15 YEARS

WHITE BOOK

Proposals for improvement of the business environment in Serbia

2017

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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of the business environment in Serbia

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2017

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

www.fic.org.rs/whitebook2017.html

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CONTENTS

PILLARS OF DEVELOPMENT

LEGAL FRAMEWORK

SECTOR SPECIFIC

top

FOREWORD

The Foreign Investors Council celebrates its 15th anniversary this year. Throughout the years, the FIC has been serving the eminent purpose of making Serbia a better place to do business and has been an important contributor to shaping the business environment in the country through a consistent dialogue with all the key stakeholders – the Serbian government, EU institutions, and international finance institutions.

The level of the dialogue has been evolving, becoming structured, mature, and constructive. The FIC welcomes the Serbian government's receptiveness towards investors' feedback and expectations. What is lagging behind is the speed of execution and implementation of reforms. The FIC continues to provide all stakeholders a summary on the progress of reforms accomplished each year, as well as an overview of the business climate in all relevant fields, in the form of the annual White Book publication.

This year, the FIC is using a new format of dialogue with the Government - a joint FIC/Government Task Force, established 31 January. This initiative came out right after the presentation of the previous White Book, during a discussion with government officials and outgoing Prime Minister Aleksandar Vučić, now Serbian president. The goal of this Task Force is to define concrete measures and implement recommendations from the White Book. It is also expected to accelerate the implementation of reform policies. The Task Force is composed of six expert sub-groups consisting of FIC committee chairpersons and representatives of the state administration, and is dealing with FIC priorities such as taxes, labour, inspections and food safety, real estate, e-commerce and -e-governance, bankruptcy, and forex. The outcome of this work has to have a positive impact on the business environment, by making it either clearer or more compact. Task force is expected to deliver acceleration of the reform process.

Starting with this edition, the White Book will rank each business climate area according to the progress made in implementing recommendations. While the ranking methodology recognizes the overall progress made in 2017, the pace of improvements did not outstrip performance recorded in the previous year. The main goal of the Task Force is, therefore, to deliver acceleration of the reform process in the future.

Over the last three years, the Serbian economy has been steadily progressing. Fiscal consolidation, reduction of the budget deficit, increased employment in private sector - these are positive signs for investors that Serbia has achieved a certain level of macroeconomic stability.

The next important step in strengthening the Serbian economy and making it more competitive, resilient, and attractive for investors should be sustaining or even improving growth rates.

To accelerate the growth momentum in the country, Serbia needs to implement difficult, yet necessary, structural reforms. Acceleration of structural changes and privatization of state-owned enterprises will substantially increase the efficiency and productivity of the economy, and will enable a level playing field for business, as well as contribute to further development of the private sector.

For years, the business community has been requesting a decrease in bureaucracy and reform in public administration. The FIC welcomes the new Government approach to addressing the inefficiency in public administration and to improving the transparency, consistency, and quality of government services using innovation and digitalization as enablers.

FIC members are not only the driving engine of the Serbian economy. They are also contributing to the development of Serbia bringing in new technologies, innovation, and the knowhow that are essential to building a modern and efficient economy. Recognizing the growing need and acceleration of digitalization in Serbia, the FIC established a new Digital and E-commerce Committee to bring new business opportunities to life and contribute to the development of the legislative framework for digital acceleration.

EU integration has been defined by the Government as the way forward. The FIC is not only one of the strongest promoters of Serbia's economic integration into the EU, – it also continues to serve as a private sector focal point in the EU negotiation process, as 74% of FIC members come from the EU, while other members have their footprint on the EU market. The FIC has the capacity and capability to provide well-grounded support to the process of EU integration.

Apart from the aforementioned assistance, the FIC will continue to provide input on the harmonization of national legislation with the EU acquis. Harmonization with the EU acquis is an important tool in this process, as it makes the

business environment in the country more predictable and competitive, and supports a growth in exports of Serbian products to Europe.

The FIC recognizes and respects the new Government's determination to improve the business climate and continue reforms. Today, Serbia's business climate is significantly better compared to what it was a decade ago.

These changes wouldn't have happened without the commitment of both the FIC and Serbian government to continue their dialogue, identify opportunities to further improve the business climate, and increase Serbia's attractiveness for long-term investments.

Yana Mikhailova
FIC President

EXECUTIVE SUMMARY

Dear Reader,

This Executive Summary is not an attempt to present an overarching overview of the over 40 topics that the White Book 2017 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 in which the most or least progress was made in the period between October 2016 and October 2017.

You are invited to browse through the rest of the White Book to find more detailed information as well as the presentation of topics not mentioned in the Executive Summary.

WHAT IS THE WHITE BOOK?

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. It can be viewed as an additional contribution provided by foreign investors operating in Serbia – a kind of common CSR product – sharing, free of charge, their knowledge and experience for the benefit of all, aspiring to improve the competitiveness of the Serbian economy overall.

Moreover, the intent of this annual publication is to track the record of reforms, recognize accomplishments achieved between the two editions and identify which issues were left unresolved. With that in mind, the structure of each White Book chapter encompasses five segments: Score Card results (an overview of the endorsement of FIC recommendations given in the previous edition), Current Situation, Positive Developments, Remaining Issues, and FIC Recommendations.

This year's edition brings something new, stemming from collaboration with a new Editor-in-Chief – a ranking of progress made in specific areas based on score card results. For more detailed info, see the text on ranking methodology (p.10), though note that scores range from 1 to 3.

HOW IS THE WHITE BOOK WRITTEN?

The White Book is a mechanism to create a consensus amongst FIC members around those topics that 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 (both within FIC working committees and through direct inquiry towards the entire membership) on topics that should be featured in the upcoming White Book edition and investigating their interest in writing a specific text. Once the topics are determined, identified authors take on the responsibility of writing the first drafts of their texts. Members within the relevant FIC working committees then review, potentially revise, and adopt the draft texts. Adopted texts are 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 to membership consultations for final remarks. 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 standpoints of the entire FIC membership and to prevent promotion of individual/group views.

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

KEY FINDINGS OF THE WHITE BOOK 2017

A new ranking methodology has resulted in a more specific definition of the key findings of the White Book. With that in mind, we will first present information about the four areas that made the most/least progress, followed by information about the performance in the areas which the FIC sees as priorities.

Between October 2016 and October 2017, the most progress was attained in the following four areas: construction land and development; protection of users of financial services, transport, and tobacco.

In the same period, the least progress was marked in the following four areas: company law, corporate income tax, restitution, and quality standards in milk production. However, here we must note that the Government of Serbia initiated activities on changes to the Company Law and Corporate Income Tax Law which have not yet yielded results by the time this edition went to print.

AREAS WITH THE MOST PROGRESS

Construction Land and Development (average score 2.13)

Continuous improvement in implementation of laws was the main driver of progress in this area. Out of eight recommendations presented in the White Book 2016, three marked significant progress, three marked certain progress, while two marked no progress.

Key positive developments include increased efficiency in execution of conversion proceedings; a record number of construction permits issued, due to the introduction of an integrated procedure and e-platform; and continuous openness for dialogue with the private sector.

In the future, the focus needs to be on the following: making sure that restitution does not automatically suspend conversion, except in the case of public or state-owned companies; eliminating inconsistencies in the calculation of the conversion fee, which hamper future investments; and adoption of the necessary by-laws.

Protection of Users of Financial Services (average 2.00)

Previous law changes led to greater transparency in the relationship between banks and consumers of financial services. In addition, significant efforts have been invested in building consumer awareness. Out of four recommendations presented in the White Book 2016, one marked significant progress, two marked certain progress, and one marked no progress.

The most progress has been made in the adoption of remaining by-laws; and increased activity, across the board, on building consumer awareness and rolling out educational programmes.

Going forward, the focus should be on: continuing efforts to educate consumers on how to execute their rights; defining in a comprehensive way the transfer of claims against natural persons in order to enable the resolution of NPLs; and creating new legislation based on the same principles as current ones.

Transport (average score 1.95)

Progress in this field is to a large extent linked to improvements in the transport infrastructure, both in terms of investing in/modernization of infrastructure, as well as the current maintenance of existing infrastructure, with less progress in harmonization with European standards. Out of 20 recommendations presented in the White Book 2016, one marked significant progress, 17 marked certain progress, while two marked no progress.

Looking into achievements, works on all forms of transport are being continued, not just in a technical sense, but also in the way of closing contracts and negotiations with executive authorities of regional countries, as well as foreign investors. In particular:

- Railway: secured agreement for financing a Belgrade–Budapest railroad, which will be the first railroad where trains will be able to reach speeds of 200 kph. Reconstruction of 223 kilometres of railroad is planned; in addition, preparation of the new law on railways has started;
- Road sector: progress in works on corridors 10 and 11; until the end of the year Corridor 10 and the Obrenovac–Preljina highway should be brought to a completion, and works on the Obrenovac – Surčin section are also being continued, and should be finalized by end of 2019. Moreover, the E80 (Pirot-Dimitrovgrad) highway has been finished and made operable. Two electric vehicle charging stations have been installed along Corridor 10, while the installation of an additional three stations is expected soon;
- Air transport: instead of selling the airport, it was decided to go with a concession for a 25-year-period. During first quarter of the year at Nikola Tesla Airport, the number of passengers increased by 10% compared to the same period in 2016. The Skytrax rating agency ranked Nikola Tesla Airport as the fifth amongst the best Eastern Europe airports. Also, during the first seven months, the number of passengers at the Konstantin Veliki Airport in Niš rose to 183,000, a dramatic increase (in 2014, the total was 1,300 passengers).

Key goals for the future are: continue improving the capacity and quality of transport infrastructure and services; accelerate the restructuring of public enterprises in the transport sector (with a focus on railway transportation and introduction of result-oriented management), and improving the quality of the national road administration; stimulate public-private partnerships and private sector participation in the construction of major roads and railways in Serbia; set up an efficient road user toll system to bring back passenger and cargo transit traffic; and promote usage of electric vehicles by efficient registration, incentive schemes for the purchase of electric vehicles, and more widespread construction of charging stations.

Tobacco (average score 1.86)

The tobacco industry is consistently one of the strongest and most vibrant sectors of the Serbian economy, despite high regulation and economic crises. The export of tobacco and tobacco products has continued to increase, reaching almost EUR 325 million in 2016. At the same time, fiscal revenues from the sale of tobacco products contributed more than 14% of total budget revenues in Serbia in the previous year (more than EUR 1.15 billion). Out of seven recommendations presented in the White Book 2016, one marked significant progress, four marked certain progress, and two marked no progress.

Main improvements include: adoption of a multi-year plan on excise taxes for cigarettes and tobacco as a further step in gradual harmonization with relevant EU directives; declaring 2017 the Year of the Fight Against the Grey Economy, and a clear dedication of the highest state authorities to combat illegal market activities.

Future activities should be focused on: continuing efficient combat against the illegal tobacco market; efficient implementation of the Law on Advertising, as a level playing field should be created for all market participants; and carefully setting the timeframe for harmonization with the EU Directive in a way that will not lead to a further expansion of the black market.

AREAS WITH THE LEAST PROGRESS

Restitution (average score 1.00)

Ambiguities and inconsistencies in the Restitution Law have led to divergent practices by the Restitution Agency, which sometimes affect the acquired rights of foreign investors. Out of three recommendations presented in the White Book 2016, all marked no progress.

Going forward, we suggest that: the state should lead transparent restitution procedures and ensure that the acquired rights of foreign investors are protected; and that foreign nationals should be enabled to exercise the right to restitution, equally as Serbian nationals.

Corporate Income Tax (average score 1.00)

The latest amendments to the Corporate Income Tax Law were made at the end of 2015, with most of its provisions entering into force 1 January 2016. Over the past year, there were no improvements in this field and out of 14 recommendations presented in the White Book 2016, none marked progress.

There are two sets of recommendations for the future. With regard to changes in the law, the main suggestions are: to introduce monthly or quarterly tax filings (instead for each transaction separately); to further clarify the method of calculation and recognition of tax depreciation cost for the first group of fixed assets (acquired before Jan 1, 2004), which caused numerous dilemmas and controversial interpretations in practice; and to allow a full deductibility of marketing expenses.

In terms of implementation, we believe that it is necessary to adopt the guidelines on the taxation of permanent establishments, as well as to adopt the definition of royalties for withholding tax purposes in line with the best international practices and signed treaties.

Company Law (average score 1.00)

After more than five years since the start of the implementation of the Company Law, the necessity for further adjustments is indisputable. Therefore, we acknowledge ongoing work on changes to the law which we hope will address the main concerns of foreign investors. However, up until the time that this publication went to print, no progress has been achieved. Out of four recommendations presented in the White Book 2016, all marked no progress.

Nonetheless, the positive sign is that the Government recognized the need to address current problems, prepared changes of the law, and organized public consultations.

Ongoing changes to the law should: allow express permitting of limited liability partnerships (LLPs); precisely regulate the increasing of share capital through a debt-to-equity swap; in general, try to eliminate ambiguities and inconsistencies and provide clear procedures and competencies; and align the law with the Law on Contracts and Torts regarding limitations to the authority of a company's representatives.

Quality Standards in Milk Production (average score 1.00)

The food industry still faces numerous challenges. One of the key factors that could significantly help local producers increase the sale of milk and dairy products, especially in foreign markets, is the building of a raw milk quality system on solid foundations. However, ever since the adaptation of the legislation in April 2016, no significant changes were

noted. Out of eight recommendations presented in the White Book 2016, all marked no progress.

Positive developments relate to an increase in the testing of the quality of raw milk in authorized national laboratories.

Key goals for the future should be: an operational, fully independent, properly staffed, and technically equipped National Reference Laboratory; more affordable price for raw milk testing; and a farm registration procedure that should be simplified and made efficient, as registration is needed for exports to the EU. In that regard, the Government should adopt and execute an action plan to raise the number of registered farms.

AREAS OF PRIORITY INTEREST

Real Estate (average score 1.60)

The field of real estate had uneven performance, with construction land and development marking the most progress on the one side, and restitution, mortgage, and real estate leasing marking no progress on the other. Out of 20 recommendations presented in the White Book 2016, three marked significant progress, six marked certain progress, while 11 marked no progress.

The main positive developments include: increased efficiency in the execution of conversion proceedings; the record number of construction permits issued due to the introduction of an integrated procedure and e-platform; start of enforcement of the new Cadastre Law, which moved the second instance competence to the Cadastre Office, and enabled accelerated processing of new registration requests; and continuous openness of the Ministry of Construction, Transport, and Infrastructure for dialogue with the private sector.

Going forward, we recommend focusing on the following: ensuring that restitution does not automatically suspend conversion, except in the case of public or state-owned companies; eliminate inconsistencies in the calculation of the conversion fee, which hamper future investments; adopt the necessary by-laws; change the Financial Leasing Law to enable registering real estate lease in the cadastre; change the Mortgage Law to introduce more explicit norms, increase security, and enable more efficient borrowing; and introduce more consistency and clearing the backlog in cadastral processing.

Inspections and Fight Against Illicit Trade (average score 1.55)

Certain progress has been made in the fight against the grey economy. Total government revenue in 2016 increased by 6.5% in real terms relative to 2015, primarily due to an increased collection of VAT and excise taxes, which are the best indicators of reduced illicit trade. In 2016, due to the implementation of the new Law on Inspection Oversight, 3,656 unregistered businesses were discovered, most of which were subsequently registered. Out of 11 recommendations presented in the White Book 2016, six marked certain progress, and five marked no progress.

Main positive developments include: implementation of the National Programme for Countering the Shadow Economy (Dec 2015) and adoption of the Action Plan for 2017 and 2018, as steps toward a systematic combat against the shadow economy; the Strategy for the Integrated Border Management of the Republic of Serbia was adopted for the period of 2017-2020; measures in the area of taxation of excise products (primarily tobacco and coffee) were formulated in consultations with industry representatives; the Government declared 2017 and 2018 as Years of the Fight Against the Grey Economy; and implementation of the Law on Inspection Oversight gave results in control of non-registered entities and combat against undeclared work.

In the future, the main focus should be on: introduction of specialized prosecutors and increasing efficiency in the processing of cases related to illicit trade before judicial bodies; harmonization of sectoral laws with the Law on Inspection Oversight; allocation of adequate resources and funds to law enforcement bodies; and ensuring implementation of integrated control of border crossings by all the involved departments.

Digitalization and E-Commerce (average score 1.33)

This is an innovative sector that will see significant growth in the future and a bigger role in overall development. The key missing piece of legislation is the Law on Electronic Documents, Identification, and Trust Services. The public discussion on its draft version was held last year in September, but it still has not been enacted by the Parliament. Out of six recommendations presented in the White Book 2016, two marked certain progress, while four marked no progress.

Almost all positive developments are related to the Proposal

of the Law on Electronic Documents, Identification, and Trust Services, awaiting adoption by the Parliament. Here we list some of the main improvements that, if adopted without changes, this law would bring: introduction of a comprehensive law, instead of existing separate laws, which brings more clarity; a digitized document that will have the same power of evidence as the original document; more flexible electronic identification schemes than the qualified electronic signature will be provided (schemes based on three levels of security: high, medium, and low), allowing for an adjustment in the level of security to the value of the transaction and its legal importance (so-called multi-level authentication); and use of electronic identification schemes will be enabled for all transactions (not only those carried out with the state, which was the initial proposal).

Future activities should be focused on: adopting the proposed Law on Electronic Document as soon as possible; enabling application of Direct Carrier Billing payment model for digital content and services (through monthly bills issued by mobile operators); changing the current regulation to allow payment in foreign currency via PayPal; resolving the current problem where the submission of payment slips is required as proof of payment by the administration, thus excluding the possibility of using electronic banking; and making it possible to receive packages by signing the courier's scanner, because it is currently still necessary to compile, fill in, and archive paper supply lists.

Food and Agriculture (average score 1.21)

We believe that the sector of food and agriculture has a great potential, both to significantly contribute to GDP growth, as well as to propel exports from Serbia. However, in order to tap into this potential, Serbia needs to modernize its regulation and harmonize it with EU rules, thus opening the door for more vibrant development in this sector. Nevertheless, over the past year there were no notable improvements in addressing key issues: implementation of food-safety regulations, a lack of quality assurance (National Reference Laboratories are still not fully operational), and an uneven treatment in registering PPP (plant protections products). On a positive note, on several occasions, the FIC opened dialogue with the Ministry of Agriculture on food safety regulations, but with no concrete results in improving the regulation. Out of 42 recommendations presented in the White Book 2016, two marked significant progress, five marked certain progress, while 35 marked no progress.

The following main achievements have been noted: formation of the Expert Council for Risk Assessment in the Field of Food Safety, which should prepare expert opinions for the state, private sector, and consumers; certain progress in the work of the phytosanitary inspectorate in terms of the number of products sampled and sampling frequency; the Rulebook on the declaration, labelling, and advertising of food was changed and is now, to a larger extent, aligned with EU regulation; and several regulations related to agriculture and livestock production were adopted (Law on Subsidies in Agriculture and Rural Development, Law on Agriculture and Rural Development, and the relevant by-laws).

Main recommendations for the future are related both to implementation and legislative changes. Regarding implementation, it is necessary to ensure a consistent application of rules by inspectors, especially in the phytosanitary and sanitary area, as well as to make the established National Reference Laboratory fully functional. Regarding legislation, it is necessary in the short term to adopt food safety by-laws, and beyond that, fully harmonize regulation on food safety and plant protection products with the relevant EU regulations.

Labour Regulations (average score 1.19)

After significant breakthroughs were made by the adoption of the Labour Law in July 2014, the last three years went on to see a standstill in reform. While we fully understand the sensitivity around this regulatory area, we believe that Serbia needs to continue labour market reform in order to foster new employment and increase its competitiveness on the global market. Out of 32 recommendations presented in the White Book 2016, one marked significant progress, four marked certain progress, while 27 marked no progress.

Key improvements include: adoption of the new law for temporary work abroad, which simplifies and expedites administrative procedure and strives to bring a balance between the needs of the global labour market and the protection of domestic workers while on temporary work abroad; and the formation of a working group tasked with the preparing of a draft law on staff leasing.

Remaining issues are: staff leasing still not being regulated; a decrease in administrative burden for the employment of foreigners (i.e. foreigners with a residence permit still need to register with the police every time they leave the exact city they are registered in); changing the Labour Law to prescribe salary compensation during leave equal to the

amount of the base salary increased by seniority; simplifying the currently very complex model of salary calculation; and treating the compensation for unused annual leave by an employee as damage compensation, not salary.

Taxes (average score 1.14)

Problems in the application of tax regulations, no safeguard against new parafiscal charges, and cases of sudden law changes (i.e. at the end of December 2016, two tax laws were adopted without any public discussion – the VAT Law and the Law on Tax Procedure and Tax Administration) are still present. On a positive note, the past year brought improvement in communication with the relevant authorities, as well as certain positive changes in the regulation. Nevertheless, out of 69 recommendations presented in the White Book 2016, four marked significant progress, two certain progress, while 63 marked no progress.

Positive developments include an enhanced dialogue with both the Ministry of Finance and the Tax Administration. Over recent months, the Ministry of Finance showed more openness and readiness to modernize the current framework, especially through the White Book Task Force subgroup on taxes, although we have not yet seen concrete results stemming from this collaboration. Also, throughout the year, the FIC had an open dialogue with the Tax Administration aimed at identifying key issues in law application and discussing the way forward in institutional reform in order to develop a modern and strong Tax Administration, which would, on the one side, provide an efficient service to compliant companies, and on the other, sanction those operating in the grey area.

Moreover, certain progress was also brought by (although sudden) changes of the two laws in December 2016. We highlight two improvements in the Law on Value Added Tax: rules related to the place of supply of services are now to a large extent harmonized with EU rules; and norms on VAT registration of foreign entities are clear, in line with best practices, decreasing the administrative burden both for the private sector and the Tax Authority. Moreover, we emphasize two improvements in the Tax Procedure Law: the second-instance procedure is moved from the Tax Administration to the Ministry of Finance, which should improve the quality of the proceedings (as this provision was made applicable as of July 2017, the exact effects are yet to be determined); and the first step was made towards harmonization of the Tax Procedure Law with the Inspection Oversight Law by explicitly stating that the tax procedure is to be performed in accordance with provisions of the law applicable to inspections.

In the future, the main recommendation is to start organizing public discussions on new draft laws. More specifically, we do not expect the Government to discuss the level of taxes, but rather the so-called "technical details" regulating the manner and process of paying taxes. We are convinced that expert discussion on the best practices and exchange of knowledge could help overcome current bottlenecks and inconsistencies in application of regulation and make Serbia a more stable place to invest. In addition, we give the following suggestions:

- Tax procedure: regulate the provisions of the Criminal Code concerning tax crimes in more detail to allow taking into account the size of the legal entity and volume of taxable activities; introduce an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance; and allow taxpayers to file amended tax returns an unlimited number of times;

- Corporate Income Tax: adopt definition of royalties for withholding tax purposes in line with the best international practices and signed treaties; introduce monthly or quarterly tax filings (instead for each transaction separately); further clarify the method of calculation and recognition of tax depreciation cost for the first group of fixed assets (acquired before Jan 1, 2004) , which caused numerous dilemmas and controversial interpretations in practice; and allow a full deductibility of marketing expenses;

- Value Added Tax: adopt one comprehensive rulebook instead of the many that currently exist (around 20!); a rulebook on VAT records (effective from 1 January 2018) should be reconsidered, including its requirements relating to the keeping of records and reduction of the number of categories in which invoices are recorded;

- Personal Income Tax: introduction of a synthetic system instead of a scheduler system that was abandoned in many developed countries; compensation for unused annual leave by an employee should be treated as damage compensation; and tax treatment of "team building" should be changed and adjusted to its economic nature (an investment made by a company in increasing productivity of employees, not as a fringe benefit of an employee);

– Parafiscal levies: all existing parafiscal levies should be reviewed and safeguarded against new ones that should be created; and a draft Law on Fees for the Use of Public Resources should be completed with a comprehensive analysis and alignment with solutions and tendencies of sectoral laws.

Foreign Exchange Regulations (average score 1.07)

The issue of the necessity for further liberalization of the Law on Foreign Exchange Operations is still in focus and identified as one of the main priorities of foreign investors. Out of 15 recommendations presented in the White Book 2016, one marked certain progress, while 14 marked no progress.

We note the following positive developments that took place: changes of a few by-laws slightly amended the regulation of foreign currency market operations and effective foreign currency transactions, but without bringing material improvements; the National Bank of Serbia issued an official opinion enabling automatic international payment for small amount transactions (up to EUR 1,000).

The main suggestions for the future are: allowing cash-pooling between affiliated companies; enable cross-border inter-company invoicing in order to simplify cross-border payments and further regulate netting operations; simplify all relevant by-laws and ease reporting requirements; harmonize various financial laws and regulations (e.g. the Foreign Exchange Law, the Law on Capital Markets, and the Law on Investments) in order to avoid ambiguities; and ensuring adequate law interpretation by the relevant authority (especially the NBS), based on regular interpretation standards; e.g. by considering all types of transactions as permitted under the Law, unless explicitly prohibited.

Bankruptcy (average score 1.00)

Over the previous period there have not been any substantial changes in this area apart from the fact that the Government of Serbia adopted the changes to the current law, which had not been endorsed by the Parliament by the time this publication went to print. Therefore, so far, no progress has been achieved in all 10 recommendations presented in the White Book 2016.

That being said, the only positive development is that the Government recognized the need to amend the law and the first reading indicates that some of the FIC recommendations will be endorsed.

The FIC gives three main suggestions: to restrict the additional possibility to prohibit enforcement over a bankruptcy debtor's property and disable debtors to prevent enforcement settlement for the indefinite period of time; to enable the possibility and procedure for amending the adopted reorganization plan; and to regulate the procedure of personal insolvency by changing the current Law on Bankruptcy or adopting a separate law.

FIC RANKING FOR 2017

TABLE 1: RANKING BY PROGRESS IN IMPLEMENTING RECOMMENDATIONS IN 2017

2017	Scores			Number of recommendations			Rating		Years
Recommendations	Average score in 2017	Average score in 2016	Change of scores in 2017	Significant progress in 2017	Certain progress in 2017	No progress in 2017	Rating in 2017	Rating in 2016	Average time of outstanding recommendations
Sectors									
Real estate: Construction land and development	2.13	2.14	-0.01	3	3	2	1	4	4.00
Protection of users of financial service	2.00	2.33	-0.33	1	2	1	2	2	3.50
Transport	1.95	1.45	0.50	1	17	2	3	26	4.60
Tobacco industry	1.86	2.00	-0.14	1	4	2	4	7	2.71
Consumer protection	1.83	2.14	-0.31	0	5	1	5	5	3.67
Private security industry	1.80	1.80	0.00	1	2	2	6	12	5.00
Environmental regulations	1.78	1.86	-0.08	0	7	2	7	11	4.33
Dual vocational education	1.75	NA	NA	0	3	1	8	NA	1.00
Intellectual property	1.75	2.00	-0.25	1	1	2	9	8	7.75
Human capital	1.75	1.25	0.50	0	3	1	10	34	8.25
Non-performing loans	1.75	NA	NA	1	4	3	11	NA	1.00
Oil and gas sector	1.70	1.75	-0.05	0	7	3	13	15	1.80
Arbitration proceedings	1.67	NA	NA	0	2	1	14	NA	4.67
Labour regulations: Temporary employment abroad	1.67	3.00	-1.33	1	0	2	15	1	1.00
Capital market trends	1.67	1.67	0.00	0	4	2	16	18	3.00
Protection of competition	1.63	1.75	-0.12	0	5	3	17	14	7.00
Judicial proceedings	1.63	1.50	0.13	1	3	4	18	24	3.38
Real estate: Cadastral procedures	1.60	2.00	-0.40	0	3	2	19	9	1.40
Public-private partnership	1.60	1.20	0.40	0	3	2	20	38	3.00
Telecommunications	1.58	1.60	-0.02	2	7	10	22	22	1.58
State aid	1.57	2.13	-0.56	0	4	3	23	6	2.71
Illicit trade fight and inspection control	1.50	1.25	0.25	0	5	5	24	36	2.55
Energy sector	1.50	1.67	-0.17	0	2	2	25	19	1.00
Law on personal data protection	1.50	1.67	-0.17	0	3	3	26	20	6.14
Pharmaceuticals	1.47	1.25	0.22	2	4	11	27	37	3.71

2017	Scores			Number of recommendations			Rating		Years
Recommendations	Average score in 2017	Average score in 2016	Change of scores in 2017	Significant progress in 2017	Certain progress in 2017	No progress in 2017	Rating in 2017	Rating in 2016	Average time of outstanding recommendations
Sectors									
Food safety: Livestock production	1.40	1.75	-0.35	0	2	3	28	17	3.40
Customs	1.36	1.78	-0.42	0	4	7	29	13	5.20
Food safety: Food safety law	1.36	1.08	0.28	2	0	9	30	44	2.55
Investment and business climate	1.33	1.60	-0.27	0	1	2	31	23	4.33
Public procurement	1.33	1.33	0.00	0	2	4	32	28	3.00
Labour regulations: Staff leasing	1.33	1.33	0.00	0	1	2	33	29	7.33
Digitalization and E-Commerce	1.33	1.20	0.13	0	2	4	34	39	3.50
Trade	1.30	1.30	0.00	0	3	7	35	31	5.17
Taxes: Para fiscal duties	1.29	1.00	0.29	1	0	6	36	47	3.00
Taxes: Value added tax	1.27	1.18	0.09	2	0	13	37	41	2.73
Food safety: Declarations on food products	1.25	1.50	-0.25	0	1	3	38	25	2.00
Law on whistle-blowers	1.25	1.00	0.25	0	1	3	39	48	2.00
Labour regulations: Employment of disable persons	1.20	1.33	-0.13	0	1	4	41	30	4.80
Taxes: Tax procedure	1.20	1.00	0.20	1	1	13	42	49	2.67
Food safety: Sanitary and phytosanitary inspections	1.18	1.29	-0.11	0	2	9	44	32	3.82
Leasing	1.13	1.43	-0.30	0	1	7	46	27	1.71
Homecare products and cosmetic industry	1.13	1.00	0.13	0	1	7	47	50	2.63
Taxes: Property tax	1.13	1.00	0.13	0	1	7	48	51	2.50
Labour regulations: The Labour law	1.12	1.00	0.12	0	2	15	49	53	4.29
Foreign exchange operations	1.07	1.17	-0.10	0	1	14	50	42	3.53
Prevention of money laundering	1.00	2.00	-1.00	0	0	3	51	10	7.33
Insurance: Motor third party liability	1.00	1.00	0.00	0	0	8	52	52	2.63
Food safety: Registration process for plant protection products	1.00	1.00	0.00	0	0	3	53	46	6.33
Law on notaries	1.00	2.25	-1.25	0	0	3	54	3	2.00
Law on payment transactions	1.00	1.67	-0.67	0	0	3	55	21	2.00

2017	Scores			Number of recommendations			Rating		Years
Recommendations	Average score in 2017	Average score in 2016	Change of scores in 2017	Significant progress in 2017	Certain progress in 2017	No progress in 2017	Rating in 2017	Rating in 2016	Average time of outstanding recommendations
Sectors									
Taxes: Personal income tax	1.00	1.20	-0.20	0	0	10	56	40	2.40
Insurance: Natural disasters and shared services	1.00	1.00	0.00	0	0	3	57	55	2.00
Insurance: Corporate governance issues	1.00	1.00	0.00	0	0	4	58	56	2.00
Insurance: Law on insurance	1.00	1.00	0.00	0	0	4	59	57	3.00
Insurance: Remaining issues	1.00	1.00	0.00	0	0	7	60	58	1.43
Labour regulations: Law on foreigners	1.00	1.00	0.00	0	0	4	61	59	4.00
Law on bankruptcy	1.00	1.00	0.00	0	0	10	62	60	1.40
Real estate: Mortgages and real estate financial leasing	1.00	1.00	0.00	0	0	4	63	61	2.75
Law on the central registry of temporary restriction of rights	1.00	1.00	0.00	0	0	2	64	62	1.50
Real estate: Restitution	1.00	1.00	0.00	0	0	3	65	63	2.00
Taxes: Corporate income tax	1.00	1.00	0.00	0	0	14	66	64	3.50
Company law	1.00	1.00	0.00	0	0	4	67	65	3.75
Food safety: Milk production quality standards	1.00	1.00	0.00	0	0	8	68	66	3.50
Divisions									
Human capital and vocational education	1.75	1.25	0.50	0	6	2	12	35	4.63
Real estate	1.60	1.75	-0.15	3	6	11	21	16	2.54
Food & agriculture	1.21	1.27	-0.06	2	5	35	40	33	3.60
Labour regulations	1.19	1.12	0.07	1	4	27	43	43	4.31
Taxes	1.14	1.06	0.08	4	2	63	45	45	2.80
Insurance	1.00	1.00	0.00	0	0	26	69	54	2.19
AVERAGE/TOTAL	1.37	1.39	-0.02	21	130	308			3.45

RANKING METHODOLOGY

Starting with this edition, the *White Book* will rank each economic activity according to the progress made in implementing recommendations offered by the FIC for improving the business climate and regulations in Serbia. The ranking methodology was laid down in the *White Book* for 2011, which first provided tables with score cards assessing the progress that had been achieved in the previous year. Based on that, we now offer quantitative scores that measure progress and compare the level of accomplishments across sectors and years. The scores are calculated on a Likert-type scale with three levels: significant progress (3 points), certain progress (2 points) and no progress (1 point). Certain progress is the exact midpoint between the two extreme values of significant progress and no progress.

Any quantitative ranking methodology based on subjective rating has its advantages and disadvantages. The clear advantage is that even a huge set of rated items can be reduced to a few indicators or scores which are mutually comparable and clearly observable. Based on these scores we can easily infer whether any progress was made in a sector compared to the previous year, and how that sector performed compared to all other sectors. Finally, it is also possible to infer if the country on the whole made progress relative to the previous year or whether it merely stagnated.

On the other hand, there are many challenges in making a proper rating assessment. Each member of the FIC is treated equally in the process of evaluation, and each sector has equal chances to influence the final result. It is true that the FIC identified the so called "pillars of development", i.e. the sectors with the strongest influence on the overall economy, but they are given equal weight in the rating process. Another challenge is that we cannot rely on a questionnaire with predefined items subject to evaluation. Problems across sectors are different and they change over time. Therefore, the number of recommendations across sectors cannot be predetermined in advance and remain the same from year to year. The sets of recommendations change in parallel with the legislation and economic policy of the Government of Serbia. The final consequence is that we must deal with a varying number of recommendations with respect to the observed sectors and years.

In order to overcome this problem to some extent, the scores are calculated as weighted average scores[1]. Consider Table 1. - The transport sector had one recommendation evaluated as significant progress (1x3), 17 recommendations with certain progress (17x2=34), and two recommendations with no progress (2x1=2), which altogether have 39 points (3+34+2). If this number is divided by the number of recommendations (1+17+2 = 20), we will get 1.95 as the weighted average score for the transport sector. This score can be compared with all other sectors' scores, for instance with the sector of protection of users of financial services, which has only four recommendations, but a weighted average score of 2.0. Without the weighted average scores, comparisons would not be possible due to significant differences in the number of recommendations for each sector.

Of course, average scores tend to conceal the variability of progress in implementing the recommendations. Because we are aware of this shortcoming we approximate the underlying variability with the number of recommendations without any progress, which can be easily compared with the total number of recommendations. This information will be used as an auxiliary criterion for identifying the worst performing sectors. Additionally, the time when each recommendation was first made and the number of years that passed by before it is fully implemented is also relevant information. The shorter, the better. Although this information does not affect the ranking, it is disclosed in the table as a relevant fact.

In addition to the current year's scores, the table also provides the scores for the previous year, to track each sector's progress over the short term. A few sectors topping this year's ranking ranked quite low in 2016. For instance, the transport sector ranked 26th last year and is now at a very high 3rd place.

In Table 1, the first twelve sectors are the best performers, and the last twelve sectors the worst performers in 2017. The best performers had no more than one or two recommendations without any progress. As for the worst performers, all of the selected sectors are in the last bracket. There are 6 cross-cutting areas, these are: Human Capital

1 Let $\mathbf{q}_i$ be the score in sector i (i = 1, 2,...69), $\mathbf{p}_j$ is the three-level Likert-type scale measuring progress in implementing recommendations (j = 1, 2 or 3), and $\mathbf{N}_{i,j}$ is the number of recommendations in sector i according to the type of progress j. The formula for the weighted average score is: $q_i = \frac{\sum_{j=1}^{3} p_j \cdot N_{i,j}}{\sum_{j=1}^{3} N_{i,j}}$.

and Vocational Education, Real Estate and Construction, Food Safety, Labour Regulations, Taxes and Insurance. Table 1 clearly shows which sectors are comprised by each area. The six cross-cutting areas are listed in the bottom section of Table 1, in a separate bracket. There are 63 sectors and 6 cross-cutting areas. In 2017, the FIC made 459 recommendations in total. The year before, there were 413 recommendations, which means that the number of recommendations increased by more than 11% in 2017. The average score in 2017 was 1.37, which was slightly lower than in 2016, when it amounted to 1.39. The difference of - 0.02 points indicates that no improvements were made in 2017 in implementing recommendations relative to 2016. Also, the time required to follow up on outstanding recommendations increased from 3.10 years in 2016 to 3.45 years in 2017.

FIC OVERVIEW

2017 is a special year for the Foreign Investors Council – we were established 15 years ago as an independent business association with the mission to contribute to the improvement of the investment environment in Serbia through dialogue with relevant stakeholders. To provide expert advice, share the best practices, and promote harmonization with EU rules - to be a partner for growth.

Therefore, this is the time to reflect on those postulates and measure the FIC as it is today. To assess our work in the past decade and a half, mark the most important moments, recognize our achievements, define "lessons learned", identify opportunities, and pave the way forward.

GROWTH

From an association established by 14 companies, the FIC grew to gather over 130 companies which have invested over EUR 34 billion[1] and employ more than 97,500 people[2] in Serbia. This data can be compared to records from 2003, which show that FIC members made investments in the amount of EUR 150 million and employed 3,160 people[3]; or to those from 2012, which state that FIC members account for almost EUR 17 billion of investments and have more than 88,000 employees[4]. These figures are impressive by default, but also because they corroborate the fact that this association is continuously growing. They also confirm the FIC message that foreign investors, FIC members, have a long-term interest in developing their operations in Serbia and helping make the Serbian economy and society become more prosperous, richer, and more developed.

EXPERTISE

The FIC currently has 136 members, coming from more than 30 different sectors: from food and agriculture, energy, electronics, the automotive industry, and various types of industrial manufacturing, to financial services, telecommunications and IT, pharmaceuticals, etc. The list is long and available on the FIC website. At the same time, the FIC is a truly international association - 74% of members come from the EU, 11% from USA, and the remaining ones from different corners of the world, from Russia and China, to the United Arab Emirates, Israel, and Australia, etc. Keeping the aforementioned in mind, the FIC undoubtedly represents an infinite pool of knowledge and experience on various regulatory topics that relate to the business environment.

However, the key to FIC expertise does not only lie in the wealth of its membership base. It is also very closely linked to the essence of the FIC itself – the fact that the FIC does not transmit the individual positions on the business environment of its members, but rather promotes the views of the majority. In its daily operations, the FIC continuously organizes a structured exchange of views and ideas between members, a kind of internal "members debate on the business climate", aimed at finding a common denominator that fits all. This is not a simple task, if one considers the fact that many of FIC members are competitors, or are horizontally or vertically intersecting, or come from competitive industries, or simply have opposite views and interests. However, as a result, the FIC promotes views and recommendations which have been carefully assessed and evaluated, taking into account the interests of various sectors and industries, with a meticulous selection between various possible solutions.

The main vehicle for organizing "members' debate on the business climate" are the FIC working committees. They represent forums within which representatives of member companies analyse specific regulatory areas and policies, and formulate joint conclusions and proposals. The FIC currently has ten committees, both cross-sectoral, like Anti-Illicit Trade, Digital and E-Commerce, Human Resources, Infrastructure and Industrialization, Legal and Taxation; and sectoral, such as Food and Agriculture, Leasing and Insurance, Real Estate, and Telecommunications and IT. The youngest amongst them is Infrastructure and Industrialization, formed in March of this year. The FIC forms and dissolves working committees based on members' interest to participate in impacting the improvement of the regulatory framework in a specific area.

INDEPENDENCE

In 2002, the FIC was established as an independent business association, formed to present the unbiased recommendations of the foreign business community on how to improve the business environment in Serbia. Over time, the FIC developed various tools in order to preserve its independence. Here, we will name only the two most important ones. First, the FIC is self-sustainable, as its operations are

1 Data for the entire period of members' operations in Serbia, source: FIC records

2 Data for 2017, source: FIC records

3 Source: FIC records

4 Source: The White Book 2012

financed solely by membership fees – no external grants, donations, or sponsorships are accepted (except individual members' sponsoring of membership networking cocktails once/twice a year). Secondly, the FIC has put into place a two-step decision-making process designed to ensure that the determined FIC positions represent the view of the majority, and do not oppose the interests of other member companies. All decisions are taken first on the level of the working committees, with the full inclusion of members, after which they need to be confirmed by the Board of Directors. It goes without saying that the FIC way of working might have some disadvantages, in terms of budgetary constraints and/or a lack of efficiency in decision-making, but at the same time it gives weight and credibility to FIC views and recommendations.

COOPERATION

Since its establishment, the FIC has worked to be a reliable and constructive partner to all institutions and organizations which have been active in the area of business climate reforms.

We have been devoting special attention to building dialogue with the main stakeholder – the Serbian authorities. We are glad to note that the Serbian authorities have always been receptive towards the FIC. Even more so, we are proud of the fact that our dialogue has matured and deepened over the years, ultimately leading to a formation of the joint Task Force for the implementation of White Book recommendations in January this year. While we are aware that there will always be a certain difference of opinion between the Government and the private sector, we are confident that an open and concrete exchange of opinions/proposals can facilitate faster reforms and economic development of the country.

