| Continue developing local and regional waste management plans. | 2009 | | √ | |

## CURRENT SITUATION

Few new developments and little progress were noted in the field of environmental protection relative to 2014. The procedure for amendments to the Law on Environmental Protection, the Law on Waste Management and the Law on Nature Protection, which was discontinued due to extraordinary parliamentary elections in 2014, and was not continued in the one-year period following the election of the new Government. Public consultations on the drafts of the aforementioned laws started in June, and the adoption of the new laws, that is, of the amendments to these laws, aimed at harmonizing environmental regulations with EU legislation, is expected by the end of this year. Also, incentives for the re-use of waste as alternative raw material for the production of energy and plastic bags were decreased, and the largest obstacle is the discontinuation of the Fund for Environmental Protection and allocation of state funds.

Packaging waste is collected pursuant to the Waste Management Law and the Law on Packaging and Packaging Waste. In 2014, any company placing its products on the market was obliged to collect 23%, and 19% of the total packaging waste generated for re-use and recycling, respectively. Operators Sekopak and Eko 21 collect pesticide packaging waste and export it for incineration. However, there is no systemic solution for the disposal of pesticide packaging waste in Serbia.

The Rulebook on methods and procedures for waste tire disposal management stipulates the recycling of at least 80% and the use for energy purpose of not more than 20% of the total quantity of collected waste tires in the previous year. This puts users of this type of waste in an unequal position. Operators do not have any information, nor are they allowed to have any information according to competition rules, about the quantity of waste tires used for energy purposes by another operator. This also means that none of them know if the target stipulated by the Rulebook has been or will be reached during the year.

Additionally, the incentive rates presently applied for the re-use of waste as alternative raw material (EUR 160/t), or for

generating energy (EUR 30/t), are not based on the actual costs of processing these products once they become waste, which is the primary purpose of these incentives. The unjustifiably big difference between the incentive rates applied for the different types of waste treatment has led to:

- disruption in the waste oil and waste tires market, depriving the operators who are licensed for thermal treatment of waste oil and waste tires for energy purposes of permanent and stable sources of alternative fuels, contributing to the development of the "black market" of energy sources;
- immense, unnecessary waste of state funds, of a minimum of EUR 10 million in the case of tires, considering that the entire quantity can be treated in cement plants at no additional cost or at significantly lower cost. All of the above will not contribute to the reduction of the number of employed who collect tires, as they would continue to perform their job.

## POSITIVE DEVELOPMENTS

The line Ministry is currently revising environmental protection financing in the Republic of Serbia, with the idea of establishing a national Green Fund, as one of the key mechanisms in financing programmes and projects in the area of environmental protection. Significant investments into large waste management and waste water management infrastructure projects were also announced.

The realization of the Twinning Project "Improvement of hazardous waste management system in the Republic of Serbia" was also announced. The general goal of this project is to help Serbia comply with EU environmental protection legislation, through institutional capacity building and improvement of infrastructure in the area of environmental protection. The purpose of the project is to develop and improve the waste management system, by finalizing legislation, strategic planning and implementing the frame for managing hazardous waste special flows in accordance with EU standards and Serbian legislation.

The process of amending the Environmental Law and the Law on Waste Management must be continued, as this is necessary for further harmonization with the EU legislation, among other with the Directive on Waste (Directive 2008/98/EC) regulating the re-use of waste. According to the Guidance on the interpretation of key provisions of the Directive, this includes co-processing, as an operation of re-use of waste, to allow import of non-hazardous waste for this purpose. This would contribute to reducing the use of non-renewable energy sources, and allow facilities with an Integrated Pollution and Prevention and Control (IPPC) permit, which fulfil conditions for thermal treatment of waste, to manage production costs more efficiently, increase their competitiveness and become equal players in the European and other relevant markets where trading in such waste is permitted and fully liberalized.

## REMAINING ISSUES

- A legal framework for the waste trade is not in place and the waste market is underdeveloped.
- The monitoring and reporting system is not sufficiently developed to enable the completion of the national and local register of pollution sources.
- There is no system of incentives for investing in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, environmental investments, recycling, etc.)
- A limited number of IPPC permits were issued and waste management licensing is complicated and time-consuming.
- There is no thermal treatment of hazardous waste, especially packaging and printed paper (PPP), and PPP waste is not collected for several reasons, such as: lack of permits and lack of appropriate preparation lines for this type of waste.
- Lack of adequate means for the treatment and proper disposal of animal waste is a huge problem in across Serbia.

## FIC RECOMMENDATIONS

- Support new and accelerate existing procedures for IPPC waste management licensing, and the training of employees in local authorities regarding the licensing process.
- Support the establishment of new and development of existing companies engaged in production and/or services in the field of environmental protection, and in the production of energy from alternative sources.
- The introduction of economic incentives for investment in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, eco-innovation, etc.).
- Encourage the establishment of partnerships between public and private stakeholders, together with local authorities, to help the implementation of the Government's waste management policy, which is a necessary precondition for the establishment of an appropriate programme that will provide a framework for further investments and growth in the private sector.
- Reinforce cooperation with operators licensed for thermal treatment of waste to solve the issue of permanent waste disposal and significantly reduce quantities deposited in landfills.
- Stimulate investments into treatment of animal waste and ensure adequate solutions for such waste.
- Continue developing local and regional waste management plans.

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# SECTOR SPECIFIC

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# FOOD AND AGRICULTURE

## A. FOOD SAFETY

## 1. FOOD SAFETY LAW

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The provisions under Articles 70 and 71 should be clarified, by making a clearer distinction between the analysis costs under Article 70 and analysis fee under Article 71, or, if there is no relevant difference, then the respective provisions must be amended by deleting the parts which create the confusion. | 2014 | | | √ |
| A more accurate definition of "super-analysis" should be included in the law and of the body that should perform it (if it is different certified laboratory how comes that results might be different). | 2014 | | | √ |
| Specific controls, as mentioned in Article 70, should be clearly defined or if they are not substantially different from already defined official control, this should be clearly stated. | 2014 | | | √ |
| The responsibilities in Article 12 should be clearly defined. | 2014 | | | √ |
| Article 30 should clearly define what is meant by proof of compliance with food safety requirements (analyses in licensed laboratories) and frequency of analyses. | 2014 | | | √ |
| In order to secure proper implementation of regulations, the adoption of a general Rulebook on food safety criteria at food retailer level is needed. | 2014 | | | √ |
| It is necessary that the Rulebook on the quality of minced meat, semi-finished products and meat products be amended to harmonize it with the Rulebook on the quality of livestock, poultry and game meat and the Rulebook on the quality of slaughtered pigs and pork categorization. | 2014 | | | √ |

### CURRENT SITUATION

The Food Safety Law was adopted in 2009 and jurisdictions in the area of inspection were split between the two relevant ministries; the Ministry of Agriculture and Environmental Protection, whose phytosanitary, veterinary and agricultural inspectorates are responsible for conducting official controls of food of animal and plant origin in primary production, processing, trade, import, transit and export, and the Ministry of Health, whose sanitary inspectorate is responsible for controlling novel food, dietary products, additives, flavourings, non-animal-derived enzymatic preparations and for all types of potable water.

In May 2013 the Ministry of Agriculture and Environmental Protection announced that the Food Safety Law (hereinafter referred to as: the Law) would be amended to place the control of food and food products of non-animal origin under the jurisdiction of the sanitary inspectorate of the Ministry of Health, while the veterinary inspectorate will remain responsible for control of foodstuffs of animal origin. Furthermore, it was announced that the Directorate of the National Reference Laboratories would not be a part of the Ministry of Agriculture, but an independent authority, in accordance with EU practices. However, these announced amendments to the Law have not been implemented to date. In May 2015, the same ministry announced the finalization of the new Food Safety Law, which is scheduled to enter Parliament by the end of the

year at the latest. The Ministry said that changes would only be made to the provisions that have still not been fully harmonized with EU legislation, which would contribute to the further improvement of food safety monitoring in Serbia.

Although the Food Safety Law was adopted in 2009, it has not been fully implemented to date. Article 18 of the Law prescribes the founding of the Directorate for the National Reference Laboratory (NRL) for laboratory testing activities and related expert activities in the food chain. The duties of the National Reference Laboratory, envisaged by the Law, include activities in the fields of food safety, animal health, plant health, agricultural and decorative plants seedlings, residues, milk and the plant gene bank.

The National Reference Laboratory opened on 9 March 2015 and its work is divided into the following sections: Phytosanitary Laboratory, Laboratory for Food and Animal Feed and Milk Quality Testing, Laboratory for Physical and Chemical Testing of Food and Testing of Veterinary Drug Residues, Pesticides and Other Harmful Materials in Food and Animal Feed, Seed Laboratory with Plant Gene Bank, and the Department of Organic Production. However, although some testing began in mid-February 2015 in the Phytosanitary and Seed Laboratories, the NRL is still not conducting all the activities envisaged under the Law (e.g. the Phytosanitary Laboratory currently only analyses potatoes), which means, among other, that the required conditions for risk analysis, envisaged under the Law have not been met. The plant gene bank of the National Reference Laboratory started its activity, and the Ministry of Agriculture and Environmental Protection announced that it will fully equip the Laboratory for Physical and Chemical Testing and the Laboratory for Milk by the beginning of the next year, which is hugely important for testing food and milk safety and quality. Still, despite these announcements of the competent institutions, the pace at which the implementation of the law is currently going is not satisfactory. The causes that prevent the National Laboratory from carrying out all of its duties stipulated under the Law must be identified and eliminated.

Furthermore, Article 23 of the Law envisages the formation of an independent Expert Council for Risk Assessment in the Field of Food Safety. In May 2013, the Ministry of Agriculture announced that 15 experts would be appointed to this Council by mid-June 2013, at the latest, to monitor food safety within nine different committees and warn the appropriate authorities of any irregularities. There has been no progress on this issue to date. Instead of the current approach to testing food safety, which is based on testing finished products, production process control should be based on risk assessment. As the activities of the Council include improvement of and coordination in the application of risk assessment methods, the absence of the Council is a major obstacle to the risk analysis envisaged under the Law. Under the current approach, inspectors make decisions on sampling and testing products (both finished products and those intended for further processing) and it is not uncommon for the goods of an importer adhering to regulations to be held, which impacts product freshness, overall costs and makes imported products less competitive than domestic products. A risk analysis would facilitate the classification of food business operators into low risk and high risk, which would, on the one hand, speed up customs clearance and placement on the market of low-risk goods, and importers assessed as low-risk, could save money and time through fast-track procedures, and on the other hand, inspection resources would be allocated to the testing of risky products. Risk analysis would reduce the workload of the inspectorates and relieve the pressure on their limited resources. aFurthermore, Article 38 of the Law and Article 8 of the Rulebook on the Manner of Establishment and Organization of a Rapid Alert System for Food and Feed, stipulates that the Expert Council must also participate in the rapid alert system. Thus, the Law stipulates that the line minister for public health affairs issues a licence for the placement of novel food on the market for the first time, of genetically modified food and of genetically modified animal feed, on the basis of the prior expert opinion of the Expert Council. These are all additional pressing reasons for the immediate formation of the Council and for bringing the work of the National Reference Laboratory to its full capacity.

Another important issue is food and feed safety monitoring, as a mechanism for the systematic control of pollutants in food and feed at all stages of production, processing and marketing. Although the provisions of the law governing the corresponding programme have been in force since 1 January 2009, their implementation has still not begun.

A measure that could additionally contribute to improving the general situation in the field of food safety is the formation of a Food Safety Agency, existing in all EU member states as an independent authority with overarching responsibilities in the field of food safety, as part of the European Food Safety Agency (EFSA), responsible for exchanging information of importance for controlling the content and quality of food. This agency is not envisaged under Serbian legislation.

## POSITIVE DEVELOPMENTS

The Directorate for the National Reference Laboratories (DNRL) opened on 9 March 2015, and its plant gene bank began operating. However, the Laboratory is still not conducting all activities envisaged under the Law.

## REMAINING ISSUES

Under Article 70 of the Law, the costs of analysis and super-analysis of all samples must be borne by the party from which the sample was taken, if it is found in the final procedure that the sample does not conform to the prescribed requirements. If a sample conforms to the prescribed requirements, the costs of the laboratory analyses and super-analyses are covered by the funds allocated by the budget of the Republic of Serbia. Furthermore, food or feed business operators whose products are sampled and analysed are entitled to an additional expert opinion (super-analysis), however, this not delay the enforcement of emergency measures in case of an emergency. Furthermore, under Article 71 of the Law, food and feed business operators must pay a fee for laboratory analyses of samples taken in official controls, as well as for official controls carried out in case the result of the analysis is unfavourable, unless otherwise prescribed by the Law. Revenues generated by the state from this fee are kept on a separate account in the national budget. The amount of the fee is set by the Government.

However, in practice, only importers pay for analyses. Thus, food and raw material importers in the food industry face hidden parafiscal levies. Although the state is obliged to refund them for the costs of food and feed analyses if the results are favourable, this does not happen in practice, because there is no designated institution to which companies could submit requests for the refund of the costs of the analysis. Only one such request was submitted to the Plant Protection Administration of the Ministry of Agriculture between 2009 and the present day, and this request was rejected.

Furthermore, the Law defines "official sample", not "samples", and since the latter is predominately used throughout the Law, it is not fully clear whether these two terms have the same meaning. There is also no definition of "super-analysis", mentioned in Article 70, apart from the description that it is an "additional expert opinion". Finally, it is unclear whether the fee for laboratory analyses of samples, under Article 71, is the same as the costs of the analysis and super-analysis in Article 70. Consequently, the exact extent of the costs of the analysis to food and animal feed business operators is unclear.

Article 12 defines the food safety-related responsibilities of the state administration, with a list of these competencies, however, there is an overlapping of duties and the division of responsibilities is unclear.

Article 31 states that food and feed business operators are required to ensure that food or feed meets the requirements prescribed by this Law and other special regulations, and to prove compliance with such requirements in all stages of food and feed production, processing and circulation. There is no clear definition of what is meant by proof of food safety, nor is the frequency of analyses specified.

In addition, there are several inconsistencies with respect to relevant by-laws.

There were problems in the interpretation of the Rulebook on Food Declaration in 2015. The Phytosanitary Inspectorate began interpreting the Rulebook on Food Declaration, Labelling and Advertising differently. In this regard, inspectors began holding importers' trucks at customs and issuing decisions banning the import and placement on the market of these products more frequently than was the case previously. After importers and business associations reacted, in March 2015 the Ministry of Agriculture and Environmental Protection issued an opinion on the interpretation of the Rulebook. However, to avoid further problems with interpretation, the Rulebook has to be amended. (More on this in the section "Quality control and declaring food products")

A general rulebook on food safety criteria in retail stores has still not been passed. The rulebook currently in use treats food retailers as food producers, which results in additional costs for retailers (hygienic and sanitary prerequisites, preparation of premises and sampling units)

The Rulebook on the Quality of Minced Meat, Semi-finished Products and Meat Products (Official Gazette of the Republic of Serbia No 21/2012) is not in accordance with the Rulebook on the Quality of Livestock, Poultry and Game Meat (Official Gazette of the Socialist Federal Republic of Yugoslavia No 34/74, 26/75, 13/78 - as amended, 2/85 - as amended, 1/81 - as amended) and the Rulebook on the Slaughter of Pigs and Pork Meat Categorization (Official Gazette of the Socialist Federal Republic of Yugoslavia No. 2/85, 12/85, 24/86) - Articles 10, 11, 12 and 23. A change

made to the Rulebook on the Quality of Minced Meat, Semi-finished Products and Meat Products banned the use of third-category meat in the preparation of semi-finished products. This Rulebook is not in accordance with the rulebooks governing the categorization of fresh meat, in the section which defines category-three meat.

## FIC RECOMMENDATIONS

- Establish the Expert Council for Risk Assessment in the Field of Food Safety in accordance with Article 23 of the Law.
- Base the food safety strategy on risk analysis. Classify importers based on the risk analysis.
- Enable the work of all departments of the National Reference Laboratory and create the conditions for the Laboratory to carry out all of its statutory activities.
- Facilitate the acceptance of certificates of foreign accredited laboratories.
- Clearly define the difference between the costs of analysis and super-analysis of samples referred to in Article 70 and the fee for laboratory analyses referred to in Article 71, or, if there is no relevant difference, amend the parts which create the confusion.
- Clearly define super-analysis and define which authority should perform super-analyses (if a super-analysis is done by another certified laboratory, how is it possible for the results to be different?).
- Clearly define the term "special control", mentioned in Article 70, and define whether a special control differs from the already defined "official control".
- Clearly define the responsibilities under Article 12.
- Article 30 should clearly define what is meant by proof of food safety (analysis in accredited laboratories) and frequency of analyses.
- Fully harmonize the Rulebook on Declaration and Labelling of Packed Foods with EU Regulation 1169/2013.
- Pass the Rulebook on the Criteria for General Food Safety at the Level of Food Retailers
- The Rulebook on the Quality of Minced Meat, Semi-finished Products and Meat Products needs to be amended and harmonized with the relevant Rulebook on the Quality of Livestock, Poultry and Game Meat and the Rulebook on the Slaughter of Pigs and Pork Categorization.

# 2. SANITARY AND PHYTOSANITARY INSPECTIONS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The consistent application of standard operating procedures by the inspection services in terms of costs, time frames, and mechanisms implemented on the ground. | 2011 | | | √ |
| Discretionary rights of inspections to make arbitrary decisions on the number of samples taken, sampling procedures and costs of laboratory analyses should not be allowed. As a consequence of this situation, the number of samples ranges from 10 to 30 among the different inspections, and differs even within the same inspection, depending on the inspector on duty, because decisions on these issues are often left to the discretion of the individual inspectors. | 2011 | | | √ |
| Inspectors should not have the discretionary right to determine the types of laboratory tests to be performed. Prices are standardized among laboratories, but the number and type of tests affect the price. | 2011 | | | √ |
| Improving border inspection control, since importers are unable to predict and plan their business operations in Serbia, as there is no fixed time frame for completing the border inspection and validation formalities. This time frame varies based on factors unknown to the importer. The length of time between the unloading of a shipment and the release of the goods into circulation ranges anywhere between 3 and20 days, depending on whether the inspector samples goods for analysis or not, then on the laboratory the inspectors sent the samples to, and various other factors | 2012 | | | √ |
| The importer should be protected since he bears the financial burden of possible loss or destruction, as samples taken from original packages often damage the goods and its packaging | 2014 | | | √ |
| Barriers to trade should be overcome and the principle of free movement of goods should be respected. Currently it is impossible to predict which goods are going to be held up for quality inspection, and consequently importers cannot plan the time of release of the goods which in turn affects their plans for monthly volumes, promo activities, etc. | 2013 | | | √ |

## CURRENT SITUATION

The Food Safety Law was adopted in 2009, and as a result the inspection authorities were split between two relevant ministries. The phytosanitary, veterinary, and agricultural inspectorates of the Ministry of Agriculture and Environmental Protection are responsible for the official control of food and feed of animal and plant origin in primary production, processing, trade, import, transit, and export. The Sanitary Inspectorate of the Ministry of Health is responsible for the control of foods, dietary products, additives, flavourings, enzymes of non-animal origin, and all types of potable water. In addition, the Sanitary Inspectorate is also responsible for the control of products for general use, including cosmetics.

## POSITIVE DEVELOPMENTS

There is no significant development compared to the previous year in terms of sampled quantities, frequency of sampling, and obtaining decisions of inspectorates.

Some progress is noticeable in terms of monitoring, as inspectors usually try to avoid sampling the same stock keeping unit (SKUs) within a six-month period; however,

this is still not fully applied.

At the end of 2013 and in 2014 there were significant changes in terms of the quality control of wine and other alcoholic beverages. The validity period of a Laboratory Certificate has been set at six months for each lot, along with the specification of the types of analyses required for getting an export license and control number. A database of wine producers was created, along with a list of inspectors and certified laboratories.

## REMAINING ISSUES

The key problem identified is the unpredictability of the business environment, as the situation with the length of the quarantine time for shipments remains unclear.

The number of sampled shipments remains high, with an average of 35% of imports held up for quality inspection (referring to the fact that the same products from different trucks are often sampled). It is still impossible to predict which import shipment will be held up, so certain plans cannot be made with regard to the time of availability of the goods. According to Phytosanitary Inspectorate's data, however, only 10% of imports are sampled, analysed, and processed.

A special challenge is beer import and sampling, since only an analysis conducted by domestic laboratories of each lot/batch number, provided by the importer, was regarded as sufficient evidence of product safety in 2013.

This is not in accordance with the Guidelines on the official sampling of food and animal feed of plant and mixed origin by the Ministry of Agriculture and Environmental Protection, Directorate of Plant Protection.

In early 2015, the Phytosanitary Inspectorate changed the manner of issuing decisions overnight, revoking the certificate of customs clearance and disabling a larger number of importers to ensure the normal way of doing business. These changes resulted in an increase of stocks, costs, and time needed to find the product on the domestic market. By mid-2015 the situation returned approximately to the level that it was before, but these ad hoc situations additionally cause business uncertainty and affect the business climate as well.

Although the Labelling Rulebook enacted in 2013 with a grace period up to April 2015, including the sudden changing of interpretations in January, has brought into question the validity and correctness of the Rulebook, and opened the way for different interpretations, and thus a different implementation of the same regulations. Certain points of the Rulebook, i.e. the lack of a more detailed explanation of certain elements (e.g. transport boxes) practically paralyzed certain importers.

The uncertainty caused by the changes that occur literally overnight is further underscored by the fact that inspectors alone have the right to interpret the Rulebook in a valid way and implement changes immediately as regards declaration, packaging, etc.

## FIC RECOMMENDATIONS

In order to create a stable business environment, certain changes must be implemented in order to increase predictability:

- The consistent application of standard operating procedures by the inspection services in terms of cost, time frames, and mechanisms implemented on the ground
- Discretionary rights of inspections to make arbitrary decisions on the number of samples taken, sampling procedures, and costs of laboratory analyses should not be allowed. As a consequence of this situation, the number of samples ranges from 10 to 30 among the different inspections, and differs even within the same inspection, depending on the inspector on duty, because decisions on these issues are often left to the discretion of the individual inspectors.
- Inspectors should not have the discretionary right to determine the types of laboratory tests to be performed. Prices are standardized among laboratories, but the number and type of tests affect the price.

- Improving border inspection control, since importers are unable to predict and plan their business operations in Serbia, as there is no fixed time frame for completing border inspection and validation formalities. This time frame varies based on factors unknown to the importer. The length of time between the unloading of a shipment and the release of the goods into circulation ranges anywhere between three and 20 days, depending on whether the inspector samples goods for analysis or not; then at the laboratory the inspectors sent the samples to; and various other factors
- The importer should be protected since he bears the financial burden of possible loss or destruction, as samples taken from original packages often damage the goods and their packaging.
- Barriers to trade should be overcome and the principle of the free movement of goods should be respected. Currently, it is impossible to predict which goods are going to be held up for quality inspection; consequently, importers cannot plan the time of release of the goods which in turn affects their plans for monthly volumes, promo activities, etc
- It is necessary to clearly separate the fee for the import for laboratory analysis, which would provide a fixed fee, not variable and dependent on the choice of inspectors.

# 3. QUALITY ASSURANCE, DECLARATIONS ON FOOD PRODUCTS, NUTRITION AND HEALTH CLAIMS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Adopt changes or issue an official opinion for the Rulebook, eliminating the differences in understanding of 18 months transition period, to allow producers time to comply with the new labelling requirements, use up the old ones and timely approve and produce new ones. | 2014 | | | √ |
| Adopt changes to the Food Safety Law, in line with relevant EU regulations, enabling coordinated food market and quality control by an independent institution. | 2013 | | | √ |

## CURRENT SITUATION

The new Rulebook on the Declaring and Labelling of Packaged Groceries (Official Gazette of RS No 85/2013) came into force. It made the marking of groceries closer to the European standard of marking, which enabled more flexible operating for manufacturers, but certain discrepancies related to the interpretation of these rules by the line inspectorate and QA laboratories arose.

Amendments to the Law on Food Safety (Official Gazette of RS No 41/09) are under way. The focus is on the manner of controlling food safety.

The Rulebook on Nutrition and Health Claims is being prepared. This rulebook will prescribe the requirements for labelling, advertising, and presenting of food in terms of nutrition and health claims. For regulating in the area of labelling food products, only Article 30 of the Rulebook on

the Declaring and Labelling of Packaged Groceries (Official Journal of Serbia and Montenegro, No. 4/2004, 12/2004 and 48/2004) is applied.

## POSITIVE DEVELOPMENTS

A Draft of the Rulebook on Nutrition and Health Claims is aligned with Regulation (EC) 1924/2006 of the European Parliament and Council, dated 20 December 20 2006 on nutrition and health claims, specifically on food, which means, in the transitional phase and until the Republic of Serbia publishes the Rulebook on Nutrition and Health Claims on products, authorized claims from the European Food Safety Authority (EFSA) and the EU Register may be used, but only on products which are marketed on the European market. In this way, entities, especially those marketing products of this type on the European market, are not at risk of inadequately declaring information on their products and disabling export.

## REMAINING ISSUES

The final and interim provisions of the Rulebook on the Declaring and Labelling of Packaged Groceries are not defined clearly enough, which results in a space for an arbitrary interpretation of the 18-month deadline given to producers to align their labels with the new rulebook. This is why packaging which remained after 5 May 2015 can no longer be used, creating additional costs for commercial entities.

An unclear expiration date of microbiologically perishable groceries remains an issue, along with the term and definition of collective packaging.

Other outstanding issues include different interpretations of the formulation referring to the Country of Origin of groceries. Pursuant to Article 8, item 8, the place, i.e. country of origin of food, is to be specified, while the manner in which this is to be done is not described. Inspections and laboratories are interpreting this in different ways because some of them accept the formulations "Country of Origin" or "Made in" (which was aligned with the previous Rulebook on the Declaring and Labelling of Packaged Groceries 4/04,12/04,48/04), while others strictly demand that products be marked only with "Country of Origin."

The Rulebook on Nutrition and Health Claims is still not finished; i.e. it is uncertain when it will be passed and put in effect, which leads to inadequately declared products. Inherently, consumer rights may be compromised because they may be provided with inaccurate claims not allowed in Europe.

## FIC RECOMMENDATIONS

- Fully align the Rulebook on the Declaring and Labelling of Packaged Groceries (Official Gazette of RS No 85/2013, 101/2013) with EU Regulation 1169/2011 – adopt Regulation (EC) No. 1169/2011 (dated 25 September 2011) of the European Parliament and Council on the provision of food information to consumers, in order to enable a better and more uniformed declaring of food products.
- Adopt the amendments to the Law on Food Safety pursuant to the relevant European legislation.

# 4. MILK PRODUCTION QUALITY STANDARDS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Need for urgently establishing a National Reference Laboratory (NRL), as provided by the Law on Food Safety and ensuring its complete autonomy, professionalization and adequate technical equipment. | 2010 | | √ | |
| Simplification of the operation of the NRL, at least in the part of raw milk control, based on solely economic parameters. This primarily implies territorial division for the purpose of increasing the efficiency of raw milk sample processing. In this sense, the proposed centres for sample collection and processing are Belgrade, Novi Sad and Kraljevo, since they already have accredited laboratories there, and the NRL would be the "umbrella" institution. | 2010 | | | √ |
| Seek a model which would reduce the current cost of testing raw milk samples and increase its accessibility for most milk producers. One alternative is to divide the cost of raw milk sample testing among the state, farmers and dairies. It is similar in EU, for instance in France, where the costs of testing are equally shared by dairies and farmers. | 2014 | | | √ |
| Activation of experts in educating farmers, by creating a training system and financing - through access to EU funds and other financial institutions - projects that are essential for increasing the competitiveness of milk production and raising the quality of raw milk. | 2014 | | | √ |

## CURRENT SITUATION

The food industry still faces numerous challenges when production and sale of finished products are concerned. The domestic market's purchasing power, which has been stagnating for the second year in a row, as well as fierce competition from foreign markets are the major obstacles to a substantial increase in milk and dairy production.

Creation of a new economic value going forward is under huge risk amid shocks in this industry on a global scale, triggered by the EU–Russia dispute. After Russia banned food imports from the EU, the latter lost access to a large export market for EU dairy products. In order to resolve the product surplus issue, EU companies decide to place surplus products in Southeast Europe, the Middle East and Africa at much lower prices (by 15-27%, depending on the product) than the selling price of these products in the previous period.

One of the key factors and priorities that could significantly help domestic companies increase the sale of milk and dairy products, especially in foreign markets, is building a raw milk quality system on solid foundations with the active support of the Government and its agencies.

In spite of the global crisis in recent years, the changing global and local market conditions offer good prospects and options for opening new markets for dairy products, as is the case now, following the shift in Russia–EU relations. Yet again, this highlights the need for establishing a sustainable, consistent, clear and simple raw milk production system compliant with global and EU quality standards, in particular milk microbiology standards.

## POSITIVE DEVELOPMENTS

The introduction of interim protection measures (levies) on import of EU-produced milk and dairy products is a concrete measure taken by the Serbian Government, and a positive signal for domestic milk and dairy production. This measure primarily aims to preserve primary milk and dairy production by reducing disturbances in the domestic mar-

ket triggered by increased milk and dairy products imports from the EU, until a sustainable business model is found for primary milk production.

Unfortunately, hardly any progress has been made in other areas compared to the same period last year. The ensuing conclusion is that precious time has been lost once again. The fact that the state, the industry and milk producers, in particular, were unable to improve the quality of raw milk production to approximate EU quality parameters, is a cause for concern. Specifically, this means that the deadline for harmonizing our raw milk quality with the EU requirements by 2020 has been prolonged. In this context, the fact that the Ministry of Agriculture and Environment Protection formed a task force on milk in April this year to prevent losing more precious time is a positive development.

The rise in the number of raw milk quality analyses conducted in licensed domestic laboratories signals a slight improvement. We note that these analyses were carried out according to the criteria of the domestic rulebook, which are not as strict as the EU ones.

## REMAINING ISSUES

All issues that haven't been resolved until now will have to be dealt with by 2020, which is the deadline for Serbia's compliance with EU raw milk quality standards. Although it might seem that there are only a few of these issues, they are probably the most complex ones.

The Food Safety Law has been in effect for years; however, it does not reflect the real circumstances in the field and the other way round, which is exactly why raw milk quality is questionable. The underlying reason for this assumption is the fact that the National Laboratory still hasn't been established as stipulated by the Food Safety Law.

Although raw milk testing at licensed laboratories intensified, these tests involve only one share of the raw milk market – primarily the one covered by the largest milk production group in the country. The reason why these tests are not being conducted on the entire market is their price.

## FIC RECOMMENDATIONS

- This year again, we underline the need to urgently activate the National Reference Laboratory (NRL), as prescribed by the Food Safety Law, and secure the NRL is fully independent, properly staffed and technically equipped.
- Streamlining the National Reference Laboratory's (NRL) workflow, at least when it comes to raw milk control, on the basis of purely economic parameters. This primarily involves securing efficient raw milk sampling. We propose to establish centres for the collection and processing of samples in Belgrade, Novi Sad and Kraljevo, as they are already equipped for this kind of activity, i.e. they have licensed laboratories, while the National Reference Laboratory (NRL) would be an umbrella authority.
- Finding a model to lower the current price of raw milk testing and make it more affordable for a majority of milk producers. One of the ways to do this entails sharing the costs between the state, dairy farmers and dairy plants. EU has a similar system; for instance, in France, dairy plants and farmers share the costs equally. Hence, the Task Force of the Ministry of Agriculture responsible for devising a plan for creating a network of laboratories and milk quality analysis in the Republic of Serbia should be instructed to move in this direction.
- Activation of trained staff in the area of farmer education, along with the creation of a training system and raise funding from EU accession funds and other financial institutions for the projects that are essential for competitiveness growth in milk production, and consequently for the improvement of raw milk quality.
- Establish a premium/subsidy for quality (or premium differentiation for quality milk according to milk quantity

delivered) to stimulate split farming estates to: 1) expand livestock population, and 2) raise the quality of raw milk supply. The goal is to make a selection and stimulate farmers who opt for this kind of production. The merging of farms into larger units that would be able to produce 100–200 litres of milk per day would be an important achievement, because the larger the nucleus herd is, the lower the production costs, due to the economy of scale effect.

- Adoption of an action plan to raise the number of registered farms. Farm registration is necessary to allow export to the EU. Farm registration regulations should be amended to simplify the procedure and make it more efficient.
- Promotion of a proactive approach to primary milk producers. Setting up an institutional mechanism to ensure that primary agricultural producers have constant professional support during the production process – either in the form of personal education or hired experts.
- Formation of a development bank for supporting the development of agricultural production.

# 5. REGISTRATION PROCESS FOR PLANT PROTECTION PRODUCTS (PPPS)

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Transposition of EU standards into the national legislation, in terms of the efforts of the Republic of Serbia to fully harmonize its regulations with the EU and the World Trade Organization (WTO). | 2010 | | | √ |
| The FIC advocates full harmonization with EU standards and proper implementation of the PPPs registration process in the Republic of Serbia to ensure food safety for consumers and fair competition between international and domestic companies, whilst simultaneously creating favourable market conditions for foreign investments by putting all of the articles of the new Law on PPPs into force immediately and starting a revision of the existing registrations. | 2010 | | | √ |
| New by-laws in line with the new Law on PPPs to enable efficient registration, inspection, sales, import, and use of pesticides in agriculture and forestry. | 2012 | | | √ |

## CURRENT SITUATION

The current state of the registration of plant protection products, unfortunately, did not improve with the adoption of the Law on Plant Protection Products in 2009, as was realistically expected. In fact, certain amendments defined at that time have postponed the enforcement of part of the Law (Articles 11-25), which refer precisely to the process of registration of plant protection products. Said articles should have come into force in January 2014.

However, six years after its adoption, this Law has not ensured food safety. On the contrary, an unidentified risk for food consumers is still present in Serbia. Although the

purpose of the adoption of the Law of 2009 was harmonization with EU legislation that would alleviate aforementioned risk, this has not occurred. The harmonization has not occurred only due to the fact that, shortly before January 2014, when full application of the 2009 Law should have begun, a "technical mistake" suddenly appeared in certain amendments to the Law (Articles 86-90), which was impossible to correct due to unknown reasons.

Therefore, instead of harmonization, the registration of plant protection products in Serbia retrograded to the previous Law on Plant Protection of 1998, which was 17 years old.

In November 2013, shortly before the long-awaited harmonization was finally to take place, the Directorate of Plant Protection issued two official letters, from which it could be undoubtedly concluded that after 1 January 2014, there would be only one, wholly valid Law of 2009 harmonized with EU legislation.

However, contrary to all expectations, in March 2014 the Directorate of Plant Protection in the Ministry of Agriculture issued on its website a Guidebook entitled "The Registration of Plant Protection Products as of 31 December 2013", mentioning that "At the initiative of the Serbian Chamber of Commerce. .. and keeping in mind the so-called "target" interpretation of the law, i.e. what was expected to be accomplished with certain provisions of the law, the Directorate of Plant Protection will accept requests for the registration of new plant protection products submitted and in compliance with Articles 11 to 25 of the Law on Plant Protection Products, as well as in compliance with Article 86, paragraph 3 of the Law, depending on the type of request by the applicant".

In practice, this meant and unfortunately still means a parallel application of two completely opposite Laws:

- The old Law on Plant Protection (Official Gazette of the Federal Republic of Yugoslavia No. 24/98 from 15 May 1998), which is being applied in its entirety;
- The new Law on Plant Protection Products (Official Gazette of the Republic of Serbia, No. 41/2009 from 2 June 2009), which is not being enforced in practice, with the exception of Article 16.

Constant efforts to pass amendments on the current inapplicable Law of 2009 have not yet been successful. There is good will on the part of all stakeholders in the process but unfortunately there have been no evident advances in this six-year period. Plant protection products in Serbia are still registered according to the regulations of 1998.

The registration of potentially hazardous plant protection products, non-compliance of the Law with EU standards, and a potential risk for human and animal health and the environment are still a great challenge in Serbia.

## POSITIVE DEVELOPMENTS

In spite of the fact that the Ministry of Agriculture and Environmental Protection is always open for communication, unfortunately, there have been no improvements.

We believe that the aspiration of the Ministry of Agriculture to find an agreeable solution that would be initiated by business entities is not realistic. If this were possible, it would already have occurred.

## REMAINING ISSUES

The opinion of the Foreign Investors Council for Food and Agriculture, that the role of the local government authorities is of utmost importance, and that it cannot be replaced by any concord of business entities, remains. Local government authorities have a crucial role in creating an ethical business environment. Consequently, it is our opinion that principles such as food and consumer safety should not be based on the consensus of stakeholders in the market. Without a decisive resolution to follow international standards, with an active role of state authorities, there will be no viable solution.

Harmonization of the Serbian legislation with European legislation is the viable solution, for reasons of food consumer safety in Serbia, as well as the anticipated food exports to EU states.