In parallel, during the past 15 years, the FIC also developed an active dialogue with all other relevant stakeholders. We have been investing significant resources in sharing the views of the foreign investors gathered in the FIC with international financial institutions, development agencies, embassies, etc. Last but certainly not least, we have been continuously interacting with our colleagues from other business associations – mutually benefiting from an exchange of information, as well as launching joint initiatives to resolve specific regulatory problems. We believe in dialogue and the positive impact that synergy with partners can bring, and we will remain open to cooperation in the future.

BEST PRACTICES

High ethical standards, clear management rules, and innovation are of great significance for the FIC and its members. In our daily operations, we work to promote the best practices within the organization and towards local companies, Government, and other external stakeholders.

From a member company's perspective, foreign investors bring not only fresh capital but also new technologies, strong corporate rules, solid business ethics, and a sustainability concept – acting responsibly towards shareholders, the workforce, suppliers, clients, the environment, and society in which they operate.

From an association perspective, the FIC developed a set of statutory norms that introduced strong ethical rules and corporate governance principles. Over the years, the FIC has adopted a series of statutory acts determining the rights and obligations of FIC members and officials in more detail, promoting competition rules, and defining guidelines for engagement in the FIC. All this aims at making the FIC an association that ensures a level playing field within itself and which communicates and cooperates with its stakeholders in a transparent, consistent, and reliable way.

EU INTEGRATION

The Foreign Investors Council is characterised by yet another particularity linked to a strategically important process for Serbia – that of European integration. Seventy-four percent of FIC members come from the European Union, whilst other members also have an EU footprint. Thus, the FIC has the unique ability to combine knowledge and experience about the European and Serbian markets and give advice and concrete suggestions as to how to go through the process of economic integration of Serbia into the EU as efficiently and productively as possible.

Since the start of accession negotiations between Serbia and the European Union, the FIC has increased its engagement in this field, maintaining regular dialogue with both negotiating sides and providing expert advice.

MAIN PROJECTS

- The White Book (since 2003)
- The Reality Check Conference (since 2010)
- The Dialogue for Change (since 2017)
- The Government-FIC White Book Task Force (2017)

KEY REGULATORY ACHIEVEMENTS – IMPLEMENTATION OF FIC RECOMMENDATIONS BY SERBIAN AUTHORITIES

2003 – Customs Law – liberalization, in line with WTO rules

2004 – Company Law – i.e. quick registration of new business

2005 – Law on Foreign Trade – cancelled obligation to register "foreign trade activity"

2006 – Forex Law – liberalization in terms of exports, real-estate, securities

– Takeover Law – level playing field for market participants;

– Law on Accounting

2007 – Changes of VAT Law – clearing ambiguities

2009 – Construction Law – enabled private ownership over land

– Competition Law - more in line with EU regulation

– Set of environmental laws – EU harmonized (i.e. integrated waste management system)

– Bankruptcy Law – more efficient and professional insolvency procedure

– Law on Foreigners – streamlined procedures for foreigners residing in Serbia

– Abolished mandatory membership in the Serbian Chamber of Commerce

2010 – Law on Tax Procedure and Tax Administration – introduction of voluntary disclosure, five-year statute of limitation introduced

– Several parafiscal charges blocked/abolished: irrigation fee, forest fee, tax on mobile phones

2011 – New Company Law responded to 90% of White Book recommendations

2012 – VAT Law improved (i.e. reverse charge introduced)

– Parafiscal charges significantly decreased

– Mobile number portability introduced

– Abolished obligatory reserves for leasing products

2013 – Law on Corporate Income Tax improved (i.e. calculation of tax depreciation)

– Law on Tax Procedure and Tax Administration improved (binding opinions by the Ministry introduced)

– Law on Trade improved (i.e. private label products introduced, abolished the obligation to do an impact study)

2014 – New Labour Law – responded to 65% of White Book recommendations (i.e. fixed-term employment extended to two years, significantly lowered burden of severance payments, limited application of industry-wide collective agreements)

– Changes to Bankruptcy Law – responded to 55% of White Book recommendations (i.e. changed status of affiliated entities, introduced the category of collateral creditors)

– Law on Consumer Protection (i.e. norms on sanctioning unfair business practices, effective resolution of consumer disputes)

– Insurance Law – harmonization with EU rules

– Fixed number portability introduced

2015 – Construction Law – streamlined construction permitting procedure

– Law on Inspection Surveillance – better coordination between relevant state bodies

– Improved Enforcement Law

– Blocked adoption of the Disqualified Persons' Act

– Resolving implementation issues:

– Law on Foreigners – foreigners may get working permit for multiple functions

– Submission of financial statements – foreigners enabled to receive electronic certificates

2016 – Conversion Law – change of right of use to ownership over land enabled in most parts of Serbia

– Competition Protection - improved merger control regulation

2017 – Construction Law – efficient implementation

– Consumer protection – building public awareness

– Transport – infrastructure network development

LESSONS LEARNT

- Prescribe the rules, respect them and do everything "by the book"
- Be open to constructive criticism and ready to constantly improve
- Be clear in your views and never point to a problem without offering a solution

FIC WORKING COMMITTEES

Since

- 2002 Legal Committee
- 2002 HR Committee
- 2008 Taxation Committee
- 2009 Real Estate Committee
- 2009 Telecommunications & IT Committee
- 2010 Food and Agriculture Committee
- 2011 Leasing and Insurance Committee
- 2014 Anti-Illicit Trade Committee
- 2016 Digital and E-Commerce Committee
- 2017 Infrastructure and Industrialization Committee

15+

While being proud of our first 15 years and the achievements that we have made, we are also aware that there is still a lot of work to be done and that we can still significantly contribute to making Serbia more competitive, richer, and appealing to new investment. With that in mind, the Foreign Investors Council will carry on diligent work on formulating recommendations for better business conditions in Serbia. We will continue being a reliable partner to the authorities and all relevant stakeholders in the process of creating a sustainable business environment in Serbia.

OVERVIEW OF THE PERIOD OCTOBER 2016-2017

During the period between October 2016 and October 2017, there were two important highlights for the FIC – formation of the White Book Task Force and launch of the new FIC conference, "Dialogue for Change".

The most significant event was the formation of the Task Force for the Implementation of White Book recommendations, established jointly by the Government of Serbia and the FIC in January 2017. Its purpose is to accelerate implementation of White Book recommendations and thus improve the country's competitiveness and investment attractiveness. The Task Force was created at the initiative of then Prime Minister Aleksandar Vučić, who presented it at the launch event of the White Book 2016, while Deputy Prime Minister Zorana Mihajlovic gave instrumental support to its realization. The Task Force gathers the highest Government representatives – the Prime Minister and relevant ministers, and FIC representatives – the Board of Directors and Executive Director, who should meet regularly to assess achieved progress and set new goals. In addition, six sub-groups were formed, consisting of state administration and FIC working committee chairmen, as vehicles for the implementation of decisions taken. The FIC prepared the proposal of the work plan which compiles 30 activities

and concentrates on seven areas of priority interest: taxes, labour, real-estate, digitalization and E-Government, food safety and inspection, bankruptcy, and foreign exchange regulations (for more information see: Table 2). While the formation of the Task Force undoubtedly demonstrates the Government's readiness to work with foreign investors on improvement of the business climate, we hope that it will also bring concrete results in overcoming the current obstacles for doing business.

Parallel to this engagement, the FIC has continued its regular regulatory activities, analysing 18 different laws and by-laws and submitting 24 written initiatives for changing existing regulations. Moreover, the FIC started a review of ten additional laws, half of which through membership in Government working groups. We have been also closely monitoring the implementation of these laws, paying extra attention to the level and consistency in the enforcement of laws and regulations adopted in the recent period. We looked into a variety of areas, including: taxes (corporate income tax, personal income tax, value added tax), tax treatment of unused annual leave, labour law, the law on foreigners, e-commerce, construction law, conversion law, company law, bankruptcy, competition protection, SCC obligatory membership and fees, financial collaterals, loans indexed to a foreign currency, enforcement, prevention of money laundering and terrorism financing, personal data protection, civil procedure law, foreign exchange regulations, investment funds, as well as in the fields of food and agriculture (sanitary inspection, food safety, plant protection products), and telecommunications (law on electronic communications).

Keeping all the aforementioned in mind, we can conclude that the FIC engaged in a very active dialogue with the Government on all levels – from meetings with the highest Government officials to deep discussions with representatives of the state administration. This spring we once again had to decide to pass the organization of the well-known Reality Check Conference, as it coincided with national elections. On the other hand, we chose to organize a new format of the private-public dialogue.

In 2017, the FIC started organizing a new conference, "Dialogue for Change", which focuses on specific regulatory topics and enables direct interaction between high Government officials, FIC committee chairmen, and the audience. The goal of the conference is to reach common conclusions and to trigger concrete changes which improve doing business conditions in Serbia. In March, the FIC organized a kick-off event focusing on digitalisation and telecommunications, featuring discussion with then Minister of Public Administration and Local Self-Government Ana Brnabic and State Secretary for telecommunications Tatjana Matic. The event immediately made a concrete positive impact, as it resulted in inclusion of mobile platforms in the e-Government Action Plan, an official Government document. In June, a "Dialogue for Change" dedicated to taxes was organized, featuring Tax Administration Director Dragana Markovic and EU Commission representative Reinhard Biebel. The opportunity was used to discuss how important it is to modernize the Serbian tax system and administration and harmonize it with EU rules and practices.

Having said that, the FIC continued its active engagement in the process of European integration. Besides hosting EU Commission representative at the "Dialogue for Change", the FIC carried on regular communications with EU institutions and once again organized its official annual visit to the EU capital. In early October, the FIC delegation met the Serbian negotiating team; and after that travelled to Brussels, where it had a series of meetings with seven directorate-generals of the European Commission, European External Action Service (EEAS), European Parliament, and CEFTA Secretariat. We deemed it important to consistently convey that Serbia should remain in EU focus and that we are ready to provide active support to both negotiating parties in order to better understand the particularities of the Serbian market and modalities of its adjustment to European principles and standards.

Throughout the year, the FIC also held an active dialogue with all other relevant stakeholders, international financial institutions, development agencies, embassies and, of course, other business associations. We also launched a joint initiative with the American Chamber of Commerce on the necessity of increasing the predictability of the regulatory framework. We believe in dialogue and the positive impact that synergy with partners can bring and we will remain open to cooperation in the future.

In closing, let us point out that everything the FIC does comes from the 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, the 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 operating with high governance standards and contributing to societies in which they operate.

In order to attain its goal, the Foreign Investors Council will continue paying close attention to members' interests, stimulate active debate, and studiously produce recommendations to increase the competitiveness of the Serbian market and make it more attractive for new investments. We will continue being a reliable partner and engaging in constructive dialogue with all the relevant stakeholders in a joint effort to foster the economic development of Serbia.

- The Foreign Investors Council was established in 2002, by 14 foreign companies, with the 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".

TABLE 2: FIC PROPOSAL OF ACTIVITIES OF THE WHITE BOOK TASK FORCE

№	TOPIC	ISSUE	ACTIVITY / GOAL
1. TAX			
1.1	TRANSPARENCY AND PREDICTABILITY OF LEGISLATIVE PROCESS	Adoption of regulation without public discussion	The laws should be adopted and/or amended in the regular procedure and not in an urgent procedure, so as to enable a very important public debate, with a timely submission of draft laws and by-laws to be available to the public and for public discussion (application of Article 41 of the Government Rules of Procedure)
1.2	TAX DEPRECIATION FOR THE FIRST GROUP OF FIXED ASSETS	Method of calculation and recognition of tax depreciation cost for the first group of fixed assets	To revoke the Opinion of the Ministry of Finance No.413-00-97/2014-04 issued on 09/11/2015 or to amend the Rulebook on the Fixed Assets Classification in Groups and Depreciation for Tax Purposes (align Article 9 of the Rulebook with Article 10 of the Corporate Income Tax Law)
1.3	TAX TREATMENT OF "TEAM BUILDING"	Tax treatment of "team building" as fringe benefits of an employee	To change the Opinion of the Ministry of Finance issued in 2015, as "team building" expenses should be treated on a case-by-case basis
1.4	WITHHOLDING TAX ON SERVICES	Tax filings for each transaction separately	Amend the CIT Law (Article 40) in order to reduce the administrative and financial costs of the application of withholding tax on services by introducing monthly or quarterly tax filings
1.5	TAX CRIMES	The same threshold for tax-related criminal offences is applied to both small-sized and the largest companies	To regulate the provisions of the Criminal Code concerning tax crimes (Article 225) in more detail to allow taking into account the size of the legal entity and the volume of taxable activities

№	TOPIC	ISSUE	ACTIVITY / GOAL
1.6	FAIR VALUE OF ASSETS	The CIT Law does not make a clear difference between impairment of assets and decrease of fair value of assets, for which IFRS prescribes different rules and treatment	Change the rules regarding tax deductibility of impairment expenses (Article 22v of the Corporate Income Tax Law) and make it clear that a decrease of fair value of assets does not represent an impairment expense. In this way, increases and decreases of fair value of assets would be treated in a fair way.
2. LABOUR			
2.1	TAX TREATMENT OF COMPENSATION FOR UNUSED ANNUAL LEAVE	Opinions of the Ministries of Finance and Labour changed the tax treatment of compensation for unused annual leave, treating it as a salary Increased costs for employers and lower net-income for employees	To act in line with Article 76 of the Labour Law and compliant Opinion of the Ministry of Labour 011-00-12/2015 issued on 4 June 2015, which treated payment for unused annual leave as compensation for damage. To revoke the Opinions of the Ministry of Finance No. 413-00-274/2014-04 issued on 17 October 2016 and the Ministry of Labour No. 101-00-721/2016-02 issued on 7 October 2016, which treat compensation for unused annual leave as a salary
2.2	STAFF LEASING	A lack of formal regulation of staff leasing, although it exists in practice	Adoption of the Law on Staff Leasing under the regular legislative process with a public debate. All important issues should be regulated (relationship of an employer and individual, employer and service user, occupational health and safety, etc.)
2.3	SALARY CALCULATION	Salary structure and calculation are very complex A different system of salary calculation in the RS creates an additional barrier to foreign investment and increases the costs	Change Article 106 and Article 107 of the Labour Law To simplify the salary structure and calculation Work performance should not be a mandatory, but rather a discretionary portion of the salary Allow free agreements between employees and employers on the structure of salary and additional benefits and establishment of a salary system that will stimulate employees' performance
2.4	SALARY COMPENSATION	Salary compensation during leave from work (sick leave, national holidays, annual leave etc.) is higher than the salary, in case the employee receives a bonus The employer's inability to plan the costs	Change Article 114, Article 115 and Article 116 of Labour Law The salary compensation during leave from work should be equal to the amount of the base salary increased by seniority
2.5	WORK PRACTICE	The Labour Law limits the possibility to engage individuals (i.e. students) in order to gain practical knowledge and skills relevant for future employment	Change Article 201 of the Labour Law To define a modality for engaging students and other individuals under non-standard employment terms for the purpose of gaining practice in a real work environment without prescribing additional conditions limiting such engagement

№	TOPIC	ISSUE	ACTIVITY / GOAL
3. INSPECTIONS AND FOOD SAFETY			
3.1	IMPORT PROCEDURE / TRADE	EU certificates are not recognized in the RS, meaning that an additional analysis is often required, which slows down the free movement of goods	Facilitate the acceptance of certificates of foreign accredited laboratories which would increase the competitiveness of the Serbian market (amendments to Articles 22 and 94 of the Customs Law, implementation of Article 36 of the Food Safety Law and of Article 124 of the Veterinary Law)
3.2	LAW ON INSPECTION OVERSIGHT	The Law on Inspection Oversight not fully implemented, deadlines for implementation breached	Formation of the Unit for support of the Coordination Commission (implementation of Article 12 of the Law on Inspection Oversight) Adoption of compliant sectoral laws (implementation of Article 69 of the Law on Inspection Oversight): 1. Ministries submit statements of compliance to the Coordination Commission 2. The Coordination Commission submits proposal of harmonization to the Government 3. The Government determines the appropriate level of harmonization Enhancing the efficiency in processing illicit trade cases before judicial bodies by: 1. forming specialized departments in police, prosecution, and courts (in line with Law on organization and jurisdiction of state authorities in combating organized crime, terrorism and corruption) 2. training organized in cooperation with the FIC
3.3	FREE MOVEMENT OF GOODS / TRADE	The import procedure is complicated and burdened with formalities. Discretionary rights of inspections and no timeframe for completing border inspection	Introduction of integrated control of border crossings by all the involved departments (efficient cooperation of different institutions and clearly defined competencies); implementation of the Integrated Border Management Strategy 2017-2020 and adoption of the Action Plan Introduction of Guidelines for inspectors in terms of the number of samples taken, sampling procedures, types of laboratory tests to be performed, timeframe, etc.
3.4	FOOD SAFETY LAW	A lack of compliance with EU regulations	Adoption of the new Food Safety Law and relevant by-laws fully compliant with EU regulations within regular legislative procedure with a public debate
3.5	RISK ASSESMENT	No risk analysis Insufficient capacities and funds of inspection services The National Reference Laboratory is not conducting all prescribed activities	Establishing the risk assessment system in terms of food safety (production process control) and the fight against illicit trade (implementation of Articles 6 and 23 of the Food Safety Law and Articles 9 and 10 of the Law on Inspection Oversight) Allocation of adequate resources and funds to law enforcement bodies (inspections) Full functioning of the National Reference Laboratory (implementation of Article 19 of the Food Safety Law)

№	TOPIC	ISSUE	ACTIVITY / GOAL
4. REAL ESTATE			
4.1	CADASTRAL PROCEEDINGS	All relevant data are not easily accessible to the public	Free-of-charge online access to all relevant data honouring personal data protection regulation
4.2	CADASTRAL PROCEEDINGS	Proceedings are uneven, inconsistent and complex	Creating a Response Unit to comprise representatives of the the RGA, the Ministry of Construction, Transport and Infrastructure and the FIC, meeting every two (2) months with the aim of unifying practice
4.3	CONVERSION	Uneven implementation of the Conversion Law	Adopt Rulebook/Guidelines for implementation of the Conversion Law
4.4	CONVERSION	A lack of implementation of the Conversion Law	Change the Conversion Law and its application: • refrain application of Art. 11, point 6 of the Conversion Law to tackle only cases when it concerns majority public/state owned companies • Extend deadline by two (2) additional years, in which the right of use is to be considered an appropriate title for obtaining a construction permit
4.5	CADASTRAL PROCEEDINGS	Need to improve the current Law	Creating a WG to draft the new Law on State Survey and Cadastre, including participation of FIC representatives
5. ELECTRONIC-BUSINESS, E-COMMERCE AND E-GOV			
5.1	FRAMEWORK FOR ELECTRONIC IDENTIFICATION AND TRUST SERVICES IN ELECTRONIC COMMERCE	Low usage of digital signature	Introduction of different levels of authentication with different levels of security: advanced, medium and regular level of security in the Law on Electronic Document, Electronic Identification and Trust Services in E-commerce. The required level of security for each transaction will be based on its economic value and legal importance. Expanding the use of electronic identification schemes which are foreseen for the communication between state authorities to be also used between private legal entities Activities: • Change the Law on Electronic Document, Identification, and Trust Services in E- commerce, to add needed rules in articles 18 and 20 and adopt that version of Law in order to expand electronic schemes to business and citizens • To adopt a by-law which closely defines which level of authentication is needed for a specific type of legal activity/transaction: regular, medium, advanced

№	TOPIC	ISSUE	ACTIVITY / GOAL
5.2	DIGITAL CONTENT	Purchase on App Stores (e.g. Google Play) directly via mobile phones	A more flexible interpretation of the Law on Foreign Exchange Operations and the Law on Payment Services in order to enable payment of content through monthly bills for mobile services • Activity: Initiative towards the National Bank of Serbia to give a positive opinion on legal interpretation that would enable this model
5.3	INCREASING AWARENESS OF E-COMMERCE/DIGITAL SERVICE	A lack of awareness about all advantages of e-commerce, digital services and data protection	Cooperation of different stakeholders regarding a wider usage of e-commerce and education of representatives of public bodies and companies, entrepreneurs, and citizens • Activity: Align with the Ministry of Public Administration and Local Government activities to conduct a national awareness campaign concerning the importance of digital services
5.4	M-GOVERNMENT	Accessibility of e-government on mobile platforms	Implementation of the M-Government platform • First activity: A swift decision by the Government about the implementing model: self-financing by the state or in the form of public-private partnership
6. BANKRUPTCY AND FOREX			
6.1	BANKRUPTCY PROCEDURE	Enforcement in bankruptcy procedure	Change the Bankruptcy Law: • Restrict additionally the possibilities for banning enforcement against the bankruptcy debtor's property during the procedure of adoption of the pre-drafted reorganisation plan, in order to prevent bankruptcy debtors from averting an enforcement settlement over an indefinite period of time and without the support of the majority creditors through multiple consecutive initiations of bankruptcy proceedings
6.2	BANKRUPTCY PROCEDURE	No possibility of pledging a bankruptcy debtor's property	Change the Bankruptcy Law: • Stipulate the possibility of pledging a bankruptcy debtor's property, in order to enable potential buyers without other property which could be pledged for the providing of funds necessary for the purchase price. • This is the first step that will lead towards an increase in successfully finalized sales, a higher price, and better payout of creditors in bankruptcy proceedings.

№	TOPIC	ISSUE	ACTIVITY / GOAL
6.3	BANKRUPTCY PROCEDURE	Two instance procedures with respect to collection of secured creditors	Change the Bankruptcy Law: • Additionally regulate the position of secured and pledged creditors in a way that provides the two instance procedures with respect to their settlement from the sale of pledged property
6.4	FOREIGN EXCHANGE OPERATIONS	Enable resident individuals to provide warranties and other security instruments by order and in favour of non-resident creditors	Change the Forex Law: • Currently, only a resident legal entity can provide warranty to a non-resident as per transaction of import of goods and services of another resident, as well as to a non-resident who performs investment works in the Republic of Serbia. This possibility should be extended to all other types of transactions, as well as be allowed to resident individuals. • Current restrictions do not have any practical ratio, but their derogation would significantly facilitate doing business for both residents and non-residents (investors).
6.5	FOREIGN EXCHANGE OPERATIONS	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	Change the Forex Law: • Legislation in force prescribes that a resident legal entity may issue guarantees and other forms of warranties for credit transactions between two non-residents abroad under the condition that the non-resident – debtor in credit transaction is in majority ownership of the resident. • Such a restriction shall be derogated because there is no reason to limit the possibility of issuing warranties based on the order and in favour of a non-resident only for credit transactions. • Hence, such a possibility shall be granted for all other commercial transactions between two non-residents under the condition that the non-resident – debtor in credit transaction is in majority ownership of the resident. • This would help resident legal entities to improve their business established abroad.

CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

The challenges faced by modern society, both in the underdeveloped and developed parts of the world, impose the pressing need for transformative and innovative societal and economic changes. Evidenced by high unemployment rates and social exclusion, demographic changes that reshape the landscape of our societies, and increased environmental risks linked to climate change, these challenges are driving a new level of business collaboration with governments and civil society to achieve large-scale and systemic impact. As the driving force behind economic growth, the business sector is uniquely positioned to help establish a more equitable, inclusive, and sustainable society, and as this understanding becomes increasingly common for both companies and social partners, we are witnessing increased corporate engagement in society, as well as the rise of influential multi-sector initiatives.

Commitment to Sustainable Development – Leaders' Promise to People Everywhere

Designed as a promise by leaders to all people everywhere, and a universal, integrated, and transformative vision for a better world as stated by Ban Ki-Moon, at the time Secretary-General of the United Nations, the 2030 Agenda for Sustainable Development's implementation officially began on 1 January 2016, following a call for collective action. The year behind us was inspired by the 17 Sustainable Development Goals (SDGs), which resulted in various activities that put the role of business in the forefront.

In this regard, a lot of attention is paid to discussing the alignment of business strategies with the SDGs, along with measuring and managing their contribution. By integrating sustainable practices into their core business, companies become ever more important stakeholders in tackling socio-economic topics such as unemployment and economic inequality, human and labour rights, sustainable industrialization, innovation, and climate change. And while SDGs enable companies to easily report on sustainable development performance using common indicators and a shared set of priorities, the monitoring of national progress constitutes a tremendous challenge for all countries, including Serbia.

In order to fulfill state leaders' commitment to engaging in a systematic follow-up and review of SDG implementation, countries took actions in line with their own capacities and priorities – from adopting national action plans, as was done in Demark, to appointing a governmental coordinating body with a wide scope of responsibilities in mapping, proposing, and tracking national progress as is foreseen, but not yet implemented, here in Serbia.

Companies' contribution through CSR practices to the overall economy advancement is often understood as a contribution on a voluntary basis. However, regulation in this area is very important because it additionally promotes sustainable business practices and encourages the advancement of the existing ones. Challenging circumstance is also ensuring compliance of national public policies with the SDGs as well as ensuring different sectors' contribution to their fulfillment. The creation of a new National Strategy for the development and promotion of CSR in Serbia for 2016-2020, as intended by the Serbian Chamber of Commerce's Council for CSR, would represent a step in the right direction. The momentum should be seized to integrate SDGs into the new strategy and provide a national action plan respecting the growing need for a healthy economy based on responsible businesses.

A Step Towards a New Level of CSR Comprehension in Serbia – Introduction of the CSR Index

Respecting all known sustainability guiding principles and assessment methodologies, the first national online tool for comprehensive assessment of corporate social responsibility for companies, the CSR Index, was introduced in 2016. This useful tool is comprised of over 100 indicators evaluating a company's performance in five areas: corporate governance, local community, market, labour practices, and environment, allowing one to evaluate performance and benchmarks across sectors and industries. Furthermore, the tool offers the opportunity to identify responsible business performers based on objective criteria and create a national list of good businesses, as a basis for inclusive growth of the economy. The first list of companies tracked by the index was announced in December 2016, and includes in total 20 companies: 13 big companies, five medium enterprises, and two small businesses.

Emphasis on Transparency in the Period to Come – Raising the Importance of CSR Reports

At the EU level, the Directive on Non-financial Information Disclosure made non-financial reporting on environmental matters, social and employee aspects, respect for human rights, and anticorruption issues mandatory for all large public-interest entities with more than 500 employees. The disclosure was due to be transposed

into Member States' national laws by December 2016, and the first mandatory reports are expected in 2018. Although the Directive is not obligatory for companies operating in Serbia, it stands as a perspective and guidance for improving corporate governance while providing stakeholders with a meaningful, comprehensive view of the company's performance. Following outstanding world practices, a number of companies in Serbia issues annual sustainability reports in line with Global Reporting Initiative (GRI) guidelines.

Empowering Youth and Contributing to Their Social Inclusion - Still Among the Priorities

Staying on the path toward enabling and empowering European youth to be competitive on the job market, businesses, educational institutions, and youth organizations continue to develop and consolidate partnerships in support of youth employability and inclusion through collective efforts within the Pact for Youth project. This initiative was launched in 2015 by the largest European business network for corporate social responsibility , CSR Europe, as a mutual engagement of business and European Union leaders. This initiative, also supported by its partners in Serbia, invites businesses to engage in supporting the creation of quality business-education partnerships, with the shared target of establishing new and good quality apprenticeships, traineeships, or entry-level jobs. Although companies have shown an effort to engage and contribute to this goal, plenty of work remains to be done in improving the systemic mechanisms of cooperation related to high school and university competences necessary for increasing the employability of young people. Recently, further attempts have been made towards improving the policy framework by adoption of the Proposal of the Law on Dual Education.

Venture Philanthropy – A New Trend in Community Giving

When it comes to philanthropy, a new trend emerged in Europe as a high-engagement approach to social investment and grant making which combines business logic with philanthropy goals. Aiming to create common values for both their businesses and society, many companies are now turning towards establishing programs for the community that have long-term and sustainable effects. And although this approach is relatively new, companies and corporate foundations are in second place in the domain of investing in social innovations, with a noticeable growth in VP funds.

CSR and the Responsibility of the Government

Although it started out as a neoliberal concept that helped to downscale government regulations, CSR has matured into a more progressive approach of societal co-regulation in recent years, stressing the importance of respective public policies and stronger business-government relations. The new patterns imply the greater responsibility by the state itself, stating the commitment to foster a competitive economy based on sustainable and responsible principles. This should be primarily done by creating an affirmative environment and, what's more, by incorporating sustainable practices, whenever possible, into state-driven initiatives. The reform and restructuring of public enterprises should take into account sustainable development goals, influencing public initiatives in a greener and more socially responsible manner, as well as sanctioning negative and recognizing good practices - these are only some of the inexhaustible opportunities for state engagement. By promoting and applying sustainable practices, the state and its institutions, as well as public enterprises, should lead by example and further publicly commit to building a competitive economy based on the principles of sustainable and responsible business practices.

CSR Development and Business Leaders' Responsibility

Over the past several decades, the concept of business responsibility has rapidly evolved. It started as an undertaking to protect shareholder value in the period of strong activist movements, turning shortly thereafter into charitable initiatives, followed by a phase where it was perceived as a PR tool. The next stage, through an integrated management approach, brought CSR to the company's core business, characterized as a phase of strategic CSR. Finally, CSR as perceived today, focuses its activities on identifying and tackling the root causes of the present unsustainability and irresponsibility, typically through innovating business models, revolutionizing processes, products, and services, as well as lobbying for progressive national and international policies. Companies in Serbia are in different stages of CSR development and only a minority of the leading companies in Serbia are into strategic and transformative CSR, representing a truly driving force for innovation and a sustainable society. Therefore, a few business leaders have the additional responsibility of taking the lead in disseminating good practices across their supply chains and through their partners, especially focusing on empowering SMEs towards healthy and sustainable growth.

OUR COMMITMENTS

Believing that the business sector can play a leading role in driving economic growth, while fostering social inclusion and cohesion, as well as 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 of CSR;
- advocating for the introduction of CSR in university curricula, in order to educate future generations of business leaders.

INVESTMENT AND BUSINESS CLIMATE

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continue membership negotiations with the EU, as a means of improving the legal and policy conditions for business and investment	2008		√	
Complete the restructuring or closure of failed enterprises.	2015			√
Increase public spending on infrastructure, a necessary requirement for a better business environment	2015			√

CURRENT SITUATION

Macroeconomic stability has been maintained in 2017, both in the internal market and in international trade with the rest of the world. The fiscal consolidation process, launched in 2016, has continued along with a lower than expected GDP growth rate. The Government and most international financial institutions projected a 3% GDP growth rate in 2017, while the IMF only recently reduced its initial projection to 2.3%. According to our estimate, the growth is likely to be even lower, in the range of 1.5% to 1.8%.The reasons for a slower growth lie in the negative effects of external shocks (severe weather conditions in the winter and drought in the summer), the pending restructuring of State-Owned Enterprises (SOEs) in the energy sector (electric power generation and coal mining) and lack of investments in infrastructure (irrigation systems). However, other macroeconomic conditions were favourable, (low interest rates and oil prices, resumed growth in the neighbouring countries and the EU, high external demand and stable foreign prices).

As already indicated, the successful fiscal consolidation process has continued this year. Specifically, the budget had a surplus of 1.4% of GDP in September 2017, though a small year-end deficit between -0.5% and -1% of GDP is expected. The fiscal improvement is mostly owed to improved tax collection, control of wages and salaries in the public sector, reduction of pension payments, and postponement of some capital expenditures, as well as to a real appreciation of the dinar, that contributed to the reduction of the foreign debt from 73% of GDP to 65% of GDP in the second quarter of 2017. However, some additional foreign loan repayments will affect the budget by the end of the year. Servicing the foreign debt will remain an issue, also in view of some new bilateral loans that are in the pipeline.

Some positive results were also achieved in the employment policy. The unemployment rate dropped from 15.25% (average for 2016) to 13.2% (average for Q1-Q2 2017). On the other side, the employment rate increased from 45.2% to 46.15%, in the same period[1]. Half of the newly employed persons are in the 55+ age group, while the biggest reduction of unemployment was registered in the 35-54 age group. On the negative side, the unemployment of the youngest cohort of the working age population, between 15 and 24 years of age, was reduced due to their emigration, i.e. the so-called "brain drain", and this presents a challenge for future economic development.

Inflation is low but higher than the average rate in the previous year. Inflation stood at 1.1% in 2016, and was very stable throughout the period. It rose to 3.4% in 2017, with increasing variability, but was still within the 3% +/- 1.5% inflation target corridor. The inflation rate over the next 12-month period is expected to be within the 3% target rate. On the other hand, the exchange rate of the dinar against the euro dropped from 123.47 at the end of the previous year to 119.23 in September 2017. The situation is similar with respect to the US dollar. The dinar appreciated against the dollar, moving from 117.13 to 101.39 in the same period. The real strengthening of the dinar is hampering the country's competitiveness on the export markets. However, the National Bank of Serbia has kept the foreign-exchange reserves at a stable level, EUR 10.3 bn at the end of 2016, and EUR 10.2 bn in September 2017.

Foreign trade maintained the previous year's positive growth trend. The value of exports and imports has increased by a similar rate of around 13% so far. The import

1 Comparison with previous years is not possible since the methodology of compiling employment and unemployment data was changed in 2016 in order to be harmonized with the EU statistical standards.

coverage by exports stood at a stable 80%. However, the foreign trade deficit is expected to increase by 1.5% of GDP relative to the previous year, (about 13% in total). This might push the current account deficit over the expected level of 4% GDP by at least 1% of GDP.

The share of investments in the GDP is still inadequate and below the level of 20%. Although the inflow of FDIs has recorded a slight increase this year, it will not exceed EUR 2 bn by the end of the year. Still, even the present inflow will be sufficient to cover the current account deficit.

Negotiations on UK's exit the EU did not have any negative effects on Serbia's EU accession process so far. However, this process has been slow and below all expectations. Only two new chapters were opened in the accession negotiations, and one of them was closed without talks (education and culture). In 2014, a diplomatic initiative was launched to speed up the Western Balkan countries' integration into the EU, and improve cooperation in the region, known as the Berlin Process. Tangible outcomes of this initiative are yet to be seen.

Overall, the business climate has not changed much this year compared to the previous year. According to the FIC's assessment, progress in the implementation of FIC recommendations worsened by a mere - 0.02 point in 2017, which was contrary to any expectations. The expectations for 2017 were high, and the number of new recommendations rose by almost 11% compared to 2016.

As for the country's investment risk, we note that Standard&Poors reaffirmed Serbia's BB- rating, with a positive outlook, which means that the rating may be raised over the next six to twelve-month period, so that Serbia may get an investment grade rating for the first time in its modern history. The FIC encourages the authorities to continue improving growth prospects, complying IMF's recommendations and facilitating long-term macroeconomic stability.

FIC RECOMMENDATIONS

- Maintain fiscal stability, and reduce the public debt to an affordable level as soon as possible,
- Complete the restructuring of infrastructure enterprises, and close loss making SOEs,
- Increase and diversify public capital expenditures, with a view to bridging the infrastructure gap and improving the overall business environment,
- Continue negotiations on Serbia's EU accession with the EU, and further harmonize national legislation with the acquis communautaire,
- Streamline and modernize the Tax Administration, improving its capacity and eliminating uncertainties in the implementation of tax provisions.

top

PILLARS OF DEVELOPMENT

TRANSPORT

The three main goals of the transport sector policy are proper maintenance and modernization of the existing infrastructure, and the alignment of the Serbian law with the European Union acquis. The transport sector activity continues across the board, not only in technical terms, but also in terms of cooperation with the neighbouring governments and foreign investors. The focus was on the completing the construction of the two pan-European Corridor 10 and Corridor 11 highways, modernization of the railways, the opening of new routes in air traffic and the restructuring of large infrastructural enterprises.

This pillar registered considerable progress on the majority of the recommendations addressed in last year's edition of the White Book. Moreover, progress was made across the board in road, railway and air traffic. Progress was also achieved in repairing the damage caused by the floods of 2014. As a result of these outcomes, the transport sector was ranked third in our rating list of best performers in 2017.

The previous White Book edition offered 20 recommendations for the transport sector, of which one registered significant progress, 17 registered some progress, and 2 no progress at all. It is noteworthy that 6 recommendations were first proposed back in 2009, but it was only this year that some progress was made on five of them. Nevertheless, the average time it takes to follow up on outstanding recommendations is 4.6 years. Had the rating been compiled according to this criterion, the transport sector would have fallen down the list to 55th place. This year's edition of the White Book offers 21 recommendations, some of which are repeats from previous years.

ENERGY

The correct transposition of the European Union's Third Energy Package into the national legislation was completed last year and the electricity market was liberalized. The market operates under the management of the South East European Power Exchange (SEEPEX) that was established by the Serbian transmission system operator Elektromreža Srbije (EMS) and the European Power Exchange EPEX SPOT SE. This is a significant development which was somehow not recommended in last year's edition of the White Book and could therefore not be included in this year's rating. The Government of Serbia started implementing the new incentives scheme for renewable energy, which is another significant achievement. Some progress was also made in increasing energy efficiency of the street lighting system and the involvement of private investors in this initiative.

We have to note that the energy sector is ranked 25th in the 2017 rating list of best performers, but its ranking would have been much better if the liberalization of the electricity market had been included (between 6th and 7th place). The previous edition of the White Book offered four recommendations for the energy sector. None registered significant progress, two saw some progress, and two no progress at all. All of these recommendations were first introduced in 2016, so the average time of outstanding recommendations is only one year. This White Book offers four recommendations for the electric power sector and two for renewable energy.

TELECOMMUNICATIONS

Last year's key expectations of foreign investors, which are stability and predictability of doing business in Serbia, transparency in the Government's and regulatory authorities' decision-making process, were not met in 2017. Consequently, no progress was registered in the telecommunications sector compared to the previous year. Telecommunications ranked 22nd on the 2017 rating list, which was the same position as in 2016.

The key missing piece of legislation is the new Law on Electronic Communications, a draft of which was shared with the professional community, though it has yet to be enacted. Nevertheless, the state made significant progress on two other recommendations last year, certain progress on seven, and no progress on ten recommendations. It is striking that one of the two "significant progress" ratings refers to fiscal policy, specifically, the fact that the tax authorities did not introduce any new parafiscal charges in 2017. This year's White Book offers 18 recommendations for the telecommunications sector, indicating the industry's strong interest in the immediate completion of the legislative framework necessary for the stability and predictability of doing business.

DIGITALIZATION AND E-COMMERCE

E-Commerce is an innovative, digital and internet-based sector that will bring significant growth in the future and play an important role in the overall development. However, it is still subject to regulatory constraints of obsolete legislation and the lack of harmonization with the EU standards and best practices. No significant progress was noted in 2017 relative to 2016, but the sector's ranking slightly improved from the previous year's 39th to 34th place.

top

The key missing piece of legislation is the Law on Electronic Documents, Identification and Trusted Services is adopted on October 17, while the effects of the proposed changes will be seen in the upcoming period upon the adoption of 17 by-laws which should be passed in the next 6, 12 and 18 months as of the date of entry into force of this Law, in order to enable the full implementation of all the provisions prescribed by the Law.

Some progress was made on two recommendations and none at all on four recommendations in 2017. This year's White Book offers ten recommendations in total, indicating the industry's strong interest in digitalization and innovative online commerce in Serbia.

REAL ESTATE AND CONSTRUCTION

As in last year's edition of the White Book, this year, too, the focus was on the implementation of the Planning and Construction Law, in particular the application of the integrated procedure for obtaining construction documents, legalizing existing buildings, converting land use rights to ownership rights, and improving the efficiency of the Cadastre.

In 2017, an uneven progress was registered in the rate of implementation of the FIC's recommendations in the real estate and construction sector compared to other sectors, while its subsectors performance varied. Progress in the construction land and development area was of such an impact that it pushed this subsector to the 1st position in this year's rankings. On the other side, restitution and mortgage and leasing of construction land, saw no progress at all, consequently, they were ranked 63th and 65th, respectively. Progress in implementing the recommendations related to the activity of the Cadastre and to the cadastral procedure was somewhere in between, 19th in the rankings.

This year's edition of the White Book offers numerous recommendations for the next year: seven for construction land and development (one less than last year), eight for the Cadastre and the cadastral procedure (three more than last year), five for mortgage and financial leasing of construction land (one more than last year) and three for restitution (same as last year). The number of recommendations indicates that there are great opportunities for improvements in this area in the next year.

LABOUR FORCE AND HUMAN CAPITAL

The breakthrough in labour legislation occurred in 2014, but not much progress has been made since then. The work on by-laws and the implementation of the Labour Law have been proceeding at a very slow pace, and yielded unexpected interpretations of some of its key provisions. Out of 17 recommendations from last year's edition of the White Book, only two registered certain progress, while the remaining ones saw no progress at all. Hence, the sector's position on the rating list for 2017 is at 49th place. The average outstanding time for implementing recommendations is 4.29 years.

Recommendations on the posting of workers abroad registered better than average progress (one with significant progress and two without any progress) putting the sector in 15th place in the rankings. No progress was registered in the implementation of any of the recommendations on hiring foreign staff, pushing this sector to 61st place in the rankings. Recommendations on the Law on Vocational Rehabilitation and Employment of Persons with Disabilities have also been poorly implemented. The sector as a whole ranked 41st, with an average time of outstanding recommendations of 4.80 years.

On the other side, areas related to human capital and dual education improved their ranking in 2017, to 10th and 8th place, respectively. However, the outstanding time for implementing recommendations in the human capital sector reached an impressive 8.25 years.

The interest of foreign investors in the smooth functioning of the labour market is evident. This is illustrated by the number of recommendations offered in this year's White Book. There are 44 recommendations for labour relations and 12 for human capital.

top

INFRASTRUCTURE

TRANSPORT 1.95

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. 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		√	
Improve the quality of the national road administration 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		√	
Establish 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 minimize public costs of 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			√
Create conditions for sustainable development of the transport system through stable financing sources.	2013		√	
Increase efforts to improve expropriation proceedings.	2013		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Restructure public enterprises 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

The significance of the Republic of Serbia, regarding all kinds of transport, is undisputed, not just for Balkan countries, but for the whole of Southeast Europe. The situation, problems, and positive developments concerning transport would be most appropriately reviewed through five forms of transport: road, rail, water, air, and intermodal.