## FIC RECOMMENDATIONS

- To introduce European standards into Serbian legislation, in terms of efforts made by the Republic of Serbia to

fully harmonize its legislation with that of the EU and the World Trade Organization (WTO).

- Complete harmonization with EU standards and a proper realization of the registration process of plant protection products in the Republic of Serbia, with the purpose of ensuring the safety of food for consumers, as well as fair competition between foreign and domestic business entities.
- Creating favourable market conditions for foreign investments, among other means by enacting only the Law on Plant Protection Products of 2009, and by reviewing the current resolutions on the registration of plant protection products as of October 2015.
- Harmonization with EU standards is also necessary due to the fact that only upon the closure of all 35 chapters (Chapter 12 is related to food safety, veterinary, and phytosanitary policy) will it be possible to sign an agreement of membership of Serbia with all other EU states.
- Passing the new by-laws or revision of existing ones in accordance with the new Law on Plant Protection Products, which will facilitate the efficient registration, inspection, sale, import, and use of plant protection products in agriculture and forestry.

# B. SUBSIDIES

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Adopt four-year strategies for all major sectors of agricultural production, by setting mid-to-long-term subsidy policies. | 2010 | | | √ |
| Adopt regulations promoting quality standards in agricultural production (for example Global GAP and HACCP for milk) and change the structure of incentives, in terms of subsidizing by quality classes and per kilogram and for herbal production, in order to promote efficient production, and discourage the outflow of certain herbal cultures into illegal channels (e.g. tobacco). | 2010 | | | √ |
| Where they remain as an economic assistance tool, subsidies (and other incentives for rural development, e.g. procurement of irrigation equipment) should be available to all legal and natural persons under equal conditions, regardless of the past or present growing areas, in order to secure the transparency of the process, the rewarding of efficient producers, and the recognition of specialization and professionalization of farming. | 2010 | | | √ |
| The Rulebook on conditions for exercising the right to reimbursement for fertilizers needs to be amended to introduce legitimate invoices as sufficient proof of the amounts paid for fertilizers to enable reimbursement in accordance with the Law on incentives in agriculture and rural development; | 2014 | | | √ |
| The same Rulebook should allow farmers to exchange crops for fertilizers by concluding barter agreement with their buyers. | 2014 | | | √ |

## CURRENT SITUATION

The subsidy policy has been and is likely to remain a significant economic assistance tool of the Serbian as well as many EU member states' policies. When it comes to the EU, this topic is covered by the Common Agricultural Policy, which envisages a EUR 408 billion budget for the period 2014–2020. Subsidies as an economic instrument should be aimed at achieving efficiency and sustainability of farm production in order to generate preconditions for the extended competitiveness of the export sector and achieve high quality in production. We must bear in mind that export subsidies will be abolished once Serbia accedes to the World Trade Organization (WTO). This implies that export competitiveness should be supported through subsidies for direct farm production.

The Serbian Government should identify the agricultural sector as one of the key drivers of growth and provide the sector with predictability in terms of a long-term strategy as the main precondition for stable operations, and a further enhancement of Serbia's agricultural trade balance. We believe that the agricultural sector in Serbia has a lot of potential. However, without stronger Government support with respect to a clear long-term strategy for subsidies, the productivity of the sector will not improve. Productivity is low, both in the sense of low yield per land unit or head of cattle (milk, for example), and low productivity of land and capital. The reason for low productivity is an inadequate subsidy policy for artificial fertilizers and land analysis as a basis for adequate fertilization and preservation of land's fertility and protection of natural resources; a poor breed composition; a low level of land irrigation; and low utilization of inputs and seed on the one hand, and obsolete equipment, technology, and infrastructure on the other.

After refocusing the subsidy system from payments per surface (ha) to payments per unit of produce (kilogram), through the adoption of the Rulebook on Conditions and Method of Using Subsidies for Crop Farming and Potato Production by the Government in September 2012, the subsidy system was brought back to the payment of funds per hectare of registered land. These steps gave rise to confusion among subsidy users and a lack of predictability, which is the key factor in planning and implementing activities in the agricultural sector, as well as a lack of control with regards to utilized subsidies in relation to products manufactured in accordance with relevant regulation.

According to current provisions of the Rulebook on Conditions for Exercising the Right of Reimbursement for Fertilizers, such reimbursement is feasible only for procurements proved with fiscal receipts, although the majority of companies involved in agricultural production pay for fertilizers through invoices. Invoice-based payment is in full compliance with the relevant laws; hence, these provisions create discrimination among producers and farmers in terms of reimbursement for fertilizers. This way the Rulebook also denies the possibility of barter between the farmers and their buyers, since it excludes the possibility for farmers to be provided with fertilizers from their buyers for which they could pay later through crops. Thus, the current subsidy model discourages procurement of particular fertilizers which are directly impacting characteristics of the product which the buyer demands.

By adopting the Law on the Budget for 2015, the Government has decided to decrease the amount of funds envisaged for agricultural subsidies to RSD 28 billion, from RSD 34.9 billion allocated in 2014.

Also, the Law on the Financing and Securing the Financing of Agricultural Production has been adopted and entities conducting their activities in the agricultural sector are welcoming such an adoption; however, it remains to be seen how implementation in practice will proceed.

## POSITIVE DEVELOPMENTS

The Government adopted the regulatory framework for subsidies in January 2013, with the adoption of the Law on Agricultural Incentives and Rural Development and the timely issuance of the Act on the Allocation of Agricultural Incentives and Rural Development in 2015, defining the scope of the incentives.

## REMAINING ISSUES

The Ministry of Agriculture and the Government adopted the National Agricultural Programme (NAP) in October 2010. The document is the first national programme for agriculture referring to the period of 2010–2013; and represents a summary of legislative, institutional, and financial activities of the Ministry of Agriculture; but there are no clear references to the exact amounts planned for the implementation of the programme for agriculture, or percentages indicating changes compared to other years.

By introducing the fiscal receipt as a mandatory requirement, the Rulebook on Conditions for Exercising the Right to Reimbursement for Fertilizers practically disqualifies all the entities that can prove their transactions only with invoices, thus discriminating against producers and farmers. Furthermore, the Rulebook limits the right of reimbursement provided by the Law on incentives in agriculture and rural development, which is unlawful. Indirectly, by the same provisions, the Rulebook also denies the farmers the right to exchange crops for fertilizers by concluding barter agreements with their buyers.

### FIC RECOMMENDATIONS

- Adopt four-year strategies for all the major sectors of agricultural production by setting mid-to-long-term subsidy policies.
- Adopt regulations promoting quality standards in agricultural production (for example, Global GAP and HACCP for milk) and change the structure of incentives in terms of subsidizing by quality classes and per kilogram and for herbal production in order to promote efficient production and discourage the outflow of certain herbal cultures into illegal channels (e.g. tobacco).
- Where they remain as an economic assistance tool, subsidies (and other incentives for rural development, e.g. procurement of irrigation equipment) should be made available to all legal and natural persons under equal conditions, regardless of the past or present growing areas, in order to secure the transparency of the process, the rewarding of efficient producers, and the recognition of the specialization and professionalization of farming.
- The Rulebook on Conditions for Exercising the Right to Reimbursement for Fertilizers needs to be amended to introduce legitimate invoices as sufficient proof of the amounts paid for fertilizers to enable reimbursement in accordance with the Law on incentives in agriculture and rural development.
- The same Rulebook should allow farmers to exchange crops for fertilizers by concluding barter agreements with their buyers.

# C. LIVESTOCK PRODUCTION

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Laws and by-laws must be applied in a uniform manner across the board and without exceptions. | 2012 | | √ | |
| State bodies have to introduce protective measures for livestock producers (milk producers in particular) to protect them from excessive fluctuations of prices of crop products used as food for livestock. | 2012 | | | √ |
| It is necessary to establish a group of experts who would establish a sustainable development strategy in the long term through close contact with farmers; | 2012 | | √ | |
| Increase of exports to the EU has to be supported by the application of quality standards including traceability practices and good farming practice. | 2012 | | √ | |

## CURRENT SITUATION

Livestock production holds an important place in Serbia's economy because it creates great value by engaging economic and human resources. In the structure of agricultural production, livestock production has a particularly important role because agricultural development is not sustainable without a stable and developed livestock production. The share of livestock production in the gross value of total agricultural production, which stands at 37.9%, indicates a low level of development of livestock production, and consequently a low level of development of agriculture in Serbia.

Serbia has excellent natural potentials for developing livestock production, with more than 1.4 million hectares of high quality permanent meadows and pastures and significant unused facilities for the accommodation of cattle and sheep. Yet, this branch of agriculture has been recording negative trends for the past three decades. Just over the last ten years, the number of livestock units per hectare of agricultural land has decreased from 0.34 to 0.27.

Regardless of the perspective of livestock production and its strong potential to become the driver of agricultural development, the number of livestock has been steadily declining in the last two decades, by 2-3% annually. Serbia ranks 22nd in milk production in Europe, with 1.9 billion tons of milk produced per year, which is 0.40% of the total European milk production.

## POSITIVE DEVELOPMENT

Starting 2016, EUR 175 million will be available to the Serbian agricultural sector from Instrument of Pre-Accession in Rural Development (IPARD) fund. This will be a great incentive for Serbian agricultural producers. Priority is given to farmers, dairy, meat, vegetable and fruit producers, and the funds are primarily intended for the construction or reconstruction of facilities, purchase of new machinery and technologies. All that remains to be done now is to accredit the Agency for Agricultural Payments.

The draft Strategy for Agricultural and Rural Development for 2014–2024, finalized in November 2013, was finally adopted in August 2014. This Strategy sets the key objectives of agricultural development in the next ten years, specifically:

- the development of agriculture and the food industry based on the concept of sustainable development, environmental protection and sustainable management of natural resources;
- a model of support that leads to a rapid development of the agricultural and food sector with the aim to increase the volume of production and sustainable growth of competitiveness in the region and beyond;
- directions of future reforms of agricultural policies and institutional framework.

A laboratory for the quality control of raw milk is expected to start its activity by the end of the year, and this will enable producers to further improve production.

The introduction of an independent and impartial control authority will allow milk producers transparent payment of raw milk in accordance with its quality.

## REMAINING ISSUES

Contemporary livestock breeding imposes increasing demands on growers, as well as on the animals, in all areas. The requirements or objectives are: to produce more, better and cheaper product, while keeping it healthy, safe and usable for end users and processing industries. Farms, depending on their size, i.e. the number of livestock units are passing a path of development that is necessary to meet the objectives set:

- raising livestock production to a level that is competitive on the global market,
- produce food that meets the needs of consumers in terms of safety,
- developing a comprehensive, coordinated and integrated national system for monitoring and controlling animal disease,
- providing support to raise living standards of entities involved in livestock production,
- in addition to the standard selection methods to improve the productivity potential of certain domestic animal species, start using new molecular genetic methods,
- increase interest in organic farming,
- improve livestock breeding techniques, strengthen national genetics, increase the number of all types of livestock and the number of heads under control.

## FIC RECOMMENDATIONS

- Laws and by-laws must be applied in a uniform manner across the board and without exceptions.
- State bodies have to introduce protective measures for livestock producers (milk producers in particular), to protect them from excessive fluctuations of prices of food crop used as livestock feed.
- A team of expert should be assembled to design a long-term sustainable development strategy in close contact with farmers.
- Increase of exports to the EU has to be supported by the application of quality standards, including traceability practices and good farming practices.

# TOBACCO INDUSTRY

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| All relevant state institutions need to shift their focus on the effective implementation of the Law in order to combat the illegal tobacco products market, which has a significant negative consequence for the whole society. The FIC also supports the adoption of an umbrella Law on Inspections which would ensure greater efficiency of inspection services. | 2013 | | √ | |
| The consistent implementation of the Excise Law - Any change in the applicable excise tax calendar which is provided for under the Excise Law would seriously jeopardize the predictability of the regulatory environment relating to the field of tobacco and tobacco products. On the other hand, we believe that there is room for further regulation of taxation which should address the problem of a growing trend of unfair competition in the lowest price segment. | 2012 | | √ | |
| Immediate adoption of the new Advertising Law based on a draft from 2010 -The Council believes that the regulator must set clear rules on the advertising of tobacco products that could be effectively enforced and that would create a level playing field for all market participants. The Council calls on the Government to adopt the draft from 2010 and forward it to the Parliament for approval as soon as possible. | 2013 | | | √ |
| The FIC believes that prior to its approval by the Government, taking into account the overall additional restrictions that are included in the Action Plan of the Ministry of Health, a transparent dialogue and consultations are needed between the government, the tobacco industry and all third parties that would be affected by the measures under this Plan (tobacco growers, retailers, the hospitality sector, suppliers, etc.). | 2013 | | | √ |
| In general, the Foreign Investors Council strongly supports an open and transparent dialogue between the legislature and the tobacco industry according to the principles of participation, transparency, accountability, effectiveness and coherence. | 2013 | | √ | |
| Although satisfactory, the existing Law on Tobacco requires some adjustments which can be achieved more efficiently through amendments to the existing Law and not through the preparation of a new Law on Tobacco. The mass use of ancillary products for smoking (filter tips, rolling paper...) should certainly be regulated by relevant regulations. Additionally, the amendments and additions to the Law should regulate the field of tobacco based products such as tobacco foil and tobacco stem. Given that these changes are not essential, they do not require a change of the entire legal framework, the FIC supports limited amendments to the Law on Tobacco. | 2014 | | √ | |

## CURRENT SITUATION

Despite years of economic crisis, the tobacco industry is constantly one of the strongest and most vibrant sectors of the Serbian economy contributing 11% of total budget revenues in 2014, while exports in this industrial branch grew by as much as 60% in 2014 compared to the previous year. Three leading global tobacco companies have set up their manufacturing facilities in Serbia, while the level of foreign investment in the tobacco industry exceeded the amount of EUR 1.2 billion, which is a clear indicator of medium-term and long-term business commitments in Serbia. Taking into account the aspirations of Serbia towards EU membership and the economic importance of the tobacco industry, the importance of having a predictable fiscal and regulatory environment, that is gradually being harmonized with EU

directives in this field, is crucial to ensuring the sustainability and further development of the industry. In two years' time, the market of tobacco products has lost more than 1/3 of the legal market and thus a key problem remains a developed illegal market in tobacco products, with an approximately constant level of illegal cut tobacco and an increasing level of illegal cigarettes.

## POSITIVE DEVELOPMENTS

One of the most significant legislative achievements in the tobacco field and a further step in the direction of the gradual harmonization with relevant EU directives (2011/64/EU) is the existence of a multi-annual plan on excise taxes on cigarettes (until the end of 2016) and other tobacco products stipulated in the Excise Tax Law. Additionally, the Ministry of Finance has shown a willingness to open the topic of a new excise calendar, in a timely manner, with representatives of the tobacco industry (for the period after 2016) contributing in this manner to the predictability of the regulatory environment. The adoption of amendments and additions to the Excise Tax Law, which has introduced excise tax on electronic cigarettes and non-combustible tobacco, has placed Serbia among the few European countries that have introduced excise tax on next-generation tobacco products. The adopted changes and amendments to the Tobacco Law from 2013 represent a step forward in combating illegal trade in tobacco and tobacco products, however, this measure has not led to the desired results because of poor implementation in practice in certain fields (the prosecution and the courts). Although the aforementioned amendments and additions to the Tobacco Law from 2013 are a step in the right direction it should be noted that the principal, conditionally speaking, improvement is the increase in seizures of mainly illegal tobacco. Although the amount of seized tobacco in the first six months of 2015 increased nine times compared to all of 2014, increased activity of bodies controlling the implementation of regulations will remain without effect if it is not completed by appropriate court rulings.

## REMAINING ISSUES

a. Illegal trade in tobacco products - A wave of price increases caused by an excessive increase of the tax burden in 2012, with the simultaneous decline of purchasing power, have led to the emergence of a growing illegal market for tobacco products. The above-mentioned initial tax and price impact on consumers has influenced the legal tobacco market to be reduced by 1/3 over a period of two years, both in urban and rural locations across Serbia (green markets, street vendors, registered retail facilities, the Internet. ..). Consequently, this phenomenon has led to a substantial and sudden drop in the legal market of tobacco products, which directly led to a significant reduction in expected government revenue in 2013 and 2014 (RSD 21 billion less collected in 2013 and RSD 22 billion less in 2014 compared to the initial plan from the Ministry of Finance). In addition, due to an increased negative impact of the illegal cut tobacco market, the viability of the entire supply chain within the tobacco industry is jeopardized (growers, processors, manufacturers, distributors and retailers), as is employment and GDP, on which the production chain of tobacco products has a direct impact. Moreover, illegal tobacco products have a negative impact on consumers because of unknown origin, uncontrolled manufacturing, uncontrolled storage and transportation conditions as well as the fact that illegal tobacco products are available to minors, that they do not contain the statutory health warnings, that they are illegally advertised and the like. The Government of the Republic of Serbia is investing great efforts in combating illicit trade in tobacco products, which can be seen, primarily, through the seized quantities of tobacco and cigarettes. Namely, in the first six months of 2015, about 1,400 tons of tobacco and about 3.6 million cigarettes were seized in total, which is a big step forward when compared to 2014 and especially when compared to 2013 (in 2014 about 100 tons of cut tobacco and about 16 million cigarettes were seized, and in 2013 10 tons of tobacco and five million cigarettes were seized). Also, during 2014, 780 procedures were initiated against various offenders in the illicit trade of tobacco and tobacco products by the Ministry of Interior Affairs alone. However, there is a clear lack of adequate reaction from prosecutors and courts since, according to data available to the public, we have not had one final judgment as of yet.

b. Excise Tax Law - Ensuring the consistent application of an existing excise tax calendar is of great importance given the importance of tax policy in the field of tobacco and its predictability for both state revenues and the tobacco industry. There is room for improvement in this area within elements of unfair competition in the cheapest price segment which threatens, if not addressed effectively and in the proper manner, to aid in further distorting the tobacco product market.

c. Law on Advertising - The Law on Advertising, adopted in 2005, contains very restrictive provisions relating to the advertising of tobacco products, even in comparison to many countries of the European Union. However, some of its provisions are not sufficiently precise, allowing arbitrary interpretation and leading to difficulties in the implementation of the Law, for both competent inspections and the tobacco industry. The Foreign Investors Council encourages the adoption of a new Law on Advertising, which will refine the existing provisions, in line with the European Union Directive and relevant regulatory practices within EU member states, without introducing additional restrictions, thus enabling uniform rules of competition for all participants.

d. Action Plan of the Ministry of Health - The Draft of the Plan contains some extreme provisions that could have serious consequences on the entire supply chain within the tobacco industry, starting from the growers, manufacturers all the way to the retailers, as well as on boosting the expansion of the illicit market, state revenues, the level of employment as well as the hospitality sector. Among other measures, the Plan provides amendments to the Law on the Protection of the Population from Exposure to Tobacco Smoke in order to secure a 100% tobacco-free public and work space. The introduction of such measures would have very serious economic consequences, primarily on the hospitality sector but consequently on the economy as a whole, on the other hand this does not represent an obligation of Serbia towards any international agreement. It is also important to note that such a (complete) ban has only been introduced in a few EU member states.

e. Initiative for the adoption of a new Tobacco Law - The Government of the Republic of Serbia employs enormous efforts in fighting illegal trade in tobacco and tobacco products, which has resulted in the stabilization of the market. This trend, however, should not be, in any way, compromised by amendments to existing regulations which would introduce additional levies and obligations on entities operating on the legal market, while not having any effect on entities involved in illicit trade or would serve to even encourage their competitiveness. For the most part, the existing Tobacco Law is compliant with all EU directives, except with Directive 2014/40/EU which formally entered into force in May2014 in European Union member states with a deadline for compliance of at least two years, while some provisions of the Directive have a deadline of up to six years.

f. Harmonization of regulations with EU acquis - The regulation that governs the field of tobacco and tobacco products is largely in compliance with relevant EU directives while in some areas, such as tobacco advertising, it is even more rigorous than some EU member states. Any hasty changes to legislation can lead to a further distortion of the legal market for tobacco and tobacco products which will result, primarily, in the further expansion of the black market. Specifically, one of these possible changes is to comply with provisions of Directive 2014/40/EU prior to Serbia's accession to the European Union. Within the National Programme for the Adoption of the Acquis (NPAA) it has been stated that by the end of 2018 the Ministry of Finance will align provisions of the Tobacco Law with, among others, provisions of the said Directive. This approach would certainly lead to the further expansion of the black market for tobacco in terms of supplementary obligations, which the Directive imposes only on legitimate market participants, and which would consequently increase operating costs, unless the aforementioned amendments to the Tobacco Law did not prescribe a transitional period for the application of certain provisions to be applied after Serbia's accession to the European Union. Such a regulatory solution already exists in Serbian legal practice (e.g. the Law on Insurance).