Endeavours to achieve the levels of development of the European Union are also present in this segment, which is evidenced by the implementation and harmonization of Serbian legislation with the EU acquis. The underlying base for these activities is the General Master Plan for Transport in Serbia (TMP), adopted in 2009, which contains the guidelines and plans for road, rail, water, air, and intermodal sectors of transport until 2027. At the same time, the General Master Plan for Transport in Serbia is the base for existing and future projects, financed out of pre-accession and accession funds of the EU, as well as other sources of financing.

The road sector is certainly the most extensive, as regards legislations, which is not uncommon given its development and share relative to other forms of transport. Out of 5,000 kilometres of Serbian roads, 1,100 kilometres is pointed out as high-priority in terms of rehabilitation, in accordance with the Transport Strategy and the aforementioned General Master Plan. Alongside valid laws (and accompanying by-law) an additional six laws were adopted last year and at the beginning of this year, which are mainly concerned with confirmation of cooperation with country lenders, as explained further in this text.

The rail sector is a sector where the need for modernization is the strongest, something intensively worked on over the past few years. Within the rail sector, many negotiations are being carried out in order to improve the overall condition.

Two commercial airports, out of 32 certified airports, are not enough for the country's needs. Since last year, several laws have been adopted to improve cooperation with foreign countries within the area of air transport.

The water transport sector is perhaps the most neglected, when considering development and modernization. The waterways and Serbia's international connection through them are underutilized, while another issue of this sector is the financing of reconstruction and modernization of water transport, because the means needed for upgrading ports, waterways, and related systems, as well as their maintenance, are extremely high. An innovation in the legal regulation of water transport is the Law on Amending the Law on Inland Navigation and Ports from November 2016.

Intermodal transport, with three partially constructed terminals, is still in its infancy, with the tendency of further development over the following period.

The three main characteristics of the state of transport in the Republic of Serbia are current maintenance of existing infrastructure, investing in/modernization of infrastructure, and harmonization with European standards. Raising the level of transport itself, investing in infrastructure, investing in and maintenance of the existing transport network – these are both short-term and long-term goals.

POSITIVE DEVELOPMENTS

Last year, as well as this year, works on all forms of transport have been continued, not just in the technical sense, but also in terms of closing contracts and negotiations with executive authorities of regional countries, as well as foreign investors.

Attention is being put on Corridors 10 and 11. By the end of the year, Corridor 10 and the Obrenovac – Preljina highway should be finished, and works on the Obrenovac – Surčin section are also being continued, with a conclusion envisaged at the end of 2019.

This May, two agreements were signed in Beijing, amounting to EUR 2.5 billion with the Chinese company CRBC. One agreement refers to Corridor 11 (Preljina – Požega – Boljare), and the other refers to Corridor Fruškogorski, which is supposed to connect Novi Sad with Ruma. In November of this year, a commercial contract for financing the Preljina – Požega section of Corridor 11 should be signed at the 16+1 Summit.

Also, performance-based road maintenance is planned in the period from 2017 to 2019, covered by an amount of EUR 60 million, financed by the World Bank. Documentation for the Preljina – Pojate section, namely Corridor Moravski, which should connect Corridor 10 and Corridor 11, should also be brought to a conclusion by the end of the year. Highway E80, which connects Pirot and Dimitrovgrad, 30,5 kilometeres in length, is finished and made operable. The toll will be paid from the beginning of 2018 and the amount will be 190 dinars.

This March, a summit of prime ministers of the Western Balkans was held, during which the financing of regional projects and highways to Sarajevo and Priština were discussed, among other issues.

Although plans for building the Pančevo – Vršac – Vatin – Timisoara highway have been halted, through no fault of the Serbian side, the project has nevertheless not been abandoned.

Regarding rail transport, an official delegation in Beijing, back in mid-May, secured an agreement on financing the Belgrade – Budapest railroad in the form of a loan amounting to USD 297.6 million. This railroad will be the first where trains will be able to reach speeds of 200 km per hour.

Last year, 120 kilometres of railroad were reconstructed, whereas for this year, the reconstruction of an additional 223 kilometres is planned. In January, an agreement was reached between Serbia, Macedonia, and Greece, to form a joint panel whose goal is raise the efficiency of the rail transport of goods from the Piraeus port to the rest of Europe. The unbundling of Železnice Srbije (Serbian Railways) into new companies received approval by foreign investors and the World Bank. For example, Srbija Kargo, one of the four new companies, recorded a significant growth in profit compared to the first quarter of last year. This year's profit, before taxes, was RSD 275 million.

The rail sector cooperation with regional countries continued this year. At the beginning of May, in Doboj, a strategic partnership agreement was signed between Željeznice Republike Srpske and Serbia. One more significant improvement in this sector is new Law on Railways, of whose draft was debated publicly during the September.

A step forward was made in the air sector as well. Instead of selling the airport, it was decided to offer a concession for a 25 year period. Twenty-seven companies applied in the pre-qualification period. After restoring direct flights to New York and the North American continent, cooperation with other countries was continued, such as negotiations for establishing a direct service to South Korea, negotiations with the Indian company GMR for air traffic cooperation, and an air traffic agreement with Iraq signed at the end of April, while in September 2017. direct flight to Beijing was introduced.

Belgrade's Nikola Tesla airport was a success in service activities. In the first quarter of this year, the airport serviced 955,988 passengers, which is a 10% increase relative to the first quarter of 2016. Subsequently, the Skytrax rating agency rated Nikola Tesla as fifth Best Airport in Eastern Europe.

Airport in Niš, Konstantin Veliki, also made improvements – in seven months of this year, number of passengers who used this airport is 183000, which is incomparably bigger than in previous periods. For example, number of passengers who used this is airport in 2014 was 1300. In next four years, investments in amount of EUR 6.3 million are planned, in order to improve service of mentioned airport.

REMAINING ISSUES

Traffic safety is the foremost of transport issues. The data are not encouraging, keeping in mind statistics from the previous two years. According to information from the Road Traffic Safety Agency, the number of injured persons increased in 2015 and 2016, which is against the goals of the Strategy for Traffic Safety on roads in 2015-2020. The growing number of injured and killed persons is worrying, as are changes in financing activities for traffic safety.

Another all-present problem of road traffic is financing. The state funding and foreign investments are not sufficient for the maintenance, rehabilitation, and construction of new roads, an aggravating circumstance, given the fact that this issue is directly in connection with traffic safety.

One of the pending issues is the absence of an appropriate procedure for the registration of electric vehicles in Serbia. This, accompanied with the lack of a suitable incentive scheme for the purchase and import of such vehicles, as well as an almost complete absence of electric vehicle charging stations, may become a notable obstacle for the country's green energy agenda, jeopardizing the strategic importance of Corridors 10 and 11. In this respect, it is still encouraging that the competent authority (that being the Ministry of Construction, Transport and Infrastructure) has most recently recognized this need and, as a result, the two electric charge stations have already been installed on the Corridor 10, with the next three ones being planned for installation soon.

Also, harmonization with European Union regulations should be accelerated, from technical regulations to those regarding principles of transport, interoperability, environmental protection, and social policy. Within this sector, attention should be paid to the restructuring of public companies, as well as other sectors, as was done with the rail sector.

As mentioned earlier, modernization is the biggest problem of the rail sector. Although efforts are being made, there is still a lot of work to be done to improve this form of transport, as a great number of railroads are not even being used, and the speed of trains on operable sections is not satisfactory, as has been the case for years now.

Attention should be also paid to a long term plan of improvement of rail transport and its linkage to road transport, in order to increase intermodality. Another issue is that of employees in this sector. Attention should be paid to the professionalism of the employed, an option for hiring new staff, keeping in mind the average age of employees.

Another issue is rail's public image. Public opinion should be actively changed by changing rail's marketing policy.

Air transport is an area where there is always room for improvement, whether it is regarding the internal or external level. Setting up direct flights to the North American continent was a success, and this course should be continued, not only for that particular part of the world.

Connections and the improvement of air infrastructure began with the founding of the Aerodromi Srbije company at the beginning of last year, but there is still a lot to be done in this area. The utility of airports other than the Belgrade and Niš airports should be increased, and a long-term strategy of usage of the whole of the air infrastructure should be conceived.

Talking about water transport, the biggest issue is financing. Great means are needed to renovate infrastructure dating from the former Yugoslavia. Modernization and maintenance of the water transport system will cost a lot, so here one can ask what part is this form of traffic to play in the future (current participation in Serbian transport is negligible), and what is its plan of development to be. Sailing/boating on main rivers should also be reconsidered, especially on the Sava River, where conditions are somewhat worse than on the Danube. It is encouraging that, on Danube International Day, it was announced investing in years to come in amount of 66.5 million euros, oriented to development of river transport and protection of natural characteristics of Danube. One example of investing is building of Smederevo Port, which will begin in the following year.

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. 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 existing damages, which are a consequence of floods, with high-quality materials, in order to diminish the frequency of subsequent repairs.
- Amendment of legislation and implementation practices to allow for efficient registration of electric vehicles in Serbia and the introduction of specific incentives relating to the purchase and import of these vehicles, as well as the more widespread construction of electric vehicle charging stations.
- Increase funding of maintenance and rehabilitation of major roads to stop the long-term deterioration of the road network.
- Increase the quality control and inspection of materials when performing works.
- Further strengthening of capacities, particularly in the field of regulation enforcement 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 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 the 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 a 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 1.50

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Following the stakeholders' feedback on the new incentive scheme, PPA to be adjusted to address stakeholders' concerns.	2016		√	
Abolishment of excise taxes on electricity.	2016			√
Regulated tariffs for households and small consumers to be increased to be closer to the market-based prices, provided that the increased proceeds are exclusively used for investments in new and revitalization of the existing power infrastructure.	2016			√
State owned electricity companies to be led by a professional management.	2016		√	

CURRENT SITUATION

Electricity

The legal framework for electricity in Serbia is set out under the 2014 Energy Law which, as an umbrella law, prescribes the general rules for performing electricity related activities. Serbia transposed the Third Energy Package into the Energy Law almost in entirety, with the exception of permitting the Energy Agency to issue penalties.

Most of the by-laws were aligned with the Energy Law in 2016.

The main authorities responsible for the energy sector are: (i) the Serbian Government, in charge of introducing sector policy and strategy; (ii) the Ministry of Mining and Energy, in charge of implementing the energy legal framework and its monitoring and supervision; and (iii) the Energy Agency, an independent regulatory authority in charge of the issuance of licenses, tariff methodologies, and regulated tariffs.

State-owned enterprises Elektromreža Srbije (EMS) and Elektroprivreda Srbije (EPS) remain the dominant players in the electricity sector. EMS is the transmission system operator, while EPS is engaged in the production, wholesale, and supply of electricity. EPS's subsidiary EPS Distribucija is in charge of distribution and operates the distribution system.

The electricity market is fully liberalised – all consumers are entitled to freely choose their suppliers and be supplied under market terms. Around 40 wholesale suppliers were active on the market, with eight engaged in supply for final consumers.

Households and small consumers remain entitled, for the time being, to opt for supply under regulated tariffs (unlike other consumers which do not have the right to regulated tariffs). The intention of the law is to phase out the regulated supply of electricity, once the Energy Agency finds that there is no more need for regulating electricity prices. Even though the decision to terminate the regulated supply was deemed possible as early as May 2017, it is unlikely that it will be made over the next few years.

The breakthrough of 2016 was the launch of the electricity spot market operated by SEEPEX A.D., a joint stock company established by EMS, with a 75% holding, and EPEX SPOT (European Power Exchange), with a 25% stake. The maximum tenor of the trades available on SEEPEX is day-ahead, though the intention is to gradually introduce new products.

Renewables

After long delays, the Government of Serbia adopted a package of decrees for the promotion of electricity from renewable energy, including: (i) the Decree on the Power Purchase Agreement; (ii) the Decree on incentive measures for the production of electric energy from renewable energy sources and from high-efficiency cogeneration of electric energy and thermal energy; and (iii) the Decree on the requirements and procedures for acquiring the status of a privileged power producer, a preliminary privileged power producer, and a producer from renewable energy sources.

This package of decrees represents the culmination of a long process of energy sector reform which began in the latter half of 2009, when Serbia incorporated a support scheme for renewable energy into its legal system for the first time.

This package significantly improved the legal environment for investment in renewables.

The incentives for renewable energy include the following:

- a mandatory take-off by the guaranteed supplier of the entire quantities of electricity generated by the privileged producer, under guaranteed preferential prices - feed-in tariffs (FIT) - for a period of 12 years under a PPA;
- a take-off of electricity during a trial period of the plant at 50% FIT;
- an exemption of the privileged producer from balancing responsibility, i.e. the privileged producer is not required to bear balancing costs;
- priority in access to the transmission/distribution system;
- free access to the transmission/distribution system.

Investments in RES have so far been modest – since 2009 (the year in which Serbia introduced incentives for the first time), around 80 MW from RES have been installed, mostly referring to small hydro power plants.

It is expected that investments in RES will significantly increase with the newly introduced PPA package. The odds are good – 500 MW of wind power plants are in the ready-to-build stage, with secured PPAs, and in the process of financing negotiation or, in smaller part, already operational.

Serbia has a significant potential for the use of biomass, but a lack of infrastructure is preventing the use of this resource in order to generate electricity.

Energy Efficiency

The Law on Efficient Use of Energy, adopted back in 2013, explicitly defines the energy services company (ESCO) and sets the rules for energy performance contracting in line with the EU acquis, with the aim of providing an overall legal framework for energy efficiency arrangements.

To enable implementation of these general possibilities, the Rulebook on Model Energy Service Contracts for the Implementation of Energy Efficiency when Users are from the Pub-

lic Sector (ESCO By-Law) was finally adopted in May 2015, following the completion of a year-long work by the National Working Group under the guidance of the Ministry of Mining and Energy (with the support of the EBRD and external advisors, in a project funded by the European Union).

The ESCO By-Law prescribes two models of ESCO agreements, one for public buildings and one for public lighting. It necessitates that public-private partnerships be established between the relevant public partner (e.g. municipality, public company, the State) and the relevant private partner (i.e. ESCO company) on a long-term basis. The concept of this approach is that a private partner install, manage and finance the energy efficiency measures, at the same time guaranteeing to the public partner that a pre-agreed amount of financial savings will be achieved, based on which the project can be fully financed – all without creating public debt.

Two years after the ESCO By-Law's adoption, 17 of 50 approved PPPs are ESCO street lighting projects. The energy efficiency market is still in the early stages of development. With a few energy performance contracting (EnPC) projects awarded to private investors in the area of public lighting (examples being the award of PPP projects in the municipalities of Ada and Žabalj) and a couple of bigger ones in the preparation phase in large cities (Belgrade and Novi Sad), the market is nonetheless yet to see a successful cooperation of public and private sector in the area of public buildings.

Also, energy supply contracting (ESC) started to function recently, with public sector assets such as schools and hospitals being the main point of interest.[1]

Unlike EnPC, ESC arrangements are currently not governed by any by-law, nor is there a prescribed model available. The most notable difference between ESC and EnPC is that EnPC implies the backing of the project by guaranteed savings, unlike the ESC focus on rearranging the energy supply when the private partner guarantees the continuous provision of a certain minimum amount of energy. It is expected that, once the ESC model is regulated too, a much-needed certainty will be brought into the sector, allowing for successful cooperation between the public and private sectors.

1 Site visited as of 29 August 2017, project 25: http://ppp.gov.rs/misljenja-komisije

POSITIVE DEVELOPMENTS

Electricity

Save for the launch of the electricity spot market operated by SEEPEX A.D., no significant developments can be reported.

Renewables

The new package of decrees for the promotion of the renewable energy, in particular the new model PPA, are a significant step forward. Both PPA and the decrees send the message that Serbia intends to increase investments in renewable energy, which so far have been pretty modest.

Energy Efficiency

The successful awarding of several energy performance contracting projects to private investors in the area of public lighting throughout Serbia is surely a positive step towards the further development of the energy efficiency market. The same holds true for the current preparation of projects in the same sub-sector in larger Serbian cities, including Belgrade and Novi Sad.

Energy supply contracting has also started to function, although it is still of somewhat limited scope. A few PPP contracts in this sub-sector have been awarded to private investors, with the projects typically tackling the heating system of public utilities. Then too, the first private-to-private arrangements have started to be negotiated, although existing practices are rather diverse and of different contracting quality.

REMAINING ISSUES

Electricity

Coal is still the single most significant resource for the generation of electricity – ¾ of annual generation comes from coal-fired power plants.

Coal mines are in relatively poor shape and need extensive modernization in order to meet needs. For years now, Serbia has failed to invest enough in coal production. As a result, according to official statistics, the production of coal over the first two months was decreased by 9.8% (unofficial information mentions an even higher decrease).

A direct consequence of the decrease in coal consumption

was the necessity for EPS to import 48 million kWh of electricity in the first quarter of 2017, for which around EUR 42 million was paid.

Renewables

Despite significant improvements introduced by the new PPA package decrees, this new model PPA failed to completely remedy all the shortcomings of the previous one.

The major downside of the new PPA model is that the off-taker may provide only promissory notes as collateral for the fulfilment of obligations under the PPA. Promissory notes are only effective if the debtor has the relevant level of funds secured by the promissory notes in its accounts, and therefore it remains to be seen whether they will be perceived as adequate collateral. This fact, coupled with the possibility of a change in off-taker every five years without the producers or lenders having any say, is expected to be the most significant challenge for the further realization of renewable energy projects.

Additionally, Serbia has failed to make significant progress in implementing the policy measures outlined in its action plan, and to ensure reaching renewable targets in gross energy consumption by 2020.

Energy Efficiency

When it comes to energy performance contracting, apart from the need to have consistent practices in the formal preparation of projects being fully in line with the ESCO By-Law and the relevant PPP legislation, the challenges ahead also include the need to reduce subsidies, which keep energy prices on an artificially low level, and introduce instead further sector-specific incentives for energy efficiency projects in the relevant legislation (notably, in real estate and tax-related legislation); the gradual raising of financiers' awareness of the practical feasibility of ESCO and related projects; and increasing the energy tariff to a cost reflective level.

As regards energy supply contracting, the adoption of the model contract by the relevant authority (i.e. Ministry of Mining and Energy) would be very helpful in tackling projects involving both the public and private sector and removing existing ambiguities. At present, noting the early stages of this specific market, the public sector is still overly careful in considering prospective projects, while the very understanding of this concept and its practical implementation is still lacking on the authorities' side. In this regard, it is encouraging that said Ministry is currently considering a preparatory model ESC contract and allow for greater transparency and feasibility of projects in the market.

The challenges ahead, attributable to both EnPC and ESC arrangements include:

- capacities of the PPP Commission to be further improved (including a better understanding of EnPC and ESC projects' specifics);
- sharing of knowledge and existing know-how among various public entities to be strengthened and supported (this is particularly the case with minor Serbian municipalities);
- the domestic financial and banking sector needs also to become acquainted in greater detail with the specifics of the relevant arrangements;
- practical implementation of the rules relevant for determining the project value that are PPP-specific needs to be improved, and the capacities of the public sector strengthened, to fully delineate such projects from purely public procurement projects;
- new rules on subsequently adapting PPP contracts at the request of funders are yet to be fully tested in practice and, because of this, knowledge-sharing and capacity-building on the basis of the best international practices would be highly welcome.

FIC RECOMMENDATIONS

Electricity

- State-owned electricity companies to be led by professional management.
- New investments in the modernization and revitalization of coal production.

- Cancellation of excise tax on electricity.
- Regulation of electricity prices for households and small customers to be abandoned as soon as possible, provided that the increased proceeds are used exclusively for investments in new and revitalization of the existing power infrastructure.

Renewables

- Streamlining, simplification and coordination of procedures for authorization, licensing and network connections for new renewables projects.
- The PPA package to be adjusted to address stakeholders' remaining concerns.

Energy Efficiency

- Promoting the ESCO contracts that the Ministry of Mining and Energy adopted in 2015 (RS Official Gazette No 41/2015http://www.mre.gov.rs/dokumenta-efikasnost-izvori.php).
- Adoption of the functional model contract to govern the energy supply contracting.
- Improvement of capacities of the PPP Commission and other notable public stakeholders in respect of both energy performance contracting and energy supply contracting projects involving public and private sector.
- Considering a streamlined review and approval process for small projects that use contract templates for specific project types (e.g. street lighting).
- Considering an improved consultation of private stakeholders in order to better include competent Serbian companies as potential contractors in PPP projects as well as in opening the market for energy efficiency measures in the private sector.

TELECOMMUNICATIONS 1.58

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Abolition of monopoly on cable ducts is an important precondition for a stronger penetration of LTE technology and improving the capacity of operators through the use of fixed infrastructure. In addition, the price of access to this infrastructure is significantly higher than in the region and, in this segment, a comparative analysis of prices in the region has not been performed.	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to improve and increase availability of electronic signatures to citizens and businesses, it is necessary to: 1) simplify the identification procedure, 2) make electronic signature available for everybody, 3) relieve customers of high costs associated with the electronic certificate. The prerequisite is that the Law on Electronic Business should be the general law in the field of electronic signature and laws, whilst such as the Law on General Administrative Procedure would have to be amended allowing the use of electronic documents and e-signatures in administrative and judicial proceedings.	2016		√	
Given that the use of qualified electronic signatures requires special hardware, software and high costs, there should be three types of ordinary electronic signature, where it will be prescribed for which particular contract/transaction which type of signature may be used. The key to improving this area is to prescribe the mechanism of electronic identification instead of technical resources for the implementation of electronic signatures. With registered SIM cards and PIN code known only to the user, mobile phones would become an ideal means of identification because the user already owns the entire hardware and software.	2016		√	
In addition to improvement of electronic signature that has already been discussed, it is essential to improve the system of electronic payment and recording of these payments in a way that the citizens are not obliged to provide paper evidence of electronic payment.	2016		√	
Full independence of the regulatory body, including financial independence, is an EU standard and should be fully implemented in Serbia as a top priority for further development of the sector, which aims at preserving and building expertise for further harmonization of the regulatory framework with the framework of the European Union. This statement also applies to other regulatory bodies, primarily to the Commission for Protection of Competition.	2014			√
Making a decision on relocation of the army from the 900 MHz band.	2015			√
Further development of e-government and the possibility of placing these services on a mobile platform is possible through establishing a single management system for the electronic government, where a body would be constituted which will have a political and legal capacity to implement all the necessary steps to coordinate the exchange of information. Our recommendation is that, in addition to representatives of the Government and its agencies, units of local self-government and representatives of economy should also be members of that body. E-government should integrate the existing data in electronic form and when it comes to the system, it is important to establish a simple interface adapted to the widest range of users and unique form of data convenient for exchange, Thus one of the priorities is establishment of a unified database of e-government system.	2015		√	
Regarding regulating and facilitating the cross-border transfer of data, we believe that the Law should not make a difference in legal treatment between EU Member States and countries that have not yet become members, and so our recommendation is to follow the EU model, i.e. the data on the generated traffic should not be excluded from the definition of personal data. Also, with more efficient management of investments through joint systems within a group which operates in several countries, rationalization of costs is achieved, where the funds can be reallocated into investments that provide growth.	2016		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Electronic Communications Law should be a special law (lex specialis) for the field of electronic communications when it comes to customer protection (which would also be aligned with the EU 2009 framework), instead of the current situation where the Consumer Protection Law has that role.	2016			√
In the field of market analysis, it is necessary to further improve the mobile termination market analysis for the purpose of aligning it with the EU practice, whereas access to telecommunications ducting requires additional regulation and ensuring competitive conditions for all alternative operators.	2016			√
Restoration of VAT on computer equipment to the previous level.	2015			√
In the field of cable television and fixed telephony, there is a recommendation to suspend the control of retail prices because it is not in line with EU practice.	2015	√		
Amendments to the Law on Foreign Exchange Operations, in order for the Ministry of Tourism, Trade, and Telecommunications to support the service of costing and billing by operators with the relevant authorities, for the purpose of selling digital content and charging it through monthly bills for mobile telephony services ("operator billing"). This is currently not possible due to the restrictive interpretation of the Law on Foreign Exchange Operations.	2014			√
Refraining from the introduction of para-fiscal charges in the telecommunications sector.	2015	√		
Additional cycle of market regulation, which should be implemented in a transparent and predictable manner. Market regulation should follow market development and should include the implementation of best practices of the EU, not just the incorporation of regulations adopted from the developed markets of the EU. Further alignment with EU legislation should contribute to ensuring equal opportunities for all in the digital environment.	2015		√	
Changing regulations regarding the cross-border transfer of data and the location of the equipment. This should lead to a more efficient allocation of resources and increased investment in the network and services.	2016		√	
Changing regulations in the field of protection from non-ionizing radiation, which will not provide for the option of preparation of the environmental impact assessment studies for setting up base stations.	2016			√
Better coordination between state institutions – the Ministry of Tourism, Trade, and Telecommunications should take a leading role when it comes to issues inherent in this sector requiring the intervention of other state institutions and bodies.	2015			√
Coordinated activity of state institutions and operators of electronic communications aimed at suppressing illegal termination of international traffic and clear definition of this phenomenon as illegal, through amendments to the Criminal Code and Law on Electronic Communications.	2016			√

CURRENT SITUATION

In 2017, telecommunications operators in Serbia are facing new challenges and obligations, i.e. the regulation and further reduction of roaming prices; the uncertainty regarding the adoption of the Law on Electronic Communications; the unresolved situation regarding access to significant parts of the telecommunication infrastructure, establishment of e-government, and growing demands and needs of customers in relation to the new trends and opportunities brought by modern technologies.

The need has been recognized for shifting the focus of business from basic telecommunications services (voice, text) to digital services delivery and, accordingly, to creating the conditions for finding the new sources of revenue necessary for further progress and development of the telecommunications industry, which is currently stagnating and declining, both globally and locally.

The total revenue generated by the electronic communications market of the Republic of Serbia in 2016 amounted to about RSD 189.4 billion, so, the market recorded an increase of 1% compared to 2015. The share of the electronic communications market revenues in Serbia's Gross Domestic Product (GDP) in 2016 amounted to 4.51%. Same as in previous years mobile telephony services accounted the largest share in total revenues in the electronic communications market, participating with 59% of total telecomunications revenues.

Total investments in the electronic communications industry in 2016 amounted to RSD 32.3 billion, which is 4.9% less than in the previous year. The biggest amount is invested in mobile telephony (RSD 11.1 billion), which makes around 34.3% of total investments in 2016.

Regarding Digital Dividend 2 (700 MHz), the position of mobile operators is that there is no need to allocate the spectrum in this band before 2020.

At the end of 2016, operators were given access to the Draft Law on Electronic Communications, and during the public hearing operators provided their feedback, primarily focusing, among other things, on the potential problem of RATEL financing, i.e. reduction of RATEL revenues, which would ultimately be borne by the operators. Considering the reduction of RATEL's revenues under the new legal solution, there is a reasonable fear that the lack of funds would be burdened by the operator. It is extremely important to create conditions for the financial independence of the regulatory body that is in line with Serbia's orientation to the path of European integration. We emphasize that one of the recommendations of the European Commission in its annual report for 2016 for the Republic of Serbia is the strengthening of state capacities, in particular those of RATEL and the Commission for the Protection of Competition, which should address the telecommunications market competition challenges that the operators face in doing business.

It is precisely the postponement of the enactment of the Law on Electronic Communications that is creating additional legal uncertainty, which is reflected in the impossibility of improving the business environment, or bringing by-laws in line with the practice imposed by this dynamic industry and the requirements of the European Union. These issues are particularly prominent in the field of mobile number portability, which has seen no progress because the adoption of the new Rulebook is constantly being postponed because of the delayed enactment of the new Law on Electronic Communications.

All new technologies and innovations, followed by the rapid development of LTE technology, require additional capacities within the transport networks of mobile operators, i.e. access to cable ducts and fibre optic infrastructure. Despite the willingness of operators to invest in this segment and prepare their networks for the development of 5G technologies as well, operators still have a significantly restricted access, both to cable ducts and fibre optic infrastructure, resulting in the de facto obstruction of the operators' activity and negative effects on market competitiveness. This is the area in which the least progress has been made in relation to the recommendations in the White Book for 2015.

A direct costing and billing system for content downloaded from the "Google Play" and "Apple Store" was identified as one of the priorities in 2016, which has not been implemented yet due to regulatory requirements, despite the declared readiness and initiative of operators.

Control of landline telephony prices at the retail level still remains an issue.

In 2016, again, operators suggested that the Draft Law Amending the Criminal Code be supplemented by an arti-

cle that would more effectively regulate the prosecution of persons involved in illegal termination of international telephone traffic, which causes damage both to operators and the local economy. The Draft Law on Electronic Communications presented during the public hearing, however, omitted to include a new offense as an appropriate way of reducing the scale of the issue.

POSITIVE DEVELOPMENTS

No new parafiscal charges were introduced in the previous year and the operators welcome this trend, but it should be upheld in the forthcoming period.

The Draft Law on Electronic Communications stipulates that traffic data processed in the transmission and billing of communication within the electronic communications network is treated as personal data. Consequently, it may be exported to other countries parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe – Convention 108 CE. Cloud computing has been regulated as well, which will allow cross-border hosting of network elements, thus significantly improving this area compared to the current regulations.

We also welcome the proposal of a solution for the registration of pre-paid users, and urge to the relevant ministry to pay special attention to this topic, since it will affect almost 4.5 million users in a short period of time and to keep the focus on efficient implementation.

In addition, unlike the current regulatory framework that limits service neutrality only to cities with a population of up to 1,500, the new Draft Law envisages a solution that will allow service neutrality without restrictions, which will result in a better use of the spectrum and availability of new services.

In the previous years the sale of the digital dividend to mobile telephony operators has contributed to the development of broadband mobile Internet, as well as better mobile coverage of the territory of the Republic of Serbia, which is reflected in the extraordinary 4G coverage. Such a decision is an example of how the government can, by listening to and considering the needs of the customers and operators, make a step forward and contribute to the technological revolution and the improvement of the telecommunications market.

In September 2016, the Ministry of Trade, Tourism and Telecommunications provided access to the Draft Law on Electronic Document, Electronic Identification and Electronic Trust Services, which was welcomed by operators. This has led to the improvement of the regulatory framework that will enable the implementation of modern technologies and speed up business transactions, primarily through the use of e-signatures and e-documents, e-payments and e-archiving, which are the pillars of the modern business process management.

In December 2016, the Ministry of Trade, Tourism and Telecommunications initiated discussions with operators on the topic of the national broadband network. It is expected that a project for the improvement and development of broadband networks in Serbia will be implemented by the end of 2017. Cheaper and easier access to the existing cable and fibre optic infrastructure is expected to become available to all operators in the market.

At the same time, electronic government (e-government) has been recognized as a relevant topic by businesses and state institutions alike.

Finally, the informal consultations on the issue of electronic commerce are also a good practice example of the readiness of state institutions to involve the private sector in the earliest stage of the drafting of legislative proposals.

REMAINING ISSUES

The stability and predictability of the business environment, as well as transparency in the decision-making process on the part of the relevant state and regulatory bodies, are the key expectations of the telecommunications industry in 2017.

The expectations in 2016 related to the regulatory framework were high, relying on three key laws: Electronic Communications Law, Law on Electronic Document, Electronic Identification and Electronic Trust Services, and improvement of e-government.

The Law on Electronic Communications has not been enacted and there is a reasonable fear that it will not be enacted in 2017, which has already led to serious legal uncertainties and delays in solving the key challenges in the telecommunications industry. With regard to this, we welcome the fact that the Law has been adressed to the Gov-

ernment and we hope it will be adopted by the National Assembly as soon as possible. The issue of the cutback in the funding of RATEL has been recognized in the model Law on Electronic Communications. Similarly, the enactment of the Rulebook on number portability for services provided via public mobile communications networks follows the same trend of delay in amending the regulatory framework. With regard to this Rulebook, the FIC already recommended that it should be aligned with the current EU regulatory framework, that the procedure should be accelerated and made more efficient, as well as that fees should be reduced and limited.

Despite the efforts of market players to introduce new innovative services, the development of new services continues to be a problem. Due to the current legal framework in Serbia operators are still unable to provide the customers with the service of direct costing and billing for content downloaded from "Google Play" and "Apple Store". The main obstacle to this is the interpretation of the Law on Payment Services and the Law on Foreign Exchange Operations by the National Bank of Serbia. Operators, on the other hand, are of the opinion that the transactions carried out through telecommunications and digital devices should be exempt from the application of the Law on Payment Services.

The elimination of the monopoly on the use of cable ducts and harmonization of standard offer prices with the prices in the region will remain a challenge in the coming period. Also, the trend of increasing prices for shared infrastructure has continued, which is unacceptable under such market conditions.

The current annual fees paid by mobile operators for services provided by RATEL and for the use of the spectrum, go beyond the scope of cost justification, i.e. of the efficient use of radio frequency resources. Amendments to by-laws regulating these fees are expected in 2017. It is expected that on this occasion RATEL will implement the European guidelines recognized by the current Law on Electronic Communications, which will enable a further reduction in these fees.

Of additional concern is the fact that the Draft Law on Electronic Communications proposes to introduce a new fee model, according to which, instead of unique fees for the use of radio frequencies and numbering, there will be two types of fees – fees for the right to use radio frequencies/numbering, determined by the Ministry, and fees for managing radio frequencies/numbering, prescribed by RATEL. This would have an adverse effect on the independence of the regulator and would contribute to the uncertainty and the potential increase in the fees for mobile operators in line with the budgetary needs.

In the context of financial burdens for the mobile operators, expectation of the committee is that the registration process of pre-paid users will not cause additional costs, since such an outcome would geopardize the predictability of the business environment and negatively affect future investments.

Due to the pressure of the local government units, the local public utility tax for displaying business signs has not been abolished yet, although both the Ministry of Finance and operators reported the negative economic effects of charging the fee and its direct connection with the reduction of further investments by operators.

The enforcement of regulations in the field of non-ionizing radiation poses a serious problem for mobile telephony operators. Many local governments, justifying their actions by citizens' concerns, use these regulations to prevent the construction of new base stations or require unnecessary preparation of environmental impact assessment studies. This is a significant cost for operators and hinders construction. Urban development plans of local government units are not compliant with the Law on Planning and Construction and impose stricter requirements for the construction of telecommunication infrastructure than the framework set by the Law. By-laws should therefore be amended in order to standardize practices and prevent discretionary decisions by local governments, which were especially evident in 2016, when operators complained to the line ministry about this issue. In addition, the reconstruction of the existing radio base stations in the context of the expansion of the 4G network has been made impossible, thus preventing the addition of new systems, which poses a challenge to further development of the 4G network.

The regional roaming agreement signed by the ministers responsible for electronic communications in Serbia, Bosnia and Herzegovina, Montenegro and Macedonia led to a further reduction in roaming prices as of 1 July 2017. The agreement and RATEL's decision were introduced on the basis of EU guidelines, but as the guidelines are not a part of the domestic regulatory framework, the legality of this Agreement has been called into question. Meanwhile, the

above Agreement has also been challenged by the Administrative Court of Montenegro, but irrespective of the court decision indicating the illegality of the procedure itself, the regulator in Montenegro issued a new decision to reduce prices. This has obliged the other signatories as well to continue with the implementation of the above agreement. In June 2017, the Serbian Ministry of Trade, Tourism and Telecommunications, along with the competent ministries from Bosnia and Herzegovina, Montenegro and Macedonia, once again launched the initiative before the European Commission for the involvement of these four countries in the implementation of the EU Roam Like at Home rules. Bearing in mind the impact of such initiatives on the operations of operators in individual markets, improving the transparency and predictability of new proposals for regulation of roaming services, both in the region and beyond, is of the utmost importance. In the process of considering roaming regulations, it is also important to recognize flexible roaming plans, tailored to the needs of customers, which are available in the EU.

In the recent period, the debate about the need for regulating the position of over-the-top (OTT) market players has intensified at the European level. While operators in Serbia welcome healthy competition under equal market conditions, they emphasize that the OTT market should be regulated. In this context, it should be borne in mind that OTT operators do not have a local presence, do not pay any taxes, and do not have employees in Serbia. On the other hand, they participate equally in the telecommunications market and maximize profit, whereby mobile operators that invest in the infrastructure, labour force and face significant tax burdens are placed at a disadvantage.

Although Chapter 10 of EU accession negotiations has not yet been opened, relevant institutions can be expected to intensify their efforts and activities to align the regulatory framework of the Republic of Serbia with the EU acquis in the forthcoming period. In this sense, it is crucial for the fixed and mobile telephony operators that the new Law on Electronic Communications is in line with the 2009 EU framework and new standards set by the European Digital Single Market Initiative.

With regard to the enforcement of the Law on Personal Data Protection, the issue of extensive paperwork (registration of data files, permits for cross-border data transfer, detailed and extensive consents for processing personal data), has become a prominent one in practice as is, in particular, the issue of submitting data to debt collection agencies. Although the assignment of claims is regulated by the Law on Contracts and Torts, because personal data are required to be submitted for the purpose of enforcement of claims, in practice it is necessary to register the data file, enter into the personal data processing contract with the agency and prevent the transfer of data to third parties that may be engaged in debt collection. In addition, every complaint filed by a citizen to the Commissioner with regard to the sale of receivables is thoroughly checked by the Commissioner and anyone who gets a call from a collection agency will file a complaint to avoid having to repay the debt. Also, with regard to the work of the debt collectors, the Commissioner has taken the position that they are not entitled to call and contact debtors whose debts are time-barred, which is not based on any statutory regulation.

A particular problem is an excess of paperwork related to the import of and the process of obtaining a certificate of conformity (COC) for radio and telecommunications terminal equipment that is already provided with a COC issued by the EU Member States.

Although we acknowledged that some progress was made in the previous year, owing to the fact that no new parafiscal charges were introduced, we must draw attention to indications that the financial liability of subscriber registration will be imposed on the mobile operators under the Law on Electronic Communications, which means that there is a serious risk that another parafiscal charge will be levied on mobile operators.

FIC RECOMMENDATIONS

- Enactment of the Law on Electronic Communications in line with the regulatory framework and EU recommendations, which is the basis of the financial independence and autonomy of RATEL, whilst fast-tracking amendments to the by-laws on the number portability process, based on the currently applicable Law on

Electronic Communications.

- Restraining from the implementation of parafiscal charges through the imposition of pre-paid registration, finansed by the mobile operators. Bearing in mind that the position of the Government of Serbia is that the parafiscal charges seriously geopardize the predictability of the business environment and new investments, as well as that the obligation of registration of these users is establishing in the public interest, it is very important that this process is not accompanied by the implementation of additional financial burden for the commercial sector.

- Abolition of monopoly on cable ducts is an important precondition for a stronger penetration of LTE technology and improving the capacity of operators through the use of fixed infrastructure. In addition, the price of access to this infrastructure is significantly higher than in the region, and a comparative analysis of prices in the region has not been performed in this segment.

- In order to improve and increase the availability of electronic signatures to citizens and businesses, we consider it necessary to: 1) simplify the identification process, 2) make electronic signatures available to everyone, and 3) relieve customers of the high costs associated with electronic certificates.

- The precondition for this is to make the Law on Electronic Commerce an umbrella law in the field of electronic signature, while other laws, such as the Law on General Administrative Procedure, should be amended to enable the use of electronic documents and e-signatures in administrative and judicial proceedings. Given that the use of a qualified electronic signature requires special hardware, software and entails high costs, there should be three types of ordinary electronic signatures, putting rules in place to determine the type of signature that can be used for each specific contract/transaction. The key to improving this area is prescribing an electronic identification mechanism instead of the technical means for implementing the electronic signature. With a registered SIM card and PIN code, known only to the customer, mobile phones could become the ideal means of identification.

- It is essential that the electronic payment system be improved, and payments recorded in such a way that citizens are not obliged to submit a paper proof of payment made electronically.

- Full independence of the regulatory body, including financial autonomy, is an EU standard and should be fully implemented in Serbia as a major priority for the further development of the industry, aimed at preserving and building expertise for further harmonization of the regulatory framework with the framework of the European Union. This statement also applies to other regulatory bodies, primarily to the Commission for Protection of Competition.

- Taking the decision to relocate the army from the 900 MHz band.

- Further development of e-government and the option of placing these services on a mobile platform is possible through the integrated management of the e-government system, where a body would be created with the political and legal authority to implement all necessary steps and coordinate the exchange of data. Our recommendation is that, in addition to representatives of the Government and its agencies, local government and private sector representatives should also be included in this body. E-government should integrate existing data in electronic form, and regarding the system, it is important to create a user-friendly interface adapted to the widest circle of users and a standard data format suitable for sharing. One of the priorities is to establish an integrated electronic government database.

- The Electronic Communications Law should be a special law (lex specialis) for the field of electronic communications for the area of customer protection as well, (which would also be aligned with the EU 2009 framework), instead of the current situation where the Consumer Protection Law has that role.

- In the field of market analysis, there is a need to improve the mobile termination market analysis further, aligning it with EU practices, while access to cable ducts requires additional regulation and competitive conditions for all alternative operators.

- Amend by-laws and the Decision on Determining Goods Subject to Issuance of Specific Documents on Importation, Exportation and Transit, with regard to the approval of certified radio and telecommunications terminal equipment according to the European Union standards, to eliminate excessive paperwork related to the import and certification of radio and telecommunications terminal equipment.

- Refrain from the introduction of parafiscal charges in the telecommunications sector, which can be avoided primarily by strengthening the financial independence of RATEL.

- Additional cycle of market regulation, which should be implemented in a transparent and predictable manner. Market regulation should follow market developments and should also include the implementation of EU best practices, not just the incorporation of regulations of the developed EU markets. Further alignment with EU legislation should contribute to ensuring equal opportunities for all in the digital environment.

- Amend regulations on protection from non-ionizing radiation, to eliminate the requirement of preparation of environmental impact assessment studies. Also, it is of the utmost importance that special town planning requirements that are not in accordance with Article 217 of the Law on Planning and Construction be abolished. These requirements are presently defined by detailed regulation plans and hinder the installation of base stations in accordance with the needs of the customers. The Law on Planning and Construction recognized the rapid technological development in the field of telecommunications and consequently simplified the town planning requirements for installation of radio base stations. New detailed regulation plans have introduced new, special requirements for the installation of radio base stations that are contrary to the provisions of the Law on Planning and Construction and directly prevent their installation and new investments.