## FIC RECOMMENDATIONS

- It is important for the focus of all relevant state institutions to be shifted to the effective implementation of the Law in order to combat the illegal tobacco market, which has a significant negative effect on all of society. The FIC also supports efforts of the Serbian Government in combating the illicit trade in tobacco and tobacco products and proposes the formation of a special department within the Prosecutor's Office which would be responsible for excise goods.

- Consistent application of the Excise Tax Law - Any change in the applicable excise calendar envisioned by the Excise Tax Law would seriously jeopardize the predictability of the regulatory environment as it relates to the field of tobacco and tobacco products. On the other hand, we believe that there is room for further regulation of taxation which should address the problem of the growing trend of unfair competition in the cheapest price segment, which could be implemented with amendments and additions to the existing Law.

- Rapid adoption of the new Law on Advertising, on the basis of a Draft from 2010 - The Council believes that the regulator must set clear rules on the advertising of tobacco products that could be effectively enforced and that would create a level playing field for all market participants. Therefore, the Council calls on the Government to adopt the Law and forward it into parliamentary procedure as soon as possible.

- Taking into account the overall additional restrictions that are included in the Ministry of Health's Action Plan Draft, the FIC believes it is necessary, prior to its implementation, to conduct transparent dialogues and consultations between the government, the tobacco industry and all third parties that will be affected by measures from this Plan (tobacco growers, retailers, the hospitality sector, suppliers, etc.).

- The Foreign Investors Council strongly supports an open and transparent dialogue between the legislature and the tobacco industry according to the principles of participation, transparency, accountability, effectiveness and coherence.

- The existing Tobacco Law, although satisfactory, requires certain adjustments that may be efficiently achieved through amendments and additions to the existing Law rather than through the creation of a new Tobacco Law. The widespread use of ancillary smoking products (filter tubes, cigarette papers...) should certainly be regulated by relevant regulations, as tobacco or next generation products (electronic cigarettes and non-combustible tobacco). Additionally, it is necessary to work on the elimination of certain problems in the practical application of the Law. Given that these changes are not essential to demand a change of the entire legal framework, the FIC supports limited changes to the amendments of the Tobacco Law, in the interest of improving the text itself, while harmonization with Directive 2014/40/EU should be postponed, due to its complexity, until Serbia's accession to the European Union. Also, the mentioned changes to this legislation would actually only bring additional obligations to those parties who are already legally operating on the market, while not having any effect on entities involved in illicit trafficking or might even encourage their competitiveness.

- The Council believes that, taking into account the current state of the tobacco product market in the Republic of Serbia, a number of substantial changes to the regulations and the additional obligations imposed by the Directive to legitimate market participants, as well as a significant period of adjustment for the Member States themselves, which is due to the complexity thereof, the process of alignment with the Directive should be postponed until the accession of the Republic of Serbia to the EU, and in any case for the period after 2018. In addition, such an approach would put Serbia in a position, until its own entry into the EU, to have access to all positive and negative experiences which have resulted from the implementation of the Directive in other Member States (which are still underway) and to make a timely decision regarding decisions it deems most appropriate.

# INSURANCE SECTOR

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Insurance Law | | | | |
| It is necessary that the new Insurance Law enable the merging of the companies that separately perform life and non-life insurance business, if such companies have the same shareholders, i.e. if such shareholders have a controlling share in both companies. In line with the stated companies' merging, it is also necessary to include the provisions setting forth that the National Bank of Serbia will issue a unified license for conducting all lines of insurance business that are applicable to the companies separately. | 2013 | | √ | |
| Adoption of a new set of insurance laws: Insurance Supervision Law – ISL, Insurance Contract Law – ICL and the Law on Insurance Intermediaries and Representatives. | 2013 | | √ | |
| Distribution | | | | |
| The proposed Draft Insurance Law needs to be improved and as a minimum should be aligned with Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation regarding freedom of intermediation in insurance. | 2014 | | √ | |
| Considering that intermediaries play a central role in the distribution of insurance products, the Law should precisely define insurance mediation. Intermediation should be allowed both to natural and legal persons. Arrangements with insurance companies, both for natural and legal persons, should be commission based. | 2014 | | √ | |
| MTPL | | | | |
| "• Create a level playing field in line with European standards by working in two directions:<br>– Strengthen the action of the regulatory body to enforce the legal provisions to the entire market with penalties that should be meted out promptly and indiscriminately;<br>– Change the regulatory framework leveraging best practises already present in other markets and in line with European Union standards. Possible initiatives being:<br>– MTPL price liberalization which would immediately favour both the traditional distribution channels (independent outlets) as well as the development of prospective alternatives such as internet and bank outlets.<br>– Allow insurance companies to perform car registrations on their own business premises.<br>– Revise the number and timelines of mandatory technical checks for newer vehicles." | 2013 | | | √ |
| Tariff System | | | | |
| Focus on the monitoring technical reserves that will give all authority to insurance companies to regulate the general conditions of insurance and the transition from the model of tariffs to "underwriting" models in order to stimulate new processes and practices both within insurance companies and the regulator itself. | 2009 | √ | | |

# OVERVIEW OF THE INSURANCE MARKET

In Serbia there are 21 active insurance companies (three less than the previous year) and 4 reinsurance companies. Regarding insurance companies 6 are life insurance companies, 9 are P&C companies and 6 are composite players.

The market is still very concentrated. The market leader, Dunav, corners 25% of the market, the three biggest insurers 61%, and the top 5 players 78%. Companies with majority foreign ownership (17 out of 21) clearly dominate the market with a 70% share in total revenues (65% in P&C and 87% in Life).

In 2014, the insurance market turnover amounted to RSD 69.4 billion in premiums, recording an 8% growth relative to 2013. The market has shown two very different trends over the last 10 years:

- 2005-2008: +15% Compound Annual Growth Rate (CAGR) driven by Casco business (+25%)
- 2009-2014: +5% CAGR sustained by Life business (+16%)

In terms of business mix, the market shows some signs of change:

- The share of life insurance gross premiums written is at 22%. An encouraging rate but still low compared to the majority of European countries,
- P&C business (78% of share) remains stable and has a large stake coming from motor insurance: 54%, of which 43% is compulsory car insurance. This share is expected to increase in the near future, after the tariff increase implemented by the National Bank of Serbia (NBS) in July 2014.

# LIFE AND NON-LIFE INSURANCE

## CURRENT SITUATION

Insurance companies and their activities are mainly regulated and governed by the new Insurance Law, adopted in December 2014, as amended, and related by-laws adopted by the National Bank of Serbia (NBS).

Other relevant legal sources are the Law on Compulsory Traffic Insurance and the by-law on Voluntary Health Insurance adopted by the Government of the Republic of Serbia. The lateral relevant legal source is the Traffic Safety Law.

The NBS is the competent authority for the issuance and withdrawal of insurance companies' licenses and for insurance sector oversight. It also extends its opinions on the laws regulating this area. The Ministry of Finance is the competent authority for drafting amendments to major laws. The Ministry of Interior is responsible for drafting and implementing the Traffic Safety Law.

The following are regulated by the Insurance Law:

- licensing of insurance companies – mandatory requirements related to assets, organization, internal documents, policy, and business plans;
- common organization requirements for insurance companies - requirements related to the foundation document and Statute, the mandatory bodies (Shareholders' General Meeting, Management and Supervisory Boards, and General Manager), and "relevant and appropriate" requirements for their appointment;
- issues related to actuaries and internal audit;
- reinsurance;
- activities of insurance agents and brokers and related licenses;
- supervision of insurance activities by the NBS.

The following is regulated by the Law on Compulsory Traffic Insurance (hereafter referred to as the "CTI Law"):

- basic contractual elements in the CTI Law;
- association of insurers and its authorities;
- procedures for price limitation (including the Association of Insurers and the NBS);
- legal framework of the CTI policies.

The following is regulated by the by-law on Voluntary Health Insurance:

- the authority of the Ministry of Health for the issuance and withdrawal of licenses for voluntary health insurance;
- mandatory priority of the social components of health insurance (no client can be denied insurance);
- eligibility requirements for voluntary health insurance, even though one set of conditions has already been met when licenses were issued to companies for dealing with this type of insurance, the "duality" will continue to create confusion.

Relevant changes took place in 2014 regarding Motor Third Partly Liability, the largest line of business:

- since July 1st, the NBS increased the minimum price by 45%;
- from October, in line with EU regulations, the NBS increased the coverage limit from USD 100,000 to EUR 200,000 for material damages and from USD 200,000 to EUR 1,000,000 for bodily injuries;
- the contribution to the Guarantee Fund (created to cover claims with unknown or unregistered vehicles and insolvent or liquidated companies), required of every company active in this business, tripled in relative terms after a decision of the Association of Serbian Insurers (UOS). This measure and similar measures, even if temporary, do not contribute to the predictability of the business environment.

The current Insurance Law stipulates that an insurance company may not engage concurrently in life and non-life insurance activities. However, the new law allows some exceptions for composite companies that are clearly discriminatory. A new provision in the Law regulating 'Shared Services' for separated companies with the same shareholder, seeks to limit inequality, but tax treatment is still not clear.

# COMPOSITE COMPANIES AND SHARED SERVICES

## CURRENT SITUATION

This issue was introduced in the White Book back in 2013, due to discrimination between composite players and those who have established separate life and non-life insurance companies to meet legal requirements.

According to the Insurance Law, an insurance company cannot carry on simultaneously life and non-life insurance activities (Article 24). However the Law: i) allows exceptions for composite companies through an alternative solution (Article 25), and ii) denies other players equal possibilities, leading to clear discrimination against current and future investors.

## POSITIVE DEVELOPMENTS

A new provision of the Insurance Law (Article 26) seeks to limit inequality by allowing separate companies, with the same shareholder, to perform jointly:

(i) stipulation of insurance contracts;
(ii) promotional and related marketing activities;
(iii) general, personnel, administrative and technical support activities.

## REMAINING ISSUES

The tax treatment of the 'Shared Services' for the separate companies with the same shareholder has not yet been defined yet. Any charges or cost (e.g. VAT) would counterintuitive to the intention of the Insurance Law to reduce discrimination in favour of composite companies, and would mean going back to square one.

## FIC RECOMMENDATIONS

- Discrimination between composite players and those who meet the legal obligation (having separate companies for life and non-life insurance) should be eliminated through an extensive and tax neutral interpretation of the Shared Services introduced by the new Insurance Law.

# INSURANCE FOR NATURAL DISASTERS

## CURRENT SITUATION

Because of its geography, Serbia is frequently exposed to natural disasters (2005, 2006, 2010 and 2014 in this century only). According to data of the World Bank and the Association of Serbian Insurers, the 2014 flood disaster effect was estimated at around EUR 1,5 billion (3,9% of GDP) and only 2,4% of total losses were insured. Other countries with similar exposure, like Turkey and Romania, have established mandatory insurance for natural disasters.

## POSITIVE DEVELOPMENTS

None.

## REMAINING ISSUES

In Serbia, insurance in general and insurance for natural disasters in particular is perceived as a cost or a levy but not as a way of transferring the risk, and therefore the growth rate is among the lowest in Europe.

## FIC RECOMMENDATIONS

- We believe that a strategy should be devised for natural disaster insurance coverage to secure that, in case of an extremely damaging event, an important share of losses is transferred to insurance companies. It is important to avoid new taxes on existing contracts, a measure already proposed by the Ministry of Finance that would entail additional costs for the minority that currently has insurance coverage.

- Considering the social impact that this kind of measures may have, they could be implemented progressively by:
  (i) introducing mandatory insurance for all state and public properties and infrastructures;
  (ii) introducing mandatory coverage for all properties pledged as collateral to secure financing;
  (iii) introducing a mandatory natural disaster coverage for every property with fire insurance, based on the French model.

# THE LAW ON PERSONAL INCOME

## CURRENT SITUATION

Taxation of the individuals is governed by the Personal Income Tax, last amended in July 2014. Currently the Law does not exempt life insurance premiums, or fees arising from life insurance contracts, from the taxable income in any of its Articles 9, 14b, 21a and 84, or Article 13 of the Law on Mandatory Social Insurance Contributions.

## FIC RECOMMENDATIONS

- Amend the listed Articles of the law to create the conditions for introducing tax incentives for all types of life insurance premiums, which would additionally stimulate the development of the insurance sector and create conditions for the improvement of the social role of these types of insurance, or provide the necessary protection to persons close to the insured in case of accident, which will simultaneously reduce the state's duty to care for those persons and decrease the amount of money allocated for this purpose. This would also, equalize tax treatment and rights arising under pension plans contracts with the tax treatment and rights arising under life insurance contracts.

# CORPORATE GOVERNANCE ISSUES

## CURRENT SITUATION

The long-awaited amendment of the Insurance Law did not provide a less conservative approach in all of its aspects, and unfortunately, those pertaining to corporate governance will influence management operations in the future, i.e. as of the end of 2015. The articles on management bodies and their structure/function are certainly an issue of major concern.

Currently, supervisory board members are appointed by the Assembly, adequately represented at top level by the shareholders of an insurance company. At the same time, these are all members of managing bodies in financial sector entities. The only restriction here is related to membership in another joint stock insurance company. Rules on the composition of the executive management are governed by the Company Law, stipulating that insurance companies can choose whether to have one or more executive directors.

## POSITIVE DEVELOPMENTS

At present, there are no positive developments with regard to this issue. Furthermore, the rules adopted by the new Insurance Law will have negative effects on the business of insurance companies.

## REMAINING ISSUES

A review of the application of insurance legislation of countries in the region, specifically Romania, Bulgaria and the Czech Republic, established that there are no restrictions or exceptions with regard to the management bodies of controlled/controlling companies, or affiliates in the same group.

Firstly, new Insurance Law strictly defines that no alternative choice can be made with regard the executive function – it only recognizes the Executive Board as an essential part of company management, which must consist of at least two members. When concluding business transactions and taking legal actions, the chairperson of executive board must obtain the signature of one member of the executive board, where the member of executive board may not have deputies.

Further, the supervisory board must have at least three members, including its chairperson, and at least one third of its members must be independent persons. However, how will a person outside the financial world, who is not a top level manager, and is not a member of an executive/supervisory board of another financial entity, be able to offer expertise, excellence and top support to insurance activities? Further-

more, maybe even more questionable – how will an independent member, someone who is not fully involved in the insurance business – on a daily level – be able to represent the shareholders' best interests on all major, strategic decisions/actions taken on behalf of the insurance company?

At least once a year, the shareholders' assembly must be notified in writing in detail about salaries, compensations, and other income of the members of supervisory board and executive board and about all contracts signed between the joint stock insurance company and these entities and other related entities that can produce gains for these entities, as well as about the supervisory board's proposal on salaries, compensations, and other gains for these entities for the following year.

Finally, restrictions with regard to management membership are too strict, since a board member cannot be a person who is a management member or supervisory board member or proxy in another insurance/reinsurance company or another entity from the financial sector. At least one member of supervisory board or one member of executive board must be proficient in the Serbian language and have residency in the Republic of Serbia. The remaining members of the executive board must also be Serbian residents and must be full time employees of the joint stock insurance company. In a special by-law, i.e. the Decision on the implementation of provisions of the Insurance Law on licensing of insurance/reinsurance companies, the National Bank of Serbia stipulates detailed requirements for the position of a member of the management board, as well as evidence, documents, and information that the joint stock insurance company is required to submit with its application for obtaining the required approval. These requirements are also a difficulty for non-residents, since they need to have their diploma/other evidence on education validated by Serbian authorities, which requires additional time and costs for the applicant companies.

### FIC RECOMMENDATIONS:

- Allow insurance companies to determine the number of executive directors in their articles of association, i.e. harmonize this article with Article 417 of the Serbian Company Law, which offers the possibility for the company to choose whether it will have one or several executive directors.
- Leave the election of supervisory board members to the competence of the shareholders' assembly, which could then decide whether to elect an independent member, or not, without being limited in this respect.
- Restrict membership in management boards only to another joint stock insurance company and/or another insurance holding company in the Republic of Serbia. Thus, a person could be appointed as a member of the management board, even if that person is in the management board of another joint stock insurance company with which the insurance company shares the same shareholders.
- To simplify the procedure for the recognition of foreign qualifications and reinstate to former requirements.