- Better coordination between the state institutions, where the Ministry of Trade, Tourism and Telecommunications should take a leading role when it comes to addressing issues of interest to this sector that require the intervention of other state institutions and organs.

- Coordinated action of state institutions and electronic communications operators to suppress illegal termination of international traffic and clearly define such conduct as illicit, by amending the Criminal Code and the Law on Electronic Communications to sanction such actions as criminal offences and misdemeanours.

- Reduce paperwork with regard to the personal data protection procedure.

DIGITALIZATION AND E-COMMERCE 1.33

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).	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		√	
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.	2015			√
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			√
Training and education of market inspectors in the sphere of e-commerce by the means of organised congresses, seminars and workshops.	2016			√

CURRENT SITUATION

Digitalization and e-Commerce are becoming increasingly important in the business environment and on the regulatory agenda of the Republic of Serbia. Moreover, digitalization has been recognized by the newly-formed Government as one of its key priorities and it is a substantial part of the Prime Minister's keynote address.

Electronic payment is growing increasingly popular in Serbia, and according to official reports by the National Bank of Serbia, the situation since 2015 has been such that the number of on-line banking transactions has surpassed the number of traditional transactions. Electronic transactions are going to be a growing trend. On the other hand, e-trade is insufficiently represented due to, among other reasons, a lack of certain payment options, such as PayPal. According to the data provided by the Statistical Office of the Republic of Serbia, over 54% of Internet users have never shopped for or ordered goods/services on-line. However, the number of those who carried out these transactions in 2016 increased by 19% in comparison with 2015.

Additionally, the electronic signature, introduced 13 years ago, has been poorly used in practice: used by a mere 5% of the population, with the total number of qualified electronic certificates issued in Serbia by the end of 2016 at 350,000.[1] Reasons can be found in the fact that the qualified electronic signature was intended for business people and requires special hardware such as a USB stick or smart card, software that often causes difficulties even to advanced users, and the fact that the cost of issuing the certificate is relatively high.

The e-Government system that has been in place since 2010 through the national eUprava portal was recognised in 2016 by the Ministry of Public Administration as the key mechanism for the reform and improvement of public administration. Health card replacement, making appointments for personal ID cards or passports, and orders of birth certificates are some of the most popular services on the portal. Interoperability (the possibility of data exchange between all state-owned databases) of the

1 Data from the Draft Action Plan for the Development of e-Government for 2017 and 2018.

databases owned by state institutions, simpler electronic identification of user and introduction of all non-cash payment mechanisms are some of the key challenges for the successful implementation of a functional e-Government.

The field of electronic business was primarily governed by the Electronic Signature Law, the Law on Electronic Document, and the Law on Electronic Commerce is still in force. The Law on Electronic Document and the Law on Electronic Commerce were passed eight years ago, whereas the Electronic Signature Law is dated to 2004. Meanwhile, the technological advancement and digitization of business have led to the development of new services, and the provision of those already existing, has become more complex, and the security component has become increasingly important. All this, together with changes in European Union legislation (EU Regulation Nº 910/2014 on electronic identification and trust services for electronic transactions in the internal market passed in 2014, superseding the Electronic Signatures Directive 1999/93/EC) has created a need to develop a new legislative solution. A public debate on the Draft Law on Electronic Document, Electronic Identification, and Trust Services in E-Commerce was held in September 2016, and on October 17 the Law was adopted in the Parliament, while the effects of the proposed Law will be seen in the upcoming period upon the adoption of 17 by-laws which should be passed in the next 6, 12 and 18 months as of the date of entry into force of this Law, in order to enable the full implementation of all the provisions prescribed by this Law. As of the day of entry into force of this Law, the Law Electronic Signature Law, and the Law on Electronic Document have ceased to apply.

POSITIVE DEVELOPMENTS

The Law regulates the field of electronic document, electronic signature, electronic seal, and electronic identification, and other trust services such as electronic delivery, electronic document retention, and website authentication. We consider the fact that this law is going to regulate the matter of electronic business as a whole, unlike the previous situation, where there are separate laws on electronic signature and on electronic document, to be very important.

What is new is that in the future, a digitized document (a document that was not originally created in electronic form but was subsequently converted to electronic form) will have the same power of evidence as the original document, provided that it was digitized in the manner prescribed. In relation to that, it is necessary to explain how the aforementioned innovation affects the entry into various contracts, such as insurance contracts (insurance policies), loan product contracts, etc. It also regulates the delivery of electronic documents between the authorities and their clients, and in relation to that it provides for a special trust service – electronic delivery, whereby the service provider provides evidence of sending and receipt of data. In this manner, an electronic document is protected from all unauthorised changes. It is expected that this will make a significant contribution to the reduction of paper usage in everyday business and in the storing of paper documents, which currently represents a major issue especially for retail companies.

The law provides for the introduction of electronic identification schemes as an identification mechanism that is more flexible than the qualified electronic signature. These schemes are based on three levels of security: high, medium, and low. This solution will allow use of the so-called multi-level authentication, requiring a scheme level that is adequate, depending on the value of the transaction and its legal importance.

Initially, the Law provided for the possibility of using the electronic identification schemes for citizen identification when they engage in transactions with public authorities. Following a comprehensive dialogue with the economic sector, and especially with the representatives of the Digital and E-Commerce Committee, the law text was amended so that the use of electronic identification schemes may be extended to transactions carried out between the economic sector and the citizens. In that manner, it will be possible to determine a user's digital identity by means of hardware and software that is owned by everybody, such as mobile phones or bank cards. For example, a mobile phone can become a means of user identification in electronic transactions, thanks to a SIM card and its unique PIN.

E-government has been recognized as a way to optimize state administration and provide access to public administration services at any time and any place, along with the transparency of public institutions' work and the equality of all citizens before the administration. Apart from the several new services that have been available on eUprava portal for a year now, this has been the first time that we are able to notice a holistic approach to the system of electronic government and that some of the basic issues are

being solved. Within that context, a public debate was held in October concerning the Draft Law on e-Government that will govern the rules of electronic administrative actions and the rules concerning the required IT infrastructure.

We are also looking ahead to implementation of the Action Plan for the Development of e-Government for 2017 and 2018 that is to be adopted by the end of 2017, as announced.

The plan will envisage linking state institutions' databases, which will allow them to communicate, a prerequisite for a functioning system of e-Government. The implementation of the eZup project has been announced for the end of 2017, connecting the six largest databases (birth certificates, the Ministry of Interior, the Tax Administration, the Republic Retirement and Disability Fund, the National Employment Service, and the Central Registry of Compulsory Social Insurance).

Another important issue is setting up the basic registers, such as the population register, the address register, and the so-called meta-register - i.e. a register of all the databases owned by the state.

The third important measure is work carried out to also allow electronic services on mobile platforms – the M-Government. Namely, we have a 129% mobile phone penetration rate in relation to the number of inhabitants, the penetration of smart phones being on the increase, and the global trend is that the Internet is more frequently used on mobile phones than on computers. Apart from their flexibility, mobile devices offer a number of advantages, such as the possibility to introduce personalized electronic services based on various parameters.

In 2017, the National Bank of Serbia relaxed its requirements for foreign currency payments of up to EUR 1,000 received by legal entities operating in the sector of information technologies. In practice, this means that foreign exchange payment certificates will need to be submitted only once as permanent orders, and that all future payments up to the aforementioned amount and based on the same code will go through an automated process, and the payments will be automatically credited to the account. This measure will help reduce administrative barriers hindering the business operation of small IT companies and freelancers.

The introduction of coding as mandatory subject taught from the fifth grade of elementary school is also significant headway being made in the education system that will contribute to the digitalization of the entire society. Moreover, students will be able to learn about information and communication technologies as part of the aforementioned subject, and all materials will be adapted to their age.

What also needs to be mentioned as a positive step towards the digitalization of the economy and the society is the Open Data: Open Opportunities Project within which data bases will be published by state bodies, local authorities and public enterprises on the National Portal in the next two years, making them accessible to all citizens and businesses.

REMAINING ISSUES

The use of premium digital content by retail clients is still at a very low level, and access to Apple App Store content and premium Google Play Store content is limited. Serbia is one of the rare countries without their own Apple App Store version (it is accessible in 155 countries all over the world) and in order to download content, users are forced to register as citizens of other countries. On the other hand, the usual purchase method for apps and other digital content through monthly telecommunication services bills is still unavailable due the interpretation of the National Bank of Serbia that considers the Law on Payment Services and the Law on Foreign Exchange Operations to be an obstacle for this method of payment. Namely, the National Bank of Serbia is of the opinion that in order to provide this service, mobile operators should register as electronic money institutions, which is not required in some countries in the region that are EU members.

This model is also recognized by the Law on Payment Services that stipulates that provisions of the Law will not apply to payment transactions carried out by means of any telecommunication, digital or IT device, wherein goods or services purchased are delivered and used through such a device, which is obviously the case with applications, games, and other Google Play and Apple Store content, and other digital content and/or services that may have added value to users.

Another form of this problem is the fact that Serbia is one of the rare countries not included in the Google Merchant Account List which means that Serbian developers, after having developed an application, are unable to sell the application on Google Play Store.

However, since some citizens require premium content, applications are currently purchased by means of bank cards depriving the state budget of VAT in the amount of 20%. We consider this to be an obvious example of the grey economy in the IT industry.

Moreover, the Law on VAT also recognizes this transaction as taxable: when a foreign legal entity (e.g. Google) sells goods and services to an entity that is not a VAT payer (citizen) and the compensation for the supply of goods and services is charged in the name and on behalf of a foreign entity by a VAT payer (mobile operator), the tax debtor for that sale shall be the VAT payer that charges the compensation (mobile operator). By allowing the payment of these services by means of mobile phones, significant tax resources would be collected for the state.

When it comes to PayPal transactions, the local legal framework still presents a major problem by not allowing users to receive money from abroad through PayPal due to the fact that this service does not provide for RSD as means of payment.

The Law on Electronic Document, Electronic Identification, and Trust Services in E-Commerce has preserved the old concept that implies a detailed regulation of the qualified electronic signature in the law itself, whereas electronic identification schemes as a more flexible mechanism will be regulated to a large extent by secondary legislation.

The problem persists in the domain of electronic payment regarding the payment of administrative taxes by citizens who are often obliged to submit payment slips stamped by the bank as paper evidence of payment, thus excluding the possibility to use electronic banking.

The other problem refers to the eUprava portal, which does not allow a bank-issued card payment option and does not offer portal integration with electronic banking systems, where all payment data would be automatically exported to the e-banking application. This means that citizens have to go to the bank/post office and fill in paper payment slips, which renders the idea of e-Government senseless, or to use M/E-banking to manually enter all payment data (reference number, etc.), opening the possibility for mistakes.

It is currently impossible to receive packages by signing the courier's scanner, which means that it is still necessary to compile, fill in, and archive paper supply lists.

FIC RECOMMENDATIONS

- It is necessary to facilitate the use of digital identity/signature so that it may reach the widest possible circle of citizens without high cost and in a simple way. We recommend that the secondary legislation be passed as soon as possible specifying the electronic identification schemes. This legislation also needs to regulate the establishment of a register of schemes by the Ministry of Trade, Tourism, and Telecommunications.
- One of the Committee's recommendations is the legal recognition of biometric signature. This is a physical signature on an electronic pad that monitors a large number of parameters, such as the speed of signing, pressure applied on the pad, and other parameters making authentication of the signature much easier.
- A positive opinion from the National Bank of Serbia that will enable the application of a Direct Carrier Billing payment model for digital content and digital services, one that may have added value for users through monthly bills issued by mobile operators.
- Improved record-keeping of all payments made to the state in such a manner that would allow that data on payments made arrive to the body in charge of providing the service in real time, so that users do not have to submit evidence of payment. It would be possible to provide for the option available for non-cash payments to generate, at request, an electronic confirmation of the payment locked with the bank's electronic stamp that would serve as evidence of payment, as a transitional solution after the entry of the Law into force.

- All options for making payments and posting payments to accounts receivable on the eUprava portal should be made possible, such as credit cards, integration with E/M banking applications, and telecommunication operator billing. Other entities whose services are significant to the economic sector and citizens, and which may be paid through the eUprava portal, need to be identified (e.g. by the Chamber of Commerce of Serbia, court fees, bailiffs, notaries public, etc.)

- Electronic government needs to be optimized for mobile phones by modifying the eUprava portal and making it into a responsive site adapted to all devices as a transitional solution. In the second phase, a mobile application for Android and iOS platforms needs to be developed to improve user experience.

- Introduction of non-cash payment by cards at all counters providing public services by means of POS terminals in the manner that would treat the transaction as a classic transaction by a payment card and not as a means of withdrawing cash from a counter or an ATM by means of a payment card.

- The relevant regulations referring to postal services need to be amended to allow the receipt of postal packages by placing signature on the courier's screen.

REAL ESTATE AND CONSTRUCTION

1.60

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Construction land and development				
The authorities must introduce transparency and consistency 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.	2009		√	
The missing pieces of secondary legislation regarding construction to be adopted as soon as possible.	2015	√		
Implementation of the latest version of the Planning and Construction Law to be monitored by all relevant stakeholders.	2015	√		
The implementation of the new Law on Legalization of Buildings should be monitored by all relevant stakeholders.	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		√	
It is essential that the application of Article 11, paragraph 6 of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with majority public or state-owned capital.	2016			√
The 12-month period provided under the Law (i.e. no later than 28 July 2016) in which the right of use is considered an appropriate title to the land for the purposes of obtaining a construction permit should be extended by two additional years, given the large number of pending conversion processes.	2016			√
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.	2009	√		
Restitution				
State authorities should lead transparent restitution procedures granting the right to restitution to redress the injustice perpetrated seventy years ago, taking due care to protect basic human rights of the parties to the proceedings.	2015			√
State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.	2015			√
Enable foreigner nationals to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality.	2015			√
Mortgages and Real Estate Financial Leasing				
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.	2009			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to explicitly regulate the manner / procedure and the consequences of the inscribed mortgages in the way to protect the competition between banks, provide the security of data inscribed in the property registry and enable to mortgage debtors to take loans easier.	2016			√
It is necessary to explicitly regulate some of the more flexible shapes of the mortgage which exist in the comparative law such as conditional, credit and continuous mortgage.	2016			√
It is necessary to explicitly regulate that one mortgage could be registered as means of security of more than one claim based on different legal basis as well as of different creditors' claims, and to regulate general rules of the inscribe of such mortgages and the settlement of such creditors.	2016			√
Cadastral Procedures				
More transparent and clearer instructions should be provided for the implementation of the Law within the framework of the cadastral activities, to further accelerate and increase predictability of cadastral procedures.	2016		√	
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.	2012			√
A mechanism should be created for daily updates of online real estate cadastre data.	2016			√
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.	2015		√	
The Republic Geodetic Authority should ensure the harmonization of administrative practices among all local units of the Real Estate Cadastre.	2015		√	

CONSTRUCTION LAND AND DEVELOPMENT 2.13

CURRENT SITUATION

The focus of the Foreign Investors Council (FIC) remains the implementation of the Planning and Construction Law, and in particular the application of the integrated procedure for obtaining construction documents and legalization of existing buildings in accordance with new legislation, as well as implementation of regulations concerning cadastre and cadastre procedures. New investments, obtaining the necessary permits in the integrated procedure and follow-up of the adopted legislation remain the FIC's main area of interest.

The issue of property rights and mixed forms of private and public property still remains a substantial obstacle to the construction sector in Serbia. Following expropriations in the 1950s, construction land became state-owned land, granting land use rights to former owners (who own buildings on the land) or to state-owned companies. Up to 2009, the state was the sole owner of urban construction land, and the only right that someone could have to this land was a permanent right of use, or a long-term lease of 99 years.

The Planning and Construction Law of 2009 set as one of its most important goals the establishment of clear private property rules, in particular through the conversion of land use to ownership rights. In principle, the holder of the right to use the land (or of a long-term lease of 99 years) should be able to convert such a right into ownership.

Conversion of the right of use to ownership of construction land

The Planning and Construction Law provides for two types of conversion: no-fee conversion, set as a general rule, and conversion for a fee.

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, bankruptcy 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.

The Law on Conversion of the Right of Use to Ownership of Construction Land for a Fee ("Law on Conversion for a Fee") was enacted at the end of July 2015. The long-awaited Law on Conversion for a Fee prescribes the conditions for conversion of the right of use to ownership over publicly-owned developed and undeveloped construction land and the possibility of establishing a long-term lease on such land.

The conversion fee is set at the market value of land (by the local municipality) at the time of submitting the request for conversion. Reductions of the fee are possible, under the terms stipulated by law, and are applicable on a case-by-case basis upon submission of the request for conversion. For example, a reduction can be made if the construction land is located on the territory of an "underdeveloped" local government unit, or if the construction expert determines that the applicant incurred expenses in connection with the acquisition of the land in question (expropriation, administrative transfer, expenses of remediation and revitalization and other actual expenses).

The most significant reduction of the conversion fee is envisaged in the case of developed construction land, in which case the conversion fee is determined by deducing the market value of the land for the regular use of facilities from the market value of the entire cadastral parcel.

The conversion fee may be paid in 60 monthly instalments or in full, in which case the applicant will be entitled to a reduction of up to 30% of the calculated fee. In case the conversion fee is to be paid in monthly instalments, the law stipulates that the applicant has to provide security in the form of an irrevocable bank warranty, mortgage, or registered pledge.

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 a request for the reduction of the conversion fee has been put forward.

Since the right of use can no longer serve as a legal ground for obtaining a construction permit after 28 July 2016, the Law on Conversion for a Fee provides the option for natural and legal entities which are entitled to the conversion for a fee to conclude a 99-year lease agreement with the owner of the construction land until the title to land is finally acquired and registered. In this way, the lessees can obtain the construction permit before carrying out and paying the fee for the conversion.

However, in practice the calculation of conversion fee (as it is in short presented above) is subject to serious difficulties. The competent authorities (the Secretariat for Property and Legal Affairs in Belgrade and local authorities dealing with property and legal affairs) interpret the regulations freely and without clear guidelines of state authorities and relevant ministries. Therefore, the whole procedure of fee calculation is significantly slowed down, and investors cannot rely on the fee calculations made prior to the commencement of the procedure itself. This very unpredictability of costs affects the plans of investors significantly to acquire locations on which the conversion needs to be performed.

Construction

The Planning and Construction Law, which was adopted in 2009, was significantly amended in December 2014, introducing for the first time the so-called "integrated procedure" for obtaining a construction permit through a "one-stop-shop".

The so-called "integrated procedure" encompasses all steps, from the issuance of location conditions, through the issuance of the construction and occupancy permits, to the registration of ownership over the newly constructed facility with the Real Estate Cadastre. The exchange of all relevant documents is performed electronically, through the website of the Serbian Business Registers Agency.

The exchange of all relevant documents between public authorities in the integrated procedure is performed without any further involvement of the investor. The investor's

role in the procedure is to procure and submit only the documents and/or evidence that cannot be procured ex officio by the relevant authority. The time it takes to issue a permit has been reduced in several ways: (i) the competent authority examines only whether the formal conditions for construction are fulfilled, (ii) the Law prescribes shorter deadlines for the authorities to take action, and (iii) stricter penalties for breach of public duty. All these instruments should improve the efficiency of the procedure.

Location conditions are issued on the basis of a corresponding planning document and have replaced the former location permit. If a detailed regulation plan has not been adopted within the legal deadline, location conditions are to be issued on the basis of the by-laws regulating land parcelling, development, and construction or on the basis of the existing planning document which contains data on the alignment (the line separating a particular public area from areas foreseen for other use).

Location conditions are a public document containing all conditions necessary for the preparation of technical documentation for a construction project, and information on possibilities for and limitations on construction for a specific land parcel. In order to obtain location conditions, an investor is obliged to submit a concept design, made in accordance with the location information. 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.

An important characteristic of location conditions is that they are not linked to a particular investor. Hence, 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, within the deadline of validity prescribed in the document.

A significant improvement envisaged under the rules of integrated procedure is the clear methodology for setting the land development fee, paid by an investor to the municipal authorities for the purpose of developing land infrastructure. This means that the possibility of the municipal government changing the fee amount at their own discretion, which posed a significant impediment in the past, has now been decreased, if not completely eliminated. In addition, if an investor has directly financed infrastructural development, the land development fee can be reduced for the value of the investment. If the investor chooses to pay the fee in lump sum, 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 in lump sum, the fee is payable before commencement of construction; otherwise, if paid in instalments, only the first instalment is to be paid before commencement of construction works (however, collateral for the payment must be provided). The land development fee is not charged for infrastructural and production facilities, warehouses, underground floors, etc. The provision of the Law on Planning and Construction that regulates the types of real estate that are exempted from the payment of the land development fee were subject to a review of constitutionality before the Constitutional Court. However, in its decision rendered on 11 May 2017, the Constitutional Court dismissed the motion for review of the constitutionality of said provision.

Amendments to the Law on Planning and Construction have further introduced 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 requires companies engaged in the preparation and control of technical documentation, professional supervision, technical inspection, as well as contractors, to obtain professional liability insurance coverage for damage caused to the other contractual party 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, these services cannot substitute for the official opinion issued by the Ministry regarding the interpretation of certain provisions of the Law, or for interpretation of the Law by an experienced real estate lawyer.

Legalization

The problem of illegal construction, i.e. construction without appropriate permits, has been extremely pervasive over the past 20 years. The legislators tried to cope with this complex issue by enacting various regulations, but none of these attempts were deemed successful. The new Law on Legalization was adopted in November 2015, and stipulates a somewhat radical legalization procedure, envisaging only two options for illegally built facilities – either demolition, or full legalization.

POSITIVE DEVELOPMENTS

Conversion of the right of use to ownership of construction land

Some improvement has been seen with regard to the conversion proceedings, as well as a growing interest from investors to initiate and finalize the respective proceedings. Additionally, the relevant authorities are becoming more and more cooperative in this regard as well. According to the Ministry of Construction, Transport and Infrastructure, conversion procedures are now more efficient and all local government units have received clear instructions to speed up pending proceedings.

Construction

Amendments to the Law on Planning and Construction introduced the integrated procedure for the issuance of all construction-related documents and permits, and a system for the issuance of e-permits (CEOP), functional as of 1 January 2016.

As for the number of issued building permits, one may note an increase of number of issued construction permits since the unified procedure has been introduced. For instance, in October 2016 there was the largest number of issued construction permits in last 10 years, whereas the total number of permits issued in march 2017 was 1491, which is 126,3% more than March 2016.

According to the World Bank's global Doing Business ranking, Serbia has made significant improvements in the area of construction permitting, and consequently rose from 152nd to 36th place in 2017.

Legalization

After several attempts to regulate the legalization of buildings without valid permit, which failed to achieve the desired effect, in 2015 the Law on Legalization of Buildings (RS Official Gazette No 96/2015) was adopted and came into force on 27 November 2015.

The Law regulates the requirements, procedure and manner of legalization of facilities built without construction permits and the legal consequences of legalization. For the facilities used without occupancy permit, the respective permit is to be obtained in a regular procedure, in accordance with the law governing construction of buildings. Exceptionally, only in cases when a construction permit was issued in a previous legalization procedure, but no occupancy permit, the designated authority will issue a decision on legalization, without implementing the procedure prescribed by this Law.

Only a building for which there is evidence of title to the construction land, or to the building itself, is eligible for legalization. The Law stipulates in detail the documents that can be accepted as evidence of the respective rights. Generally, the Law stipulates that facilities built in protected areas in accordance with special laws, or from materials that provide no guarantees of stability , or on land unsuitable for construction, or that are not aligned with the applicable planning documents, or that are incomplete (i.e. not fully constructed) are not eligible for legalization.

Properties for which an earlier application for legalization was already denied cannot re-apply for legalization.

The most frequently quoted reason for failure to complete the legalization procedures initiated under the previously applicable laws, is that the procedure was too complicated and expensive. To overcome this obstacle, the Law has introduced a fixed legalization fee determined by several criteria, such as the intended use of the property (commercial or residential) and their surface area, and the whole procedure has now been significantly simplified.

However, in 2013 the Constitutional Court contested the "simplification" of the previously applicable Law on Planning and Construction on grounds that it puts owners of unlawfully built properties in a more favourable position than those who built properties in accordance with regulations governing construction.

As regards illegal properties for which legalization applications have not been submitted by 29 December 2014, a construction inspector will make a list of these and subsequently issue a decision on their demolition. This decision will then be delivered to the legalization authority that will initiate the legalization procedure ex officio, and the decision will not be enforceable until final completion of this procedure. Therefore, the legalization procedure envisaged by the Law applies to facilities for which legalization requests have been submitted by 29 December 2014 in accordance with previously applicable laws, as well as to the facilities to which the ownership right has been registered in accordance with the previously applicable Law on Special Conditions for the Registration of Ownership of Structures Built without a Construction Permit.

Furthermore, buildings for which a legalization request has not been submitted in accordance with previously applicable laws will also be subject to legalization, provided that such facilities are visible on a satellite image of the Republic of Serbia from the year 2015.

In the case that a request for the legalization of a building is rejected or denied, the building will be demolished.

In practice, there was no significant enforcement of demolition orders; however, the Ministry of Construction, Transport and Infrastructure announced the stricter enforcement of this type of sanction and the removal of such structures.

REMAINING ISSUES

Conversion of the right of use to ownership of construction land

A large number of cases of conversion has been suspended, mainly on grounds of Article 1, paragraph 5 and Article 11, paragraph 6 of the Law on Conversion for a Fee, which stipulate that the conversion process will be immediately suspended by the competent authority if it is established that the plot of land is subject to restitution, until final completion of the restitution process.

However, Article 9 of the Law on Property Restitution and Compensation (RS Official Gazette No 72/2011, 108/2013, 142/2014 and 88/2015) provides that only a public enterprise or other legal entity (i.e., an entity founded by the Republic of Serbia, autonomous province or local government unit, a company with majority state-owned capital and cooperatives, including enterprises and cooperatives in the process of bankruptcy and liquidation), is obliged to return nationalized property, and that return in kind is not possible in all other cases, consequently, the stay of the conversion process in all these other cases is unjustified.

It is, therefore, essential that the application of Article 11, paragraph 6 of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with majority public, i.e., state-owned capital.

Additionally, there are serious problems with inconsistencies in the calculation of the conversion fee by the relevant authorities. Consequently, investors cannot predict in advance the amount of the conversion fee for large-scale projects and plan the funds in their accounting records accordingly. The unpredictability of the costs of conversion proceedings significantly affects plans of investors to acquire locations that require conversion proceedings.

The provisions of the Law on Conversion for a Fee are currently subject to review of constitutionality before the Constitutional Court.

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.

Communication with authorities responsible for the issuance of official documents in the integrated procedure should be improved.

Legalization

The implementation of the new Law on Legalization of Buildings should be monitored by all relevant stakeholders.

FIC RECOMMENDATIONS

- The authorities must introduce transparency and consistency 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 in the construction area and regarding communication between the real estate cadastre and authorities responsible for the issuance of construction and use permits, should be adopted as soon as possible.
- The implementation of the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders.
- The implementation of the new Law on Legalization of Buildings should be monitored by all relevant stakeholders.
- 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.
- It is essential that the application of Article 11, paragraph 6 of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with majority public or state-owned capital.
- 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 stakeholders 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 everyone.

MORTGAGES AND REAL ESTATE FINANCIAL LEASING 1.00

CURRENT SITUATION

The Law on Mortgage was adopted at the end of 2005 and its implementation began at the beginning of 2006. At the time of its adoption, the Law on Mortgage 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 Amending the Law on Mortgage in July 2015, with the primary goal to overcome the problems identified from the very beginning of the implementation of the law.

Subsequently, the Law on Mortgage underwent minor technical changes by decision of the Constitutional Court, and new amendments in October 2015.

The aforementioned changes were adopted about two years ago, and more time is needed to see their full effects. 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 excep-

tions of a few office buildings acquired through leasing. The main problems in the application of the Law on Financial Leasing, related to the high costs and tax treatment of leasing, have yet to be resolved.

POSITIVE DEVELOPMENTS

With the adoption of the Law Amending the Law on Mortgage in July 2015, significant improvements were introduced 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 amendments introduced a number of other technical improvements that will hopefully contribute to overcoming the many dilemmas that arose in the application of the Law on Mortgage in practice.

Finally, we appreciate the technical changes in the Law from October 2015 stipulating that the deadlines related to the out-of-court settlement should run from the date of non-appealability ("konačnost") rather than from the date of finality ("pravnosnažnost") of the decision on the registration of the foreclosure sale annotation which will, we expect, significantly accelerate the settlement procedure.

REMAINING ISSUES

As in the previous edition of the White Book, as a general remark we have to point out that the amendments of the Law on Mortgage from 2015 were not sufficiently far-reaching. The impression is that they lack additional clarifications, which could have been very useful, and they also failed to introduce some new useful concepts. Furthermore, we consider that some of the new solutions are not good enough.

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).

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

Furthermore, the position of the lessee in the case of an out of court settlement is not entirely clear. Specifically, following the amendments to the Law on Mortgages, it seems that in the case of a foreclosure the mortgagee/buyer of the real estate can in any case demand that tenant vacate the property, which is not always feasible in practice (e.g.

in the case when the mortgagee was or could have been familiar with existence of the lease at the time when the mortgage was created). On the other side the Law on Enforcement and Security protects the dutiful tenant who stays in possession of the real estate even following the court foreclosure procedure. The legislator must have clear rules for resolving the conflict between the rights of the mortgagee in a foreclosure procedure (either court or out-of-court) and the rights of the tenant.

Finally, the amendments have failed 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.
- It is necessary to explicitly regulate the manner/procedure and consequences of registered mortgages to protect competition between banks, the security of data registered in the real estate cadastre and facilitate access to loans for mortgagors.
- It is necessary to explicitly regulate some of the more flexible types of mortgage envisaged by comparative law, such as conditional, credit and continuous mortgages.
- It is necessary to explicitly allow a mortgage to be registered as collateral for more than one claim, on different legal grounds, and for different creditors' claims, and stipulate general rules for the registration of such mortgages and the settlement of such creditors.
- It is necessary to regulate the position and rights of the tenant in the case of extrajudicial enforcement.

CADASTRAL PROCEDURES 1.60

CURRENT SITUATION

The latest amendments to the Law on Cadastre and State Survey came into force in December 2015. These amendments to the Law were significant, aiming, first and foremost, to accelerate the registration procedure in the Real Estate Cadastre, create conditions for e-administration, eliminate gaps that had been detected in the previous implementation of the Law.

Now that the amendments to and innovations of the Law have been in force for almost two years, we can opine that some progress has been made in the activity of the Real Estate Cadastre, mainly the efficiency in resolving the client requests, as well as communication with clients have improved. In principle, the amendments to the Law and its implementation can be assessed as positive, but there is still plenty of room for improving the regulatory framework for this rather complicated administrative procedure.

In that regard, professional public was recently presented with the Draft Law on the Registration Procedure with the Cadastre, prepared by the Ministry of Construction, Transport and Infrastructure. This Law aims to introduce significant innovations, primarily in the method of filing applications and documents with the Cadastre, the relation

between Cadastre, other state authorities and holders of public authorities, as well as deadlines for rendering decisions. The authors of this Draft Law additionally propose to accelerate the procedure at the Cadastre by introducing the obligation for public notaries, courts, bailiffs and other state authorities to submit their decisions to the Cadastre electronically, ex officio, within short deadlines (within 3 days at the latest); by gradually transitioning from written to electronic means of conducting business, as well as by regulating in more detailed procedures at the Cadastre. However, a downside of the Draft is the more rigid behaviour of the Cadastre, reflected in the omission of one of the key principles of procedural law, which is to assist lay client. The debate on the Draft is still in its early phase, so it remains to be seen if all the provisions will be introduced in the final version of the Law, and whether efficient implementation will be possible as soon as the Law enters into force.

POSITIVE DEVELOPMENTS

Amendments to and innovations of the Law on Cadastre and State Survey that entered into force in December 2015 are starting to yield results, which is reflected in faster and more efficient procedures in the Real Estate Cadastre. Additionally, the Cadastre has made evident but not yet full-scale progress in its communications with the clients.

REMAINING ISSUES

The main issue is still the inconsistent interpretation of currently applicable regulations by different Real Estate Cadastral offices, often contradicting other laws and by-laws.

Recent regulatory solutions, as well as the activities of cadastral offices reflect a prominent formalistic approach in processing applications for registration of rights to immovable property. This approach will certainly help accelerate procedures at the Real Estate Cadastre offices, which is one of the main expectations investors have. However, an exceedingly formalistic approach can also aggravate the position of anyone applying for the registration of their rights with the Real Estate Cadastre. In that sense, the authority of the competent service to reject an application that it finds non-compliant, without the obligation to inform the party about the deficiencies identified in it, is a highly problematic regulatory issue. This automatic rejection leads to loss of the priority of a party to register its right and unpredictable additional delays in issuing a decision on the party's application. It is therefore necessary to reconsider the possibility of a party whose application was rejected for formal reasons to retain priority in having a decision issued on its application, provided that the same party re-files its application within a certain deadline, similar to the solution already applied in procedures before the Serbian Business Registry Agency.

We also emphasize the problem of transfer of mortgages from buildings under construction to the finished buildings in cases when the investor deviated from the parameters set out in the construction permit. This problem is particularly prominent in cases when special units of a building under construction are mortgaged. Although the Law on Mortgage clearly mandates that mortgage includes improvements on immovable property, and prohibits the investor from making any alterations to the building without the creditors' consent, in practice there are deviations from construction permits and investors manage to legalize and register such altered buildings with the Cadastre. However, due to their strictly formalistic approach, Real Estate Cadastral offices refuse to transfer the mortgage from a building under construction to the finished building under the pretext that the mortgaged building no longer exists. Consequently, creditors risk losing the mortgage and negligent investors are protected. To avoid such a situation, it is necessary to change either the practice of Real Estate Cadastres, or laws to oblige Real Estate Cadastre offices to provide for the transfer of mortgages in such cases. Alternatively, regulations on legalization should provide that the state authority approve the legalization, by issuing a resolution on legalization, and order the transfer of the mortgage from the building under construction to the finished building.

While the decision-making procedure on requests submitted following the amendments to the law appears to be significantly faster on the overall, the huge backlog of unresolved requests, some of them unresolved for years, still remains a problem.

In 2016, the Republic Geodetic Authority took over a significant number of second-instance cases from the Ministry, many of which are waiting to be resolved for years. The Authority should organize the work on second-instance cases in such a way as to ensure their prompt resolution. Additionally, in practice information on the procedure upon applications submitted before the Authority is obtained through a call-centre, which is usually inefficient and has no information about the relevant case.

Digitalization and organization of cadastral plans are yet to be completed, as in practice there are inconsistencies of data contained in the cadastral registry and corresponding cadastral plan. Because of this, there is a significant delay in investments that can cover large areas of land, or a large number of land plots.

Data available through Real Estate e-Cadastre are not always reliable, because it is not updated often enough.

The utility cadastre is not yet fully set up, and this creates uncertainty in the domain of property rights, preventing registration of encumbrances on utilities.

FIC RECOMMENDATIONS

- More transparent and clearer instructions should be provided for the implementation of the Law in the sense of cadastral activities, in order to further accelerate and increase predictability of cadastral procedures.
- 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, upon submission of a request for issuance.
- A mechanism should be created for daily updates of online real estate cadastre data.
- The formation of the utility cadastre should be finalized as soon as possible, along with all remaining procedures related to the formation of the real estate cadastre.
- The Republic Geodetic Authority should ensure harmonization of administrative practices among all Real Estate Cadastre local units, increase control over their activity, and handle parties' complaints with greater promptness.
- The Republic Geodetic Authority should resolve all unresolved second-instance cases as soon as possible and promptly notify the parties involved.
- The Republic Geodetic Authority and the Real Estate Cadastral service should be more available to parties for consultations.
- Through change of practices and/or the regulatory framework, there is a need to secure the recognition and adequate treatment of exceptions from the principle of formality, so that diligent investors and mortgage creditors do not suffer any negative consequences due to a rigid interpretation of laws, or omissions by the Real Estate Cadastre in the application of said principle.

RESTITUTION 1.00

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 the state's intention to return 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 statutory 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. In rare cases privatized companies may be obliged to make restitution in kind.

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.

In 2015 there were several cases of investors who acquired certain rights under privatization laws and potentially faced restitution claims. In fact, the Agency for Restitution and the Republic of Serbia refuse to take a definite position with respect to the conflicting rights to restitution and rights to property acquired in privatization. Several proposals for amendments to the law on restitution were publicly circulated, which, if enacted, would jeopardize the acquired rights of foreign investors.

Agricultural Land

The Law on Agricultural Land prohibited foreign legal entities and private persons from acquiring ownership of agricultural land. Amendments to the Law on Agricultural Land abolished the ban on the acquisition of ownership of agricultural land for foreign natural persons who are citizens of the European Union and who have the right, as of 1 September 2017, to acquire ownership rights on agricultural land up to 2 ha, for a fee or free of charge, upon fulfillment of the prescribed conditions. 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 provisions of the Law on Agricultural Land.

The provision of the former Law on Co-operatives entitled 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.

A new Law on Co-operatives was enacted in 2015, which does not contain any of the former provisions on returning agricultural land to newly founded co-operatives. However, the abuse of rights by newly founded co-operatives remains an issue since the final provisions of the new Law stipulate that existing claims for the return of the land filed by the new co-operatives, founded for the purpose of abusing this right, are to be settled under the rules of the former law, thus jeopardizing the acquired rights of foreign investors.

POSITIVE DEVELOPMENTS

Agricultural Land

The new Law from 2015 indicates that, in the future, the abuse of rights by cooperatives for the purpose of gaining possession of agricultural land will no longer be possible.

REMAINING ISSUES

Restitution

The Law on Property Restitution and Compensation declaratively prescribes the basic principle of restitution, but numerous exceptions indicate that the most frequent model of res-

titution 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). Ambiguities and inconsistencies in the Law on Property Restitution and Compensation have led to divergent practices by the Restitution Agency, which may jeopardize the acquired rights of foreign investors.

In some of the restitution cases, the Restitution Agency interprets regulations in a manner that hinders or even denies foreign nationals their right to restitution or compensation, and such a restrictive viewpoint has been accepted by the administrative courts. Certain provisions of the Law on Property Restitution and Compensation are applied in 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.

The draft amendments to the Law on Property Restitution and Compensation, made available to the public in November 2015 only to be rapidly withdrawn from circulation, indicate that the conflict between the right to restitution and the protection of acquired rights is an issue that has not yet been definitely resolved. The Draft amendments to the Law on Property Restitution and Compensation indicate that there is strong support for the idea that privatized companies should be returned to their former owners. This is also supported by the provisions of the Law on Conversion of the Right of Use to Ownership of Construction Land.

FIC RECOMMENDATIONS

- State authorities should lead transparent restitution procedures granting the right to restitution to 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 foreigner nationals to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality.

LABOUR

LABOUR RELATED REGULATIONS 1.19

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 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.	2009			√
We also 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			√
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?	2015			√
We propose to extend the limit for the duration of the suspension measure to one month.	2010			√
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.	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2012			√
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			√
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.	2012			√
A more precise definition is required as to what is considered a placement of trade union representatives into an "unfavourable position".	2013			√
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.	2015			√
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.	2015			√
We propose that the Labour Act defines a modality for of engaging students and other individuals outside employment, for the purpose of gaining practice in a real work environment which can enhance their careers ("work practice"), without prescribing additional conditions limiting such engagement.	2016		√	
To change labour-legal regulations in order to differently regulate, alternatively, first the conduct of formal communications between the Employer and Employee, then employment-based information/ receipt/processing/delivery of requests and decisions, as well as keeping of documentation, etc.	2016		√	
Law on Vocational Rehabilitation and Employment of Persons with Disabilities:				
Classification of business activities that due to its own specifics (eg. Private security, manufacturing, construction, etc.) are subject to a limited application of the Law in a way that in these branches, the number of persons with disabilities that employer must hire, shall be calculated with respect to the number of employees who works on jobs that can be performed by employees with disabilities and for which is not required special health ability in accordance with the law and / or with the nature of business activities	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Harmonize the Law on Vocational Rehabilitation and Employment of Persons with Disabilities with the Law on private security in respect of the obligations of the Companies from this industry	2016			√
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			√
Employment of Foreign Nationals:				
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			√
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).	2013			√
The labour market test should be excluded in case of employment of directors or other high ranking management individuals.	2015			√
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.	2015			√
Law on Conditions for Assignment of Employees to Temporary Work Abroad and Their Protection				
Abolish the limitation of the duration of business trips abroad during the year, i.e. closer defining what is considered to be a business trip, in which case the rules on assignment would not apply.	2016	√		
Introduce the possibility of assigning the employees for professional education and development to a foreign company which is not affiliated by equity with domestic employer.	2016			√
Introduce the possibility of assigning the employees under the age of 18 on professional education and development abroad.	2016			√
Staff leasing:				
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 relation of employer and individual, employer and service user, employee and service user, occupational health and safety, etc.).	2009		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2010			√
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.	2010			√

THE LABOUR LAW 1.12

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 extensive changes to the Labour Law (RS Official Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, and 13/2017; hereinafter: Labour Law or Law) were made in the period that followed.

The Law on Amendments to the Labour Law from 2014 incorporated practically 65% of the recommendations from the White Book 2013. The aim of the reform was to create conditions for the establishment of a business environment that would enable the growth of foreign and domestic investment and increase competitiveness and productivity of the economy, as well as create new jobs, while preserving the necessary balance between the interests of employers and those of employees.

In November 2016, the Constitutional Court passed a decision on the unconstitutionality of the Labour Law provision which enabled termination of employment if the conduct of an employee constituted an act of criminal offence committed at work or in relation to work, regardless of whether criminal proceedings have been initiated or not. As a consequence, this provision was repealed and has not been in force since 24 February 2017. This provision was introduced in 2014, with the aim of extending the number of grounds for termination of an employment agreement, as well as of relieving employers from the need to prescribe every type of violation by general act or employment agreement. Under the decision of the Constitutional Court on the unconstitutionality of this provision, options for the employer for terminating the employment agreement is limited to situations in which an employee's action apparently falls under the description of a criminal offence.