# MOTOR THIRD PARTY LIABILITY INSURANCE MARKET

## CURRENT SITUATION

Motor Third Party Liability (MTPL) is by far the most important segment of the insurance market in Serbia (32.7% of the total in 2014 up by 2.1 percentile points relative to 2013) and the technical check-points that carry out the obligatory annual inspection of all motor vehicles are by far the most important distribution channels for these insurance policies. Art. 44 and 45 of the Law on Compulsory Traffic Insurance prohibit making any commission payments to these technical check-points - directly and/or through related parties - which exceed 5% of the mediated premium. For many years this legal provision

has been largely disregarded by the market, with notable differences in the conduct of individual companies, which paid commission rates of up to 50%, in spite of the statutory prohibition. Despite the recent minimum tariff increase (up by 45% as of 1 July 2014) that gave "relevant oxygen" in terms of cash flow and profitability to the market, the aforementioned practice makes the overall insurance market sustainability and predictability questionable. In the recent past many players were forced to recapitalize and/or to reduce the reserves levels thus endangering the medium-term stability of the company.

Several times, the National Bank of Serbia launched activities intended to ensure the strict interpretation of legal provisions but without radically solving the matter, and after a short period of only two to three months, in most cases market behaviour relapsed to previous patterns.

Presently, any company acting in full compliance with the law, and the National Bank of Serbia's strict interpretation of it, is seeing its motor third party liability insurance portfolio collapse with frightening speed. Without a more or less aggressive infringement of legal provisions, defending one's market share is simply impossible under present market conditions, let alone increasing it.

The prospect of either losing a very important business portfolio or having to operate in the grey area of illegality is unacceptable for any foreign investor. An equitable interpretation of the applicable legal provisions as well as their immediate and equal enforcement are indispensable prerequisites for a functioning market, and compliance with the rule of law, the applicable Serbian law and European legal standards.

Another opportunity for the Serbian market is the activation of the web as a distribution channel for intermediation of Motor Third Party Liability policies. This method of distribution has become very relevant in mature markets since a significant reduction of distribution costs, coupled with a price liberalization regime delivers significant value and benefits to the final customers and to insurance companies.

## FIC RECOMMENDATIONS:

- Create a level playing field in line with European standards by working in two directions:
  - strengthen the action of the regulatory body to enforce the legal provisions across the entire market with penalties that should be meted out promptly and indiscriminately;
  - change the regulatory framework leveraging best practices already present in other markets and in line with European Union standards. Possible initiatives being:
- Allow MTPL price liberalization which would immediately favour both traditional distribution channels (independent outlets), as well as the development of prospective alternatives such as internet and bank outlets.
- Allow insurance companies to perform car registrations on their own business premises.
- Revise the number and timelines of mandatory technical checks for newer vehicles.
- Develop a joint project with OUS and the police to enable online sales of MTPL policies.

# LAW ON INSURANCE

## CURRENT SITUATION

The Law on Insurance (Official Gazette of the Republic of Serbia No 139/2014, hereinafter: the "Law") came into force on 26 December 2014, but its application was delayed until 27 June 2015. Insurance companies are obliged to align their business, assets, capital, liabilities, bodies, organization and acts with the provisions of the new Law no later than 26 December 2015.

The insurance companies established under the old Law will continue to operate in the manner and under the conditions that applied when they registered with the competent authority and obtained a license from the National Bank of Serbia – until the finalization of the process of alignment with the new Law, i.e. until 26 December 2015.

The Law does not allow simultaneous engagement in life and non-life insurance activities, except in the case of insurance companies that already had a license for both insurance activities on the date of entry into force of the Law, which may continue to operate as composite companies.

Consequently, the new Law on Insurance does not provide equal treatment of all insurance market participants. As a result, tax liabilities of insurance companies with separate life and non-life insurance activities have increased manifold for both companies, and their operating and financial capacity has been reduced when participating in public procurement procedures.

Furthermore, Article 62, paragraphs 5 and 6 of the Law require that at least one member of the supervisory board, and one member of the executive board, has to possess active knowledge of the Serbian language and be a resident of Serbia, whereas other members of the executive board have to be temporary residents of Serbia, and all of them have to be full-time employees of the joint stock insurance company.

The analysis of the above provisions of the Law from the point of view of separated companies leads to the conclusion that these companies must duplicate the aforementioned functions and thus be immediately punished for complying with legal provisions. In addition, paragraph 3 item 1 of the same Article, stipulates that a board member must not be a person who is a member of a managing or supervisory body or a proxy in another insurance or reinsurance company, or any other financial sector entity, further complicates the selection of members and procurators for the separated entities, thus putting them in an unequal market position. This is in contradiction to Article 84 of the Constitution which provides that everyone shall have an equal legal position in the market, i.e. that acts limiting the freedom of competition are prohibited, which ultimately entails the equal position of foreign and domestic entities in the market.

## POSITIVE DEVELOPMENTS

The new Law on Insurance has made significant progress towards harmonization with applicable EU legislation. Evidently, the intention of the legislator was to achieve a high level of harmonization with EU practices, and create an environment for further progress in this field, considering that a new directive will enter into force in the EU insurance industry on 1 January 2016 (Solvency II), which will introduce significant changes to business practices of insurance companies in the EU.

According to the Law, persons licensed by the National Bank of Serbia may provide insurance brokers and agent services, within an insurance brokerage and agency company, respectively, based on an employment contract or service contract.

Insurance agent services, based on the prior approval of the National Bank of Serbia, may be performed as additional activities by:

- banks seated in Serbia and established in accordance with the Law governing banks;
- financial leasing providers seated in Serbia and established in accordance with the Law governing financial leasing;
- public postal operators seated in Serbia and established in accordance with the Law governing postal services.

In addition, insurance broker/agent activities may also be performed by entities that are not subject to the Law on Insurance, provided that the amount of annual insurance premium per insurance contract does not exceed EUR 100, that the contract is not concluded for a period longer than five years, and that the contract's subject matter is not mandatory or life insurance.

## REMAINING ISSUES

The Law introduced novelties in terms of the content and the obligation to notify, i.e. inform policy holders and insured persons prior to the conclusion of the insurance contract, as well as during the contract period. These provisions will lead to problems in practice, given that insurance companies are not always able to obtain proof as to the insured's awareness, particularly in the case of group insurances. Additionally, one must bear in mind that issues dealing with protection of users' rights are within the competence of other laws, specifically: Law on the Protection of Users of Financial Services and Law on Consumer Protection, thus leading to the risk of multiple sanctioning of insurers.

The equal treatment of all insurance market participants must be ensured. In this sense, the amendments to the Law should enable the merging of companies performing life and non-life insurance activities separately, if the companies have the same shareholders, or if such shareholders have a controlling share in both companies. The Law envisages that companies that separately perform life or non-life insurance activities can conduct joint business activity when such companies have the same shareholders, but provides no solution for the disputed issues (e.g. the tax treatment of joint business activity).

To improve accuracy and systematic regulation, following the example of the legislation of some European countries, and in accordance with EU Guidelines and Directives, the insurance activity should be regulated through three different laws: the Insurance Supervisory Law – ISL, the Insurance Contract Law – ICL and the Insurance Brokers and Agents Law. While the ISL primarily deals with the relationship between the competent authority and insurance company, as well as with status issues, and the ICL defines the relationship between the insured person and insurer, i.e. with contractual obligations between them, the Insurance Brokers and Agents Law deals with regulating the manner in which insurances are sold through other licensees or, alternatively, a tripartite law.

### FIC RECOMMENDATIONS:

- Adoption of amendments to the provisions of the Law on Insurance pertaining to the obligation to notify/inform policy holders and insured persons.
- Enable the merging of insurance companies that perform life and non-life insurance activities separately if such companies have the same shareholders, or if those shareholders have a controlling share in both companies.
- Regulation of the tax issue, in cases when companies performing life and non-life insurance activities separately conduct joint business activity, provided that the companies have the same shareholders.
- Adoption of a new set of laws on insurance: the Insurance Supervisory Law – ISL, Insurance Contract Law – ICL and Insurance Brokers and Agents Law.

# LABOUR REGULATIONS

## CURRENT SITUATION

The new Labour Law adopted in 2014 defines contracts for work performed outside standard employment relationships, i.e. temporary and periodical work, service contracts, vocational training and specialization contracts and supplemental work contracts (Article 197, 198, 201 and 202), with the following characteristics that prevent insurance companies from engaging the active population on the sale of insurance policies:

- temporary and periodical work is limited to 120 days (if the insurance company intends to hire sellers on the basis of this agreement, this is a limiting factor);
- the service contract does not allow insurance companies to hire sellers using this form, since it is already planned in the staffing list for insurance companies (direct or internal sales network);
- the vocational training contract is not a proper form of hiring insurance sellers either, because it is fixed-term, and the compensation is not considered as salary;
- the contract for supplemental work applies only to persons who are already employed, which limits insurance companies to exploit the potential of the working population (approval from the current employer is required, etc.).

The new Law on Insurance, partially liberalized the stipulation of agreements on work performed outside the employment relationship insurance agents/brokers, banks, post offices and leasing companies, as authorized representatives, (e.g. temporary and periodical work contracts, service contracts and supplemental work contracts).

In developed insurance markets, insurance companies, as well as external sales, are able to stipulate these types of contracts, allowing for flexible forms of employment in a liberalized labour market, allowing for the possibility of supplemental work for the working population and providing education and certification by insurance companies or by the supervisory authority (in our case of the NBS).

If the labour market were to be liberalized, insurance companies would be able to expand the sales network, recruit more sellers, which would contribute to the overall development of the insurance industry and would enable the industry to project the sales costs with more ease and accuracy.

## FIC RECOMMENDATIONS:

Either:

- amend the Insurance Law to liberalize the recruitment of persons for the sale of insurance or other tasks allowing agreements on work outside the employment relationship (temporary and periodical work contracts, service contracts, supplemental work contract and similar), or:

- or Amend Articles 197, 198, 199, 201 and 202 of the Labour Law, which enable the establishment of agreements on work outside the employment relationship, by eliminating the restrictions listed above. In addition, restore the previous provisions of the Labour Law, or by-laws, on agent jobs which the new Labour Law does not recognize.

# LEASING

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Initiation of an amendment to the provision of the Law on Corporate Income Tax. | 2009 | | | √ |
| Initiation of amendments to the decisions on public car parks of local governments, wherein the lessee would be considered as the user of a public car park in the case of leased vehicles. | 2011 | | | √ |
| Initiation of an amendment to Article 10 of the Law on Financial Leasing whereby the lessor could act as an intermediary in insurance operations. | 2012 | √ | | |
| Financial leasing companies should also be given the possibility to conduct operating leasing according to IAS 17 and the Rulebook on criteria for determining when a delivery of goods based on a lease or rental contract is considered as a sale of goods. | 2014 | | | √ |
| The Insurance Law should be harmonized with the Law on Financial Leasing in terms of provisions on the right of the Guarantee Fund to seek recourse upon payment of damages caused by a means of transport for which the contract on compulsory insurance was not concluded, from the owner i.e. registered user of the means of transport. | 2012 | | | √ |
| Initiate amendments to the Law on Incentives for Agriculture and Rural Development with the objective to include leasing financing within this agricultural incentives programme. | 2014 | | | √ |

## CURRENT SITUATION

The development of leasing in Serbia dates back to the beginning of 2003, when the Law on Financial Leasing was adopted. The introduction of this Law enabled the registration of nine leasing companies at first, followed by a very intensive development of leasing activities in Serbia over the next few years, which resulted in the present number of 17 leasing companies. The leasing companies currently operating in Serbia are mainly affiliates of distinguished financial institutions, leaders in the banking and finance markets in Central and South-East Europe. These groups have applied their knowledge and high corporate business standards to the Serbian market as well.

During the last three years the leasing market was stable, and the value of leasing contracts showed an upward trend again. This fact indicates a recovery of the leasing market, with a positive effect on future tendencies. All system changes affecting the development of leasing as a form of financing (allowed funding of the real estate business, the abolition of the minimum term for the conclusion of leasing contracts, as well as an absence of a minimum deposit), made leasing a serious competitor to other available sources of funding on the market. Further improvements in the field of leasing development are still necessary, in spite of these positive changes, taking into account the fact that leasing is a very important source of mid-tem and long-term funding, because it is an economically efficient solution for the procurement of funds required for business by corporate companies. International data at European level suggest that this is especially the case with funding small and medium enterprises. The initiation of and continued efforts to adopt changes within the framework of the leasing industry would contribute to the additional gain of current values with the national and international business entities.

## POSITIVE DEVELOPMENTS

The following was done over the course of 2014:

The National Assembly enacted the new Insurance Law, applicable from 27 June 2015, which stipulates in Article 98 that leasing companies may conduct representation in insurance activities. The National Bank of Serbia (NBS) also issued a decision on the implementation of the stipulations of the Insurance Law on the mediation and representation in insurance, thus providing leasing companies with precise rules for acquiring operating licences for conducting these

activities and other detailed conditions for representation in insurance. This is very important for improving profitability and competitiveness in the sector and is much appreciated by the Serbian Leasing industry.

## REMAINING ISSUES

The Law on Value-Added Tax should be amended in the part concerning interest taxation. The tax treatment of interest in financial leasing should be equalized with the tax treatment of interest in the banking sector.

The decisions on public car parks of local government should be amended where the lessee would be considered as the user of the public car park in the case of leased vehicles. According to the decisions on public car parks in the cities and municipalities in Serbia, users of public car parks are mainly the drivers or owners of a vehicle, if drivers are not identified. Those decisions further envisage that user of public car parks who violate the provisions of these decisions by not paying the parking fee are obliged to pay a fine. In case of leased vehicles, decisions on public car parks do not take into account financial leasing transactions and thus fines are sent to leasing companies, even though these vehicles are used by the lessees. According to the Law on Financial Leasing, Article 2, financial leasing is defined as a financial transaction performed by the lessor, and entails that the lessor, by keeping the ownership rights over the leased asset, transfers the authority of keeping and using the leased asset to the lessee for a certain period of time, along with all the risks and benefits related to the ownership right. On the other hand, according to the Law on Road Traffic Safety, Article 316, paragraph 1, if a motor vehicle or a trailer vehicle is the subject of a finance lease, lease contract, or business and technical co-operation arrangement, and the respective information has been recorded in the registration card, the provisions of the owner's tort liability stipulated by this Law will be congruently applied to the person operating the vehicle under the conditions stated above. Hence, the aforementioned decisions are clearly not in line with the primary legislation of the Republic of Serbia, i.e. the laws regulating financial leasing, otherwise they would have envisaged a special rule for vehicles provided by way of financial leasing, designating the lessee as the user of the public car parks. Had this been envisaged, the decisions on public car parks throughout Serbia would have been in accordance with the substantive content of laws regulating financial leasing and in line with the legal system of the Republic of Serbia. Furthermore, leasing companies would not have been burdened by a large number of court proceedings conducted against them for the collection of fines based on decisions of local governments, which are not in accordance with the legal system of the Republic of Serbia.

Operating leasing should be regulated by law, in other words, financial leasing companies should also be given the possibility to provide operating leasing services according to International Accounting Standards 17 (IAS) and Rulebook on criteria for determining when a delivery of goods under a lease contract or rental contract is considered as a sale of goods (Article 4, paragraph 3, item 2a of the Law on Value Added Tax, Official Gazette of RS No 84/04 – correction, 61/05, 61/07 and 93/12).

The reasons are the following:

- Operating leasing accounts for 15 % of total leasing services provided by leasing companies operating in Serbia. It is a financial product (off-balance sheet financing), present everywhere in the world as an alternative way to procure and use fixed assets. Due to its off-balance nature, it is highly sought by companies. Individuals often choose operating leasing due to the absence of legal limitations on the debt level, though there are internal rules of leasing companies pertaining to debt level;

- The regulation of operating leasing creates a safer and more transparent business environment. In operating leasing, there are significant obligations on the part of companies and individuals. The current situation leads to ambiguity and uncertainty of the treatment of this product both for clients and leasing companies. The application of International Accounting Standards 17 (IAS 17) and the presentation of financial statements on both sides is unclear, making the business environment uncertain because these ambiguities are used for early budget revenues, even though the time in question should be the time when VAT is due to be paid, since the total obligation is undisputed. The Rulebook on criteria for determining when a delivery of goods under a leasing -or rental contract is considered as a sale of goods is welcomed by the leasing industry in Serbia because it has cleared some taxation concerns regarding the differentiation of financial and operating leasing transactions, although it did not provide a comprehensive solution for conducting operating leasing business in Serbia;

- By extending the jurisdictions of the National Bank of Serbia (NBS) to this type of leasing as well, one part of the financial flow would be included in the NBS surveillance and control, which would lead to even greater safety of the financial system. The NBS has long considered that operating leasing is a consequence of stiff limitations that apply to financial leasing (primarily to individuals). The regulation of operating leasing could result in the equalization of the rules for both types of leasing;

- Operating leasing is currently offered through an inappropriate form of leasing. Operating leasing is much closer to financial leasing than to classic leasing. The separation of operating from financial leasing according to accounting standards is done based on eight criteria, which best shows how similar these products are;

- The importance of better regulation of operating leasing worldwide has been recognized and thus international accounting bodies have prepared the draft changes of IAS 17 directed at the presentation of total operating leasing in the financial statements of clients (abolition of off-balance). This is the best evidence that operating risk is a financial product. The competent institutions in Serbia will probably be interested in regulating and supervising it after this change of accounting standards takes effect;

- Operating leasing should be defined as a type leasing in which all risks and benefits are transferred to the client. This basic principle of differentiation between financial and operating leasing can be tested based on IAS 17 criteria. As the latter are descriptive, it is important to additionally specify and quantify them. Most importantly, the maximum allowed level (in percentages) of repayment of the initial value of the leased asset during the contract period should be defined, as well as the maximum length of the leasing contract in relation to the economic lifecycle of the leased asset.

The Insurance Law should be harmonized with the Law on Financial Leasing. The 1996 Insurance Law stipulated the obligation of insurance companies to establish a Guarantee Fund with their contributions. Its funds would be used, among other things, for the compensation of damages caused by a motor vehicle, aircraft, or other means of transportation for which the contract on compulsory insurance was not concluded. The same Law defined that the Guarantee Fund of the Association of Serbian Insurers has the right to recourse, upon payment of the compensation of damage by the owner of the means of transportation for the paid amount of damage, interest, and costs.

Seven years after the Insurance Law was passed, the Law on Financial Leasing came into force and it defined the financial leasing and financial mediation activities conducted by the lessor. The Law on Financial Leasing stipulates that the leasing company retains ownership rights to the leased asset, while transferring the right to keep and use the leased asset to the lessee, along with all ownership-related risks and benefits over a certain period of time, and in return, the lessee pays a leasing fee. Also, according to the same Law, the lessee is responsible for damages caused by using the leased asset contrary to the agreement or intended use of the leased asset, regardless of whether the leased asset was used by him, or a person acting upon his order, or any other person whom he allowed to use the leased asset.