Since the White Book 2016, no new changes have been made to the Labour Law, while a practice has been developed in the application of new and changed concepts, which primarily includes employers' practice in the -application of the Labour Law and the setting up of employment relations between employers and employees.

The year 2016 saw a change in the interpretation of the Labour Law provision regulating compensation for unused annual leave in the event of termination of employment. The Ministry of Labour, Employment Veteran and Social Affairs and the Ministry of Finance have taken the stance that this kind of compensation, for tax purposes, be treated like a salary; i.e. tax and contributions are to be paid on the compensation for unused annual leave. This despite the fact that, according to the Labour Law, such compensation is defined as compensation of damages, and despite the fact that both ministries gave opposite opinions in 2015.

POSITIVE DEVELOPMENTS

Amendments to the Labour Law from 2014 have certainly contributed to the creation of a more favourable business environment. The labour legislation reform is the result of harmonization with European Union legislation; but also of economic needs, i.e. the need to revive the economy and attract foreign investment, that created the urgent necessity for amending the law. We would particularly like to point out that there have been improvements in the work of the courts, i.e. decision-making in labour disputes, thanks to the change to the law according to which

the court may in the course of the procedure adjudicate to 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.

For further development and implementation of the law, special attention will 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 certain concepts.

REMAINING ISSUES

Certain innovations in recent amendments to the Labour Law remain 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;
- Introducing high misdemeanour fines for employers may present an obstacle to opening new positions.

Also, some of the 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, 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;
- Treating compensation for unused annual leave as a salary for tax purposes (according to the current opinions of the Ministry of Labour and the Ministry of Finance) unjustifiably increases employers' expenses and creates legal uncertainty;
- Generally, 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 such (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; A deadline for payment of severance (which is before the termination of employment) is not coordinated with the deadline for the payment of earnings arising from employment upon termination (which is 30 days from the day of employment termination). This complicates the administration of payments to redundant employees;
- Fixed-term employment is limited to 24 months, with extensions possible only in special cases, while the terms under which such employment can be contracted are quite restrictive. Despite the expansion of cases in which an employment agreement may be extended beyond the statutory maximum term, 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 person, but on some other job, one different from 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; Pro-

visions 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 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 "unfavourable 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 unfavourable position. We note that the need for a change in salary or internal reorganization of positions is often caused by real economic difficulties 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;
- Amend Article 210 of the Labour Law in terms that the employer's obligation to provide technical and spatial conditions, as well as to enable data access, refers only to the representative trade union;
- The Labour Law regulates the resolution 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 where there is no obligation to adopt the program, which creates some uncertainty for employers, while the issue of redundancy is highly delicate and the source of a large amount of litigation;
- 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 one) to issue a decision on termination or could do so within the subjective deadline of six months;
(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 for not terminating the employment contract and/or not imposing a disciplinary measure after the statement of the employee, if such a decision is made;
(iii) whether there is the possibility for the employer to impose more disciplinary measures for the same violation instead of termination of the employment agreement.

On-the-job Training under the Labour Law

The Labour Law limits the possibilities of non-standard employment relationships for the purpose of individuals gaining practical knowledge and skills relevant to their future employment ("on-the-job training"). This type of engagement is in particular important for students, as well as for graduates (usually unemployed) without sufficient or appropriate work experience.

The Labour Law expressly defines two types of agreements for training purposes, but neither type is suitable for covering some important cases of engagement. The first such agreement is the internship agreement ("ugovor o stručnom osposobljavanju"), which assumes that the intern has already completed the academic degree required for work on a certain post, but lacks the work experience required by the employer (or in rare instances, by a statute) to work in that post. These conditions make the internship agreement unsuitable for student training, because they do not yet hold a degree in the field in which they need training. In addition, this agreement seems unsuitable for engaging those graduates who want to increase their potential on the job market by obtaining practical work experience, but who are not necessarily interested in (or seen as candidates for) employment at the employer once they complete their training, or who wish to gain experience in fields other than the one in which they hold a degree. The second agreement is the agreement on vocational develop-

ment ("ugovor o stručnom usavršavanju"), the use of which was limited in 2014 (by Amendments to the Labour Law) to the cases when vocational development is prescribed by a piece of legislation. Since for most professions there is no legislation prescribing vocational development, this type of agreement is practically inoperative. This unnecessarily limits possibilities for students and other individuals to obtain practical work experience that could later help them find employment. This also limits employers in finding new talent they could offer employment to.

Digitalization in Labour Regulations

For companies oriented towards investment in the further development of information technologies and the development of digital societies, as well as having the technical possibilities of completely carrying through on such initiatives in a situation when there are laws on electronic signature and electronic document and other accompanying regulations, as well as a major shift made in the Law on General Administrative Procedure, a change in labour regulations would be of great importance, as it would differently regulate, alternatively, the conduct of formal communications between the Employer and Employee first, then employment-based information/receipt/processing/delivery of requests and decisions, as well as the keeping of documentation, etc. as an alternative to hardcopy form which, in principle, now represents its basic form. In this way, employees would have news, activities, and the overall history relating to the labour status all available at one place – on modern, now mostly standard work-required devices (laptops, mobile phones, tablets) provided by the employer, so that major challenges that are present in the practice now would no longer be there, or would be significantly reduced. The positive effect on business operations would be manifold, including the ecological (i.e. the minimum use of paper).

FIC RECOMMENDATIONS

- Most international companies have a system of salary calculation 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 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 concluding a fixed-term employment contract should not be conditioned on any specific reasons (such as work on a specific project, increase in the volume of work, seasonal jobs, etc.), something currently the case. We propose that such limitations be abolished, so that parties can freely enter into fixed-term employment contracts in whatever case they deem appropriate.
- In addition, we propose that the provisions of the Labour Law specify that a fixed-term employment contract be allowed to 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 a fixed-term employment contract 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.
- The threshold for the employer's duty to enact the Rulebook on Internal Organization and Job Classification should be increased from the current ten to 50 employees, and only open-end employees should be counted for this threshold.
- 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, and not just two consecutive levels of professional qualification, as the current legal solution provides.
- Misdemeanour fines should be decreased, and coordinated with the actual gravity of the misdemeanour, since, for example, the more severe sentence is prescribed for not delivering the calculation of salary than for not paying the salary.
- 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) The decision on employment termination will not be void if the pregnancy commences after the delivery of said decision to the employee; and
  (ii) 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.
- Defining more precisely the obligations of employees with regard to notifying their employer of the temporary inability to work; that is, the obligation of delivering the report on the temporary inability to work, and not only notification of temporary inability to work, and cross-referencing the provisions regulating the responsibility of the employee for abusing the right to temporary inability to work with the provisions of the Health Insurance Law.
- It is necessary to define that one part of annual leave is to be used continuously in a two-week period, which does not necessarily have to be the first part of annual leave (as the current legal solution provides).
- It is necessary to provide the possibility of carrying over unused annual leave to a new employer, upon consent of the employee and new employer.
- It is necessary to exclude the compensation for unused annual leave from compensation which is treated like a

salary in accordance with Article 105, paragraph 3 of the Labour Law.

- A more precise definition is required as to what is considered a placement of trade union representatives into an "unfavourable position", as well as redefining the term for the review of union representativeness; that is, to shorten the term of three years for reviewing the representativeness or to determine that, for the purpose of determining the representativeness, a membership longer than 12 consecutive months is required.
- It is necessary that the Labour Law regulate the redundancy procedure in those cases where there is no legal obligation to adopt a redundancy program.
- It is necessary to determine that the deadline for payment of severance in case of redundancy is the same as the deadline for payment of earnings arising from employment upon termination of employment.
- 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.
- It is necessary to define the term for giving a statement on the change of agreed employment conditions as eight calendar days, rather than work days, as that is often too long because of public holidays and non-working days.
- It is necessary to define that, in the case of an employee's refusal to receive an act delivered to him in the business premises, it shall be deemed that the act has been delivered, since otherwise the delivery process may last for several weeks.
- It is necessary to introduce the possibility of the employer unilaterally releasing the employee of the duty of coming to work during the notice period along with the payment of compensation in the amount of the employee's base salary.
- It is necessary to regulate in more detail the consequences of unlawful termination, specifically whether the employee has the right to compensation of damages in the amount of lost salary in addition to compensation that is a substitution for reinstatement.
- We propose that the Labour Law define a modality for non-standard employment relationships with students and other individuals for the purposes of gaining practice in a real work environment which can then enhance their careers ("on-the-job training"), without prescribing additional conditions limiting such engagement.
- We propose extending the maximum term of contracts on temporary and periodical jobs from the current 120 to 180 working days in a calendar year. This is because in certain industries some seasonal jobs last longer than 120 working days per year.
- Defining the form for the calculation of salary and the obligation to fill in only the elements which are paid to the employee, as well as prescribing the record of salaries' layout.
- To change labour regulations in order to differently regulate the conduct of formal communications between the employer and employees, employment-based information/receipt/processing/delivery of requests and decisions, archiving documentation, etc.

LAW ON VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES 1.20

With respect to the issues concerning the implementation of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities, bearing in mind there was no progress in this area in the period since the previous edition of the White Book, we emphasize the following:

- The problem for employers is a lack of staff that would apply for jobs appropriate for employees with disabilities.
- Existence of business activities for which it is practically impossible to employ a person with a disability because the performance of such activities requires specific health abilities (jobs such as construction, private security, manufacturing, etc.).
- Failure to carry out classification of business activities of employers that, according to their nature, cannot be subject to the application of the Law in the same way as employers not requiring special health abilities or special psychophysical abilities of employees for performing jobs, while companies selling services rather than products, for which people with special psychophysical characteristics are a key factor in performing basic business activities, are unable to meet the requirements set by this Law.
- Conflict between the Law on Vocational Rehabilitation and Employment of Persons with Disabilities and the Law on Private Security, pursuant to which, starting from 1 January 1 2017, the activities of private security can be carried out by persons with an appropriate license for whose acquisition and maintenance an appropriate psychological and physical ability is required, especially for employees performing specific jobs with weapons and whose health status has to be checked every year, resulting in the fact that companies from private security industry are additionally prevented from complying with provisions of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities in the manner prescribed by the Law.
- Although there is the possibility of current employees undergoing an assessment of their working ability in order to be recognized as PWD, in practice such a procedure is very complex and administratively cumbersome, as it includes submission of numerous documents by the employee and involvement of different state authorities with somewhat overlapping powers within just one procedure (the National Employment Service [NES] and the Republic Fund for Pension and Disability Insurance [FPDI]).

FIC RECOMMENDATIONS

Because the regulations listed herein are considered particularly important and vital for attracting and maintaining foreign investment, and given that the very purpose of this Law is the inclusion of people with disabilities, the FIC has previously provided and is still putting forth a number of suggestions on how to improve the situation. To this end, we will here underline the most important recommendations on how to improve the existing legal framework and practice:

- Classification of business activities that, due to their own specific nature (e.g. private security, manufacturing, construction, etc.), are subject to a limited application of the Law in a way that, in these branches, the number of persons with disabilities that the employer must hire, shall be calculated with respect to the number of employees who work on jobs that can be performed by employees with disabilities, and for which special health abilities in accordance with the law and/or with the nature of business activities are not required.
- Harmonize the Law on Vocational Rehabilitation and Employment of Persons with Disabilities with the Law on private security with respect to the obligations of the Companies from this industry.
- 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 that the procedure and decision making should be accelerated and a list of documents required by the authorities from the employee be reasonably decreased.

- We believe that a more efficient manner for achieving a higher employment rate of PWD would be to stimulate employers to employ such persons by way of incentives.
- The Law should enable the employer to initiate the procedure for the establishment of current employees' disability, rather than leave it to employees alone.

EMPLOYMENT OF FOREIGN NATIONALS 1.00

The Law on the Employment of Foreign Nationals that entered into force on 4 December 2014 (with the exception of certain provisions regulating the employment of EU citizens), envisages two types of work permits: (i) a personal work permit, enabling foreign nationals who have a permanent residence permit, as well as refugees and other special categories of foreign nationals, to work, be self-employed, and exercise unemployment rights in Serbia; and (ii) a work permit for employment for self-employment and special cases. A personal work permit is issued at the personal request of a foreign national, whilst a work permit (except for the work permit for self-employment) is granted at the request of the employer.

For the same time period, a foreign national who seeks employment in Serbia may be granted either a personal work permit or work permit, and a foreign national may only conduct that business activity for which he/she was issued the work permit.

The requirement for obtaining a work permit is holding a temporary residence permit in Serbia, and a work permit is issued for the period of validity of the temporary residence, not to exceed one year. On the other hand, all stated 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 foreign nationals 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 foreign nationals. However, the Law on Employment of Foreign Nationals stipulates that such restrictions are not applicable to all foreign nationals. For example, 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 restriction for employers introduced by the Law on Employment of Foreign Nationals (that previous laws did not recognize) has so far not contributed to the improvement of the business environment. This particularly refers to the provisions prescribing that a work permit will only be issued to the employer if that employer has not dismissed any employee working on the same job 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 an employee among Serbian citizens, or persons who have free access to the labour market, or persons who possess a personal work permit with suitable qualifications from the records of the National Employment Service (the so-called labour market test). The impossibility of avoiding the labour market test, even when hiring a high-ranking manager, has been shown to be problematic in practice. Also, the issue of the maximum period of validity of the residence and work permit (up to one year) is still outstanding, and the necessity for extending these still remains an additional administrative burden for foreign nationals and employers.

On the other hand, the Law on the Employment of Foreign Nationals has also had its positive effects, including a more comprehensive and precise regulation of issues related to the employment of foreign nationals than before, allowing not only employment, but also self-employment, as well as 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 the practical application of the Law, e.g. by shortening the period of time for issuing a residence permit, reducing the number of documents required during the procedure for acquiring a residence permit, etc.
- A work permit's term of validity should reflect the needs of the employer officially confirmed by the term of the Employment Agreement.
- The labour market test should be excluded in case of employment of high ranking management individuals.
- The Central Registry's certificate regarding whether the employer, prior to filing the request for the work permit, dismissed the employees due to redundancy should contain the exact job titles of the redundant employee.

THE LAW ON CONDITIONS FOR THE TEMPORARY POSTING OF WORKERS ABROAD AND THEIR PROTECTION 1.67

The Law on Conditions for the Temporary Posting of Workers Abroad and Their Protection came into force on 13 November 2015, and its application commenced 13 January 2016. On the commencement date of the application of this law, the Law on the Protection of Citizens of the Federal Republic of Yugoslavia on Work Abroad was thereby abolished, whereas the new law foresaw that all procedures for the temporary posting of workers abroad that were commenced until 13 November 2015 will be completed based on the previously applicable law.

The main reasons for the enactment of the new Law on Conditions for the Temporary Posting of Workers Abroad and Their Protection were the new social, political, economic, and cultural circumstances, inadequate legal solutions which could not provide sufficient protection in a changed environment, nor ensure to employers the compliance of their business with the modern requirements of the market, as well as inefficient legal concepts of the applicable law which included difficult administrative and technical procedures for the assignment of employees to temporary work abroad.

Under the Law on Conditions for the Temporary Posting of Workers Abroad and Their Protection, temporary posting of workers abroad includes not only work, but also professional education and development for the needs of the employer. In fact, this law binds employers who temporarily post their employees abroad for the following purposes: (i) work to carry out investment and other works and provision of services; (ii) work or professional education and development for the purposes of the employer in business units of the employer located abroad; and (iii) work or professional education and development for the purposes of the employer within the intercompany movement of the employees.

The most important advances in the field of temporary posting of workers abroad introduced by the Law on Conditions for Temporary Posting of Workers Abroad refer to the simplification of administrative and technical procedures of the posting, i.e. the notification of the Ministry of Labour, Employment, Veteran and Social Affairs, which reflects in a shortening of deadlines for informing the Ministry (from 30 days to one day prior to the date of the posting), as well as in the reduction of additional documentation that the employer is obliged to submit to the Ministry along with the notification on posting. Also, unlike the previously applica-

ble law, the terminology of the new law is finally harmonized with the terminology of the Labour Law, as well as with other applicable regulations governing the labour-related matter.

Further, unlike the previously applicable Law on the Protection of Citizens of the Federal Republic of Yugoslavia on Work Abroad, which foresaw that the temporary posting of workers abroad could be performed solely based on the agreement on business cooperation concluded between a domestic employer and a foreign legal entity to which the employee is being posted, the new statutory solutions are significantly more flexible and adjusted to the needs of practice, so that now it is foreseen that, depending on the type of posting, the assignment may be performed on the basis of an Agreement on Performance of Investment and Other Works, posting act, or letter of invitation of the foreign legal entity in which the employee is being assigned, as well as other appropriate legal bases. As the law leaves the possibility of including any other appropriate legal basis for all types of posting, in addition to the precisely listed documentation representing the basis for posting, it is clear that the intention of the legislature was to significantly facilitate the temporary posting of workers abroad with these new statutory solutions.

With respect to posted workers, the new law prescribes the same solutions envisaged by the previously applicable Law on the Protection of Citizens of the Federal Republic of Yugoslavia on Work Abroad, so that the employer may continue to post only employees (for an indefinite period, under prescribed conditions, and for a limited time period) to temporarily work abroad, not persons engaged under non-standard employment relationships.

One of the significant advances of the law, aimed at increasing the protection of employees in the territory of the Republic of Serbia, is the requirement of the employee's prior written consent to being temporarily posted abroad. By proposing the mandatory prior written consent of the employee to the posting, i.e. by listing particular cases in which the employee may refuse the posting (if the possibility for temporarily posting workers abroad is foreseen under the employment agreement concluded with the respective employee), the legislature, to a certain extent, strives towards the protection of employees. But unlike the new statutory solution, the previously applicable law did not foresee special situations in which the employee could refuse temporary posting abroad. Rather, it merely prescribed the general obligation of the employer to determine those situations in which the employee is entitled to refuse the suggested posting with its internal act, something that in practice was not often the case.

Certain provisions of the Law on Conditions for the Temporary Posting of Workers Abroad and Their Protection create problems in practice. One of the most problematic provisions is the provision which determines the delimitation between business trips and work abroad, as it foresees that a business trip abroad will not be considered as a posting only if it lasts less than 30 consecutive days, or 90 days in total (with interruptions) in a calendar year. Although this provision was prescribed in order to determine a more clear difference between the temporary posting of a worker abroad and a business trip, and to prevent certain employers (as was the case until now) to avoid application of the provisions on the temporary posting of workers abroad by "using" the concept of a business trip, limiting the duration of business trips may cause the application of rules on the posting of workers abroad, even in situations where such a thing is not justified (i.e. when the stay of the employee abroad, by its very nature, is a business trip), thereby unnecessarily increasing administration and hindering business. This limitation of the duration of business trips has proven to be inadequate, especially when it comes to managerial positions requiring frequent business trips.

Provisions limiting the posting of employees abroad to pursue professional education and development only to business units of the domestic employer abroad, and only to a group of people affiliated with the employer on the basis of equity share and control, are disputed in practice. By disabling the posting of employees to professional training in companies abroad that are not affiliated by equity with a domestic employer, but in some other manner (e.g. contractual affiliation), the movement of employees within regional and multinational projects is unnecessarily limited.

Also, while by limiting the possibility of posting employees under the age of 18 to temporarily work abroad the legislature's intention was probably to protect minors, (which is in line with general labour regulations), there is, no doubt, especially bearing in mind the fact that the law under the term "temporary posting of workers abroad" includes posting to pursue professional education and development, that such prohibition is unnecessary and that the possibility of posting employees under the age of 18 abroad to pursue professional training and development should have been enabled.

FIC RECOMMENDATIONS

- Abolish the limitation of the duration of business trips abroad within a year, i.e. defining more closely what is considered to be a business trip, in which case the rules on the posting of workers would not apply.
- Introduce the possibility of assigning employees for professional education and development to a foreign company not affiliated by equity with domestic employer.
- Introduce the possibility of posting employees under the age of 18 to pursue professional education and development abroad.

STAFF LEASING 1.33

The staff leasing practice of companies is still not regulated in Serbia. Although somewhat tolerated in practice for several years by the relevant authorities owing to a lack of legal governance, such may ultimately lead to certain problems for employers using this concept. Formally, 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 the risk (in certain cases, evident in practice) that leased staff will claim they were actually employed with 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 using its services.

In early 2013 the Republic of Serbia ratified the International Labour Organization's (ILO) Private Employment Agencies Convention (No. 181), committing itself to regulating staff leasing in the following 12-month period, as well as enabling the work of private employment agencies (which inter alia offer services of staff leasing). Although a couple of years passed since then, staff leasing regulation has yet to be adopted, and so this remains a potential source of great legal uncertainty.

POSITIVE DEVELOPMENTS

A work group for the preparation of the draft law regulating staff leasing was formed at the beginning of 2016. Although, according to available information, the work group has been engaged in the preparation of the draft law, the official proposal has yet to be launched.

The FIC hopes that the work group will promptly prepare the draft law and that its suggested provisions will be in line with accepted international standards (ILO and EU documents most of all). Also, the FIC hopes that prior to adopting this law, a transparent public discussion process will take place, and that the line ministry will take into account those suggestions for the improvement of the draft law given during the public discussion.

FIC RECOMMENDATIONS

- The concept of staff leasing should be regulated by a separate regulation, 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 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.

HUMAN CAPITAL 1.75

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Human Capital				
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		√	
Dual Vocational Education				
Cooperation with countries that have developed dual education system, like Austria, Germany and Switzerland and institutions from these countries ready to assist Serbia in implementation of this system in accordance with market circumstances and needs of economy, should be continued and advanced.	2016		√	
Amendments of currently applicable regulations by adding provisions on dual education system and/or passing of new systemic regulations/ regulation governing this model of education should be conducted. For this purpose, as well as for all the other aspects of this education system implementation, members of Foreign Investors Council are ready to support state authorities and institutions and provide their expertise.	2016		√	
Model of sustainable funding of dual education and possible incentives that shall attract companies in Serbia to join this system should be defined.	2016			√
Multiple benefits of this education model for both vocational schools' students and economy should be promoted in every possible way, so that both students and companies express their will to take part in its realization.	2016		√	

CURRENT SITUATION

The global economic crisis continued to affect the labour market significantly in 2016. A slowdown in economic activity and consumption worldwide brought about a reduction in exports and economic activity in Serbia. The decrease 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 a decreased 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 a combination thereof.

According to the Statistical Office of the Republic of Serbia, the unemployment rate in Serbia in 2017 is 14.6%.

The labour market in Serbia shows the same trend as the rest of the economy – a trend of moderate growth. This trend continued in 2017 – many companies decided to increase the number of employees. The Government is trying to balance between the budget revenues and the needs of the economy for tax incentives to slow down the downsizing process.

In times of economic changes, human capital becomes increasingly important. Although labour market demand has decreased, resulting in more 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.

In October 2017, the intention of additional regulation of the education system was noted as the Law on Higher Education and the Law on the Education System Foundations, as well as the Proposal on Dual Education, were adopted. The real effects of these new legal solutions will be seen in the upcoming period.

POSITIVE DEVELOPMENTS

The Government of the Republic of Serbia adopted the National Employment Action Plan for 2017, which was prepared with the involvement of social partners, relevant ministries, key institutions, and other stakeholders. The plan is a consolidated overview of the objectives and priorities of employment policy that should be achieved through active employment policy programmes and measures in 2017 to contribute to the full implementation of the employment policy strategic goal by 2020. This would ensure compliance with sectoral policies and ongoing reform processes of importance and impact on employment policy.

The Government of Serbia has also 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 over 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 was developed were 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 types of development; great technological changes, real revolutions; globalization and general mobility of everything that can move, from capital to cultural patterns. In this context, the strategy itself was developed to set the main education sector development priorities as well and as accurately as possible.

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. Serbia's population is ageing: it is ranked sixth amongst the countries with the oldest population. 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.
- Based on the analysis of the needs of the economy and the real sector, create and establish a new educational profile and regularly adjusted enrolment quotas at all universities in accordance with market needs.
- Define the legal framework between employer and student in order to simplify the application of the professional practice of students during regular school.
- Define the legal framework for the training of persons of higher educational backgrounds to work independently in the field, regardless of the conditions for obtaining the professional exam or apprenticeship.
- An Employment Action Plan by the National Employment Service to closer define, redefine, and expand the range of educational profiles that will be included in the action plan and employment policy.
- Continue joint proactive engagement of the FIC and the Government to coax the highly skilled and educated workforce currently abroad back home 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.

DUAL VOCATIONAL EDUCATION 1.75

CURRENT SITUATION

Employers in Serbia are faced with the lack of a skilled workforce on the level of secondary education, something that has a negative impact on economic development and the successful attraction of foreign companies in need of such a workforce in order to start their business in Serbia. Namely, it is customary for students complete their vocational education without any practical experience, which leads to the problem of their employment. Employers' complaints about the quality of the available workforce are characteristic for all the countries in the world, but this problem has

been significantly overcome in countries which have implemented the dual vocational education system.

Dual vocational education means an education system wherein students of vocational schools spend a certain number of their classes in schools, while the rest are spent at employers' premises; i.e. in companies with which they are in a specific employment-educational relationship. In this way, students of vocational schools, by "learning on the job", gain not only theoretical knowledge, but also essential practical skills in certain sectors of the economy. This has multiple benefits both in terms of their faster and easier employment and in terms of increased competitiveness of companies, which have the opportunity of employing a young workforce already qualified for work in the respective economic sectors.

A significant number of European countries have already developed a dual education system, with Austria, Germany, and Switzerland taking the lead. In countries that have implemented this model of education, youth unemployment has been reduced to a minimum, and education matches the needs of the economy.

The successful implementation of this kind of education system is a complex process which will depend upon various factors, but one reason for optimism is that there is an awareness amongst both the business community and state authorities of the necessity for education reform to reduce youth unemployment and satisfy the needs of the economy in the future. Those systems existing in Austria and Germany cannot simply be "copy/pasted" in Serbia; rather, they have to be adjusted to local circumstances.

An important condition for the functioning of this kind of education system in practice is the continuous assessment of labour market demand; i.e. the identification, in cooperation with the regional chambers of commerce and industry, of vocations for which there is a need in the economy, in order to organize enrolment in vocational schools and carry out dual education programmes specifically for those vocations for which the companies conducting business in Serbia have expressed a need.

The Education Development Strategy for the period until 2020 (RS Official Gazette No 107/2012), adopted by the Government of Serbia in 2012, does not contain provisions on the dual education system, but does envisage the introduction of education for tradespeople, involving employers in the vocational education development process, etc., where compatibility with a dual system can be recognized.

POSITIVE DEVELOPMENTS

The German Organization for International Cooperation (GIZ) has been supporting and assisting implementation of a dual education system in Serbia since 2002. Since September 2014, as a result of the implementation of GIZ's "Reform of Vocational Education in Serbia" project, eight vocational schools in Serbia have been enrolling students in three new vocational-technical training programmes – for locksmiths-welders, industrial mechanics, and electricians, - organized under the new cooperative education model based on a firm cooperation between schools, businesses, and local governments. Each school year, more vocational schools in Serbia implement this model of education in their programmes. This is still not real dual education, as students only attend their practical lessons in the companies, something provided as a possibility by way of the Law on Secondary Education (RS Official Gazette No 55/2013), based on contracts concluded between schools and companies. This practice has shown good results and has confirmed that the implementation of a dual education system as "education that fits the economy" should be considered as imperative in the Serbian education reform process.

In 2015, GIZ conducted a feasibility study, "Dual Vocational Education in Serbia", in cooperation with the Ministry of Education, Science, and Technological Development, as well as the Chamber of Commerce and Industry of Serbia. This study identified the conditions, possibilities, and recommendations for the implementation of the dual vocational education system in Serbia.

Austria, as a country with a long tradition of successful dual education system practices, has also supported the Serbian education reform. In February 2016, Serbia and Austria signed the Memorandum on Cooperation in Dual Education System Development in Serbia. This Memorandum lays the foundation for long-term cooperation between the Austrian Chamber of Commerce and Austrian experts and companies from Austria conducting their business in Serbia and the relevant ministry and the Chamber of Commerce and Industry of Serbia in the process of implementation of dual education system, with the aim of emulating the successful Austrian model.

Following the public discussion about dual education, which took place in February 2016 in the National Assembly of the Republic of Serbia within the Committee on Labour, Social Issues, Social Inclusion, and Poverty Reduction, the adoption of the systemic law regulating this issue was announced, as well as the law on insurance against injuries at work, which will cover the safety at work of students included in the dual education programme.

The foregoing actions resulted in the preparation of the Draft Law on Dual Education, that was adopted by the Government of the Republic of Serbia on 9 October 2017 (hereinafter: the Draft Law) and it is expected that the Law on Dual Education will be soon passed by the National Assembly. The Draft Law regulates the content and manner of the realization of dual education, as well as mutual rights and obligations of all participants, material and financial security of students, and other issues relevant for the realization of the dual education system.

Pursuant to the provisions of the Draft Law:

- Dual education has been recognized as "learning on the job" and defined as part of the secondary education system in which theoretical lessons and exercise in school and learning through work in a company will result in the gaining, improvement, and upgrade of certain knowledge, skills, and abilities;
- Dual education will be performed on the basis of a curriculum to be adopted by the Ministry responsible for education (hereinafter: the Ministry), on proposal of the Institute for Improvement of Education, and with a previously obtained opinion of the National Education Council and Council for Vocational Education and Adult Education;
- Mutual rights and obligations of employers and schools will be regulated by a special agreement on dual education, that shall be entered for a period of minimum three or four years, in accordance with the curriculum, whereby the school may enter such an agreement with one or more companies, and the company may also conclude such an agreement with one or more schools;
- Mutual rights and obligations of employers and students will be regulated by a special agreement on learning on-the-job to be entered between the employer on the one side and the student's parent or the legal guardian of a minor student (or adult student) on the other;
- Both the agreement on dual education and the agreement on learning on-the-job may be terminated under the terms stipulated by the Draft Law. Inter alia, the employer may terminate the agreement on dual education in case the unforeseen technological, economic or organizational changes which prevent, aggravate or substantially change the performance of the employer's activity occur;
- For the purpose of dual education, the employer is obliged to provide an instructor with experience of no less than three years in the relevant profession, one who has passed the appropriate training and has acquired a relevant licence issued by the Chamber of Commerce. In addition to this, there are other conditions the employer has to fulfil in order to take part in the learning through work system, such as: performance of business activity enabling realization of learning through work content stipulated by the relevant curriculums; relevant work space, equipment, and other means of work; implementation of measures for safety and health at work; an absence of bankruptcy or liquidation proceedings against the employer, etc. Fulfilment of such conditions will be verified by the Commission established by the Chamber of Commerce, which will award the employer who meets all the above requirements with a certificate of compliance with the conditions for the performance of on-the-job training in the dual education system;
- The employer will provide the students with equipment for personal safety and protection at work, compensation of actual costs of transportation from school to work and back, compensation of food expenses, and insurance for the event of injury at learning on the job with the employer;
- Protection of students' rights in dual education shall be realized in accordance with the law regulating the basics of the education system, the law regulating secondary education, the law regulating the field of work and protection at work, the regulations governing the prohibition of performing dangerous work for children and this Law. In the course of learning on the job with the employer, discrimination of students is prohibited, as well as physical, psychological, social, sexual, digital and any other violence, abuse and neglect of students, in accordance with the law regulating the basics of the education system and other laws;
- Students may spend at least 20%, and at most 80% of the total number of hours of vocational subjects on learning on the job, in accordance with the applicable curriculum;
- Learning on the job at a company can be performed throughout the entire school year from 8 a.m. to 8 p.m., up to six hours per day, i.e. up to 30 hours per week, in

accordance with the curriculum;
- For each hour spent on learning on the job, the employer will pay the student compensation in the amount of no less than 70% of the minimum wage;
- Bylaws for implementation of the Law on Dual Education shall be passed within six months as of the day the Law on Dual Education enters into force, and the Chamber of Commerce shall pass its general acts envisaged by this Law within three months as of the day the Law on Dual Education enters into force;
- The Law on Dual Education will apply as of the 2019/2020 school year.

REMAINING ISSUES

Although the initiative for dual education system implementation has been launched by the Government of the Republic of Serbia, there are numerous outstanding issues regarding the realization of this education model.

The key obligation of the state in the dual education implementation process, which, despite momentous steps made in this direction, has not yet been fulfilled, is the comprehensive legal regulation of the dual vocational education system; i.e. passing the Law on Dual Education and accompanying bylaws (envisaged to be passed within six months as of the day the Law on Dual Education enters into force).. In fact, the rights and duties of all participants of the dual education system have to be clearly defined by law and accompanying bylaws, and companies have to be fully introduced to their role and the standards they have to meet to take part in this system.

It is essential that a legal framework is provided for students to enter into an employment relationship with companies, either in the labour legislation, the Law on Secondary Education, or the law on dual education. In fact, according to the applicable Labour Law (RS Official Gazette No 24/2005, 61/2005, 54/2009, 32/2013, 75/2014 and 13/2017), persons under the age of 15 cannot be employed, and persons over 15 but under the age of 18 can be employed only with parental consent and the official opinion of a health authority confirming that a particular job will not harm the health of the youth in question. Hence, providing the legal framework for specific employment-educational relationships between students of vocational schools and companies is an issue of particular importance. If dual education in Serbia is to be regulated by a special law, it is necessary to determine how such a law is to apply in relation to the Labour Law, the Law on Occupational Health and Safety, and the Law on the Prevention of Workplace Harassment; i.e. to provide for an analogous application of the provisions of these and other laws regulating different aspects of employment. The Draft Law provides for protection of the students in accordance with the foregoing laws in general, but the bylaws to be adopted should regulate these and many other practical issues in more details.

A necessary condition for the successful functioning of this education model is the strengthening of public-private partnerships; i.e. the improvement of cooperation between private companies conducting business in Serbia and state authorities and institutions.

Bearing in mind that the dual education system implementation is a long-term process which aims to cover only particular vocational profiles in line with the education system capacity and employers' needs and requirements, in addition to the proposed solution it is crucial to accelerate the induction of secondary school personnel of all profiles into the work environment in a simple and efficient manner. To achieve this, it is necessary to enable all existing resources (prospective employers and students regularly attending secondary schools), which are currently restrained due to the complicated tripartite Employer-Educational Institution-Student relationship, followed by a lack of legislation. Regulating the Employer-Student relationship through the simple contractual form for vocational practice should provide substantial support to businesses in the process of providing practical training, while also enabling the protection of students' rights and legal certainty.

FIC RECOMMENDATIONS

- Cooperation with countries that have a developed dual education system, like Austria, Germany, and Switzerland; and institutions from these countries ready to assist Serbia in implementation of this system in accordance with

market circumstances and needs of the economy should be continued and advanced.

- Amend currently applicable regulations by adding provisions on the dual education system and/or pass new systemic regulation(s) governing this model of education. Members of the Foreign Investors Council are ready to support state authorities and institutions and provide their expertise for this purpose, as well as for all the other aspects of the education system implementation.
- A model of sustainable funding for dual education and possible incentives that will attract companies in Serbia to join this system should be defined.
- Define the legal framework for the dual system of education in institutions of higher education.
- The multiple benefits of this education model for both vocational school students and the economy should be promoted in every possible way, so that both students and companies may express their interest in taking part in its realization.
- Define the legal framework to enable implementation of vocational practice for secondary school students during regular studies not covered by the dual vocational education system.

top

LEGAL FRAMEWORK

As opposed to 2016, during which numerous laws and regulations in various areas of relevance for the general legal framework were adopted, lesser legislative activity and introducing of adopted changes to legal system of the Republic of Serbia were noticed during 2017. However, third quarter of 2017 brought an increased legislative activity, having in mind that, at the moment of preparation of this text, there are several law proposals in the Parliament pipeline, as well as that the Government started work on revision of different systemic laws.

As examples of the most important legislative changes in 2017, which refer to the topics presented in the section Legal Framework, we emphasize the following:

- **Law on Amendments to the Law on Agriculture Land** – The most significant novelty of the law relates to purchase of agriculture land by legal transaction with or without reimbursement by citizen of European Union. The law sets terms that have to be met by mentioned person, as well as limitations which restrict transactions of certain types of agriculture land, in that way protecting territorial integrity and legal interests of the Republic of Serbia. Maybe the most complicated term which has to be met by the foreigner is period of residence on the territory where transaction on of agriculture land is being made, because the period needs to last ten years at least.

  Citizens of European Union member states are not allowed to acquire agriculture land which is specified by special laws as a development land, land that has status of protected natural good, land which is near by military complex, facility, their protected zones, Ground Security Zone and land which is less than ten kilometers from the Republic of Serbia's border.

- **Law on Amendments to the Law on Judges** – New law brings novelties regarding the presidents of the courts. Their mandates are reduced from five to four years and can be elected two times in total to the position. Presidents of the courts, who meet conditions for legal age retirement during their mandates, shall remain on the position until the end of their mandates, while presidents who started their mandates before passing this law, shall finish it, in accordance with the Law on Judges and can be elected once more to the position, with mandate of four years.

- **Law on Amendments to the Law on Ministries** – The most significant change brought by mentioned law is formation of two new ministries – Ministry of Environmental Protection and Ministry of European Integration. Given the global environmental policy trends in terms of environmental protection, the establishment of this ministry was proposed in order to improve the quality of life of citizens and their health. In addition, the accession to the European Union, in other words the adoption of numerous regulations and obligations in this field, required the establishment of a ministry dealing with this issue.

  On the other hand, due to the numerous complex procedures that the Republic of Serbia has to fulfil in the process of joining the European Union, not only environmental issues, the Ministry of European Integration was established, in order to make the mentioned process as easy as possible, while at the same time the need of European Integration Office's existence ceased.

  Former Ministry of Agriculture and Environment Protection changed its name to Ministry of Agriculture, Forestry and Water Management, as well as its scope of duties. Other changes include the Ministry of Mining and Energy taking over some duties from the Ministry of Economy, while the Ministry of Economy will take over duties in regulating concessions and public-private partnerships from the Ministry of Trade, Tourism and Telecommunications.

As mentioned, in the future we can expect changes of several systemic laws. Proposal of amendments to the Bankruptcy Law and Proposal of Prevention of Money Laundering and Financing of Terrorism Law are currently in the Parliament pipeline. In addition, the Government has recently concluded the public debate on the Draft Law on Amendments to Company Law, while several laws are being reviews within working groups: Law on Competition Protection, Civil Procedure Law, Foreign Exchange Law, as well as the Law on Investment and Alternative Investment Funds.

The reduced intensity of legislative work in 2017 resulted in the continued existence of certain areas without significant progress during the previous period.

top

top

LAW ON BUSINESS COMPANIES

1.00

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			√
It is necessary to precisely regulate increasing share capital through debt-to-equity swap (conversion).	2016			√

CURRENT SITUATION

The Law on Companies (RS Official Gazette Nos 36/2011, 99/2011, 83/2014, and 5/2015) (hereinafter: the Company Law) came into force on 4 June 2011 and is applicable as of 1 February 2012. The only exception are provisions relating to electronic voting at the shareholder assembly of a public joint stock company, which are applicable as of 1 January of the current year. The last Law Amending Company Law was adopted on 19 January 2015. The Company Law regulates the subject matter of companies, i.e. their legal status, and in particular their establishment, management, status changes, legal form changes, termination and other important issues. Besides companies, the Company Law also regulates the subject matter of sole proprietorship. A sole proprietor is an individual, not a legal entity or a company, who is engaged in an economic activity. In this sense, the title of the law is not clear enough.

The Company Law is a step further in harmonizing Serbia's corporate legislation with that of the EU, primarily with its directives and with the latest solutions in comparative law of countries with developed market economies. Following the conclusion of the EU Stabilization and Association Agreement in 2008, alignment with the EU legal system becomes a formal obligation of the Republic of Serbia. The Company Law is also harmonized 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. The Directive 2005/56/EC on cross-border mergers stipulates the rules and procedures for easier cross-border mergers of public and non-public joint-stock companies with limited liability, and limited liability companies. The legislature of the Republic of Serbia is familiar with the terms of the relevant Directive (2005/56/EC) and envisages the harmonization of legislation and implementation later in the process. According to a Screening Report of the EU Enlargement Working Group at the beginning of 2015, the Republic of Serbia has achieved a good level of alignment with EU acquis in the area of company law. The key aspect of harmonization is the concept of cross-border mergers. The European Commission recommended opening accession negotiations with the Republic of Serbia on Chapter 6 – Company Law.

Now, after more than five years of implementation of the Company Law, we can conclude that its main characteristics are:

- application of standards harmonized with EU legislation;
- harmonization with the Law on the Capital Market;
- certain problems that were a characteristic of the previous Law were resolved;
- precise determination of certain legal concepts;
- the distinction between joint-stock companies and other forms of business organization and
- single-tier and two-tier management systems.

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

At the moment of preparation of this text, a public debate on the law on amendments and supplements to the Law on Companies is finalized, while the effects of the proposed changes will be seen in the next period after the adoption of the respective amendments to the Law.

POSITIVE DEVELOPMENTS

The Company Law syntax and writing style is simple and logical, and many of its standards are extremely detailed, which is a big step forward relative to the previous law that was insufficiently precise, characterized by the inconsistent use of some terms and a lack of rules for implementing its underlying provisions. In general, the Company Law is a step forward compared to the previous Law on Companies. The Company Law introduced a number of important developments in the legal system of the Republic of Serbia, among which 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 single-tier (shareholders' assembly and directors) or two-tier (shareholders' assembly, supervisory board, and directors) corporate governance structure.

Positive developments are related to the provisions on the legal form and status changes, where some of the solutions have been simplified, making their application in practice significantly easier. The changes to the provisions on the initial capital have also been helpful, since the initial capital may now be denominated only in RSD, which resolved the problem of having a company's initial capital expressed in various currencies (e.g., RSD for financial statements as compared to EUR for the Company Register). Also, the fact that the minimum initial capital requirement has now been set at RSD 100, instead of EUR 500 in RSD equivalent as prescribed by the previous Law on Companies, greatly facilitates the process of incorporation.