However, the Insurance Law was not aligned with the Law on Financial Leasing, which introduced a completely new legal transaction into the legal system of the Republic of Serbia, which, according to the definition of the rules of responsibility for the use of the leased asset, is in conflict with the existing rule on the Guarantee Fund's right to pursue recourse against the owner of the means of transportation. The fact that the lessor is not in a position to affect the behaviour of the lessee or other parties using the leased asset and to prevent the use of the means of transportation in traffic without stipulating an agreement on compulsory insurance, as long as the lessee is in possession of the leased asset, has been completely neglected.

In the current situation, leasing companies face recourse requests by the Guarantee Fund of the Association of Serbian Insurers, which they can reject by referring to the Law on Financial Leasing. On the other hand, despite understanding the essence of the dispute, the Guarantee Fund has no legal possibility to subrogate against any other person, apart from the owner and possibly the driver of the means of transportation, on the grounds of personal liability of the person who caused the damage.

Amendments to the Law on Incentives for Agriculture and Rural Development (Official Gazette of RS No 10/13) must be initiated with the objective to include leasing financing within this agricultural incentives programme.

The Rulebook on the terms and conditions for providing

support through loans, (Official Gazette of RS No 30/14), was adopted based on the aforesaid Law, defining the types and usage of the incentives. Article 14 of the aforesaid Law defines support through loans as the disbursement of direct payments: "Support through loans is a type of incentive that provides facilitated access to loans for agricultural households." Considering that leasing is also a type of financing, it should be included in the Government's incentives programmes, in order to improve market competitiveness and provide favourable financing sources to agricultural households.

Article 85 of the Law on Personal Income Tax should be amended, as this is in the common interest of all insurance and leasing companies. When a leasing company or insurance company fails to recover a debt from a customer through the courts system, and subsequently adopts a decision to write off the irrecoverable debt of that customer, that company is still obliged to pay a 20% personal income tax rate because written-off receivables have the status of "other revenues". This has been defined under Article 85 of the Law on Personal Income Tax. Consequently, in addition to suffering a loss resulting from uncollected debts, the leasing or insurance company is also obliged to pay personal income tax on these.

To make the paradox even greater, this is also included in the basis for the annual personal income tax, and consequently, a person unable to settle its debt to a Leasing or insurance company, i.e., that person can become liable to pay the annual tax, if the value of the write-off, together with other revenues, exceeds RSD 2.1 million. This tax paradox was noticed by the Ministry of Finance, so the Law on Personal Income Tax was amended in 2013 to provide an exception for banks as creditors. However, other financial institutions, also under the control of the National Bank of Serbia (NBS), were "forgotten" on that occasion. Below is a section of Article 85 of the Law on Personal Income Tax that reads:

"Notwithstanding paragraph 1 of this Article, the tax on other income shall not be payable on the income of an individual – bank customer (hereinafter referred to as the "Debtor") when a bank has written off the receivables from the debtor under the following conditions:

1. where the legal costs of a lawsuit against such a debtor exceed the total amount of bank's receivables from this debtor;
2. where such a write-off is recognized as an expense in accordance with the law governing corporate income tax.

Tax on other income shall not be payable in case of write-off of the remaining part of the bank's receivables from a debtor who has, in accordance with the settlement agreement concluded with the bank, sold the real estate property for which he was granted the loan at a value approximating the standard market value of a comparable property and has paid that amount in full to the bank, towards the repayment of the loan, which still falls short of the amount owed to the bank under the loan agreement, provided that the bank's receivables fall into the category of receivables for which 100% provisions for loss reserves were stipulated pursuant to the rules of the National Bank of Serbia."

The amendment would entail simply adding the term insurance company or financial leasing company, in accordance with the regulations governing financial leasing (hereinafter referred to as "Leasing Company") next to the term "bank customer".

The high level of the required capital in other financial institutions (banks, insurance companies or pension funds) is in keeping with the intention to ensure security in managing the client's assets, whereas, unlike the above mentioned, leasing companies manage their own assets and are not depository institutions, i.e. they invest their own capital and the founder of the leasing company fully bears the risk of business operations.

The analogy with other financial institutions in terms of the lower minimum capital amount does not apply here at all, due to the very nature of leasing. Leasing companies are not registered for, nor do their operations include managing clients' accounts, depository operations of issuing guarantees, payment system operations and similar, so that deposits, assets and other interests of potential clients should have to be protected through minimum required capital adequacy.

The proposal to apply the same minimum capital requirement to leasing operations involving movable assets and those involving immovable assets is based on the fact that leasing operations involving immovables do not carry a greater risk than that involved in standard financial leasing operations. In both cases, the leasing company remains the actual owner of the leased asset, whether movable or

immovable, and this allows for a much quicker and simpler enforcement in case of default. The current minimum capital requirement of EUR 5 million for leasing companies to perform leasing operations involving immovables limits the development of this sector. Applying the same capital requirement to leasing of movables and leasing of immovables would create adequate grounds for the development of this type of leasing in Serbia.

## FIC RECOMMENDATIONS

The following recommendations would facilitate the recovery of the leasing market in Serbia:

- Initiation of amendments to the Law on Value-Added Tax concerning interest taxation, to abolish VAT charged on interest contained in the leasing fee.
- Initiation of amendments to the decisions on public car parks of local governments, to designate the lessee as the user of a public car park in the case of leased vehicles.
- Financial leasing companies should also be given the possibility to conduct operating leasing according to IAS 17 and the Rulebook on criteria for determining when a delivery of goods based on a lease or rental contract is considered as a sale of goods.
- The Insurance Law should be harmonized with the Law on Financial Leasing in terms of provisions on the right of the Guarantee Fund to seek recourse upon payment of damages caused by a means of transport, for which a contract on compulsory insurance was not concluded, from the owner i.e. registered user of the means of transport.
- We are launching an initiative for amendments to the Law on Incentives for Agriculture and Rural Development, (Official Gazette of RS No 10/13). Specifically, in Article 14, para. 1, item 4, the wording "support through loans" should be amended to read "support through financing". Article 14, paragraph 5 should be amended to read: "Support through financing is a type of incentive that provides facilitated access to loans and finance leasing for agricultural households". Article 32 should be changed and should read: "Legal entities, sole traders or individuals – bearer of a registered commercial family agricultural household shall be entitled to support for financing. The Minister shall specify the conditions and rights during financing support."
- Leasing and Insurance companies should be on the same level playing field as banks regarding Article 85 of the Law on Personal Income Tax regarding write-off of receivables from individuals.
- Capital requirements for performing leasing operations involving immovable assets should be lowered in order to make real estate leasing more attractive on the Serbian market. We suggest that, for the performance of financial leasing operations, the monetary share of the Lessor's founding capital may not be below the dinar (RSD) equivalent of EUR 500,000 at the official median exchange rate on the date of payment.

# OIL AND GAS SECTOR

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| As an urgent measure, it is necessary to strengthen control of import of all petroleum products, especially base oils and fuel oil. In addition, with the aim of preventing illegal use of petroleum products, it is necessary to also strengthen control of committed consumption of those products by strict controls of marker concentrations, prohibition sale of fuel oil on petrol stations beyond heating season and introduce excise tax on base oils. | 2013 | √ | | |
| "Intensify struggle against the grey market:<br>- Fulfil all plans in terms of the number of marker inspections of petroleum goods at annual level;<br>- Increase work of inspection bodies, both qualitatively and quantitatively;<br>- Expand competences and measures available to these bodies in cases of illegal trade;<br>- Increase legal penalties for illegal business activity;<br>- Improve coordination of bodies in charge of market control." | 2013 | | √ | |
| As a long-term measure, it is necessary to amend the Energy Law in order to introduce the monitoring of fulfilment of terms for possessing a licence for trading with oil and petroleum products. | 2013 | | √ | |
| In addition to the proposed amendments to the Energy Law, it is vital to pass the Law on Explosive Substances, with accompanying by-laws, which would define activities in the area of production of and trade in explosives and other hazardous substances, as well as the Law on Flammable Fluids and Gasses with the accompanying by-laws aimed at improving the definition of methods for storing hazardous substances, flammable fluids and gasses. | 2014 | | | √ |
| Continue with enforcement of recommendations from the year 2013, with special attention towards activities that are aimed at fighting the grey economy. | 2013 | | √ | |

## CURRENT SITUATION

Developments in the global market in the second half of 2014 were characterized by a drastic drop in crude oil prices, as well as by fluctuations in the value of foreign currencies used for the purchase of raw materials in the oil and gas sector. These developments have also had a negative impact on business operations of companies in the oil and gas sector in the Republic of Serbia, due to high costs of inventories purchased in the period before the drop in their value and foreign exchange losses. Besides the effects of the global market on the business activities of enterprises, natural disasters and the reduction of the economic activity in Serbia also had an impact on the decrease in physical turnover of the petroleum products market in the country.

The increase in the number and amount of fiscal charges at national and local level imposed on business entities, and specifically on corporate entities in the oil and gas sector, which has been registered, is due to the inadequate regulation of the system of implementation and payment of taxes and fees to public service providers in Serbia. The lack of clear criteria for the implementation, control and payment of fiscal charges significantly reduces the predictability of the regulatory environment and business conditions in the country.

In addition, lower business predictability is negatively affected by unannounced amendments and adoption of new regulations without a dialogue with industry representatives, as well as by delays in the adoption of regulations that directly affect the implementation of previously adopted companies' business plans. Among other things, the Decree on the amount, method of calculation, payment and disposal of the fee for establishing mandatory reserves of crude oil and petro-

leum products (Official Gazette of the Republic of Serbia No. 108/2014) adopted in late 2014, stipulates that energy sector entities engaging in the production of petroleum products and in the trade of crude oil, petroleum products, biofuels and compressed natural gas, should pay a fee for establishing mandatory oil reserves. The adoption of the above Decree led to a situation where market participants are required to pay a fee for establishing mandatory reserves that is not only used for establishing commodity reserves, but also for the construction of storage facilities in public ownership, since there are no sufficient storage capacities for the required reserves. Also, the required by-laws on mandatory reserves have not been adopted yet, although the legal term for their adoption has expired. In addition, while energy entities have regularly paid these fees, the procedure for the establishment of mandatory reserves was not implemented in 2014, so the question arises as to whether the collected funds are being used for their intended purpose.

The control of compliance with the requirements for performing energy generation activity after the issuance of licenses was not systematically regulated in 2014 either. Licenses are issued for a period of 10 years, but the obligation of the competent authorities to control compliance during this period has not been prescribed. An established system of controlling compliance with the requirements would contribute both to reducing the volume of illegal trade by eliminating unfair competition, and to increasing the safety of people, material resources and the environment.

The implementation of the Decree on the labeling (marking) of petroleum products resulted in the consequent increase of quality of petroleum products sold in the market of the Republic of Serbia, as well as in the reduction of improper blending of non-excisable petroleum products in motor fuels, primarily in base oil.

## POSITIVE DEVELOPMENTS

Measures of the Government of the Republic of Serbia aimed at suppressing illegal trade, and active control of fuel markers in accordance with the Decree on the marking of petroleum products of August 2014, contributed to the reduction in the volume of illegal trade in the oil and gas sector, and the consequent increase in the registered turnover of petroleum products and an increase of the amount of collected excise taxes of 26.8% in 2014. The implementation of the Decree put pressure on importers of base oils, and led to the reduction in the import and consequent misuse of these petroleum products. In the last 5 months of 2014, the competent authorities performed over 800 inspections of energy facilities, checking marker concentrations in motor fuels, and permanently put out of circulation over 600.000 liters of various products. It is worth mentioning that the importance of the Decree is reflected primarily in the successful prevention of illegal trade, apart from the effective control. The application of the Decree has simplified control of petroleum products trade, and thus reduced the necessity of coordinating the authorities tasked with market control.

The new Decree on the marking of petroleum products was adopted in the first half of 2015, and eliminated deficiencies identified in the marking of petroleum products. However, accompanying instructions for petroleum products marking is required to further improve the marking process.

As part of the fight against illegal trade, inspection authorities have intensified inspection and control of licenses for petroleum products wholesale, as well as control of compliance with minimum technical requirements of wholesale and retail energy facilities.

In late 2014, the sale of heating oil at petrol stations as a motor fuel in place of gas oil 0.1 was prohibited through the enactment of amendments to the Rulebook on technical and other requirements for liquid fuels of petroleum origin (Official Gazette of the Republic of Serbia No 123/2012, 63/2013, 75/2013 and 144/2014), in force as of 1 January 2015.

## REMAINING ISSUES

Poor coordination and overlapping authorities of inspectorates remains an issue when it comes to implementing action against non-registered entities. Better cooperation among the inspectorates is necessary for curbing illegal trade in general.

In 2014 there were no legislative activities in the area of production and sale of explosives and other dangerous goods, or storage of hazardous substances, flammable liquids and gases.

The construction of automated filling stations, which would operate without crew, is not possible since there are no provisions or requirements under relevant regulations to regulate the trade of petroleum products and biofuels.

## FIC RECOMMENDATIONS

- In order to increase legal safety of business entities, it is important to regulate the collection of fiscal charges by establishing a functional system for reviewing the existing charges and fees paid to public service providers and the any new charges and fees prescribed at local and national level.
- The level of business predictability should be increased by engaging industry stakeholders in the process of adopting or amending regulations and by-laws which might affect their operations.
- The use of the fee intended for establishing mandatory goods reserves partly for the construction of publicly owned storage capacities should be reviewed.
- The missing by-laws arising from the Law on Commodity Reserves should be adopted.
- Taking into account that a number of controls of licenses for wholesale trade in petroleum products and controls of compliance with minimum technical requirements for retail and wholesale energy facilities that were carried out in 2014 were part of the planned activities of inspection authorities rather than a statutory requirement, the Energy Law should be amended to introduce a system of mandatory and regular control of compliance with licensing requirements.
- As a successful approach in fighting illegal trade, continue with, intensive inspection and control of marker concentration in petroleum products, and with the improvement of regulations in accordance with the energy stakeholders' suggestions.
- Please note that the Law on Explosive Goods with the accompanying by-laws still has to be adopted to define the production and circulation of explosives and other dangerous goods, along with the Law on Flammable Liquids and Gases and accompanying by-laws to better regulate the storage of dangerous goods, flammable liquids and gases.
- Amend the applicable Rulebook on the construction of stations for supply of motor vehicles with fuel and the storage and reloading of fuel (Official Gazette of the SFRY No. 27/1971), and the Rulebook on minimum technical requirements for trading in crude oil and biofuels (Official Gazette of the Republic of Serbia No. 68/2013), or adopt a new regulation which would include and govern the requirements for the construction of an automated filling station without crew and the requirements for trading in petroleum products and biofuels.

# PHARMACEUTICALS

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The legal framework must be completed and harmonized with EU legislation; transparency and predictability of business and legal security are the basic prerequisites for the sustainable functioning of the pharmaceutical industry in Serbia. | 2013 | | | √ |
| The competition on the health services and health insurance market must be improved by equalizing the state and private sector. | 2014 | | √ | |
| The Government must ensure the predictability of the decision-making process, with clear time frames and a transparent consultations process with the representatives of the industry. | 2013 | | | √ |
| Serbia's health budget must be financially consolidated and made more transparent to increase business predictability and safety of investment in the health and pharmaceutical sector. | 2013 | | | √ |
| Pledges that the manufacturers have logged into the Register of Pledges should be treated as a part of public debt and duly paid, and this should be regulated through amendments to the law and the opinions of the Ministry of Finance. | 2013 | | | √ |
| Equalize the customs fees for finished medicinal products and raw materials for medicines production. | 2013 | | | √ |
| The same tax treatment should be provided for the whole pharmaceutical sector in the field of import of finished products and raw materials. | 2014 | | | √ |
| Accelerate administrative approval of customs quotas for raw materials not manufactured in the Republic of Serbia. | 2013 | | | √ |
| Adjust the VAT rate for raw materials to the level applied to finished medicinal products. | 2013 | | | √ |
| Abolish VAT on donations of medicines and medical devices to health institutions. | 2014 | | | √ |
| Harmonize the payment dynamic and deadlines across the whole medicines supply chain (manufacturer-wholesaler-pharmacy), with payment deadlines prescribed for the NHIF (150 days in 2013, 120 days in 2014 and 90 days from 1 January 2015) through amendments to the Law on Payment Deadlines in Commercial Transactions. | 2013 | | | √ |
| Abolish outer packaging control labeling of medicines as an unnecessary expense for the industry, as it is merely an illusion that it can effectively protect against forgeries. | 2013 | | | √ |
| Annul the provisions stipulating that the expenses of waste management i.e. export of pharmaceutical waste collected from the population are borne by the pharmaceutical companies proportionally to the share of the company in the total turnover of medicines in the Republic of Serbia. | 2013 | | | √ |
| Abolish the practice of determining medicines' maximum wholesale price considering that the Government already determines the price of medicines on the reimbursement list. Limiting medicines' wholesale prices does not contribute to the development of a free market and competition, but prevents the entry into the market of medicines that cannot fit into a determined price range. It is an administrative barrier which postpones the entry of medicines that already have a marketing authorization. | 2013 | | | √ |

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| The Rulebook on criteria for forming the prices of medicines for human use should be adopted every three months level automatically whenever the difference between the official exchange rate of the National Bank of Serbia and the exchange rate from the valid Rulebook exceeds 3%. Besides, for determining the price of medicines on the C list, the NHIF should use the same exchange rate and the same model of calculation as for medicines on the A, A1 and B lists. | 2013 | | | √ |
| The NHIF should define the reference prices for all medicines on the reimbursement list and the difference in price should be paid by insurers for medicines on the A1 list. | 2014 | | | √ |
| Through the dialogue with all interested parties, find one or several adequate reference countries for determining the maximum price of medicines considering that Romania is an inadequate choice of reference country. | 2014 | √ | | |
| It is necessary to continue improving the process of determining the price of medicines and including them in the reimbursement list. This process should be transparent, with clear rules, mandatory rationale of the final decision and right to appeal; relevant patients' associations should be involved in making decisions on the medicines to be included on the reimbursement list. | 2013 | | | √ |
| The added value of innovations in the health sector should be recognized as it is the basis for accomplishing the highest quality of public health and reducing the expenses of treatment; access to innovative therapies needs to be better and faster, especially for groups of patients most in need of those medicines. Local and foreign pharmaceutical companies have the same goal – to provide the best possible therapy to all patients in Serbia. | 2013 | | | √ |
| Expand groups of medicines that can be issued without prescription while at the same time excluding those medicines from the reimbursement list. Reduce deadlines for issuing licenses for manufacturing and traffic of psychoactive substances in the Republic of Serbia and harmonize them with the regulatory practices in the region. This will strengthen the competitiveness of local pharmaceutical companies and boost exports. | 2013 | | | √ |

## CURRENT SITUATION

The production of medicinal products is one of the most important industries globally, not only from the point of view of economic activity but also of its impact on the health of the population. The pharmaceutical sector is important for the Serbian economy (approximately 6,500 employees; medicines exports amounted to EUR 180 million in 2014; the state collected around EUR 50 million in revenues from different taxes, contributions, custom duties, and other applicable fees). The pharmaceutical sector is a trustworthy partner of the health system in Serbia considering that it ensures the regular supply of all necessary medicines.

On the other side, less than 18% of the overall healthcare budget in Serbia, which is approximately EUR 1.8 billion, is allocated for medicines. By comparison, Hungary allocates 32.6% of the total health budget for drugs. In terms of absolute figures, according to IMS data in 2014 the expenditures for medicines in Serbia amounted to EUR 655 million, i.e. EUR 91 per capita, which is considerably lower compared to the surrounding countries (for example Croatia, Bulgaria, Romania). For several years now, the National Health Insurance Fund (NHIF) budget for medicines has been ranging from EUR 350 to EUR 370 million, and in 2015 the public pharmaceutical expenditure was additionally reduced to approximately EUR 46 per capita. To make things worse, Serbia allocates as little as 2% of its health budget for specialized innovative medi-

cines – only EUR 43 million (C-list of expensive drugs). As a consequence, Serbia is the only country in Central and Eastern Europe where no innovative drug has been introduced on the Reimbursement List in the last 4 years. As a result, patients in Serbia are not treated with the most advanced therapies available to patients in the neighbouring countries.

The constant decrease in the NHIF budget and the prolonged period for the introduction of modern, more efficient therapies on the Reimbursement List, as well as the announced new Rulebook on maximum prices have had huge negative impact on prices, especially for innovative drugs. In the last 5 years, these factors have put innovative companies under big pressure to cut budgets and downsize their workforce.

According to unofficial information from the Association of the Manufacturers of Innovative Drugs in Serbia (INOVIA), 5 years ago the number of employed people within this association was close to 1,000. As a result of budget cuts and government programmes regarding innovative medicines, the number of people that currently work in innovative companies in Serbia was decreased by half.

On top of that, overly narrow indications for already listed generic medicines additionally contribute to the inadequate accessibility to essential medicines. Lack of investment in health and medicinal products cannot remain without consequences. In comparison with EU member states, the overall mortality of the population in Serbia is approximately 46% higher than the EU average (14.2/1,000 vs. 9.7/1,000). Average life expectancy in Serbia is also significantly lower relative to the EU average (74.7 vs. 80.2 years). According to the EU Consumer Index which measures the state of health systems in the countries of Europe each year, Serbia is at the very bottom of the ladder. Considering that one of the major indicators within the EU Consumer Index is "investment in medicines", where Serbia is ranked last in Europe, as reported by the World Health Organization (WHO), it is evident that increasing budget allocation to drugs is vital. The manufacturing and distribution of medicines in Serbia are regulated by the Law on Medicines and Medical Devices, and also by a number of other laws governing different aspects of the manufacturing and distribution of medicines. These are the Law on Patents, the Law on Health Care (sanitary oversight, safety of dietary supplements, etc.), the Law on Health Insurance (solidarity in financing health care, defining insurance rights. ..), the Law on Domestic and Foreign trade (with elaborate anti-monopoly measures), the Law on Environmental Protection, the Law on Waste Management and other environmental legislation. There is also a set of financial laws that applies to legal entities engaging in trade in goods and services.

Nevertheless, the legal framework is still a cause of special concern. It is underdeveloped and non-compliant with EU legislation in many important aspects, causing great uncertainty in the health sector and allowing non-transparent procedures at different levels, including the Government and the NHIF decision-making level. There are no deadlines in place for several important decisions, while the existing deadlines are often too long and are usually not adhered to.

The pharmaceutical industry is seldom, and in most cases only declaratively, included in a small segment of the decision-making process, without being given the opportunity to fully contribute or enable the transfer of experience from other markets. As a result, regulations are often unsustainable and impossible to implement in practice. At the same time, patients' associations are marginalized and have no influence on decisions concerning the medicines to be included on the so-called reimbursement list.

## POSITIVE DEVELOPMENTS

Since the publishing of the previous edition of the White Book, there were no significant improvements of the overall situation in the pharmaceutical sector. However, some steps forward are visible, including the ones related to the more open communication with health officials.

## REMAINING ISSUES

### Illiquidity of the pharmaceutical sector

All segments of the pharmaceutical sector are deficient in liquid assets. The key generator of illiquidity is the state that fails to pay real expenses for the uninsured persons (estimated at approximately EUR 60 million annually). Companies in the restructuring or privatization process were "absolved" by the state from the payment of their debt for years of unpaid health insurance contributions (estimated at over RSD 120 billion). Moreover, in May 2014, the state decreased the compulsory health insurance contributions rate from 12.3% to 10.3% (Official Gazette of RS No 57/2014), thus reducing NHIF revenues by EUR 350 million on an annual level, which can be observed in 2015 NHIF Financial Plan as well In total, the NHIF budget for 2015 has been decreased for approximately 220 million EUR relative to 2014, and the Plan proposes to compensate a share of this reduction with transfers from state

budget. Yet, as we reach the last quarter of 2015, it remains uncertain whether these transfers will actually materialize. The NHIF additionally contributes to the illiquidity, as the funds that it allocates to pharmacies and hospitals are much lower than their real expenditures for medicines, forcing the latter to either not pay wholesalers or extend payment deadlines. Another generator of illiquidity is a number of wholesalers, some of whom are bankrupt, that owe local manufacturers for the medicines delivered. Pharmaceutical companies that have fully exhausted their internal reserves are at the end of this chain of debtors and creditors.

The inconsistent application of the Law on takeover of arrears owed by health institutions to wholesalers for the supply of medicines and conversion of these arrears into the public debt of the Republic of Serbia (Official Gazette of RS No 119/12) has caused legal insecurity. Relevant ministries have different interpretations of the Law, especially in its part related to the wholesalers' pledged claims. Additional confusion is caused by different interpretations of the time frame in which the claims arose and were converted into public debt. Although the Law foresees that the public debt includes claims that arose in 2012, in some interpretations of the Ministry of Finance there is a tendency to include claims from the previous years into the public debt.

## Taxes and costs of doing business

In accordance with the general trend of liberalization of foreign trade in Serbia's multilateral relations with the EU ( Serbia obtained the status of EU candidate country), WTO, CEFTA, EFTA and bilateral relations through the Free Trade Agreement (FTA) with Russia, Belorussia, Kazakhstan and Turkey, Serbia's customs policy does not prescribe protective customs duties for imported finished products. The same principle should apply to raw materials (currently, custom duties range from 1% to 5% depending on the tariff number, 3.5% on average). Also, the approval of customs quotas even for products which are clearly not manufactured in the Republic of Serbia is burdened by bureaucracy and very slow.

The Law on Payment Deadlines in Commercial Transactions (Official Gazette of RS No 119/2012) contributed to the unequal treatment of local manufacturers and importers, as the local manufacturers are required to collect payment for medicines from the wholesaler within 60 days, while this provision does not apply to importers (who offer longer payment terms of up to 210 days or more to wholesalers).

Of particular concern is the fact that regulatory standards applied at national level are not compliant with global and European standards, and are only creating additional expenses for the industry. One example is the control label on the outer packaging of medicines, introduced in 2011 in an attempt to efficiently prevent forgeries. Another example is the draft Law on Waste Management, which foresees that the expenses of managing and exporting pharmaceutical waste collected from citizens by pharmacies are to be borne by the manufacturer, proportionally to its share in the total revenues from medicines sales in the Republic of Serbia.

Amendments to the Law on Waste Management were published on 19 June 2015, on the website of the Ministry of Agriculture and Environmental Protection. If the National Assembly adopts the proposed amendments, the cost of pharmaceutical waste management which retail pharmacies collect from citizens will be proportional to the market share of each pharmaceutical company (by-laws will be similar to solutions designed in the process of implementation of the Law on Packaging and Packaging Waste).

## "Duality" of medicines prices

Prices of medicines are under strict administrative control and the pricing process is long, non-transparent and includes double pricing policy:

- According to Article 58 of the Law on Medicines, after the marketing authorization is obtained from ALIMS, the Government, in agreement with the Ministry of Health and the Ministry of Trade, determines the maximum wholesale price of the medicines. The medicines cannot be placed on the market before this decision is taken. Since this is a decision of the Government, as the holder of executive power, and not an administrative act, there is no time frame for reaching this decision. Therefore, there is no strict deadline for acting upon submitted requests. An additional problem is that the maximum wholesale prices are determined based on the ratio of the national currency (RSD) and the Euro, which is published in the Regulation on criteria for the pricing of medicines for human use from time to time. Nevertheless, no deadlines are foreseen for issuing the Regulation, even when the official EUR-RSD exchange rate is significantly fluctuating. Pharmaceutical companies have been suffering losses of up to 20% of their total turnover in the past several years because of the difference between the official exchange rate of the National Bank of Serbia and the exchange rate in the Regulation and Reimbursement List. As an illustration, the Government established and published

maximum prices based on the new exchange rate of December 2014, NHIF has not applied this rate yet for reimbursed products in 2015 resulting in additional losses to pharmaceutical companies in first half of this year.

- Only once the Government reaches a decision on the maximum wholesale price of a medicine, can the marketing authorization holder submit an application for the inclusion of the medicine on the List of Medicines prescribed and dispensed at the expense of the compulsory health insurance fund (the so- called reimbursement list). Nevertheless, the law prescribes that when including a medicine on the reimbursement list, the price of that medicine is determined once again, this time by the NHIF, based on the prices in reference countries (Italy, Slovenia and Croatia), and on prices of medicines already included in the List of Medicines. Thus, every medicine on the Reimbursement List goes through the administrative procedure of determining the price twice, which not only increases the expenses for the marketing authorization holder, but also prolongs the waiting time before the medicine is made available to the insured in the Republic of Serbia. By applying the Rulebook on the List of Medicines of April 2014, NHIF has decreased the prices of reimbursed original off-patent and generic drugs by up to 50% since the beginning of 2015. This type of decision-making leads to the delisting and termination of the production of certain medicines. To make matters worse, the savings were not used for enabling patient access to new therapeutic options.

- List of Medicines
  Article 30 of the Rulebook on criteria for inclusion in the List of Medicines of April 2014 foresees that the difference in the price between original and generic A-list medicines with the same or similar pharmaceutical properties and in the same strength may not exceed 30%, which is co-paid by patients. The availability of medicines is thus limited, above all of original and branded generic medicines that often cannot fit into such limited prices and therefore cannot be included on the list of medicines. As this difference in price is not a financial burden for the NHIF, the possibility of a price difference of up to the maximum approved price would ensure much better availability of original and branded generic drugs.

## Lack of transparency in the process of including medicines on the Reimbursement List

Even though the new Rulebook was published relatively recently, in April 2014, the criteria for putting medicines on the Reimbursement List and removing them from that list are still not transparent. Likewise, the Rulebook failed to regulate clear rules for the negotiations process between NHIF and pharmaceutical companies. On top of that, the provisions foreseeing broad use of Managed Entry Agreements as instruments to secure sustainable drug funding have not been applied yet.

Nevertheless, there are certain improvements of the transparency in the work of the Central Drug Committee whose meeting agendas are published on the NHIF site. In August 2014, the NHIF introduced an online application process which allows follow-up of the status of submitted requests and the new Rulebook introduced deadlines for the NHIF to process request. However in practice NHIF fails to comply with defined deadlines. Consequently, currently the number of new INNs pending reimbursement approval is very high and constantly increasing. The NHIF is still not required to forward the decision of the competent bodies to the applicant for the inclusion of a medicine on the Reimbursement List, while the right to appeal the decision is limited to the possibility of starting an administrative procedure before the Administrative Court.

## Administrative procedures and marketing authorization

The state administration is slow in issuing different permits, decisions, approvals of import trade and distribution of raw materials and finished products, often lacking coordination and communication between the line ministries, the Medicines and Medical Devices Agency of Serbia (ALIMS), the NHIF and other state institutions.

According to the current legislation, the first condition for placing a medicinal product on the market is the issuing of a marketing authorization by ALIMS. The law stipulates that this procedure must be completed in 30+30+210 days, with the possibility of a fast-track procedure and a deadline of 30+150 days for medicinal products registered in the EU through the so-called centralized procedure. In practice, already fairly long timelines are regularly overrun. Similarly, according to existing legislation relevant timelines for the approval of advertising and promotional materials are up to 60 days but in practice these deadlines are being substantially broken.

According to the Law on Controlled Psychoactive Substances (Official Gazette of RS No 99/2010), the deadline for issuing export licenses for products that contain narcotic substances, (control samples, finished and semi-finished products), is 90 days. Considering that this concerns exports of finished products whose placement on the market is regulated by purchase contracts with strict, time-bound delivery, such long licensing

deadlines often result in local pharmaceutical companies paying penalties for exceeding the delivery deadline. This is often the case with products acquired through tender procedures. Export licensing deadlines are considerably shorter in the region, (8 days in Bosnia and Herzegovina and Croatia, and 15 days in Macedonia and Montenegro).

The current Law on Medicines and Medical Devices recognizes "unregistered drugs" as drugs that can be imported exclusively by scientific research institutes or hospitals for the treatment of certain groups of patients. The current Law do not recognize pharmaceutical companies as importers of "unregistered drugs". However, such products are necessary for them in terms of providing and exporting services in the domain of research, development and quality control.

### List of OTC products

Medicines that can be dispensed without a prescription and are paid by patients (so-called Over-the-Counter, or OTC products), considerably reduce the burden on the health budget. This, combined with the decrease of the number of physician office visits, results in double savings for the state. The list of OTC products in Serbia is not harmonized with similar lists in the EU, which contain a much larger number of medicines.

## FIC RECOMMENDATIONS

- The legal framework must be completed and harmonized with EU legislation; transparency and predictability of business and legal security are the basic prerequisites for the sustainable functioning of the pharmaceutical industry in Serbia.
- The Government must ensure the predictability of the decision-making process, with clear time frames and a transparent consultations process with the representatives of the industry. This primarily implies that the NHIF should come up with figures on savings made through each centralized drug tender, or when prices are adjusted in line with the Rulebook criteria. Based on these fundamental, transparent data, the Central Drug Committee could establish the amount of financial resources that has been freed up and is available for innovative therapies and for broadening the indications of already listed generic medicines. Setting up a clear framework for the negotiations process between NHIF and the pharmaceutical industry is equally important, including a mandatory consultations stage. As a result of the negotiations, the two sides should conclude the Managed Entry Agreement, aiming to secure sustainable drug funding. In light of that, the Government must incentivize the application of Managed Entry Agreements as, potentially, the best instrument to simplify the listing of new innovative therapies.
- Serbia's health budget must be financially consolidated and made more transparent to increase business predictability and safety of investment in the health and pharmaceutical sector.
- Pledges that the manufacturers have logged into the Register of Pledges should be treated as a part of the public debt and duly paid, and this should be regulated through amendments to the law and opinions of the Ministry of Finance.
- Equalize customs duties for finished medicinal products and raw materials for medicines production.
- The same tax treatment should be provided for the whole pharmaceutical sector, in the field of import of finished products and raw materials.
- Accelerate administrative approval of customs quotas for raw materials not manufactured in the Republic of Serbia.
- Adjust the VAT rate for raw materials to the level applied to finished medicinal products.
- Abolish VAT on donations of medicines and medical devices to health institutions.

- Abolish outer packaging control labelling of medicines as an unnecessary expense for the industry, as it is merely an illusion that it can effectively protect against forgeries.

- Annul the provisions stipulating that the expenses of waste management i.e. export of pharmaceutical waste collected from the population are borne by the pharmaceutical companies proportionally to the share of the company in the total turnover of medicines in the Republic of Serbia.

- Abolish the practice of determining medicines' maximum wholesale price considering that the Government already determines the price of medicines on the reimbursement list. Limiting medicines' wholesale prices does not contribute to the development of a free market and competition, but prevents the entry into the market of medicines that cannot fit into a determined price range. It is an administrative barrier which postpones the entry of medicines that already have a marketing authorization.

- The Rulebook on criteria for the pricing of medicines for human use should be adopted every three months, automatically whenever the difference between the official exchange rate of the National Bank of Serbia and the exchange rate under the applicable Rulebook exceeds 3%. Furthermore, the NHIF should use the same exchange rate and the same model of calculation for determining the price of medicines on the C list, as for medicines on the A, A1 and B lists.

- The NHIF should define the reference prices for all medicines on the reimbursement list and the difference in price should be paid by insurers for medicines on the A1 list. The NHIF should not limit the level of co-payment for the A1 list drugs as this is not an additional financial burden on the NHIF budget. The upper price limit should be the maximum price approved by Government. This should ensure better accessibility of original and branded generic drugs to patients.

- It is necessary to continue improving the process of determining the price of medicines and including them in the reimbursement list. This process should be transparent, with clear rules, mandatory rationale of the final decision and right to appeal; relevant patients' associations should be involved in making decisions on the medicines to be included on the reimbursement list.

- The added value of innovations in the health sector should be recognized, as it is the basis for accomplishing the highest quality of public health and reducing the expenses of treatment; access to innovative therapies needs to be better and faster, especially for groups of patients most in need of those medicines. Local and foreign pharmaceutical companies have the same goal – to provide the best possible therapy to all patients in Serbia.

- Expand groups of medicines that can be issued without prescription while at the same time excluding those medicines from the reimbursement list. Reduce deadlines for issuing licenses for manufacturing and traffic of psychoactive substances in the Republic of Serbia and harmonize them with the regulatory practices in the region. This will strengthen the competitiveness of local pharmaceutical companies and boost exports.

- Initiate changes in existing regulations on import of finished drugs (INNs, whether or not registered on the Serbian market), standard substances and placebos to facilitate contract manufacturing, development, (bioequivalence studies, stability studies, installation and validation of analytical methods for the registration of licensed products...), research and export of drugs.

- Reject proposed amendments to the Law on Waste Management as an additional, unfair and unnecessary financial burden of pharmaceutical companies.