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 resolved in practice, due to the fact that both the banks and the Serbian Business Register Agency (SBRA) have eased the requirements, thus facilitating a smoother company registration process.

The Company Law now clearly gives shareholders the possibility to make additional payments without raising their stakes in the company. 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 provisions on jurisdiction are not provisions on sole jurisdiction. 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 also introduced. Additionally, the market value of the shares of a public JSC is now precisely defined (when compared to the calculation formula contained in the previous Law on Companies).

An important innovation, introduced by the Law Amending the Company Law of 2015, is related to joint stock companies that are not public in the sense 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 date of acquisition may not exceed 20% of its core capital. This is an improvement compared to the previous provision stipulating that the total value of own shares may not exceed 10% of the core capital. New provisions are also applicable to own shares that were acquired before this Law on Companies came into force, which definitely contributes to legal certainty.

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 the SBRA has 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 authorities of corporate bod-

ies 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 the payment of initial capital for a JSC are still ambiguous.

One of the concepts introduced by this Law is "lifting the corporate veil". When stating the reasons for the application of the related provisions, legislators made a clumsy formulation creating a dilemma on whether those reasons are the only applicable ones or are given exempli causa. Other inconsistencies of the Law include 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 rules, making their application extremely difficult, and in certain cases even impossible. For example, the squeeze-out procedure 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 how long a decision on a squeeze-out applies. Furthermore, a frequent problem in practice of the SBRA arises in situations where additional payments have to be returned to a person who, since making the additional payment, has left the company.

Another issue to be underlined is the increase in a company's share capital through a debt-for-equity swap, provided by Article 146, paragraph 1, item 3 and Article 295. Specifically, the Company Law does not provide a precise explanation in terms of the procedures and conditions of such a swap, and this should certainly be regulated. Article 295 prohibits debt-for-equity swaps in public joint-stock companies, which is contrary to Article 67, paragraph 4, item 3) of the Law on Tax Procedure and Tax Administration, for which reason it is necessary to harmonize these two laws. Furthermore, practice of the SBRA on this matter is not unified.

Another practical problem can arise from the application of 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. This is especially a problem for those companies that have a large number of members. The question is how to prove that a member of the company actually received the offer addressed, whether the member is objectively in the position to submit the offer to the relevant company bodies to decide on it. An altogether different problem arises if the offer is tied to a deadline and if the deadline expiration could cause damage to the company. Also, it remains unclear how a company gives statements in this case, since members of the supervisory board and members of the company do not have the authority to represent the company.

As discussed earlier, although generally perceived as a positive development, the provisions of the Company Law denominating share capital in RSD have 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 wherein the amounts of registered, paid-in capital contributions do not match the total amounts of the paid-in capital. It also happens that the amounts of capital contribution do not proportionally correspond to the size of the shares held by other shareholders. Another innovation introduced by the Law on Companies is a significantly lower amount of minimum share capital of a limited liability company, which now amounts to RSD 100 instead of the EUR 500 set by the previous Law. This provision can be interpreted as both 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 hand, such low basic capital does not fulfil its purpose of financing business operations and guaranteeing the fulfilment of obligations.

A deficiency of the previous law was the absence of rules 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 ministry opinions are not binding, the SBRA has in this case abided 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 avert arbitrary

actions of the line ministry, which can pass decrees invalidating certain provisions.

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 the 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 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 concept of limited liability partners in a partnership. The existence of such a concept 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 has noted this deficiency and emphasized the necessity of change as described. The Company Law also leaves uncertainty over when company's Charter enters into force. Specifically, whether the opinion of the Constitutional Court, in its Decision IUo No. 328/2009 of 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.

At the end, the Republic of Serbia will have to provide the possibility of establishing and operating the European Company (Societas Europaea) and the European Economic Interest Grouping, in accordance with the Statutes of European Economic and European Economic Interest Groupings.

To conclude, 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 regulating 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.
- It is necessary to precisely regulate increasing share capital through debt-to-equity swap (conversion).
- Providing the possibility of establishing and operating the European Company (Societas Europaea) and the European Economic Interest Grouping (EEIG).

CAPITAL MARKET TRENDS

1.67

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Announced IPOs of large public (or formerly public) companies should finally be organised.	2015		√	
The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects should be stimulated.	2015		√	
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			√
A thorough public debate, which would result in a high-quality proposal of the Law on Financial Security, should be organized.	2016		√	
The Draft Law on Securitisation should be prepared and submitted to the National Assembly for immediate adoption.	2009			√
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.	2015		√	

CURRENT SITUATION

The last fundamental capital market regulatory framework reform in the Republic of Serbia was enacted five years ago with the adoption of the Law on the Capital Market, which replaced the criticized Law on the Market of Securities and Other Financial Instruments. Also amended at the same time were the Law on Investment Funds, the Law on Voluntary Pension Funds and Pension Schemes, as well as the Law on the Takeover of Joint-Stock Companies.

Only a few minor changes have been made with respect to the capital market since then, while the most recent significant changes were made in December 2016 when the National Assembly of the Republic of Serbia adopted amendments to the Law on the Capital Market and to the Law on the Takeover of Joint-Stock Companies.

Additionally, the Securities Commission amended and passed a number of rulebooks concerning the implementation of regulations on the capital market in 2016 and 2017.

Generally, the existing regulatory framework is partly harmonized with European Union legislation and IOSCO principles. However, the Serbian capital market is still underdeveloped. Because of that, the regulatory framework has not yet been tested in practice; and therefore, all the potential insufficiencies of the regulatory framework reform since 2011 could not be talked about. However, it is a positive trend that regulators have so far shown their willingness to implement further changes to solve the problems identified in practice.

The general conclusion regarding the capital market in Serbia for this year is that some growth as well as the emergence of new products on the loan capital market is noticeable, among which issuance of dinar bonds by European Bank for Reconstruction and Development (EBRD) stand out. However, we need to note that capital market in Serbia is still developing and that more than regulatory reform is needed to stimulate capital market growth.

The announced Law on Financial Security, a draft of which was prepared by the National Bank of Serbia, has still not been submitted to the National Assembly.

POSITIVE DEVELOPMENTS

A very significant event, and one we hope heralds further development of the capital market in Serbia, was the issuing of dinar bonds by the European Bank for Reconstruction and Development (EBRD) with a value of RSD 2.5 billion in December 2016. EBRD has issued 3-year bonds with the 3M

Belibor variable interest rate + 0.4% and quarterly interest payment. Secondary bond trading will take place on the Belgrade Stock Exchange. The issuing of these dinar bonds by the EBRD is of multiple significance and we expect that it will significantly boost reliance of investors in Serbia's capital market and the "dinarization" of the domestic economy.

In addition to this, the aforementioned amendments to the Law on Capital Market and to the Law on Takeover of Joint-Stock Companies from December 2016 can generally be assessed as positive.

The amendments to the Law on Capital Market further defined additional terms in the area of financial derivatives, such as credit derivatives, spot contracts and spot markets and clarified terms and concepts that were previously not sufficiently precise, such was the case with commodity derivatives, reference values, place of trade and others.

The majority of amendments to the Law on Capital Market, however, refers to the provisions market abuse, such as abuse of insider information and market manipulation. We also consider these changes as positive.

Amendments to the Law on Takeover of Joint-Stock Companies were made to ensure alignment of certain terminology with that in the general regulations on companies, as well as to improve solutions concerning joint operations.

We appraise as positive amendments to the Law on Takeover of Joint-Stock Companies stipulating a new threshold for the activation of the obligation to announce a bid for takeover in the case of additional acquisition of shares.

Provisions on exemptions from the application of the Law on Takeover of Joint-Stock Companies were also amended. The law now requires persons exempted from the obligation to announce a takeover bid to deliver a notification on exercising the exemption to the Securities Commission within four days of the occurrence of circumstances that relieve them from such obligation.

The most significant amendments to the Law on Takeover of Joint-Stock Companies concern the determination of the price in a takeover bid. The additional obligation was introduced to deliver a fair share value study, along with the rest of the takeover documentation, , assessing the value of non-liquid shares as of the date of the obligation to announce the takeover bid and, additionally, as of the date of submission of the request, in cases provided by the Law. Article 22 of the Law, regulating the price in a takeover bid, has been completely changed so that now "trade days" have been introduced in definition of liquidity, while only two alternative prices are envisaged for liquid shares: average pondered price in the previous six months, or the highest price paid by the acquirer or persons acting in concert in the previous 12 months. The rule has been introduced that in case the acquirer or persons acting in concert sells shares in the year following the closure of a takeover bid for a price higher than that in the takeover bid, they will be obliged to pay the difference in price to all shareholders and notify the Securities Commission.

The legal framework for trade in financial derivatives is also beginning to take a clearer shape. The National Bank of Serbia has issued, and already amended, its Decision on Performing Activities with Financial Derivatives, in accordance with its authorizations, set out in the Law on Foreign Exchange Operations, prescribing conditions for performing payments, the collection of payments, transfers, netting (set-off), and reporting on activities with financial derivatives. Thus, legal rules are now in place that should enable transactions with financial derivatives. That said, it should also 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 aforementioned 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 the over-the-counter market) with non-bank residents, involving payments or collections in dinars. This rule prevents non-residents from hedging the currency risk for non-bank Serbian borrowers in the 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. This working group opted first to develop a Frame Agreement on the Repurchase of Securities. 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. The result is already visible, as the first repo transaction was concluded by the end of 2015. It is expected that the working group will continue its work, directing its efforts towards drafting a standardized agreement for financial derivative activities.

As a final point, we have to commend the initiative for adopting the Law on Financial Securities.

REMAINING ISSUES

Identifying all remaining legislative issues in the field of the capital market is still very difficult as the capital market in Serbia is still underdeveloped.

The capital market in Serbia is still narrow and insufficiently liquid. Municipal bonds are still rare (despite all the advantages of municipal bonds, only several municipalities/cities have issued municipal bonds so far), with not a single initial public offering conducted in the five 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 to ensure the harmonization of regulations in the field and eliminate identified problems occurring in practice, has stopped or delayed its work because of disagreements, since the Foreign Investors Council has not been informed of any activities of this working group since autumn 2013.

As for the regulatory framework, we reiterate that Serbia still lacks the regulatory framework for securitization. Securitization might be a good instrument to stop further negative developments in the banking sector.

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 the case of IPOs.

The regulatory framework and practice still do not seem to be precise and developed enough to perform operations that include financial derivatives in accordance with the International Swaps and Derivatives Association's (ISDA) master agreement. Also, our opinion is that further liberalization is needed regarding the possibility of natural persons resident in Serbia to invest in securities on foreign markets, including the full range of bonds, derivatives, structural products, structural deposits, ETFs and investment funds, all in accordance with the European laws implementing the ESMA guidelines.

The Law on Financial Securities has still not been submitted to the National Assembly.

FIC RECOMMENDATIONS

- Announced IPOs of large public (or formerly public) companies should finally be organized.
- 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 harmonizing 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 materialize as soon as possible by means of formulating proposals for changes to specific laws.
- A thorough public debate, which would result in a high-quality proposal of the Law on Financial Security, should be organized.
- 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.
- It is necessary to further liberalize the law in the part that incorporates the possibility for natural persons resident in Serbia to invest in securities in foreign markets, including bonds, structural products, structural deposits, ETFs and investment funds, all in accordance with European standards and ESMA guidelines.

JUDICIAL PROCEEDINGS

1.63

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, and (re)enable the search based on the names of the parties in the proceedings before the commercial courts.	2011	√		
Enactment of new amendments to the Law on Civil Procedure in order to assure flexibility of the time frame and deadlines for certain actions.	2011			√
Increase the number of employees in second instance courts who work on the enforcement procedures.	2016			√
Concepts that allow for delay of procedure, such as postponement and restitution in integrum, have to be restrictively interpreted and implemented.	2016		√	
Expand the concept of transfer of right so that it encompasses the transfer based on the statement of will of the enforcement debtor (e g cession) in order to avoid the restrictive interpretation of this provision that the transfer might be accepted only if based on the offi cial or lawfully certified document, as well as on the final and binding decision adopted in civil, misdemeanour, or administrative proceedings.	2016		√	
When it comes to counter-enforcement, introduce the provision by which it is possible for the enforcement debtor in the counter-enforcement of the pecuniary claim to claim the statutory default interest as of the day the enforcement creditor received the amount of the claim.	2016			√

CURRENT SITUATION

From 2011 to 2017 a series of legislative reforms were carried out, affecting the organization of the judiciary and judicial proceedings: namely, the introduction of private and later public bailiffs and notaries, the restructuring of the court system, and in-depth regulation of the right to a speedy trial.

The Law on Civil Procedure (RS Official Gazette Nos. 72/2011, 49/2013, along with the Decision of the Constitutional Court 74/2013 and the Decision of the Constitutional Court 55/2014) now applies to a substantial number of active judicial proceedings (proceedings which started after 1 February 2012, but also those remanded for retrial after this date). Only five years after its enactment, the Law on Enforcement and Security (RS Official Gazette Nos. 31/2011, 99/2011, and 109/2013, the Decision of the Constitutional Court 55/2014 and that of 139/2014), required substantial amendments due to numerous issues arising in practice. The new Law on Enforcement and Security (RS Official Gazette No 106/2015 and 106/2016 - authentic interpretation) is applicable from 1 July 2016, but there are still certain doubts and uncertainties regarding application of this law.

On 1 January 2014, a new network of courts was established by the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices (RS Official Gazette 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 relative 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 constitutional appeal. Specifically, they can file a motion for the protection of the right to trial within a reasonable time. However, in practice, due to the frequent demands for the protection of this right and its inadequate regulation, the need has arisen 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 Time (RS Official Gazette No 40/2015), which entered into force on 1 January 2016, which differentiates the 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 time has been abused. Having in mind the relatively short time of application of this law, it is arguable whether this law has fulfilled its purpose; in any case this "innovation" is not expected to have any significant effect in practice.

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 where 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 parties in the proceeding, and the reduction of the census for the submission of a revision, were all met with positive reaction 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 still are not delivered via email, and 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 so that evidence is produced in a time-efficient manner), but in practice judges do not comply with the set timeframes or they set an unreasonably long time frame of two or more years.

In accordance with the Legal Practitioners Law (RS Official Gazette Nos. 31/2011 and 24/2012, as well as a Decision of the Constitutional Court), an additional requirement for becoming a licensed attorney, aside from the bar exam, 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, the Bar Academy has in the past year intensified its activities especially by organizing lectures and professional training for lawyers and law graduates, having in mind that the selection of lecturers and departments was only completed in 2015, and that the amendments to the Bar Academy program and the plan for implementing specific professional training of attorneys and legal trainees. The Legal Practitioners Law provides for the possibility of foreign attorneys to register with the Bar Association of Serbia, and after three years of continuous practice of law in Serbia, to also represent parties in Serbia.

Enforcement

The new Law on Enforcement and Security (RS Official Gazette No 106/2015) entered into force in December 2015. However, most of the provisions of this Law were applicable only as of 1 July 2016. The legislature decided to enact a completely new law in the field of enforcement, deeming that the best way to solve problems existing in this field.

The new Law on Enforcement and Security has introduced a great number of innovations compared to the previous law regulating the matter. The goals intended to be achieved by the new Law are attaining the balance between the speed of procedure and the harmonization of court practice by introducing the new legal remedies; the acceleration of procedures by extending the role of public bailiffs, whose most important decisions are subject to court control; a reorganization of the general part of the enforcement procedure; elimination of practice uncertainties; the casuistic approach in order to achieve a greater legal security in this field; etc. What the limits of this Law are is difficult to estimate at this time, considering that it has been in use for still only a short period of time. The concept of appeal is returned to the enforcement procedure as a legal remedy, on which the higher courts and the Commercial Appellate Court decide as second instance courts. Some concepts are returned to the system of enforcement procedure, which the previous law did not prescribe, such

as the restitution in integrum, expertise, postponement of enforcement, and others. Under the new Law, public bailiffs are exclusively responsible for conducting enforcement, except in a few situations expressly prescribed by the Law, in which case it is the court that has exclusive jurisdiction. The public bailiffs are also, according to the new Law, exclusively responsible for conducting security injunctions. A part of the Law which pertains to security has also undergone certain changes. The new Law has regulated the field concerning public bailiffs in more detail. There are much stricter conditions for the appointment of the public bailiffs, whereas the new Law prescribes the criteria which the commission authorized to propose candidates for the appointment of public bailiffs applies. The Law prescribes much a stricter procedure of control of the work of public bailiffs, as well as those new bodies within the Chamber of the Private Bailiffs, such as the Deputy President of the Chamber, the Disciplinary Prosecutor of the Chamber, the Deputy Disciplinary Prosecutor of the Chamber; while the statute of the Chamber may introduce other bodies as well. When it comes to disciplinary infringements, the Law clearly enumerates grave disciplinary infringements, while minor disciplinary infringements are determined by the statute of the Chamber. In contrast with the previous law, the disciplinary procedure is regulated by the Law.

POSITIVE DEVELOPMENTS

Most courts of general jurisdiction, as well as commercial courts, have established online databases showing the status of pending cases. While it is notable that the databases have been improved over the previous period, in terms of precision and functionality, they still do not warrant full confidence. However, some updates in the functioning of the online databases have been introduced, namely possibility to access the online databases via smart phone or tablets, and the online databases was introduced to Administrative Court, Appellate Courts, Misdemeanour Courts, Supreme Court of Cassation and the Constitutional Court of Serbia (although the functionality and update of databases are to be confirmed in practice). Although 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 names of parties, as of 24 February 2014 the online databases solely allow the search by case file number in the competent court, and data on the parties in the proceedings is no longer publicly available. 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 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 in order to prevent present abuses by 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 where revision is always allowed, as well as by reducing the threshold to EUR 40,000; i.e. up to EUR 100,000 for commercial disputes (amounts calculated according to the median 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 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 timeframe for the main hearing and for producing evidence. However, this timeframe is not very flexible, given that the course of litigation cannot always be predicted, while in practice judges often fail to comply with the established timeframes or they determine unnecessarily long timeframes of two or more years. This law establishes the liability of judges for breach of discipline, and they can even be faulted over delays in the procedure. The law also imposes higher fines for parties who 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 the 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 deadlines for submitting legal remedies are the same as deadlines for responding to such legal remedies (15 days for appeal and response on appeal). The circle of the authorized representatives of

the party is extended by the amendment of the Law on Civil Procedure of 2014, and 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 organized only seminars since it was established. However, bearing in mind that the selection of lecturers and the formation of departments was completed only recently, and that the program of the Bar Academy was amended, starting from and end of 2016 Bar Academy finally started providing specialized education for lawyers and postgraduate law school students in limited capacity. 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

An extension of the public bailiffs' exclusive jurisdiction in conducting enforcement, along with the stricter conditions for the appointment and a disciplinary liability, will certainly help and already helps in accelerating the procedure of conducting enforcement with higher compliance with prescribed rules. A positive innovation also represents a provision which prescribes that the acts of legal or factual disposal of the object of enforcement or security have no legal effect as, for the moment, an enforcement debtor receives the decision on enforcement based on the enforceable title or the directly enforceable title, or the decision on security, which may significantly result in reducing the enforcement debtor's abuse during the enforcement. Furthermore, the Law also contains a good solution regarding the decision making upon legal remedies, and it is explicitly stipulated that the court deciding upon the objection and appeal cannot set aside the first instance decision and refer the case to retrial, but rather has to decide on the merits. This provision represents a barrier for different interpretations of the Law in this part and referring to an appropriate application of the Law on Civil Procedure, under which it is possible to set aside the decision challenged by a legal remedy. As for counter-enforcement, in addition to more detailed regulation, a third party may commence with counter-enforcement, which was not the case till now. As already stated, the concept of postponement of enforcement is returned to enforcement procedure. The solution regarding postponement upon an agreement of the parties is positive, as the situation that was common in practice is now regulated by the law. As for the sale of immovable and movable property in the enforcement procedure through a public auction, it is prescribed that the property cannot be sold below 70% of the estimated value at the first public auction, and less than 50% of the estimated value at the second public auction, which is higher than was prescribed by the previous law. In this way, the interests of the enforcement creditor and enforcement debtor are better protected. Also, when it comes to enforcement on real estate, a fiction of law of an annotation of registration of the enforcement has been introduced. This should eliminate delayed action of the Cadastre. The provisions regarding the conditions and the criteria for the appointment of public bailiffs, stricter control of their work, etc., should be noted as the positive advances.

REMAINING ISSUES

1. 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 and the use of electronic means for recording or photographing the case file should be facilitated to save the courts' and parties' resources, respectively. The hearings should be set in shorter time periods, and the duration of the appellate proceeding in practice should be synchronized with legal provisions.

2. Electronic communication is still applied sporadically, since judges are mostly overwhelmed by a backlog of cases. 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, as well as the lack of funds necessary for the technological equipment for the courts. The timeframe, 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 timeframe, or set unnecessarily long timeframes of two or more years, which again contributes to the prolongation of proceedings. Some of the deadlines are unrealistically short, and the deadline for providing evidence is too strict, which may lead to abuse by 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 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.

3. Article 204 of the Law on Civil Procedure, which provides the possibility to complete litigation of a case between the same parties, if the party has disposed of an asset or right subject to litigation, has resulted in progressive reasoning of judicial practice regarding the alteration of the claim by the assignor – according to which the respondent could be obliged to pay the assignee at the request of the claimant. However, such reasoning is not uniformly accepted by the entire jurisprudence, which leads to unequal treatment before the courts and legal uncertainty in terms of the rigid interpretation of the law, contrary to the court practice in jurisdictions that have similar provisions in their legislation.

4. The new Law on Enforcement and Security prescribes that the higher courts and the Commercial Appellate Court act as the second instance courts. These courts have not encountered the enforcement procedures so far, while the proposer of the law did not foresee additional funds for the implementation of this law, and therefore there will be no increase in the number of employees in these courts, because of enforcement procedures now in their jurisdiction. We point out this fact as something which indicates that time limits for deciding on appeals against decisions of lower courts will not be complied with, as second instance courts are already overloaded with a large number of cases, in which the decisions are often rendered after more than a year. Delays in the decision-making process in enforcement cases is already evident in practice, and is partially caused by legal remedies filed against enforcement orders that are now decided on by second instance courts.

5. The concept of restitution in integrum is restored to the enforcement procedure system. The legislature has foreseen that restitution in integrum is allowed only due to a failure to comply with the deadline for submitting the objection or the appeal in the procedure of contesting the decision on enforcement based on the directly enforceable title. Although the scope of the application of this concept is significantly narrowed, abuse of this concept can be reasonably expected. Also, it is not clear why the legislature has foreseen the application of this concept only in the enforcement procedure based on the directly enforceable title.

6. The new Law stipulates that state bodies, the statutory authorities, other legal entities, and entrepreneurs have a duty to deliver, free of charge, information on the enforcement debtor specified by the Law to the court and the public bailiff upon their request. In this way, all listed entities will have to bear the additional costs of the delivery of this information, although the enforcement procedure is something that concerns private relations of parties to the proceedings, and as a rule, there is no public interest in enforcement procedures.

7. The Law contains a problematic provision concerning the transfer of claims. According to the Law, the enforcement procedure shall be conducted on the proposal and in favour of the party who is not designated as the enforcement creditor in the enforceable title or the directly enforceable title, if based on an official or lawfully certified document such party proves that claim arising from the enforceable title or the directly enforceable title was transferred to him or her, and if such evidence is not possible – if he or she proves the transfer by the final and binding decision rendered in civil, misdemeanour or administrative proceedings. This provision can be interpreted in such a manner that the enforcement procedure recognizes transfer of rights only when facts provided by the law are acquired, but not the transfer of rights based on the will of the parties; e.g. cession. The Serbian Parliament has issued an authentic interpretation of Article 48 of the Law at its session held on 27 December 2016, according to which the claims acquired under an assignment (cession) agreement from a legal entity not listed as the creditor in the enforceable deed cannot be executed in the enforcement proceedings since Article 48 of the Law does not recognize the transfer of claims under a cession agreement as valid legal grounds for the execution of the enforcement. This means that the opportunity for the adequate interpretation of this Article, which is of huge importance for the creditors in NPS and for creditors in general, has been missed.

8. When it comes to counter-enforcement, it is not prescribed that the enforcement debtor may claim a payment of the statutory default interest on the amount of a pecuniary claim which is subject to counter-enforcement.

9. As regards multiple means and assets subject to enforcement, the new Law provides that, upon request of the enforcement debtor, the public bailiff may by its decision limit the enforcement only to certain means and assets that are sufficient to settle the enforcement creditor. The public bailiff has broad powers which may be used to the detriment of the enforcement creditor, due to an absence of provisions prescribing criteria according to which the public bailiff estimates which means are sufficient to settle the enforcement creditor.

10. Although the new Law explicitly stipulates that extraordinary legal remedies may not be used in the enforcement procedure, the Law itself has in fact introduced an extraordinary remedy in the enforcement procedure. In a situation where the decision dismissing the appeal is based on the facts which are disputed between the parties and which pertain to the claim itself, the enforcement debtor may initiate a litigation proceeding declaring the enforcement inadmissible within 30 days of receipt of the decision dismissing the appeal. Even though this litigation proceeding shall not postpone the enforcement, it represents a further procedural exhausting of the enforcement creditor.

11. As already mentioned, the concept of postponement has been restored to enforcement procedure. The postponement of enforcement upon the request of enforcement debtor, although possible only once, opens the door for abuse as the criteria for the assessment of the legal grounds for the postponement is broadly set out, and there is a possibility that, theoretically, the postponement lasts for a longer period of time, depending the public bailiff's assessment only.

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 as well as to as well as to increase its functionality, an update and accuracy and to (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 timeframe and deadlines for certain actions.
- Increase the number of employees in second instance courts who work on the enforcement procedures.
- Concepts that allow for delay of procedure, such as postponement and restitution in integrum, have to be restrictively interpreted and implemented.
- Expand the concept of transfer of right, if needed by the new initiative for authentic interpretation for Article 48 of the Law on Enforcement and Security submitted by the Ministry of Justice, so that it encompasses the transfer based on the statement of will of the enforcement debtor (e.g. cession) in order to avoid the restrictive interpretation of this provision that the transfer might be accepted only if based on the official or lawfully certified document, as well as on the final and binding decision adopted in civil, misdemeanour, or administrative proceedings.

- When it comes to counter-enforcement, introduce the provision by which it is possible for the enforcement debtor in the counter-enforcement of the pecuniary claim to claim the statutory default interest as of the day the enforcement creditor received the amount of the claim.

ARBITRATION PROCEEDINGS 1.67

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Promote the possibilities and advantages of dispute resolution through arbitration by institutional support of the relevant governmental and non-governmental bodies by instructing professional organizations and companies to accept the jurisdiction of arbitration institutions.	2010		√	
Develop a supportive legal framework for operations of arbitration institutions in Serbia in order to create conditions for achieving regional arbitration center status.	2016		√	
Adopt Amendments to the Law on Arbitration and related laws in order to rectify those deficiencies identified in practice thus far, and in order to incorporate some of the innovations introduced by the 2006 UNCITRAL Model Law.	2011			√

CURRENT SITUATION

Arbitration is an alternative means of resolving disputes outside of the courtroom. Parties can agree to arbitrate a dispute arising out of a domestic or international business contract, or any private law matter which the parties can freely dispose of, except for disputes that are reserved to the exclusive jurisdiction of the courts.

The very nature of arbitration is embedded in the consent of the parties. The arbitration agreement between parties stands as a foundation of the arbitral tribunal's jurisdiction to settle the dispute in accordance with the applicable law.

The arbitral tribunal consists of arbitrators chosen by the parties or appointed by the institution administering such proceedings. The cornerstone of a successful arbitration lies in the independence and impartiality of arbitrators appointed to settle a dispute, providing a guarantee that an arbitral award will be an unbiased one.

The outcome of arbitration is an arbitral award that is final and binding upon the parties in the same manner as a final and enforceable court decision. Furthermore, the parties are free to enforce an arbitral award like any other court decision within regular enforcement proceedings.

Moreover, unlike court decisions, arbitral awards rendered by tribunals seated in Serbia can be fully enforced in almost all the countries of the world, keeping in mind that Serbia is a state party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, signed and ratified by 150 states.

Arbitration proceedings in Serbia today are governed by the Law on Arbitration (RS Official Gazette No 46/2006),

adopted in 2006. Taking into account the disputes that arose after the Law on Arbitration was passed in 2006, more than 250 parties from around the world took part in international commercial arbitration in the Republic of Serbia. The 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 latest (2006) version of the UNCITRAL Model.

There are numerous reasons for choosing arbitration over the judicial dispute settlement system, such as:

- Proceedings are fast, efficient, and reliable, all the while being fully compliant with applicable legislation;
- Parties are free to choose their arbitrators and choose their own rules governing proceedings;
- Arbitrators apply modern and efficient rules of procedure, including techniques aimed at reducing the costs of the proceedings (e.g. telephone and video conferencing);
- Arbitrators maintain and protect equality of the parties, allowing both sides to present their arguments;
- Offers affordable dispute resolution services for disputes with a regional character and in languages spoken in the region;
- The arbitral award has the same legal effect as any final and enforceable decision of a national court;
- The arbitral award is final and enforceable, precluding the right to appeal;
- Unlike a court decision in Serbia, arbitration awards are enforceable in 150 countries in the world under the framework of the New York Convention.

Legal entities choose to refer commercial disputes to arbitration panels because of their efficiency, and the possibility to influence the composition of the arbitration panel, i.e. to appoint an independent, dedicated, and responsible professional to act as an arbitrator. An added value in international disputes is that arbitrators can be nationals of third states, i.e. not nationals of the countries of origin of the parties in dispute, which further ensures their neutrality.

Given that arbitration is, in practice, a more efficient and less expensive alternative dispute resolution method for the parties in dispute, it should definitely be used more often in future.

POSITIVE DEVELOPMENTS

In Serbia there are two active arbitration institutions. One of them is the Belgrade Arbitration Centre (BAC) and the other one is the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia (Permanent Arbitration).

The Belgrade Arbitration Centre (BAC) was established by the Arbitration Association in 2013, as a permanent arbitration institution administering domestic and foreign disputes, assisting in technical and administrative aspects of ad hoc arbitral proceedings, organizing and conducting mediation sessions, and providing other services closely related to dispute settlement. The BAC is based in Belgrade. The Belgrade Arbitration Centre organizes arbitration proceedings in both domestic and foreign disputes, in accordance with the BAC Rules. The Rules were adopted in 2014, and the first cases were filed at the end of 2015 (three cases in total during that year, the largest one with a value of EUR 1.5 million). All cases have been resolved efficiently within a period of six months, as provided by the BAC Rules. The same rules provide for a recommended clause for contractual parties stating that "All disputes arising out of or in connection with the present contract shall be finally settled by arbitration, organized in accordance with the Rules of the Belgrade Arbitration Centre (Belgrade Rules)".

The Permanent Arbitration at the Serbian Chamber of Commerce was established in 2015 for the settlement of both international and purely "domestic" commercial disputes. The Permanent Arbitration also offers international mediation and conciliation services.

The Permanent Arbitration is an open arbitration institution of a general type, i.e. it is not restricted to resolving disputes between the members of chambers. Its jurisdiction may be agreed to irrespective of the parties' nationality or their membership in the Chamber of Commerce of and Industry of Serbia. The arbitration procedure before the Permanent Arbitration may be governed either by the Rules of the Permanent Arbitration, or by the UNCITRAL Arbitration Rules (applicable only in international arbitration proceedings). The Permanent Arbitration is based in Belgrade.

The recommended arbitration clause reads: "The parties agree that any dispute arising under or in connection with the present contract shall be finally settled by the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia under the Rules of the Permanent Arbitration."

REMAINING ISSUES

In practice, the application of the Law on Arbitration has shown that the jurisdiction of the courts providing legal support in arbitration proceedings (ad hoc arbitration), as well as the recognition and enforcement of domestic and international arbitral awards could be better regulated. To that end, certain minor amendments would be desirable.

The following legal issues could be addressed and improved within the existing Law on Arbitration:

- Clarification of the nature of the court review of arbitral jurisdiction, especially as a preliminary matter.
- Clarifying the scope of application of the Law on Arbitration.
- The territorial and jurisdictional competence of state courts (or officials of the courts) to assist the arbitral tribunal in the evidence process.
- Specialization and concentration of jurisdiction for claims for the annulment of an arbitral award.
- The effects of bankruptcy on pending or future arbitration proceedings and on the validity of the arbitration agreement (this has already been properly addressed in the proposed changes to the Bankruptcy Law).

It needs to be stressed that the overall legislative framework for arbitration in Serbia is modern and satisfactory. The above recommendations for its improvement are easily attainable in the framework of the existing legislation.

FIC RECOMMENDATIONS

- Promote the possibilities and advantages of dispute resolution through arbitration by providing institutional support to the relevant governmental and non-governmental bodies as well as by instructing professional organizations and companies to accept the jurisdiction of local arbitration institutions.
- Develop a supportive legal framework for the activity of arbitration institutions in Serbia to ensure conditions for regional companies to accept its jurisdiction, subsequently creating a regional arbitration centre in Serbia.
- Consider amending the Law on Arbitration to further improve the legislative framework for arbitration.

LAW ON BANKRUPTCY

1.00

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			√
It is necessary to restrict additionally possibilities for banning enforcement against the bankruptcy debtor's property during the procedure of adoption of the pre-drafted reorganisation plan, in order to prevent bankruptcy debtors from averting an enforcement settlement over an indefi nite period of time and without the support of the majority creditors through multiple consecutive initiations of bankruptcy proceedings.	2016			√
It is necessary to restrict the possibilities of postponing decision and voting hearings on a pre-drafted reorganisation plan and submitting a revised text of a reorganisation plan, as well as to determine clear criteria for determining the debtor's / plan submitter's abuse of rights so the court can penalise such acts of the plan 92 submitter and accelerate the procedure.	2016			√
It is necessary to regulate precisely situations in which a (pre-drafted) reorganization plan is not either entirely or predominantly implemented regarding the settlement of included creditors, and the (new) bankruptcy proceedings are opened over the debtor, and to determine whether the creditors in these cases are entitled to report only the amounts of claims listed in the (pre-drafted) reorganization plan, increased for the statutory default interest calculated up to the date of the opening of bankruptcy proceedings, or whether they are entitled to report the entire claim that they have against the debtor.	2016			√
To regulate the procedure of personal insolvency either by the amendments of the current Law on Bankruptcy or the adoption of a separate law.	2016			√
To regulate additionally the position of the secured and pledged creditors in a way that provides the two instance procedures with respect to their settlement from the sale of pledged property.	2016			√
To stipulate the possibility of pledging a bankruptcy debtor's property, in order to enable potential buyers without other property which could be pledged for the providing of funds necessary for the purchase price. Due to the fact that this issue includes other laws besides the Law on Property, the necessity for wider reform, including laws regulating mortgages, pledging movable property, and other laws, would appear.	2016			√
To stipulate the obligation of bankruptcy debtors to provide written consent of the majority creditors of each class separately when submitting the reorganisation plan during regular bankruptcy proceedings.	2016			√
To stipulate the possibility and procedure for amending the adopted reorganisation plan.	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
To regulate the issue of delivery in bankruptcy proceedings in a way to make it faster and more effi cient and to specify the provisions related to the fi nality date and starting date for the implementation of the reorganisation plan so that all participants can know with certainty when the adopted plan starts with the implementation.	2016			√

CURRENT SITUATION

The Law on Bankruptcy was amended in August 2014, when it was adopted and came into force as the Law on Amendments to the Law on Bankruptcy (RS Official Gazette No 83/2014). Those were also the last Amendments to the Law on Bankruptcy, presented in detail in previous editions of the White Book.

The goal of the Amendments to the Law on Bankruptcy was the elimination of issues noted in practice as well as acceleration of the bankruptcy procedure and the enabling of a more transparent way of settling creditors' claims. Most of those amendments had positive effects, while some of the new solutions did not achieve expected results.

According to data available on the website of the Bankruptcy Supervision Agency there were a total of 2,090 bankruptcy proceedings under way in the Republic of Serbia on 1 June 2017 with the exception of bankruptcy proceedings conducted under the Law on Enforced Collection, Bankruptcy, and Liquidation (SFRY Official Gazette Nos. 84/89, SRY 37/93, and 28/96) and bankruptcy proceedings conducted against banks, which are within the jurisdiction of the Deposit Insurance Agency.

In the first five months of 2017 there were 126 bankruptcy proceedings initiated, which means that 25 bankruptcy proceedings were initiated per month. Compared to the 2016, when the monthly average was 30 bankruptcy proceedings per month, there is a slight decrease in initiated bankruptcy proceedings. That number is still significantly under the monthly average of 80 initiated proceedings in 2012. The grounds for such a decrease in initiated bankruptcy proceedings after 2012 were presented in previous editions of the White Book, and we only emphasise here that the main cause was the Decision of the Constitutional Court of Serbia on the unconstitutionality of automatic bankruptcy.

Due to the absence of automatic bankruptcy and the insufficient motivation of creditors to commence bankruptcy proceedings against their debtors, a huge number of companies that have actually been insolvent for a long period of time still operate in the Republic of Serbia. This situation has a negative impact on economic flows and is unsustainable in the long term.

In 2016, the Ministry of Economy presented the draft Amendments to the Law on Bankruptcy. The aim of the proposed amendments was limited only to certain aspects of the bankruptcy proceedings. The focus of the proposed amendments was on, inter alia, improving the position of secured creditors in bankruptcy proceedings and removing mechanisms for the misuse of the pre-drafted reorganization plan. Upon completion of several public hearings and panel discussions, the proposed amendments to the Law on Bankruptcy were withdrawn.

At the moment of preparation of this text, the proposal of the law on amendments and supplements to the Law on Bankruptcy is in the procedure before National Assembly, which adoption is proposed under urgent procedure, while the effects of the proposed changes will be seen in the upcoming period after the adoption of the respective amendments to the Law.

POSITIVE DEVELOPMENTS

Due to the fact that the last Amendments to the Law came into force in 2014, we are unable to point out positive regulatory developments that have not been already presented in previous editions of the White Book.

Examples of positive developments that could be mentioned include the position of pledge creditors (that are not at the same time a bankruptcy debtor's creditors) is now clearer; in most cases, the courts consistently comply with the restriction of the term of prohibited enforcement of the bankruptcy debtor's property in the proceedings

initiated on the basis of a pre-drafted reorganization plan; also, motions for bankruptcy based on a pre-drafted plan of reorganization are frequently dismissed by the courts in cases where the plan does not contain all the required elements.

REMAINING ISSUES

As mentioned in the previous editions 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.

The Law on Bankruptcy contains provisions aimed at preventing potential abuses of the reorganization procedure that prescribe the constriction of the length of the ban on enforcement against a bankruptcy debtor's assets, and determine the term within which the bankruptcy debtor has to file a new extraordinary report of the auditor, etc. The goal of these provisions is to prevent the use of pre-drafted reorganization plans as a means for postponing bankruptcy to avoid an appropriate settlement of creditors' claims. However, it seems that there are still certain loopholes related to these provisions, and despite the facts mentioned herein, the bankruptcy creditors do not enjoy adequate protection, and the implementation of the purposes and aims of the Law on Bankruptcy, related to the pre-drafted reorganization plan, cannot be achieved.

However, despite restrictions with respect to the duration of the prohibition of enforcement of the bankruptcy debtor's property (the prohibition cannot exceed six months), and despite the ban on submitting such a proposal more than once in the same bankruptcy proceedings, the practice has shown that bankruptcy debtors usually avoid such restrictions. Specifically, in the cases when bankruptcy debtors fail to get support for the pre-drafted plan of reorganization within six months, in practice they usually withdraw their bankruptcy application based on a pre-drafted plan of reorganization, and then almost simultaneously submit a new bankruptcy petition based on a virtually unchanged pre-drafted plan of reorganization. The Law does not prohibit the filing of a new bankruptcy petition, along with a fresh request for a stay of enforcement against the bankruptcy debtor's property, immediately after withdrawing the previous one. Although issuance of such a measure depends on the bankruptcy judge's decision, the practice has shown that judges, as a rule, issue such a measure, thereby removing the only barrier against abuse of the Law. In practice, there are cases in which bankruptcy debtors avoid enforcement of their property for years, in this or similar ways.

A frequent practice by debtors, using their right to reply to the bankruptcy creditors' remarks regarding the pre-drafted reorganization plan, is to submit the revised text of the pre-drafted reorganization plan, thereby postponing hearings scheduled for deciding and voting on the pre-drafted reorganization plan. Due to the fact that creditors have the right to submit remarks on a revised pre-drafted reorganization plan, to which the bankruptcy debtor answers once again, the proceedings sometimes last for more than a year. This is one more mechanism by which bankruptcy debtors damage creditors, and the passive behaviour of judges – not reacting or not reacting in a timely fashion – contributes to this.

In relation to procedures of adopting a pre-drafted reorganization plan, practice has shown that bankruptcy debtors, without any previous consent or consultation with the majority of creditors, submit the reorganization plan during bankruptcy proceedings with the stated intention of redefining contractual relations, but actually with the strategic intention of procrastinating the procedure, i.e. to prevent / delay a decision on the debtor's bankruptcy. This is possible due to the fact that, contrary to the initiation of bankruptcy proceedings based on the pre-drafted reorganization plan, in this case the submission of the reorganization plan during the ordinary bankruptcy proceedings does not require prior consent of majority creditors.

In practice a problem also arises in certain cases when the delivery of the decision on confirmation of the plan lasts longer than the procedure of the adoption itself. This has direct negative implications on the duration and efficiency of the bankruptcy proceedings.

Furthermore, practice has shown that there is often uncertainty regarding the date of finality for the reorganization plan, with the result that creditors do not know when they should start with the implementation of the reorganization plan. Specifically, the starting date for the implementation of the reorganization plan is the date envisaged by the plan itself, however, that date cannot be prior to the date of finality of the decision on the confirmation of the reorganiza-

tion plan, or after the expiry of the 15 days' period from the date of finality of the decision on the confirmation of the reorganization plan. In the case of appeal and confirmation of the plan in the second instance judgment, the stamp of finality has the date of the second instance judgment, with creditors sometimes getting the copy of the relevant decision significantly later. In practice, this causes a situation in which bankruptcy creditors become bound to implement a reorganization plan without even being aware of it.

It often happens in practice that it is necessary to change a reorganization plan which has already been confirmed by the court, but the current legislation prevents it. This poses a serious problem, because it may happen that a bankruptcy debtor's business activity is not on the expected level after the adoption of the plan and therefore the debtor cannot comply with the payment dynamic envisaged in the adopted plan, whereas the majority creditors are ready to accept the amendment to the plan, which formally cannot be done.

We also underline the problem with the procedure of distribution of the funds collected through the sale of a bankruptcy debtor's property that was pledged in favour of secured and pledge creditors. In fact, after the sale of the bankruptcy debtor's property, which in parallel was a means of security of secured and pledge creditors' claims, the costs of the bankruptcy proceeding should be settled first, as well as other necessary costs including those of the bankruptcy administrator. The claims of secured and pledge creditors should be settled within five days from the date of receipt of the funds by the bankruptcy administrator. The bankruptcy administrator autonomously, independently, and without control of the bankruptcy judge, decides on the amount of settlement of secured and pledge creditors, who then do not have the right to appeal against this decision. The only legal remedy that they could use is objection to the work of the bankruptcy administrator as decided by the bankruptcy judge of first instance, and no appeal is allowed against this decision of the court. The legal solution which envisages the right to appeal for unsecured creditors may seem unfair, while secured and pledge creditors are not only deprived of the second instance review of the legality of the decision of the bankruptcy administrator, but also of the first instance court.

In practice, there are often situations in which a (pre-drafted) reorganization plan is either not entirely or predominantly implemented with respect to the settlement of the included creditors, whereby the Law on Bankruptcy does not regulate the issue of consequences regarding the suspension of the (pre-prepared) reorganization plan when the (new) bankruptcy proceedings are opened over the debtor. Namely, in these cases it is not sufficiently clear whether the (pre-drafted) reorganization plan, as a new agreement on the settlement of a debtor's liabilities to creditors with respect to the claims listed therein, can be considered terminated due to non-fulfilment, and consequently whether creditors have the right to (re-)submit their claim reports for the total amount of claims (the principal amount) and related statutory default interest up to the date of the opening of new bankruptcy proceedings, or whether creditors are only entitled to submit claim reports for the amount that was determined by the (pre-drafted) reorganization plan, increased for statutory default interest calculated up to the date of the opening of bankruptcy proceedings. This issue is particularly important in cases where the (pre-drafted) reorganization plan envisages a significant reduction of creditors' claims, receivables, write-offs, and similar.

The current legislation does not envisage the possibility for potential buyers of a bankruptcy estate to acquire the funds necessary for paying the purchase price by mortgaging that estate. In fact, the bankruptcy administrator does not have the right to execute a pledge or mortgage agreement, thus, potential buyers without property to be pledged in order to provide funds for paying the purchase price cannot participate in buying the bankruptcy estate. It seems logical that, by regulating this possibility, bankruptcy procedures might become significantly faster and more efficient, because the circle of potential buyers of a bankruptcy debtor's property would expand. Primarily, such amendments would be in favour of bankruptcy creditors, resulting in faster, higher, and more likely settlements.

When it comes to the competence of the bodies within bankruptcy proceedings, it is often unclear which body is entitled to decide in certain procedural situations. While it is not realistic to eliminate this issue by regulating each and every procedural situation, it is possible to confer such authority on one of the bodies of the bankruptcy proceedings to efficiently resolve situations where the Law is unclear. Taking into account comparative legislation and experience, it would be prudent to confer on the bankruptcy judge the authority to decide in situations where it is not clear which bankruptcy proceedings body should act.

According to current legislation the opening of the bankruptcy proceedings produces effects as of the date on which the notice of the opening of bankruptcy proceedings is posted on a court's notice board. In practice, this rule creates problems as in some procedural situations it is not clear which is the relevant date of the opening of bankruptcy proceedings. In order to eliminate uncertainties, it is recommended that the opening of bankruptcy proceedings produce effects as of the date of publication of the notice of the opening of bankruptcy proceedings in the Official Gazette.

The opening of bankruptcy proceedings results in the termination of ongoing enforcement proceedings against the bankruptcy debtor. In practice, many filed bankruptcy petitions are dismissed or rejected, while enforcement proceedings against the bankruptcy debtor, once terminated, cannot be continued, so the creditor is forced to initiate new enforcement proceedings. Taking into account this provision and its frequent abuse in practice, this rule should be amended by introducing an exception to the general rule regarding the effects of bankruptcy filings, whereby the opening of the bankruptcy proceedings would not result in the termination of the ongoing enforcement proceedings against the bankruptcy debtor until a decision on the opening of bankruptcy proceedings becomes final and binding.

A huge number of long-term insolvent companies hinder economic development, therefore, although the Constitutional Court of the Republic of Serbia declared automatic bankruptcy unconstitutional per its decision in 2012, we consider it reasonable to find the appropriate legal solution which would enable a kind of automatic bankruptcy proceedings in the case of long-term insolvency.

One of outstanding issues where no progress was seen is that of personal insolvency. Specifically, we believe that the regulation of this issue would be in favour of both creditors and insolvent debtors. Current possibilities for creditors related to insolvent debtors who are natural persons do not lead to the most favourable collective settlement, on the contrary,. they result in the settlement of the claims of some creditors through some kind of enforcement procedure, while other creditors, in most cases, do not have any possibility to settle their claims with over-indebted natural persons. In that sense, we consider that the creation of the concept of personal insolvency would enable creditors a higher amount of settlement with the parallel protection of the integrity and basic necessities of over-indebted individuals.

Finally, many other questions arise with regard to improving and clarifying corresponding regulations in practice, such as the possibility and method of enjoying secured-creditor rights based on a pledge on claims; insufficiently precisely defined entities to which Article 123, paragraph 2 of the Law refers, the possibility of dealing with the subject of an excluding request during a dispute regarding such a request; the status of foreign arbitration proceedings in the case of opening bankruptcy proceedings against the respondent; and others.

Since the expectations presented in the previous editions of the White Book about comprehensive amendments to the Law on Bankruptcy that would resolve aforementioned as well as many other insufficiencies of legal solutions were not met, we sincerely hope to see amendments based on actual suggestions this year.

FIC RECOMMENDATIONS

- The provisions on automatic bankruptcy in the case of a debtor's permanent insolvency should be incorporated into the bankruptcy regulatory framework, but in a form that would be in accordance with the Constitution of the Republic of Serbia.
- It is necessary to additionally restrict possibilities for banning enforcement against the bankruptcy debtor's property during the procedure of adoption of the pre-drafted reorganization plan, in order to prevent bankruptcy debtors from averting an enforcement settlement over an indefinite period of time and without the support of the majority creditors through multiple consecutive bankruptcy filings.
- It is necessary to restrict the possibilities of postponing decision and voting hearings on a pre-drafted

reorganization plan and submitting a revised text of a reorganization plan, as well as to determine clear criteria for determining the debtor's / plan submitter's abuse of rights so the court can penalize such acts of the plan submitter and accelerate the procedure.

- It is necessary to regulate precisely situations in which a (pre-drafted) reorganization plan is not either entirely or predominantly implemented regarding the settlement of included creditors, and the (new) bankruptcy proceedings are opened over the debtor, and to determine whether the creditors in these cases are entitled to report only the amounts of claims listed in the (pre-drafted) reorganization plan, increased for the statutory default interest calculated up to the date of the opening of bankruptcy proceedings, or whether they are entitled to report the entire claim that they have against the debtor.

- Regulate the procedure of personal insolvency either by the amendments of the current Law on Bankruptcy or the adoption of a separate law.

- Regulate additionally the position of the secured and pledged creditors in a way that provides the two instance procedures with respect to their settlement from the sale of pledged property.

- Stipulate the possibility of pledging a bankruptcy debtor's property to enable potential buyers without other property which could be pledged for the providing of funds necessary for the purchase price. Due to the fact that this issue includes other laws besides the Law on Bankruptcy, the necessity for wider reform, including laws regulating mortgages, pledging movable property, and other laws, would appear.

- Regulate competence of the bodies of the bankruptcy proceedings in situations where it is not clear who is entitled to decide on certain matter. Otherwise, it should be regulated that if it is not clear who is entitled to decide on certain matter it is in charge of bankruptcy judge.

- Stipulate that the opening of the bankruptcy proceedings produces effects as of the date of publishing the notice of the opening of bankruptcy proceedings in the Official Gazette.

- Stipulate that the opening of the bankruptcy proceedings does not result in termination of the ongoing enforcement proceedings against the bankruptcy debtor until a decision on opening of the bankruptcy proceedings becomes final and binding.

- Stipulate the obligation of bankruptcy debtors to provide written consent of the majority creditors of each class separately when submitting the reorganization plan during regular bankruptcy proceedings.

- Stipulate the possibility and procedure for amending the adopted reorganization plan.

- Regulate the issue of delivery in bankruptcy proceedings in a way to make it faster and more efficient and to specify the provisions related to the finality date and starting date for the implementation of the reorganization plan so that all participants can know with certainty when the adopted plan starts with the implementation.

- Regulate the consequences of the opening of a bankruptcy procedure (Article 99) in a situation when the bankruptcy debtor is a lessor, including the obligation of the lessee (tenant) to move out after the sale of the property of the bankruptcy debtor (bankruptcy estate), or the sale of the bankruptcy debtor when the latter is a legal entity. This should be regulated in same manner as it is in Enforcement Law, having in mind that otherwise the buyer will have to deal with a long-lasting litigation procedure against the former lessee to be able to take over the property, which could affect the decision of potential buyers to invest in assets or legal entities in bankruptcy.

INTELLECTUAL PROPERTY

1.75

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
State authorities should 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 is generally the same as it was a year ago. 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, and 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:

- The Law on Trademarks (2009; amended in 2013);
- The Law on Geographical Indications (2010);
- The Law on Copyright and Related Rights (2009, amended in 2011 and 2012);
- The Law on Legal Protection of Industrial Design (2009, amended in 2015);
- The Law on the Protection of Topographies of Semiconductor Products (2013);
- The Law on Patents (2011);
- The Law on the Protection of Confidential Information (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 Marks, as well as with the Protocol to the Madrid Agreement.

The Law on Geographical Indications regulates the acquisition and legal protection of geographical indications (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: the 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 that 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 the ways to exercise those rights; 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, which involve an inventive step, and which are subject to industrial application.

Finally, the Law on the Protection of Confidential Information regulates the legal protection of information constituting 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 upon 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 being the following:

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

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

POSITIVE DEVELOPMENTS

The most recent positive development is the opening of Chapter 7 of the EU membership negotiations, pertaining to the Intellectual Property. It is also 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 existing courts. Specifically, in line with similar practices of 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 breeders when 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 falling 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 accelerate proceedings generally.

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 relevant 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 in order to lower the infringement rate further.

FIC RECOMMENDATIONS

- State authorities should enhance their efforts to combat online copyright infringement, 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 a 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

1.63

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, concrete cases should be mentioned in the Commission's decision.	2008		√	
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. The FIC and other interested stakeholders should have the opportunity to participate in the drafting process. Also, the publishing of the Commission's statistics and reports on a monthly level would surely contribute to increased transparency.	2010		√	
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.	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 made publically available.	2010			√
The Commission should make its practice consistent towards all undertakings. Competition advocacy is certainly 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			√
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.	2011		√	
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.	2013		√	

CURRENT SITUATION

The harmonization with EU competition rules in Serbia began with the enactment of the currently applicable Competition Law in 2009 (hereinafter: the "Law"), which set better material and technical preconditions for the autonomous operation of the Commission for Protection of Competition (hereinafter: the "Commission"). The Law was amended in 2013, whereas the corresponding by-laws were adopted back in 2009 and 2010, while the new Decree on the Content and Manner of Submission of Merger Notifications ("Merger Control Regulation") was adopted in 2016.

Based on the annual report of the Commission for 2016, over 95% of the Commission's decisions on merger control were adopted in a summary process (i.e., they concerned mergers with relatively limited effects on the local market). The largest share of cases had the benefit of an easier regime of a short-form merger notification introduced by the Merger Control Regulation.

The introduction of the short-form merger notification has made merger notifications easier for those mergers taking place abroad which have no impact or have insignificant impact on competition in the Serbian market (so called "foreign-to-foreign transactions"), but which have historically taken up a significant portion of the Commission's roster. However, even though the Merger Control Regulation has introduced this form of merger notification, the Commission is also entitled to request submission of a full merger notification when the circumstances indicate that the conditions for allowing the merger have not been fulfilled, granting the Commission a considerable amount of discretion in this regard. Moreover, the short-form notification cannot be made if there were no precedents in defining the relevant market.

According to its Annual Report for 2016, the Commission decided 170 cases and transferred 55 cases to the next period (2017). The Commission issued 99 opinions with regard to the interpretation of the competition regulations and their application. In the previous period, the Commission used to a greater extent the more complex authorizations that are at its disposal in accordance with the Law, including significantly relying on unannounced controls for the purpose of collecting evidence and termination of the merger control procedure while accepting the proposed obligations of the party to the proceedings. The Commission stopped certain merger control procedures in cases where it determined that there is no significant violation of competition in the market, but also imposed penalties of several million euros in other cases in which a violation was established. Finally, in cases of merger control that were the subject to investigation, the Commission imposed both structural as well as conduct measures as a condition for the implementation of the transaction.

Most of the Commission's decisions are entirely or in their major parts publicly available (in particular the merger control clearances), which was already praised as a positive development. Still, 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. Another shortcoming of the Commission database is that it does not allow the filtering of the Commission's case law by relevant criteria.

The Commission's fees have not changed and they are still very high in the area of merger control.

POSITIVE DEVELOPMENTS

The scope of the Commission's activities in the various fields of its competences, as well as its readiness to use complex mechanisms provided for by the Law, constitute a significant progress when compared to the previous period.

In the forthcoming period, as a part of the harmonization process, the Commission has announced the enactment of several other by-laws to regulate in more detail the exemption of restrictive agreements in sectors such as sale of spare parts for motor vehicles, insurance, transfer of technologies, and road, rail and inland waterway transport. Identifying the need to specifically regulate these sectors is definitely a positive development, as it reflects the Commission's awareness of the importance of its role, and once again confirms its aspiration to harmonization of the competition legislation with EU standards and rules. Also, representatives of the Commission announced a possible comprehensive revision of the law, which would involve removal of practical issues in implementing legislation, especially procedural rights of the parties in the specific procedure before the Commission, where the implementation of the Law on Administrative Procedure is not quite appropriate.

At the beginning of 2016, the Commission published instructions on submitting a request for the individual exemption of a restrictive agreement from prohibition to help market participants avoid any situation in which the conclusion of a restrictive agreement could be in breach of the Law. In mid-2016, the Commission published instructions on the application of the Law on related parties in public procurement procedures, which complements the overall framework for the action of the Commission in this area. In February 2017, the Commission adopted a new Decision on the manner of publishing decisions and acts and data anonymization in decisions and legislation, specifying the protection of confidential information of parties. Specifying the legal framework and the implementation and enforcement of regulations through policies and guidelines are of great importance in areas such as the competition law, given the impact of the decisions and practices of the Commission on the future behaviour of market participants.

In addition, compared to the previous years, the Commission clearly made a significant effort in developing competition advocacy. Specifically, it is now publishing its opinions and decisions, issuing notifications on its activities on its official website and organizing promotional activities more frequently. This positive development is important as it contributes to the overall improvement of the current legal framework and to the general public's and media's better understanding of competition rules and activities and the importance of the Commission's role, thus simultaneously raising awareness about the need for and importance of competition rules in general. Still, it would be recommendable for the Commission to enable the overview of its activities on a monthly level and not only within its Annual Reports. This would definitely ensure a greater level of transparency, as interested parties could receive "fresh" information more often over a given year. The Commission also announced the implementation of several sectoral analyses in 2017, including retail, oil market and the pharmaceutical market.

Finally, the Commission began implementing economic analyses in the proceedings of examining violations of competition and complex mergers in order to prove a violation. This indicates that some improvement was made in the quality of the decision-making process of the Commission in proving particularly complex violations.

REMAINING ISSUES

The proceedings before the Commission still do not provide a sufficient guarantee of all procedural rights of the parties, such as, for example in terms of the rights of the parties to have access to case file and powers of the Commission in terms of treatment of privileged communication. As for unannounced examinations, it seems that the decisions of the Commission on the implementation of examinations lack an explanation of the reasonable suspicion that evidence will be removed or altered which is a statutory condition for implementation of unannounced examinations. The Commission still does not sufficiently rely on economic analyses when making the decisions. Although the Commission invested serious efforts to improve the quality of economic analyses, and is engaging more and more economists and using economic tests in the procedure of examining violations, the problem is still apparent especially because the use of economic tests is sporadic and unpredictable. It is necessary that economic analyses go beyond the basic indicators, taking into account in particular the dynamics of the market and the arguments of the parties to the proceedings, and making sure that they are consistently applied in all proceedings before the Commission, considering the specifics of the particular case.

This is of particular importance as the Competition Protection Law bestows significant powers on the Commission, so predictability of decision-making, legal certainty and properly conducted processes in full respect of the rights of the parties to due process 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 detailed statement of reasons and consideration of the merits of the case, limiting their scope to repeating the Commission's findings and consideration of the basic procedural issues, without analysing the arguments of the parties in dispute. This is a severe shortcoming, as it prevents confrontation of opinions, detailed and adequate control of the Commission's decisions, development of practices, and jeopardizes proceedings in cases when an extraordinary legal remedy is lodged. In this regard, a detailed statement of reasons for the decisions of the Commission and the court, with particular consideration of arguments and evidence presented by the parties to the proceedings, 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.

As for the leniency programme, Commission still lacks public support for its implementation. Specifically, due to the lack of clear interpretation of the existing rules, the business community is not fully in favour of the use of this institute. The Commission made an effort to promote and develop this institute; however, concrete progress in terms of development of the practice is still not significant.

Some legal uncertainty is also caused by a lack of clarity in the application of the rules on merger control related to transactions that involve the acquisition of control over a part of market participants as well as the acquisition of control in the short term. Specifically, these problems often arise in the interpretation of the term "independent business units", usually related to the acquisition of control over real estate, where the business community needs a clear and timely guidance from the Commission in respect of future practices.

It is noticeable that in the previous period the Commission has been applying a more complex methodology in analysing the individual cases of exemption of restrictive agreements from the ban. While the need for a detailed examination of complex cases is clear, given the speed of economic developments and the fact that the parties to the proceedings cannot implement a restrictive agreement before the Commission's decision, it is essential that this practice should not adversely affect the efficiency of the Commission's decision-making process, in terms of avoiding any unjustified delay in the process. In the long term, it is necessary to examine the acceptability of the concept of individual exemption, which the European Union abolished several years ago.

In terms of prioritization of cases, and bearing in mind the limited capacities, it is essential that the Commission focus on cases that have significant effects on the market and the issues that significantly prevent, restrict or distort competition, and in particular on serious horizontal restrictive agreements and abuse of dominant position. In the previous period, certain activities or industries that were of interest to the Commission did not have a clearly prominent element of significant violation of the public interest.

Finally, the method of determining penalties is characterized by inconsistency and unpredictability in the application of the Law. For example, a substantive part of the existing guidelines is not in compliance with the law, the methodology for determining coefficients for individual factors in meting out the sentence is unclear, the Commission's decisions often do not include an overview of the established coefficients for individual factors, and the entire income of the party to the proceedings is taken as a basis for the calculation of the fine, and not just the income derived from the relevant market where competition was violated.

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 EU cases should be mentioned and explained in the Commission's decision, i.e., the Commission should state the reasons for applying a certain interpretation of the practice.
- In order to enhance transparency and legal certainty, clear guidelines and instructions containing the manner of application of certain provisions of the Law. The FIC and other interested stakeholders should have the opportunity to participate in the process of drafting such documents. Also, publishing the Commission's statistics and reports on a monthly level would definitely contribute to increasing transparency.
- For the purposes of legal certainty, aside from the Guidelines, the Commission needs to adopt by-laws defining in more detail certain core categories of the anti-trust framework, e.g. dominant position, minor violations, the leniency procedure, etc.
- Judges of the Serbian Administrative Court should complete advanced training in both competition law and economics. All rulings of said court should be made publicly available, and explained in detail in terms of the substantive issues of the decisions of the Commission. Non-confidential versions of all decisions and official opinions of the Commission, as well as rulings of the Administrative Court in relation to the issues of competition should also be made publicly available.
- The Commission should apply its practice consistently with respect to all undertakings, including state and private entities. Considering the penal-legal nature of the decisions in the area of competition protection and the significant powers of the competent authority, predictability as well as consistency and legal certainty are of crucial importance for all market participants.

- The Fee Schedule must decrease fees to a reasonable level, in line with comparable jurisdictions in Central and South East Europe, especially in the field of merger control.
- The right balance must be found between the Commission's role in sanctioning illegal behaviour and promoting competition rules, i.e. competition advocacy should not be overlooked and the Commission should promote competition law principles more effectively, particularly in the private sector.

STATE AID 1.57

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, (also to companies in restructuring and privatization).	2011		√	
Strengthening of independency of the Commission for State Aid Control (CSAC).	2009			√
Further reduction of sector and regional aid relative to horizontal aid should be encouraged (in particular aid for small and medium enterprises and research and development).	2016		√	
Regular publishing of CSAC's statistics and reports, on an annual and (preferably) monthly level to reduce lack of transparency.	2016		√	
Pressure by the CSAC (and the professional community) on public authorities to file notifications timely, so that the Commission is able to promptly commence with the reviewing process.	2011		√	
Effective state aid control – utilizing different mechanisms in order to monitor state aid allocation, and also impose sanctions for non-compliant state aid.	2014			√
Harmonization of the fiscal policy with the EU acquis.	2015			√

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 2015 and 2016 there were no changes in these regulations.

In January 2015 the Government of Serbia appointed a new Commission for State Aid Control (CSAC).

The latest publicly available edition of the CSAC's Annual Report is for the year 2015. In 2015, the total amount of state aid in Serbia amounted to EUR 836 million, which is 4.6% less than in 2013. In 2015, state aid amounted to 2.62% of the country's GDP, which is a decrease relative to 2014, when this percentage was 2.74%. By comparison, in 2015 EU Member States combined spent 0.67% of GDP on state aid.

In 2015, 21.4% of total state aid went to the agricultural sector and the remaining 78.6% to industry and services. Horizontal aid was the largest chunk of total aid in industry and services (34.4%), followed by sectoral and regional aid with 13.2% and 29.9%, respectively.

The share of subsidies in the total state aid granted was reduced to 50.9% in 2015. This was followed by tax incentives (23.7%), guarantees (8.6%) and favourable loans (2.4%).

POSITIVE DEVELOPMENTS

The appointment of a new CSAC is potentially an opportunity for the authority to step up enforcement of state aid rules, in particular concerning retrieval of state aid not compatible with the state aid framework.

According to the European Commission's Progress Reports for Serbia for 2015 and 2016 (hereafter: EC Progress Report), the new members of the CSAC are not affiliated to state-aid-granting ministries (but are still nominated by the ministries). This non-affiliation with the ministries may potentially result in a more operationally independent CSAC, which remains to be seen in practice.

In 2015 at the last year for which official data is available, the amount of horizontal state aid saw a significant increase, sectoral aid decreased significantly, while regional aid increased significantly compared to previous years. Further, compared to 2014, de minimis aid decreased noticeably (around 17%).

In the previous period, the CSAC organized a number of workshops and presentations with the aim of raising awareness of state aid among relevant stakeholders. The workshops and presentations were not limited to Belgrade but were also held in other cities, enabling interested parties across the country to get better acquainted with the significance of state aid regulations.

In 2015, the CSAC launched a new website. On its website, the CSAC regularly keeps the public informed of its activities and regularly publishes its decisions as well (whether or not the CSAC has published its entire decisional practice in the said year will only be verified once its annual report for 2016 is published).

REMAINING ISSUES

As 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.

According to the EC Progress Reports, a number of existing state aid schemes in Serbia, including fiscal ones, still need to be aligned with the acquis. The European Commission also noted that it is necessary to abolish the practice of exempting companies in restructuring and privatization from the rules for granting state aid (in order for aid to such companies to be compatible with state aid rules, it must satisfy the conditions laid down in the Regulation on the Rules for Granting State Aid). In addition, at the normative level, Serbia has not yet adopted regional state aid maps.

The EC Progress Report also notes that Serbia needs to provide a transparent framework of state support to the private sector, redirecting it towards efficient and horizontal objectives, such as support to small and medium enterprises and research and development. The total amount of horizontal aid has increased in 2015 compared to 2014, it is indicative that in 2015 no aid was granted for research and development, which leaves a lot of room for improvement.

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, but also wastes limited budgetary resources (i.e., taxpayer contributions).

In 2015, the CSAC adopted 36 decisions on permissibility of state aid – in 32 cases it found that the aid was compatible with state aid regulations, while in 4 cases it concluded that no state aid was involved. Out of the 32 cases that were found to be compliant, 24 were decided in ex-ante and 8 in ex-post control. These numbers show that compared to 2014, the number of ex-ante control proceedings increased, which speaks in favour of strengthening responsibilities of state authorities that see the importance of the timely filing of state aid notifications, thus enabling an adequate response by the CSAC.

The CSAC is yet to order the retrieval of granted state aid, which brings the independence and integrity of the CSAC itself into question. From the institutional side, the CSAC's status as a governmental body primarily composed by representatives of different ministries, rather than an independent authority, can bring its decision-making independence into question. Although certain steps have been taken, the CSAC'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.

The CSAC is not updating the information on its activities as frequently as expected – the last publicly available annual report, which is the only available and relevant source of statistics on the activities of the CSAC, was published in 2015. On the other side, the deadline for the publication of annual reports is 30 June of the current year for the previous year, but the CSAC is under the obligation to collect data from other state authorities (Tax Administration) and this presents an objective obstacle to publishing the annual reports before the expiry of this deadline. Regular publishing of decisions enacted by the CSAC is indeed a positive step forward in addressing the lack of transparency. Nevertheless, in order to establish and strengthen legal certainty by enhancing the level of transparency to the greatest extent possible, it is essential that the CSAC as well as other state authorities that are in possession of relevant data increase their efforts to regularly update and publish their statistics, by the end of the first half of the next year, at the latest.

Specifically, lack of transparency regarding contracts and negotiation procedures in relation to capital infrastructure investments enables potential misallocation of budgetary funds and possible distortion of market competition, and 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 in drafting state aid policy is of great importance, 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 CSAC 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, (also to companies in restructuring and privatization).
- Strengthening of independency and personnel capacities of the CSAC.
- Further reduction of sector and regional aid relative to horizontal aid should be encouraged (in particular aid for small and medium enterprises and research and development).
- Regular publishing of CSAC's statistics and reports, on an annual and (preferably) monthly level to reduce lack of transparency.
- Pressure by the CSAC (and the professional community) on public authorities to file notifications timely, so that the Commission is able to promptly commence with the reviewing process.
- Effective state aid control – utilizing different mechanisms in order to monitor state aid allocation, and also impose sanctions for non-compliant state aid.
- Harmonization of the fiscal policy with the EU acquis.
- Preparation of regional state aid maps.

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION 1.83

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further efforts towards the harmonization with international and EU principles.	2011		√	
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 of primary and secondary schools.	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 the currently applicable Law on Consumer Protection (hereafter: the Law), effective from September 2014. This is the third piece of consumer protection 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, as well as reducing difficulties in terms of realization of consumers' rights in practice.

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

One of the most important concepts introduced by the Law is the protection of the collective interests of consumers, which aims to sanction unfair business practices and unfair contract terms. Under the Law, if consumer protection associations duly registered with the Ministry of Trade, Tourism, and Telecommunications (hereafter: the Ministry) establish that a trader has breached the collective interests of consumers by means of unfair business practices or by contracting unfair terms, they are entitled to approach the Ministry with a request to initiate proceedings to protect such interests. On the basis of such a request, or by virtue of its office (if it determines in the course of the inspection process that an act or omission of market participants endangers or could endanger the collective interest of consumers), the Ministry may initiate administrative proceedings or require the trader to cease violating the 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, the acquis communautaire, and the Stabilization and Association Agreement, the Law devotes significant attention to the 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" in court, which has not been the case until now (when court fees were disproportionate to the value of the claim and often a reason for the reluctance on the part of consumers to seek protection of their rights in court). As for the out-of-court settlement procedure for consumer disputes, the Law stipulates that the Ministry must publicize a list of bodies meeting the requirements for such a procedure (the currently applicable list is

available on http://mtt.gov.rs/download/lista_tela_van-sudsko_resavanje_sporova_9.pdf). 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 introduced a stronger role for the autonomous province and local governments, which, among other things, 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 governments.

The Law further abolished the possibility of imposing the repair of goods on the consumer within the first six months of purchase, meaning that repair is only possible with the express consent of the consumer. In the case of a lack of conformity of goods or services within six 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 the misdemeanour liabilities of traders, including 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 misdemeanour provisions.

Traders are required to keep records of received complaints, and the inability of consumers to deliver the packaging of 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 is eight days, whereby a deadline for the resolution of a complaint acknowledged by the retailer cannot exceed 15 days from the date of the filing of the complaint, or 30 days for technical goods and furniture.

The Law has created 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, consisting partly of representatives of consumer organizations registered with the Ministry.

In addition, the Law sets forth that elementary and secondary school curricula should include education on the role and basic principles of consumer protection, and that the Ministry as well as consumer organizations should cooperate with schools in educating students on consumer rights and responsibilities.

In relation to the previous law, this Law introduced new and expanded the 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.

POSITIVE DEVELOPMENTS

In comparison with the previous year, the increasing number of activities undertaken by consumer protection associations is definitely an improvement. These associations conducted numerous consumer education projects, organized round tables to discuss important issues in this area, tested a large number of consumer products and informed consumers about detected irregularities, etc. The websites of these associations provide an increasing number of useful publications for consumers and presentations of on-going issues in this area. Through these activities consumer associations are increasingly fulfilling their main role, which is supplying consumers with information, education and advice, addressing their complaints, conducting independent tests and comparative analyses of the quality of goods and services, etc.

REMAINING ISSUES

Although the Law formally established a greater balance in the relationship between traders and consumers, the results in practice demonstrate this is still far away from real equality. According to the 2016 Report on the Activity of the National Consumer Complaints' Registry, the Consumer Protection Sector within the Ministry received 2,938 consumer complaints in 2016 over a toll-free phone number, while the regional consumer councils received a total of 16,394 consumer complaints. A large majority of complaints received (79%) concerned the supply of goods (mostly footwear, mobile phones IT equipment and appliances), while the remaining 21% were connected with supply of services (most often public utilities and telecommunication services). Relative to the last year's report, in 2016 there was a notable decrease in the number of complaints received by the Consumer Protection Sector within the Ministry, but the number of complaints submitted to regional consumer councils increased by 20% within the same period.

Although improvements in terms of education and raising awareness of consumers about their rights are vis-

ible, campaigns should be actively continued nationwide to ensure a better balance of consumer awareness in all regions of Serbia. By far the largest number of consumer complaints is filed in the region of Belgrade, and to change this trend it is necessary to increase the number of activities throughout Serbia with the aim of raising consumer awareness of their rights and encouraging them to seek protection.

FIC RECOMMENDATIONS

- Further efforts towards harmonization with international and EU principles.
- 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 of primary and secondary schools.
- Promoting consumer protection rights and interests through local level institutions with the aim of educating, informing, consulting and involving consumers in the decision-making process.
- Continuation of professional staff training within the ministries and inspections, judicial and non-judicial bodies, and consumer associations and other market participants.

PROTECTION OF USERS OF FINANCIAL SERVICES 2.00

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	√		
Harmonization of the announced legislation with the existing legislation already in force	2016			√

CURRENT SITUATION

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, are regulated by the Law on Protection of Consumers of Financial Services (hereinafter: the "Law"). Four years since the Law came into force (5 December 2011), its practice has shown that certain changes are necessary, and that those changes are to be implemented through the Act on Amendments and Supplements to the Law on Protection of Consumers of Financial Services which has been in force since 27 March 2015. In addition to matters governed by the aforementioned Law, other aspects of the protection of consumers of financial services not regulated by this Law are governed by other laws applicable to consumer protection, as well as the operations of banks and leasing providers, as in the areas of contracts and torts. Also, bearing in mind that ever since the Law on Payment Services came into force, on 1 October 2015, issues relating to the protection of users of payment services and holders of electronic money, as well

as issues related to account opening and payment (debit) cards, are now regulated by this law.

The most important difference between the original version of the Law and the Act on Amendments to the Law on Protection of Consumers of Financial Services is the expanded definition of a consumer of financial services, which now, aside from individuals, includes two new categories of entities. Specifically, from the entry into force of the Act on Amendments to the Law, consumers of financial services also include entrepreneurs and farmers (holders or members of an agricultural household). With the introduction of these categories listed as entities under the umbrella of the Law, these persons have the same status, rights, and level of protection as a natural person. On the other hand, the aforementioned amendments to the Law have caused additional obligations to banks and financial service providers. Banks are now obliged to supply the new categories with all pre-contractual information and information concerning the duration of the contract, as well as inform them about their rights in relation to the currency in which the loan is approved, the type of exchange rate applied, interest rate changes, and so on.

In addition to the above, important innovations introduced in 2015 are related to the greater transparency in the relationship between banks and consumers of financial services. This intent is seen throughout the Law, particularly in areas in which the obligations of the banks relating to the notification and information to the user before, during, and after the establishment of the contractual relationship with the user are more closely defined. In this sense, it is the especially defined obligation of banks to keep in their offices and on their websites a daily notification of the value of all contracted variable elements. Also, General Terms and Conditions, together with tariffs, need to be published on the website of a bank in order to be easily accessible to clients. The purpose of these provisions is to avoid hidden costs for consumers and better information about the different elements of the business relationship between banks and their customers. Additionally, banks are obligated to provide more detailed content of the files of users, which must now contain a draft contract, annexes to contracts with new repayment schedules, notifications, reminders, as well as all other relevant documentation reflecting the history of the bank's business relationship with the client.

In order to protect the rights of users of financial services in the right way, the National Bank of Serbia (NBS) has adopted a set of decisions, in particular the Decision specifying the manner of handling financial services consumer complaints by financial service providers and the NBS. This Decision prescribes the manner of filing complaints of users of financial services to the provider of financial services and to the NBS, as well as their handling of these complaints.

POSITIVE DEVELOPMENTS

According to the Annual Report of the Centre for Financial Consumer Protection and Education of the NBS for the period from 1 January 2015 to 31 March 2016 (hereinafter: the Quarterly Report), this body received a total of 714 complaints and early complaints in connection with the business activities of financial institutions (59.4% of which concerned banks). This represents an increase of 49.1% compared to the first quarter of 2015.

Considering the amendments to the Law, the process of protecting the rights and interests of consumers of financial services has been modified to enable them to apply for mediation by the NBS before filing a complaint, as well as during and after the complaint handling process. As a result of this, according to the Quarterly Report (for the previously mentioned period), there were a total of 80 submitted proposals for direct intervention, without addressing complaints, of which 27 proposals were accepted by the financial institution.

In order to further educate consumers of financial services, in the first quarter of 2016 the NBS held 17 educational debates in 15 towns and villages throughout Serbia for 530 people with a variety of topics current in the financial sector, while the forums intended for entrepreneurs and farmers as well as new categories of entities covered by the amendments to the Law of 2015 were intensified. In addition, the NBS Information Centre received 3.913 phone calls by citizens and 254 questions submitted by e-mail.

In 2016, the Education and HR Committee of the Association of Serbian Banks established a Working Group for financial literacy and education as part of an initiative to expand the activities of banks in the area of finance-related education. Education of users of financial services aims to improve business cooperation between banks and their clients as well as protection of the clients' interests, and is expected to have a significant impact on the quality of the credit portfolio of banks, consequently also an impact on commercial development and financial stability.

In order to achieve significant results in the area of financial education, this topic should be included into regular educational and school activities with young categories of students. The Ministry of Education should also be involved in this activity, and in emphasizing the importance of the topic and of a more systematic approach.

To remain competitive in this digital era and the information society, banks will have to adapt their business to the new demands of clients. Recognizing this need, in December 2015, the NBS prepared a Draft Law on the Protection of Consumers of Financial Services with Respect to Distance Contracts (hereinafter: the Draft) for the purpose of harmonizing national legislation with the EU acquis in this area, primarily with Directive 2002/65/EU. The Draft covers services in the area of banking, insurance, voluntary pension funds, payment transactions, e-money issuance, financial deals, and investment. The Draft regulates the rights of consumers of financial services to be properly informed in the pre-contract phase as well as after the conclusion of the contract, and to withdraw from a distance contract (within 14 days, as a rule), to terminate the contract, to be protected against unsolicited services, and other rights of consumers of financial services concluding distance contracts. Also, the Draft includes the protection of the rights and interests of these users, and the monitoring of the implementation of the provisions of this draft law. The expected benefits of this regulation, inter alia, are strengthening the confidence of users of financial services provided to the conclusion of distance contracts, as well as greater comfort for users in order to effectively consider the offer and make selection of services, not to mention the reduction of costs of financial services providers and the use of more modern means of communication. Adoption of this Law represents a simpler solution than regulating the same matter through amendments to several laws currently regulating substances to protect users of financial services.

This Draft went no further in the process, thus slowing down the development of financial services delivery through digital channels. Additionally, the proposed wording of the Law envisaged the use of a qualified electronic certificate contracting. Considering that only a very small share of the population uses qualified electronic certificates, expectations are that the proposed Draft Law will not produce the desired effect. To this effect, it is necessary to include different user authentication methods. Taking into consideration the practice in other countries, as well as the local regulatory framework specifically related to payment services, it is necessary to amend the draft Law and introduce other means for contracting financial services besides the qualified electronic certificate.

The existing Law on Protection of Users of Financial Services stipulates the use of the signature of an authorized person and a stamp of the bank in some of its provisions, so these provisions should be amended in order to improve the business processes in banks

REMAINING ISSUES

The Quarterly Report of the National Bank of Serbia (January–March 2016) reveals that early complaints still account for a significant share of the total number of complaints in 2016 (27%), which indicates that many users of financial services are still not familiar with the objections and complaints procedure. In this respect, continuously educating consumers of financial services about their rights and the way to exercise those rights is still needed. A lack of understanding of this and other issues points to the need of providing a systematic and consolidated approach to financial education.

In addition, there remains the unresolved question of assignment of claims owed by natural persons, which should be regulated in a comprehensive manner that would allow progress in resolving non-performing loans. The primary reason for this is that a provision of the Law does not allow banks and financial leasing providers to transfer their claims, arising from loan agreements, leasing contracts, contracts on authorized current account overdraft, and the issuance and use of credit cards, to anyone other than to another bank. This solution is not intrinsic to comparative law or regulations governing contracts and torts.

Finally, despite the announcement of the new Law on the Protection of Consumers of Financial Services with Respect to Distance Contracts, the issues that prompted legislators to submit this law for approval in the first place have not been resolved as yet. One of the reason for this is that the new Law is not aligned with the local legal framework and there is also the issue of the insufficiently developed legislation on electronic commerce. Taking all this into consideration, this law will be limited to customers who have registered an electronic signature in accordance with the Law on Electronic Signature, so that its application will continue to be limited.

FIC RECOMMENDATIONS

- Further harmonization of regulations of the protection of consumers of financial services with international and EU principles.
- Timely adoption of the remaining by-laws required under the Law.
- Inclusion of financial education in regular school activities, as well as the adoption of a national strategy in the field of financial education.
- Further education of users of financial services regarding their rights.
- Harmonization of the announced legislation with the existing legislation already in force.

PUBLIC PROCUREMENT

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Synchronized action of the Public Procurement Office and Anti-Corruption Agency with the aim of developing a feasible plan for combating corruption.	2013		√	
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.	2013			√
Amending the provisions of Law regulating the unusually low bids.	2014			√
Amending the provisions of the Law to oblige contracting authorities to deliver anti-corruption internal plans and acts 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 April 15, 2014.	2015		√	

CURRENT SITUATION

The general impression is that the new Public Procurement Law (RS Official Gazette No 124/2012, hereinafter: the Law), which has been 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, increasing the number of documents published on the Public Procurement Portal, reducing deadlines for the submission of bids to raise the efficiency and effectiveness of public procurement procedures. At the moment of drafting of this report, there are still no available analyses on the impact of these amendments.

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 2016, the number of open competitive bidding procedures was increased to 93% from 89% in 2015. In addition to this, the share of negotiated procedures without prior publication of a call for competition was reduced to 3% in relation to 2015 when the share of negotiated procedures without prior publication of a call for competition was 4%. There is no general report of the Republic Commission for Protection of Rights of Bidders for 2016 available. The average number of bids submitted per tender is almost the same as in 2015 – 2.9%.

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. A Cooperation Agreement was signed between the Public Procurement Office and the Anti-Corruption Agency on 2 March 2013. The purpose of this agreement is to enable the exchange of information between the signatories. Furthermore, the Public Procurement Office enacted the Model Internal Anti-Corruption Plan 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 these 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.

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, the contracting authority may continue the procedure, but that the contract will be annulled by force of law 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 contributed to the greater transparency of the procedure, as expected, since the number of negotiated procedures and low-value public procurement procedures was reduced in 2016.

In December 2016, the Public Procurement Office joined the Government's open data initiative and placed its data in the public domain. While this initiative is undoubtedly positive, data relevant for the implementation of anti-corruption measures are missing (e.g. the contracted value of public procurement, name of the contracting authority, number of bidders by tender).

On 9 June 2017, the Public Procurement Office awarded 178 certificates to the candidates who successfully passed their certified public procurement officer exam.

Furthermore, on 19 May 2017 and 2 June 2017, the Public Procurement Office organized training courses for representatives of the contracting authorities and bidders in the field of implementation of framework agreements and guidelines for the implementation of criteria for most economically advantageous tender (MEAT).