# PRIVATE SECURITY INDUSTRY

## WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| Continue with the monitoring of the preparation process for the introduction of the by-laws of the Law on Private Security, while continuously insisting that the by-laws should be harmonized with the European models of legislation as far as possible, but also adjusted to local specific features; licensing of the companies should be handled by the Government (Ministry of Interior) or a government agency in order to avoid monopolization of this sector and a conflict of interests. | 2009 | √ | | |
| The goal of Law adoption is legislative regulation, not taxation of the security industry; therefore, the principle of economy must be taken into account, which means having reasonable costs that would certainly, at the end of the process, be borne by the recipient of security services. | 2011 | | | √ |
| In the implementation of the Law, the security industry should be legalized pragmatically, meaning that it is necessary to set a reasonable time schedule and deadline for the training and licencing of security officers and companies. | 2011 | | √ | |
| The Law must ensure equality for all participants in the market; the Law must not include possible discriminatory elements or special privileges for entities attempting to obtain particular prerogatives through the Law, such as the Accreditation Body of Serbia, the Institute for Standardization of Serbia, the Chamber of Commerce, associations, because such a solution – aside from being a conflict of interests – results in new dilemmas, such as internationalization vs. localization. | 2011 | √ | | |
| The Government should encourage close co-operation between security sector stakeholders (both public and private), while consulting large private security investors who can present their experiences and best practices from other EU countries where they operate. | 2009 | | √ | |

## CURRENT SITUATION

Serbia's private security sector employs over 30,000 people and has over 150 active security companies, and after a long period of being the only country in the region and in Europe having such sector of the economy without a law regulating its functioning, Serbia finally got its Law onPrivate Security at the end of 2013. The adoption of the law represents a key, but by no means only, step towards the regulating and proper functioning of the private security industry in the Republic of Serbia.

The continuously disseminated and fostered misconception that the mere adoption of the Law on the Private Security will solve the problems of the grey economy in this industry is now more evident than ever. Companies that obey the laws, pay taxes and contributions, and which have commenced activities relating to the licensing of legal entities and individuals have been faced with high costs for these activities, and thus their prices are uncompetitive. Companies operating in the grey economy meanwhile generate significant profits, enter the market with the lowest prices, intending to use their "privileged" position until completion of the time limits that have been provided for the full implementation of the Law on Private Security.

Previous activities in the field of transformation and full implementation of the law show that many companies are still under certain expectations, hoping that certain changes will be implemented in order to "mitigate" the requirements for the licensing.

On the other hand, we believe that the Ministry of Internal Affairs as a state body responsible for the implementation of the law has been faced with serious financial, personnel, and organizational limitations.

The Government is one of the biggest users of private security services; yet it holds a contradictory position with regard to public procurement of security services for the purposes of state authorities or public enterprises. Namely, the Government is highly interested in having

enterprises and citizens duly pay taxes and social contributions, and its policy thereon is rigorous. However, when it comes to the above-mentioned public procurement of security services, the most common criterion is the lowest bid, and in most cases the procuring entity (the Government or a public enterprise) does not pay attention to whether the selected bidder has paid all due taxes and contributions, or whether its employees are paid regularly, and what their labour status is, etc.

In this manner, accepting "the most advantageous" bid based on the lowest price actually has negative consequences because the net effect is less favourable for the Government (the alleged savings gained by selecting the "most advantageous" bidder are lower than the amount of revenues that the Government could collect if it were to regularly collect all taxes to which the bidder is subject under the law).

## POSITIVE DEVELOPMENTS

The Ministry of Internal Affairs has opened channels of communication with the industry, which could be considered an act of the utmost importance. Finally, after more than a decade of attempts to influence the adoption of the Law, state authorities have in a relatively short amount of time realized the importance of bilateral communication, and so have formed an Expert Council for the improvement of private security, detective activities, and public-private partnerships in the security sector.

## REMAINING ISSUES

During the adoption of the law and by-laws, the economic possibilities of the security industry have not been taken into account nor the number of people employed in the industry. Officers who earn around EUR 200 a month (the minimum guaranteed wage) will have to provide EUR 400-500 for mandatory training, a professional examination, a medical examination, along with administrative fees. Vocational training programs are too ambitious, extremely comprehensive, and possess an excess of topics, with only necessary theoretical classes out of a hundred and one planned classes taking at least two working weeks to complete, for which the trainees will have to use their annual leave. The mandatory program is extremely rigid, without the application of the modern practice of dual education, distance learning, etc. The accredited training centers (thirty of them) are situated only in the major cities in Serbia, and are unavailable to employees in small towns.

## FIC RECOMMENDATIONS

- Continue with the monitoring of the preparation process for the introduction of the by-laws of the Law on Private Security, while continuously insisting that the by-laws should be harmonized with the European models of legislation as far as possible, but also adjusted to local specific features; licensing of the companies should be handled by the Government (Ministry of Interior) or a government agency in order to avoid monopolization of this sector and a conflict of interests.
- The goal of Law adoption is legislative regulation, not taxation of the security industry; therefore, the principle of economy must be taken into account, which means having reasonable costs that would certainly, at the end of the process, be borne by the recipient of security services.
- In the implementation of the Law, the security industry should be legalized pragmatically, meaning that it is necessary to set a reasonable time schedule and deadline for the training and licencing of security officers and companies.
- Allowing and enabling of distance learning by changing the bylaws in order to establish legitimate way of training of potential candidates for obtaining a security license..
- The Government should encourage close co-operation between security sector stakeholders (both public and private), while consulting large private security investors who can present their experiences and best practices from other EU countries where they operate.

# HOMECARE PRODUCTS AND COSMETIC INDUSTRY

## BIOCIDES AND CHEMICALS IN 2015

### WHITE BOOK BALANCE SCORE CARD

| Recommendations: | Introduced in the WB: | Significant progress | Certain progress | No progress |
|---|---|---|---|---|
| HAZARDOUS PACKAGING WASTE MANAGEMENT | | | | |
| The government should encourage the Ministry to intensify activities in handling chemicals on the Serbian market. | 2013 | | | √ |
| Also, support is needed for organized cooperation of industry representatives, the respective Ministry and consumers in various activities which could improve the handling of chemicals, as was the case in earlier years. | 2014 | | √ | |
| COSMETIC INDUSTRY | | | | |
| Administrative procedures for adopting regulations have to be accelerated. Specifically, for the area of cosmetic products, the process of adoption of the Rulebook is longer than the time the working group needed for the preparation of the whole regulation. Since EU legislation on to cosmetic products is constantly being updated, the Rulebook must be enacted as soon as possible to ensure smooth and timely harmonization in the future. | 2013 | | | √ |
| The system for the control of cosmetic products in Serbia should be based on internal market control, which is a practice in EU countries, while import control should mainly focus on documentation (product dossier). Harmonization with EU technical requirements, through the adoption of the rulebook on cosmetic products safety, is just the first step towards the harmonization of market control with the EU. | 2013 | | | √ |
| The adoption of a specific regulation on cosmetic products would avert differences in interpretation, and consequently differences in the requirements by different inspections (especially in the area of product labelling), which are the consequence of the application of different general regulations that neglect the specificities of certain product groups (in this case cosmetic products). | 2013 | | | √ |
| SEPARATION OF CERTAIN CLEANING PRODUCTS IN RETAIL STORES | | | | |
| Cleaning and hygiene products labelled as "irritants" should be treated as they are in the EU countries, where such limitations are not in place. | 2014 | | | √ |

### CURRENT SITUATION

Regulatory harmonization in the chemicals, biocides and detergents sector has continued, with the coming into force of new by-laws stipulating bans and restrictions in line with EU regulations.

The Ministry of Agriculture and Environmental Protection updated the website with all the relevant information in this area and also set up an information desk for queries.

The major activities in the sector were the preparation and implementation of the Regulation on the Classification, Labelling and Packaging of Mixtures (CLP Regulation), which commenced in June 2015, by business entities and the line Ministry.

Efforts were made to properly implement the CLP Regulation, in order to comply with the legal frame and create the same market situation as in some EU member states with the same understanding of the legal term “placing a product on the market”.

### POSITIVE DEVELOPMENTS

The Chamber of Commerce, the line Ministry of Agriculture and Environmental Protection, businesses and trade associations renewed cooperation. Through seminars, education and presentations, the focus was placed on forthcoming changes and further harmonization with EU regulation.

## REMAINING ISSUES

The further harmonization with changes of EU regulations on chemicals and biocides was announced with the adoption of new by-laws. By-laws related to the Law on Inspections are expected to clarify and simplify the process.

### FIC RECOMMENDATIONS

- While complying with the new rules regarding the visual elements of product packaging introduced by the CLP Regulation, there is also a need to continue and enrich cooperation with consumers, industry representatives, trade and Ministries.

# SANITARY INSPECTION AT THE BORDER – CONTROL OF CHEMICALS AND BIOCIDAL PRODUCTS

## CURRENT SITUATION

The latest amendment to the Law on Chemicals (Official Gazette of the Republic of Serbia Nos. 36/2009, 88/2010, 92/2011, 93/2012 and 25/2015) re-established the authority of the sanitary inspectorate in the sphere of chemicals, and consequently, import of chemicals is once again subject to control, in compliance with the Law on the Safety of General Use Items (Official Gazette of the Republic of Serbia No. 92/2011), and Rules of Procedure on requirements for the safety of general use items that may be placed on the market (Official Gazette of SFRY, Nos. 26/83, 61/84, 56/86, 50/89 and 18/91), as the relevant enactment.

Every year, according to the Law on Chemicals, chemicals have to be entered in the integrated Register of Chemicals. When registering, the importer/manufacturer of chemicals is required to submit detailed data on the ingredients, origin of the chemical, its classification and use.

## POSITIVE DEVELOPMENTS

Improvements were noticeable in 2012, when the sanitary inspection of import products was abolished, but with this year's imprecise amendments to the Law on Chemicals we have practically taken a step backward.

## REMAINING ISSUES

The latest amendment to the Law on Chemicals introduces that importers will pay again costs for laboratory analyses, and the period of time from the moment of submitting import documentation to the placement on the market is much longer than it was before.

The trade in chemicals is regulated once again together with that of other general use products, despite the fact that a separate regulation was enacted specifically to regulate this issue – the Law on Chemicals.

### FIC RECOMMENDATIONS

- The control system of imported products should focus primarily on documentation (product dossier) and should not involve laboratory analyses of the safety of general use items.
- The Government needs to encourage coordination between the Ministry of Health, the Sanitary Inspectorate, the Ministry of Agriculture and Environmental Protection, the Sector for Chemicals, and the Ministry of Trade, because chemicals are currently under the jurisdiction of three Ministries. Moreover, the jurisdiction over and

control of chemicals and biocidal products, both on the market and at the border when importing goods, should be precisely defined. Support should be provided to organized cooperation of representatives of consumers, the relevant ministry and industry representatives for regulating the handling of chemicals through various activities, as was the practice in the past.

- Once again, the chemicals sector should be regulated only by the Law on Chemicals, as chemicals are definitely not general use items.

# SEPARATION OF CERTAIN CLEANING PRODUCTS IN RETAIL STORES

## CURRENT SITUATION

Since 2012, cleaning products classified as "irritants" have to be placed on separate shelves in the stores with instructions for consumers (Rulebook on detailed conditions for keeping hazardous chemicals in the sales area and marking that space, Official Gazette of RS No 31/11 and 16/12).

Although the by-law is clear in terms of which products are included, it does not provide precise information about how to separate these products and no clear directions for shelving.

The separation of the cleaning products classified as "irritants" is a unique solution in Serbia, and not in harmony with EU regulations and practices. The currently applicable Law on Chemicals (Official Gazette of RS No 36/09) does not even require special packaging for these products, as their safety profile does not justify such provisions.

## POSITIVE DEVELOPMENTS

No positive developments since last year.

## REMAINING ISSUES

The by-law on detailed requirements for keeping hazardous chemicals in the sales area can be qualified as a trade barrier that imposes additional (unjustified) restrictions on the trade and retail sale of cleaning and hygiene products. With the entry into force of the new EU Regulation on Classification, Labelling and Packaging of products on 1 June 2015, the negative impact of the by-law could be even higher.

## FIC RECOMMENDATIONS

- Cleaning and hygiene products labelled as "irritants" should have the same treatment as in the EU member states, where such products are not subject to requirements on separate shelving.

# IMPLEMENTATION OF THE LEGISLATION RELATED TO UNIT PRICING IN SERBIA

## CURRENT SITUATION:

This legislation refers to the initiative for displaying unit prices per wash load for detergents in retail stores. The current maturity of the cleaning products market in Serbia requires implementation of similar practices as in the Euro-

pean Union member states with a long history in showing the price per wash load on the shelf to provide consumers with correct and complete information.

In fact, there are currently several types of cleaning products for households in Serbia: powder and liquid detergents of different levels of compaction/concentration, tablets (solid powder detergents) and gel caps. The same applies for softeners. The Rulebook on detergents requires producers to put the number of wash loads on the pack, which is the practice.

The Ministry of Trade does not recognize the importance of communicating the price per wash load together with price per pack because this price unit is not seen as an official one. On the other hand, the current communication of prices is misleading for consumers because there are different types of products on the market (e.g. powder, gels, caps), with different compaction/concentration levels, so the prices per pack and per unit (kg/l) are not comparable. The introduction of the price per wash load would help consumers compare prices of products with different compaction/concentration levels and in different forms.

## POSITIVE DEVELOPMENTS

All detergent and softener produces communicate the number of wash loads per pack together with the number of unit (kg/l) per pack on the product (package) and through different types of sales point materials (wobblers, leaflet pictures, info leaflets, dividers, etc.) in order to provide the consumers with transparent information about the dosage and number of washes per pack, to raise awareness of compaction/concentration levels and to make it easier for consumers to compare prices of different products. Consumer protection associations support communication of price per wash load together with price per pack.

## REMAINING ISSUES

This initiative is fully consistent with the Law on Consumer Protection, where the unit price is defined as "price per kilogram, litre, square meter, cubic meter or other unit of measurement that is in regular use and corresponds to the nature of the goods". Moreover, this has been a standard practice throughout European countries for a long time (more than 20 years). As a business association dedicated to the promotion and implementation of European standards in the Serbian market, and taking into consideration the presented arguments, FIC would like to win the support of the authorities as well for this initiative to better inform consumers, in line with the technical adaptation to the current technologies that allow different levels of concentrations for various types of cleaning products.

On the detergent market there are currently different product types, in different form, with different number of wash loads (e.g. powder detergent, liquid detergent, caps) and in the softener category the same pack size can have different concentration levels, meaning different number of washes. Regular shelf and action prices of all these products are communicated in retail as price per pack or price per unit (kg/l) but without stating price per wash load, which is more relevant when comparing prices of two different forms of product or same pack sizes with different number of washes.

Retailers request that official authorities issue a statement specifying the pricing information that should be officially communicated to consumers.

## FIC RECOMMENDATIONS

- In the context of having different types of concentrations it is important for consumers to know the price per wash and not only the price per kg or l. This will facilitate comparison of prices for different types of detergents and help consumers make an informed decision. An official decision or by-law is required from the Ministry of Trade to define price per wash load as the official unit in order to increase transparency and avoid misleading consumers, and make a step forward in harmonizing with EU regulation (European Union member states already have the obligation to communicate of price per wash load).

# COSMETIC INDUSTRY

## CURRENT SITUATION

Safety of cosmetic products is regulated by the Law on Safety of General Use Products (Official Gazette of the RS No 92/2011). The by-law setting more detailed requirements is the Rulebook on Requirements for the Safety of General Use Products that May be Placed on the Market (Official Gazette SFRY Nos. 26/83, 61/84, 56/86, 50/89 and 18/91).

Having in mind that scientific research and innovation are key drivers for the cosmetics industry, the legislation has to be updated to incorporate the latest information and technological developments. Obviously, a by-law dating back more than twenty years is far from keeping abreast with the changes, which creates everyday problems for companies in this sector.

Currently, cosmetic products are treated like other products for general use and there is no specific regulation regulating exclusively this sector. The absence of sector specific regulations often allows for different interpretations. Other laws, such as the Law on Trade, Law on General Safety of Products, Law on Market Surveillance, Law on Consumer Protection, and several other regulations, to some extent, also apply to cosmetic products.

The control of cosmetic products is the responsibility of the Ministry of Health, Sanitary Inspection Department, Inspection Affairs Sector. Imported cosmetic products are subject to control by the border sanitary inspectorate, while all cosmetic products on the market are subject to control by the market sanitary inspectorate.

The harmonization of regulations on cosmetic products with relevant EU legislation is planned as a part of Serbia's EU accession process. This entails amendments to the current Law and the adoption of a new rulebook to exclusively regulate cosmetic products. Adoption of cosmetics legislation is the responsibility of the Ministry of Health.

In the first half of 2013, a working group formed by the Ministry of Health completed the work on the Rulebook on Safety and Methods, Content and Detailed Conditions for Labelling Cosmetic Products. However, due to the lack of legal basis in the Law on Safety of General Use Products, as a result of the fact that relevant EU regulations have not been adequately transposed, the Rulebook was not adopted. The Law has been amended and went into legislative procedure last year, but has not been adopted yet.

## POSITIVE DEVELOPMENTS

Unfortunately, there were no positive developments since last year. The adoption of the Law on Amendments to the Law on Safety of General Use Products and the Rulebook has been postponed several times until now, but none of the regulations were adopted so far.

## REMAINING ISSUES

The harmonization of regulations on cosmetic products with relevant EU legislation can only be accomplished by adopting the by-law on cosmetic products safety. The adoption of the Law on Amendments will provide the legal basis for the adoption of this by-law. The by-law has been prepared and it is "waiting" for the adoption of the Law on Amendments.

## FIC RECOMMENDATIONS

- Administrative procedures for adopting regulations have to be accelerated. Just to note that so far the process of adoption of the Rulebook has been twice as long as the time the working group needed to prepare the whole regulation. Since EU legislation on cosmetic products is constantly being updated, due to continuous research in this sector, the Rulebook must be enacted as soon as possible to ensure smooth and timely harmonization in the future.
- The system for the control of cosmetic products in Serbia should be based on internal market control, which is the practice in EU countries, while import control should mainly focus on documentation (product dossier).

Harmonization with EU technical requirements, through the adoption of the Rulebook on cosmetic products safety, is just the first step towards the harmonization of market control with the EU.

- The adoption of a specific regulation on cosmetic products would avert differences in interpretation, and consequently differences in the requirements by different inspections (especially in the area of product labelling), which are the consequence of the application of different general regulations that neglect the specificities of certain product groups (in this case cosmetic products).

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Lafarge BFC d.o.o.

Les Laboratoires Servier

L'Oréal Balkan d.o.o.

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Marbo Product d.o.o, a company of PepsiCo

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Zivkovic Samardzic a.o.d. Beograd

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