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 2014, the Contract on Cooperation between the Public Procurement Office and the Anti-Corruption Agency of 2 March 2016, the Cooperation Agreement between the Anti-corruption Agency, the Republic Commission for Protection of Rights in Public Procurement and the Commission for Protection of Competition of 9 November 2016, 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 rules on "unusually low price". 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 comparable 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 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 review 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 review of public procurement procedures on these grounds. The Commission is not authorized to question the merits of such requests since the parties to the review procedure 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 to protect 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 procurement 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. The criteria for the award of contracts for the supply of medicines that are on the List of Medicines covered by mandatory health insurance are also selectively applied. This means that

sometimes the contracting authority applies tender criteria that stimulate a broad offer of medicines, and other times criteria that exclude bidders from competition.

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.

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

The Law stipulates that a contractor can only initiate a public procurement procedure if such procurement is envisaged in the annual public procurement plan. However, some of the latest amendments to the Law have opened the possibility for abuse by envisaging that in some extraordinary cases, when it is not possible to plan public procurement in advance, or for reasons of urgency, a contractor can initiate a public procurement procedure even if such procurement is not envisaged in the annual public procurement plan.

The Action Plan of the Government of the Republic of Serbia for the implementation of the Public Procurement Development Strategy for 2017 envisages the Government's obligation to deliver a Draft Public Procurement Law to the National Assembly for adoption. The new Public Procurement Law should comply with Directive 2014/24/EU. At the time of publishing of the White Book, the Draft Law had not yet been delivered, nor had public consultations been held on the Draft Law.

The new Public Procurement Law is expected to create a favourable regulatory basis to begin eliminating the discrepancies mentioned in this edition of the White Book.

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 the implementation of the Memorandum on Cooperation of 15 April 2014.
- Clarification of ambiguities in implementing the Public Procurement Law in the context of energy services-based projects through an "official opinion" published by the Ministry of Finance accompanied by appropriated explanatory materials and training made available to Public Procurement Departments at local level.

PUBLIC - PRIVATE PARTNERSHIP

1.60

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
A more active role of the PPP Commission, which should include issuing guidelines, as well as further developing the capacities of potential public partners for the implementation of PPP projects, and an exchange of good comparative practices, which might improve the realization of PPP projects in the Republic of Serbia.	2012			√
Increase and improve the cohesive and synchronized activities of relevant authorities for the authentic interpretation of laws (joint guidelines and recommendations) which may materialize by the increased activity of the PPP Commission; e.g. the Ministry of Finance, the National Bank of Serbia, the Public Procurement Office, etc.	2016		√	
Enact amendments to the Law on Public-Private Partnerships and Concessions fully ensuring cohesion with other laws intertwined with it (by explicitly pinning down the sole application of the Law on Public-Private Partnerships and Concessions where a matter is regulated differently).	2013		√	
Enact amendments to the Law on Public Property enabling the encumbering of publicly-owned real estate and the foreclosure thereof for the purpose of enforcing direct financing agreements related to PPP projects.	2013			√
Continue to monitor the application of the Law on Public-Private Partnership and Concessions and identify all unclearly regulated areas.	2016		√	

CURRENT SITUATION

Serbia needs better quality public infrastructure to support international, regional, and domestic connectivity and to gain from the positive impact on macroeconomic competitiveness and economic growth. Government commitment to control the external debt and budgetary deficit, combined with an inefficient provision of public services, have so far impacted the level of capital investments.

The growing need to build new public infrastructure and update existing infrastructure, invest in projects of general interest and provide services of public interest in Serbia, has required the creation of a legal and institutional framework for attracting private investment. The Law on Public-Private Partnership and Concessions (hereinafter: the "PPP Law") was adopted in 2011 and introduced the concept of public-private partnerships into the Serbian legal system for the first time. Since then, several public-private partnership (PPP) projects have been initiated and implemented in Serbia, these being mostly on the low to medium scale. The sectors involved vary from public transportation, public lighting, energy and water, to maintenance of roads and other infrastructure.

The Serbian market is, however, yet to see a large-scale complex PPP project in full operation. PPPs should be both economically efficient and socially responsible. The economic rationale of this concept is that the value obtained for the funds invested should be greater than the value that would have been obtained by using the traditional public investment model (i.e. funding from the budget). Another clear advantage of the PPP is the fact that the public sector (including municipalities throughout Serbia) typically lacks the appropriate level of expertise, knowledge, and know-how to tackle, implement and manage complex infrastructure projects themselves, so involving a private partner is usually a more practical solution than engaging external consultants on a long-term basis.

Recent improvements in the legal system treating PPPs, discussed in detail in the White Book 2016, are important prerequisites for an increase of investments through PPPs. After almost five years since PPP legislation was enacted for the first time, 48 projects have been positively assessed by the Commission for PPPs, of which 13 last year. However, according to the available information in the Register of Public Contracts, so far only 19 public contracts have been executed. In addition, the biggest infrastructure projects so far have been mostly executed the traditional way, through

bilateral arrangements and the "finance & build" model. The Register of Public Contracts does not contain bilateral arrangements.

Given delays in the capital projects' implementation, we can thus far conclude that the conventional public provision of infrastructure is not producing satisfactory results, and that other organizational models, including PPP, should be utilized more.

The inter-play between the PPP Law and the Law on Public Procurement did not work quite so well in practice. There were several ambiguities concerning deadlines and certain procedural steps involved in a PPP procedure, according to both laws, that remained a point of concern for a notable number of stakeholders on the market. Also, several rules of the PPP Law were, to an extent, not harmonized with each other, and there were notable uncertainties about some important aspects of the PPP Law, including: the very notion of a private partner (i.e. whether it mandatorily includes a special purpose vehicle – SPV, formed for a specific project or not); whether an institutional PPP is allowed for concessions or not: whether an SPV must be founded for the project's implementation or not; and so on. In addition, practical hurdles appeared to exist regarding the correct manner in how the value of the relevant project should be determined, since the application of the rules of the Law on Public Procurement did not themselves completely fit the desired purpose once they were applied to a PPP project.

As per available information, some of the identified problems in the execution of investments in the conventional way are: 1) the selection of projects is not always guided by the needs of society and economic growth, and is not based on a feasibility analysis; 2) poor project preparation (errors in technical documentation, an inefficient permitting and expropriation process, and poor profitability analysis); 3) a low level of capacity of the government bodies in charge of managing infrastructure (designing, approving, monitoring, reporting), as well as inefficient coordination between different public institutions.

POSITIVE DEVELOPMENTS

To tackle the above challenges and foster the further development of PPP projects on the Serbian market, the PPP Law has recently been subject to amendments, which came into effect in December 2016. These amendments aimed to, among other:

- provide for somewhat greater clarity as to SPV involvement in a PPP project;
- put forward clearer boundaries between the applicability of the rules of the PPP Law on a given project and the rules governed by the Law on Public Procurement, stating that the rules of the latter shall not apply to:
  - the method for calculating the estimated value of the public contract;
  - the joint bid;
  - sub-contractors;
  - deadlines for submitting bids and applications;
  - deadlines in connection with the adoption of the decision on the selection of the most preferred bid;
  - deadlines for the conclusion of the contract; and
  - amendments to the public contract;
- make explicit certain matters that have caused ambiguities in the previous practice (i.e. the notion of a private partner, notion of a bidder, possibility of charging end-users directly, possibility for institutional PPP without elements of concession, etc.);
- improve to some extent the rules on sub-contracting;
- improve to some extent the rules relevant for calculating the value of a project;
- further develop the procedural rules that are specific for concessions;
- fine-tune the mandatory contents of a public (PPP) contract;
- improve the rules on approving the PPP contract following its award to a private partner;
- further specify the scope of prospective subsequent amendments to a PPP contract at the funders' request;
- provide for greater clarity as to a PPP contract's termination and a corresponding return of assets; and
- further clarify the prospects for stipulating foreign arbitration.

In summary, the newly adopted amendments to the Law on Public-Private Partnerships and Concessions aim to further regulate and upgrade certain provisions and to harmonize them with EU standards and provisions, as well as reinforce the role of the ministry in charge of finance in the process of approving public-private partnership projects in order to control the fiscal risks that these projects would undoubtedly carry. In addition, the By-Law on Granting Concession in Phases was adopted by the Government in January 2017 to further regulate in sufficient detail the procedure of granting a concession.

Also, to address some of the recognized problems, the

Government of Serbia adopted in November 2015 the Public Financial Management Reform Programme 2016-2020 (hereinafter: "Programme" & "PFM") prepared by the Ministry of Finance (MoF). Programme adaptation is seen as a step towards an improvement of management of public investments and management of public finance in general. The Programme is part of the Memorandum of Economic and Financial Policies (MEFP) framework, concluded within a stand-by arrangement (SBA) with the IMF, the Progress Report of the Republic of Serbia, issued by the European Commission, as well as the demands for the accession process negotiations. The Programme implementation has been partially funded out of the budget of the Republic of Serbia, by donors such as the EU, WB, IMF, OECD, USAID, UNDP, as well as by the governments of Germany, Switzerland, Sweden, Great Britain and others.

As far as existing practices are concerned, the preparation of a number of large-scale PPP projects can be reported as a positive development on the Serbian market, overall. They include the waste management PPP project of a complex nature in Vinča , Belgrade, as well as the on-going concession procedure regarding the Belgrade Airport. Other notable PPP projects in the pipeline include the construction and operation of underground parking garages in Belgrade, the district heating project in Šabac and several street lighting projects in a number of Serbian cities and municipalities.

REMAINING ISSUES

Implementation of the PPP legal framework was an important first step to promote private investments, and it is aligned with Laws in the EU member states that have regulated PPPs with special laws as well as with European Commission recommendations. However, although necessary, the legal system is not sufficient to attract investments into infrastructure. Some of the issues to be tackled include governance and institutional capacity. Specifically, the remaining issues are: i) a lack of understanding of the new legal framework on the municipal level; ii) an inability to identify projects that could be developed in the form of PPPs; and iii) continuous political determination and development of institutions as an essential prerequisite for the practical implementation of PPPs.

Indeed, the recent amendments to the PPP Law seem to be a constructive step forward towards full exploitation of the PPP market potential. With several large-scale projects currently in the preparation phase in Serbia, such improvement to the legal framework is surely much needed and welcome. While there still appears to be room for further improvement of the rules directly applicable to this sector, it is nevertheless of even greater importance that a correct and efficient practical implementation of the existing rules be enabled, as recently amended. Accordingly, an important issue is the role and organization of authorities responsible to assure PPP implementation, including the Commission for PPPs in Serbia. The Commission for the PPPs in Serbia should develop stronger capacities and capabilities to tackle outstanding issues together with other relevant institutions.

The role of the PPP Commission: The Public-Private Partnership Commission was established by the Government of the Republic of Serbia in 2012 as an independent public body whose main role is to provide technical assistance to PPPs. A positive opinion of the PPP Commission is a necessary precondition for the development of PPP Projects, but the Commission does not provide support in the project preparation phase nor does it follow the project implementation. The Commission consists of nine members, representatives of the relevant ministries in charge of economy and regional development, finance, infrastructure, energy, mining and environmental protection, the autonomous province, and the City of Belgrade.

In line with a change of the PPP Law adopted in 2016, the PPP Commission has to obtain prior approval from the Ministry of Finance before issuing an opinion for projects exceeding the value of EUR 50 million. This change is intended to ensure that the Ministry has an overview of all investment initiatives, irrespective of the way of financing, in order to ensure that all initiatives are in line with the budget and fiscal policy.

The projects approved so far by the Commission are mainly covering utility services such as the construction of public garages, improvement of public transportation, public lightning, etc. The Commission is a member of EPEC, established by the European Investment Bank to support knowledge sharing among participating countries. The forming of the Commission and implementation of regulations for PPP implementation, such as the By-Law on the Monitoring of PPP Implementation, the Rulebook on the Realization of PPP Contracts, and the "Value for Money" (VfM) Methodology – all were delayed. The VfM methodology was only published two years after the law was adopted.

Thus, in order to leverage more on PPP use in the development of infrastructure, the role of the PPP Commission should be more comprehensive and value adding, while, in parallel, transparency of information about the implemented PPPs should be increased to ensure knowledge sharing. Therefore, strengthening the capacities and capabilities of the Commission to guide and be accountable for PPPs is a must. The PPP Commission's structure is not up to the level required for the early phase of PPP implementation and should be equipped with adequate resources and know-how to be in a position to serve as a competence centre and promote and encourage PPP implementation. It is critical that at least some members of the PPP Commission have experience with PPPs, and that they have gone through the implementation and construction phases. It is only with real experience that the Commission can screen projects and advise governments on the liabilities and responsibilities that PPPs entail.

In particular, institutionally strengthening the PPP Commission and introducing a standardized, short-track review and approval process for ordinary, smaller PPP projects could help harness the PPP market potential. As of August 2017, 50 PPP projects were approved, of which 17 [1] are street lighting ESCO [2] projects. These "newer" forms of PPP projects are functional tenders that rely on the private partner to take the investment, technical and commercial risks. It is the private partner that proposes the best technological solution. Meanwhile ESCO projects are often small in terms of investment size (e.g. street lighting) and follow the same contract template. In providing a "positive opinion" on ESCO projects the PPP Commission should not be concerned with the technical details of a project but rather with granting a "general approval" for the commercial concept in each particular case (e.g. street lighting), provided that the project proposal leaves sufficient flexibility with regard to the possible technical solutions.

A streamlined review and approval process by the PPP Commission seems justified for low investment ESCO projects that apply the same contract template. The Ministry of Mining and Energy prepared ESCO contract templates that were approved as a by-law to the Law on the Efficient Use of Energy (RS Official Gazette No 41/2015; http://www.mre.gov.rs/dokumenta-efikasnost-izvori.php) and are also based on the PPP law, as well as a manual to assist public partners in the preparation of projects. A manual for the PPP Commission would additionally facilitate this.

Also, the PPP Commission should consider promoting available contract templates and manuals.

In terms of governance and success in PPP implementation, an assessment could be carried out to determine if/how responsibilities could be divided between several institutions so as to avoid conflict of interest. The PPP Commission should be responsible for project planning, design, and delivery, for supporting authorities in project preparation and for market development. This could help improve the information flow on "good local practices" in implementing energy services-based projects at the local level. The central body within the Ministry of Finance should be responsible for the approval of all public infrastructure projects, including both conventional projects and PPPs. In this area, a certain threshold could be introduced for local projects to provide a possibility for decision making on the municipal level. Such an approach would ensure an overview of all projects and a cost-benefit analysis of different approaches to projects, thus guaranteeing a broader infrastructural vision. Finally, a separate entity should be responsible for the supervision and implementation of projects and arbitrate in resolution of potential conflicts.

The Register of Public Contracts: According to the Law on PPP, the Ministry of Finance has responsibility for the monitoring of approved projects and maintaining a publicly available register of signed contracts. A database – register of public contracts, does exist. So far, as per Registry, only 19 contracts have been presented. It is advisable to ensure a higher level of transparency of public contracts and also include bilaterally arranged projects in the database, thus providing the possibility to gain know-how from other project experiences. A public register of contracts that is missing is one that would cover important elements of contracts and status of project development, which would be useful for further research and recommendations, as well as the development of practice.

Inter-play with the new Law on General Administrative Procedure: The new Law on General Administrative Procedure (LGAP) became applicable in June 2017, and it introduced the notion of "administrative contracts"; that is, contracts concluded between the administrative authority and a pri-

1 Site visited as of 29 August 2017: http://ppp.gov.rs/misljenja-komisije; http://ppp.gov.rs/dok/37/MISLJENJA%20KOMISIJE.pdf

2 Energy service companies or ESCOs finance the investment and take the technical performance risk.

vate partner within the administrative procedure. According to prominent scholars and existing interpretation, the PPP contracts may qualify to pertain to this new category under the LGAP. The problem with this approach is that the relevant provisions of the LGAP significantly limit certain rights of private parties to such contracts, including, notably, the very right to terminate the contract (instead, a vaguely regulated concept of "objection" is at a private party's disposal in such specific cases). It needs to be mentioned that – if applied to PPP contracts eventually – this may become a significant obstacle for the PPP market going forward, since this will likely affect the financing of PPP projects and generally increase the costs and risks of the private partner.

FIC RECOMMENDATIONS

To assure an efficient implementation of public investments, irrespective of the model of provision, systematic and organizational changes in the management of capital investments are necessary. This issue has been recognized and certain efforts have been made by the MoF, although with delays in the implementation. Through the way they are structured, PPPs could resolve a number of issues raised, including the more efficient provision of public services and a higher level of transparency in the procurement process.

In particular:

- The institutional capacities of the PPP Commission have to be further improved and strengthened for more consistent project reviews. It is critical that the PPP Commission draw knowledge from projects that are currently going through the implementation and tender process;
- Promote available and officially approved contract templates, e.g. ESCO street lighting contract templates. Promote related manuals for public partners to prepare ESCO projects;
- Streamline the review and approval process for low investment projects using officially approved contract templates for specific project types (e.g. street lighting, parking garages);
- Increasing the transparency of public contracts and providing a better overview of existing contracts in the Register of Public Contracts are important for knowledge sharing among various public entities, and need to be strengthened and supported (this is particularly the case with small Serbian municipalities).
- Amending the rules of the LGAP so as to exclude or limit the applicability of its provisions relating to 'administrative contracts' to PPP contracts.
- Practical implementation of the rules relevant for determining the project value that are PPP-specific needs to be improved and the capacities of the public sector strengthened to fully delineate such projects from purely public procurement projects.
- New rules on subsequently adapting PPP contracts at the request of funders are yet to be fully tested in practice and, in this respect, knowledge-sharing and capacity-building on the basis of best international practices would be highly welcome.
- Take advantage of the IFI's support for project preparation and body of knowledge on PPPs. Resources from EIB's European PPP Expertise Centre (EPEC), the IFC's advisory services in public-private partnerships or EBRD's Infrastructure Project Preparation Facility (IPPF) can be used for project preparation.

TRADE

1.30

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 and standards 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 label products.	2012			√
Enabling harmonisation through policies, standards and guidelines.	2012			√
Any restrictions of entreprenurial activities or on the 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 conduct of market participants, and as such occupies a central place among the rules governing trade in goods and services. From the beginning of 2013, when the last amendments to the Law on Trade were adopted, together with other trade-related regulations there were no significant improvements in this area. The absence of by-laws providing guidance for the application of the laws as well as non-compliance with the EU acquis remain the main problems inherited from the past; i.e. the regulations did not keep pace with requirements of a modern economy. 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, for the most part, still missing.

We will merely point out a few specific problems 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), in the first phase of importation we are still facing the problem of certificates issued in most countries of the European Union, as in the case of Belgium and Greece, not corresponding to 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, although there is a list containing types of food of animal origin for which the certificates are harmonized, and for which the harmonization is pending, with their respective names and numbers, they are not available for downloading online. A simple and effective solution would be, first and foremost, to post these forms on the website of the relevant ministry, so that people who need them can have easy access.

Even in cases where 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 things, 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 that this data 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).

Additionally, 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 licensed for exports 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 and the adoption of amendments to the Law on Veterinary Medicine. 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 far too long, especially given the importance of this issue and the benefits small local producers would reap if it were resolved. Also contributing to the difficulties in the export of these types of products (especially meat and dairy products) to EU member states is the fact that Serbian food sector regulations and standards are still not harmonized with the corresponding regulations and standards applicable in the EU, meaning that the food produced in Serbia which does not meet the quality standards prescribed in the EU cannot be exported to EU countries (e.g. pigs may not be exported to the EU because vaccination against swine flu, strictly forbidden in the EU, is mandatory in Serbia).

POSITIVE DEVELOPMENTS

The currently applicable Law on Trade introduced the category of Private Label products into Serbian legislation. 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 an 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 by putting its name or trademark on the products as the manufacturer of those products.

This law improved the business environment by providing the possibility of transporting goods accompanied only by the documents related to the transportation of goods, something which certainly contributed to the simplification of this business segment and also 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.

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. Also, the terminology used in relation to sale incentives, i.e. the advertising thereof, has been harmonized with the Law on Advertising. In that regard, it is foreseen that a sale incentive must include all elements of the offer of a sale incentive, as prescribed under the Law on Trade.

A special instrument is available to corporate entities – a lawsuit for unfair competition – which arguably provides for an additional layer of legal certainty. In that regard, legal entities whose business reputations have been tarnished, e.g. by defamatory statements, may file a lawsuit seeking compensation for both tangible and intangible damages, and further 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 from now on courts will impose pecuniary fines for any intangible damage caused to the traders, if they find that the circumstances of a case justify such a decision.

The adoption of the Law on Inspection Oversight, as an umbrella law in this field marked the beginning of the process of systematic coordination of inspection oversight in the Republic of Serbia has been initiated, the establishment of cooperation among the inspectorates, as well as improved cooperation between inspections and other government bodies and private sector entities, thus significantly diminishing the arbitrariness, inconsistencies, corruption, and other possible abuses. Until the adoption of this Law, the various areas related to inspection oversight were regulated by approximately 1,000 laws, rules, and

other administrative acts, often leading to inconsistencies and conflicts of legislative rules and even, in the same or equivalent situations, to different outcomes. A significant number of inspection services were even denied their jurisdiction because their respective authorities were not explicitly or sufficiently regulated. This legal uncertainty facilitated the blossoming of the grey economy, unlicensed businesses and illegal/unregulated labour, all of which also had a strong adverse effect on the state budget and consequently the country's entire economy. Although the adoption of this law was a positive step forward, the practise has shown that there are certain problems in its implementation.

In December 2016, the Government of the Republic of Serbia adopted the new Trade Development Strategy for the period from 2016 to 2020. This strategy envisages the development of a modern trade network, trade internationalization and competition, as well as support to the small and medium enterprises and entrepreneurs sector in the forthcoming period. In addition, the strategy envisages a number of measures for boosting the development of e-commerce, and consumer protection. It is also noteworthy that this document recognizes the need for harmonizing Serbia's legal framework with the European Union acquis, but also the need for increasing the level of implementation of existing regulations, such as, for example, the use of the possibility for issuing electronic invoices, introduced by the new regulations. Specifically, despite the fact that all legal requirements are fulfilled, commercial banks issue electronic invoices in a very small percentage, whereas the number of small enterprises using this possibility is even smaller.

Having in mind the targets in the area of trade set by this national strategy in the forthcoming period, it seems that its role in the overall economic and social development in the Republic of Serbia will become increasingly more important. Of course, the actual results that this strategy will yield, remain to be seen.

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. 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 their counterparts in the EU to cover such a vast business area as trade certainly is.

Finding simple solutions in order to overcome possible differences in practice between 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 on Trade applicable through its implementing by-laws still has to be fulfilled in order to provide clear guidelines to state authorities and the business community and still ensure legal safety in this area. This leads to a situation whereby inspection services in different parts of the country apply different criteria in controlling and disciplining traders due to a lack of uniformity in their interpretation of regulations. Although it was anticipated that the Law on Inspection Oversight will resolve this problem, the lack of uniformity and arbitrariness is still present. In addition, a significant deficiency of this law, as well as the Law on Trade, is the fact that they do not establish a principle of independency of inspectors in relation to supervised subjects. Namely, the general reasons for exemption prescribed under the Law on General Administrative Procedure cannot be consistently applied to a specific relationship which exists between the inspector and the supervised subject. For example, relationship between inspector and supervised subject, whether indirect or direct, may pose a risk of inspector's permissiveness in supervision, or the risk of its ill will toward the supervised subject, depending on the circumstances of a particular case. In order to ensure the impartiality in the work of inspec-

tors, it would be advisable to introduce specific reasons for exemption of inspectors into the Law on Inspection Oversight, which would reflect the specifics of this relationship.

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 and standards is needed.
- Simplification of the importation procedure.
- Providing clear guidelines on the contents of documents accompanying goods.
- Providing special regulations for private label products.
- Enabling harmonization through policies, standards, and guidelines.
- Taking a uniform position on the interpretation of regulations.

ILLICIT TRADE FIGHT AND INSPECTION CONTROL

1.50

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introduction of specialized prosecutors for the processing of illicit trade; i.e. economic crime related cases.	2014		√	
Preparation and timely enforcement of changes in sector laws towards their harmonization with the framework envisaged by the Law on Inspection Oversight.	2015		√	
Allocation of adequate resources and funds to law enforcement bodies.	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			√
Regulating the system of performance assessment and incentives for officials engaged in fighting illicit trade.	2014			√
Adaptation of the plan of rationalization of public administration in the part related to the reduction in the number of staff for control in order to prevent further reduction of resources to combat the grey economy. We believe that this rationalization should primarily relate to the administrative staff, and that the number of employees in control needs to be increased.	2015			√
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.	2015		√	
Prescribing regulatory impact analyses that would require any legislation change to include assessment of potential effects of such changes on illicit trade.	2014			√
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.	2015		√	
Coordinate methods of maintaining databases between applicants and courts and prosecutors, so as to monitor the efficiency of application processing in an adequate manner.	2015			√

CURRENT SITUATION

Progress made in the fight against the grey economy, and consequently also against illicit trade in the previous period was apparent. Total government revenue in 2016 amounted to RSD 1.586 billion, an increase of 6.5% in real terms relative to 2015, primarily due to increased collection of VAT and excise taxes, which are the best indicators of reduced illicit trade. In particular, the total VAT collection in 2016 increased by RSD 37.5 billion compared to 2015, while the total excise tax collection was higher by RSD 29.8 billion. A similar trend continued in 2017, with budget revenues in the first quarter increasing by EUR 73 million, attributable, in part to the Ministry of Finance's fight against the grey economy.

In 2016, 3,656 unregistered businesses were discovered, most of which were subsequently registered. The implementation of the new Law on Inspection Oversight, which introduced the control of unregistered businesses, especially contributed to this result. It is particularly important to note that such a situation is the result of the systemic approach expressed in the National Programme for Countering the Shadow Economy, not a seasonal effect of ad hoc approaches.

The key problem remains the management of misdemeanour and felony complaints in the area of illicit trade by prosecutors and courts; in other words, inefficient processing and an overly lenient penal policy. Efficiency has been somewhat improved by the mass usage of the institute of prosecution delay ("principle of opportunity"), but this has been done largely at the expense of an adequate penal policy. An inadequately efficient penal policy discourages authorities combating illicit trade on the ground, and incentivizes perpetrators due to the inappropriate level of risk associated with this type of illegal activity.

POSITIVE DEVELOPMENTS

A generally consistent implementation of the National Programme for Countering the Shadow Economy over the past period represents an important step towards a systematic combat against illicit trade. An Action Plan for implementation of the programs in 2017 and 2018 was adopted, which is a confirmation of the Government's commitment to fully implementing the program. In addition, the government officially declared 2017 and 2018 as years of fight against the grey economy, thus emphasizing the high priority that this topic carries for Serbia.

Illicit trade on a larger scale is regarded as felony, according to the Law on Organization and Jurisdiction of State Authorities in the Suppression of Organized Crime, Terrorism and Corruption, which enables the appropriate specialization of the relevant authorities in the field of illicit trade.

The Ministry of Finance has formulated measures in the area of taxation of excise products, primarily tobacco and coffee, through consultations with representatives of these industries. This has ensured that the adopted measures do not jeopardize the stability of the legal market, and in the case of tobacco, it has also lead to a significant increase in tax revenues.

The Strategy for the Integrated Border Management of the Republic of Serbia was adopted for the period of 2017-2020.

An internal organizational unit responsible for the support of the Coordination Commission was formed within the ministry in charge of the state administration for professional, administrative, and technical jobs in accordance with the Law on Inspection Oversight. Also, a tender for the e-inspector platform was announced.

REMAINING ISSUES

The Law on Inspection Oversight has not yet been fully implemented because the sector laws have not been harmonized with the umbrella law, although the deadlines for such have long been broken. This prevents the use of the full potential of the law to suppress the grey economy.

The relevant law enforcement bodies have insufficient resources to systematically fight illicit trade, although their engagement is aimed at protecting budget revenues. This is mainly seen in insufficient staff that would conduct control, but also in poor technical equipment. Given the rationalization of the state administration and the fact that a special status of the mentioned staff has not been defined in relation to administrative workers, it is expected that their number will be reduced further, which would certainly have a very negative impact on the capacity of the state apparatus to combat the grey economy. In addition, inspection authorities have insufficient capacities for the storage of seized goods, which is a factor that limits their performance. The existing regulations also prevent, to a great extent, a further stimulation of employees working with bodies responsible for control of the implementation of regulations to achieve desired results in the fight against illicit trade and protection of public revenues.

The risk levels for those engaged in the grey economy, and especially illicit trade, is still perceived as low compared to potential earnings. This is due to inefficient processing and an overly lenient penal policy. A disproportionately small number of cases of illicit trade are currently being prosecuted before the relevant courts, and in most cases the perpetrators are handed minimum sentences. Such cases are usually characterized as minor offenses, although there are grounds 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, the efficiency of prosecution cannot be adequately tracked.

FIC RECOMMENDATIONS

- A consistent implementation of the National Programme for Countering the Shadow Economy.
- Preparation and timely enforcement of changes in sector laws towards their harmonization with the framework envisaged by the Law on Inspection Oversight.
- Allocation of adequate resources and funds to law enforcement bodies.
- Regulating the system of performance assessment and incentives for officials engaged in fighting illicit trade.
- Adaptation of the plan of rationalization of public administration in the part related to the reduction in the number of staff for control in order to prevent further reduction of resources to combat the grey economy. We believe that this rationalization should primarily relate to the administrative staff, and that the number of employees in control needs to be increased.
- Implementation 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.
- 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.

CUSTOMS

1.36

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 payers' appeals.	2011			√
Passing by-laws to enable the proper application of laws and avoid ambiguities in interpretation.	2009		√	
The Customs Administration to issue the guidelines and additional explanations, in cooperation with the Fiscal System Department, in terms of handling the customs procedures in which the foreign entity occurs as a participant.	2016			√
Improvement or replacement of Customs IT system (ISCS). Improvements of NCTS application provides a certain progress.	2011		√	
No further trade liberalization should be pursued without the industries' consent and a positive impact assessment of relevant sectors.	2012			√
Continuous education and training of customs officers.	2010			√
Better online information system and introduction of online services within the customs procedure, with possibility of companies to have access to all relevant information.	2011		√	
Minimizing usage of paper documentation and conversion to available electronic communication.	2012		√	
Increase the efficient resolution of claims 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 comprises the Customs Law (RS Official Gazette No 18/2010; 111/2012; 29/2015; 108/2016), the Customs Tariff Law (RS Official Gazette No 62/2005, 61/2007 and 5/2009) accompanying by-laws, and applicable Free Trade Agreements.

CURRENT SITUATION

The Customs Law

The Customs Law entered into force on 3 April 2010, regulating customs procedures, while the Customs Administration organization is still regulated by the provisions of the old Customs Law (RS Official Gazette No 73/2003, 61/2005, 85/2005, 62/2006, 63/2006, 9/2010 and 18/2010).

It is essentially the text of the previous Customs Law, itself based on earlier EU legislation, but with additions, such as simplified customs procedures, summaries of declarations, previous declarations, and a customs broker as an intermediary agent who is a declarant and a customs debtor, etc.

Old by-laws, rulebooks, and decisions apply to the extent to which they are not in contradiction with the new Customs Law. However, it is still expected that the new Customs Law will be further elaborated by by-laws, rulebooks, and decisions that should follow the logic of EU regulations. Specifically, the areas of Authorized Economic Operator and customs valuation will require detailed implementing regulations. So far, several certificates have been awarded on the granting of the status of an authorized economic operator. In these areas, the Government has already adopted several implementing regulations related to duty exemption for certain imports, the establishing and closing of certain customs offices, as well as content and form of declarations - in a regular and simplified customs procedure. Of course, additional regulations are expected for other areas as well.

The Customs Tariff

- The Serbian Customs Tariff is harmonized every year with the EU Combined Nomenclature, through a by-law on the harmonization of the tariff nomenclature with the EU Combined Nomenclature, to be adopted every November at the latest and apply the following year .

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 notifications on the classification of goods under the Customs Tariff issued by the Serbian Customs Administration, at request, regarding the classification of certain goods, in case of ambiguity or uncertainty.

As regards the EU or WCO decisions, official translations are regularly published in the RS Official Gazette.

Free Trade Agreements

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

- Central European Free Trade Agreement (CEFTA), a regional free trade agreement between Albania, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Serbia, and UNMIK Kosovo (2006).
- European Free Trade Association (EFTA), a trade association consisting of Iceland, Liechtenstein, Norway, and Switzerland) (2009).
- The European Union:
  - The Stabilization and Association Agreement between the Republic of Serbia and the European Community (2013);
  - PEM Convention - Regional Convention on Pan-Euro-Mediterranean Preferred Rules on the Origin of Goods (2011).
- The Russian Federation - free trade Agreement between the Republic of Yugoslavia and the Russian Federation (2001).
- Kazakhstan – Free Trade Agreement between the Republic of Serbia and the Republic of Kazakhstan (2010).
- Turkey - Free Trade Agreement between the Republic of Serbia and the Republic of Turkey (2009).
- Belarus - Free Trade Agreement between the Republic of Serbia and the Republic of Belarus (2009).

By concluding free trade agreements, the Republic of Serbia enabled legal entities from the Republic of Serbia to increase the volume of production, and thus increase competitiveness in the regional market.

POSITIVE DEVELOPMENTS

From the perspective of FIC members, the following improvements have been identified that significantly affect day-to-day operations in the Republic of Serbia:

The Customs Law

The Customs Administration of the Republic of Serbia has introduced the award of a certificate to an authorized economic operator on the basis of which a business entity may use various exemptions in customs clearance procedure regarding safety and security, as well as other simplifications prescribed under the Customs Law. This certificate has made a significant improvement in the efficiency of the customs clearance process.

The Convention on a Common Transit Procedure

In June 2015, the National Assembly of the Republic of Serbia adopted the Law on Ratification of the Convention on a Common Transit Procedure, by which the transition to the new computerized transit system (NCTS) started. The NCTS is used as a single transit system in the EU Member States, EFTA, and Turkey. During 2015, the NCST was applied only within the territory of the Republic of Serbia, and as of 1 February 2016, the use of the NCTS outside the national framework began, allowing for the customs clearance procedure between the member states of the convention to be performed based on one electronic declaration and a single security which are valid during the entire transit. The use of the NCTS application eliminates the need to create a transit document at the border of the Republic of Serbia (a transit document issued in EU/EFTA/Turkey is valid). In addition, for the purpose of entering the EU, an NCTS transit issued in Serbia is valid as well. This provides an incentive for the further increase of transit transport through the territory of the Republic of Serbia.

REMAINING ISSUES

From the perspective of FIC members, we would like to point out the following processes, whose minor amendments would significantly improve the customs procedure:

The Customs Law

- Inadequate compliance of the Serbian Customs Law and by-laws with the European Union customs regulations.
- The Customs Law excludes the possibility of correcting customs documents if an inventory of goods received during customs clearance shows a surplus or shortage arising in the process of delivery and import. Even though errors of this type are mainly the result of unintentional mistakes caused by the loading or delivery of goods, they are treated as legal entities' misdemeanours.
- IT solutions of the Customs Administration have exhausted their potential and are now a major obstacle to increasing import and export. A transition to a 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 in practice without regard to physicians' recommendations and patients' needs, which led to dissatisfaction of patients who cannot find the prescribed drugs on the local market.
- An important customs relief stipulated by Article 218 of the Customs Law – exemption of new production equipment from import customs duty under prescribed conditions - ceased to be applicable, resulting in unpredictability in business planning regarding future investments. Specifically, the Customs Law left to the Decision on Determining Goods Exempted from Payment of Import Customs Duties to regulate the type, quantity, and value of goods exempted from import customs duties. Given that the decision stipulated that it would be in force until 31 December 2015, these exemptions ceased to apply in 2016. However, there is the possibility of exemption from the payment of customs duties for used and new equipment through foreign investment, in accordance with the Regulation on Conditions and Manner of Attracting Investments. It should be noted that this model represents a more limited scope of exemptions than the previously applied model. The Ministry of Finance stated that the reason for the revoking the previous applicable model of exemption is the existence of international treaties; however, such treaties have not been signed with countries such as the United States or China.
- Additionally, the Customs Administration and Customs Offices have not yet established a unified practice in terms of the possibility and manner of foreign entities' participation in customs procedures, particularly with regards to filling in the customs declaration. This issue has become particularly important now that foreign entities may be registered as VAT payers via tax representatives for VAT. This has a direct influence on VAT treatment, considering that the Tax Administration determines the right to deduct input VAT, or the right to tax exemption for export, primarily on the basis of a customs declaration.
- In accordance with Article 260 of the Customs Law, the maturity of the customs liability shall be no later than eight days. Taxpayers and importers who submit a large number of customs invoices to the Customs Administration on a daily basis are subject to complicated logistical procedures. In the process of processing a large number of customs documents within one day, incorrectly entered data is a high risk, as is a delay in the processing of customs invoices. Accordingly, there is a delay in the settlement of the debt in the Law provided for by the prescribed deadline. Incorrectly processed customs accounts, as well as delays in settling the customs debt, cause the activation of forced collection or bank guarantees by the Customs Administration, resulting in additional administration in the processing of customs documents. We suggest amending the Customs Law in the form of extending the maturity period from eight to 30 days and allowing for a possibility for a taxpayer, in addition to enclosing a bank guarantee to make a one-time payment to the budget account of the Customs Administration (e.g. in the invitation to enter the VAT number or taxpayer's tax number). Debt settlement would be done by the due date on the invoice. We believe that these changes would allow flexibility in customs clearance, which would result in a reduced number of errors in the processing of customs documents, as well as a simplified customs clearance procedure.
- The complicated process of the so-called sampling slows down the customs clearance procedure for goods imported on a daily basis, while non-recognition of laboratory analyses performed by foreign accredited laboratories is also an impediment to doing business.
- Since 1 April 2017, new rules now apply for determining the place of service which, inter alia, implies that VAT on leased movable items temporarily imported is not calculated by the relevant customs body, but rather the recipient of the service considered as tax debtor. Supporting this is an explanation by the Ministry of Finance No 011¬00¬240 / 2017¬04 from 24 March 2017. The application of the VAT Law and the aforementioned explanation have been applied in different ways, depending on which customs unit has been performing clearance.

The Customs Tariff

- The Serbian customs tariff still has a specific classification of certain tariff codes in addition to the implemented EU Combined Nomenclature. Occasionally, there are import problems caused by this non-compliance.

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 for determining the origin of goods.
- Adopt the rules on determining the origin of goods foreseen by the treaties with Russia and Belarus and Kazakhstan, with the rules set by CEFTA and the Interim Trade Agreement with the EU.

Additionally, any further liberalization planned by the Government should be clearly communicated with industry stakeholders, pursued only with the industries' consent and based on a positive impact assessment of the relevant sectors.

FIC RECOMMENDATIONS

In order to improve efficiency and transparency in customs clearance, the Foreign Investors Council proposes the following improvements:

- Faster and more efficient harmonization of the Customs Regulations of the Republic of Serbia with the customs regulations of the European Community.
- Increase efficiency at all levels of administration, especially in terms of resolving customs payers' appeals.
- Amendments to Article 260 of the Customs Law - the proposal is that the payment period of the customs account should be no later than 30 days from the date of the invoice.
- Passing by-laws in order to enable proper implementation of laws and avoid ambiguities in interpretation; in particular by-laws that are harmonized with the VAT Law of the Republic of Serbia, as well as a uniform application of the VAT Law in all customs units.
- The issuance by the Customs Administration, in cooperation with the Fiscal System Department, instructions and additional clarifications in terms of handling the customs procedure in which a foreign entity occurs as a participant.
- Improvement or replacement of the IT system (ISCS) of the Customs Administration.
- No further trade liberalization without the industries' consent and a positive impact assessment of relevant sectors.
- Continuous education and training of customs officials.
- Better online information system and the introduction of online services within customs procedures, with the possibility of companies having access to all relevant information.
- Eliminate paper documentation and switch to available electronic solutions.
- Increasing the efficiency of resolving requests that are in the administrative procedure.
- Changing 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 acceptance of a declaration.

- Introduce a check and official confirmation by the customs body concerning the tariff code when importing or exporting goods considered to be predominant for a legal entity. Also, in the case of subsequent control and establishing a different tariff classification, not to declare such a customs offense, as the customs declaration has been accepted (approved) by customs authorities.
- Introduction of a simplified correction of a customs document based on correction of the quantity of goods cleared.
- Consider simplifying the sampling process, as well as accepting the analysis of accredited foreign laboratories that are necessary for the export process, referring to conventional products that are imported.

LAW ON PAYMENT TRANSACTIONS

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Analysis of reasons why investments in the market have been modest since the PSL began to apply, and the identification of potential barriers to market entry In this regard, the legislator should consider adopting the waiver option under Article 26 of the Payment Services Directive and amending the PSL to allow the establishment of so-called "small payment institutions". These institutions are subject to a special regime of less stringent authorization requirements, but also face in return limitations in the scale of business and other specific conditions and restrictions.	2016			√
Further harmonization with the European Union's acquis.	2013			√
Publications and explanations by the National Bank of Serbia further detailng the scope of the PSL and the supervisory and enforcement approach of the regulator in order to improve legal certainty for companies tentering or continuing in the market.	2016			√

CURRENT SITUATION

The Payment Services Law (RS Official Gazette No 139/2014), hereafter known as "PSL", established a new framework for the execution of payment transactions involving Serbian residents. The PSL regulates, amongst other issues, the definitions of payment transactions and payment instruments; types of payment services; and the list of entities authorized to provide such services. Payment services can now be provided by entities other than banks, i.e. payment institutions and electronic money institutions. The PSL defines a payment institution as a legal entity registered in Serbia that has been granted authorization by the National Bank of Serbia to provide payment services; and the electronic money institution as a legal entity registered in Serbia that has been granted authorization to issue electronic money.

The PSL regulates in a detailed manner the rights and obligations of participants (providers and users) in relation to the provision and use of payment services. These provisions cover the manner and conditions pursuant to which the user authorizes a payment transaction or withdraws its authorization; obligations with regard to the use of payment instruments; data protection; allocation of liability between participants for unauthorized payment transactions; refund rights; etc. The legislation further sets out the rules on the receipt, refusal, and revocation of payment orders; execution of payment transactions based on bills of exchange; execution time and value date; and other related matters.

The PSL regulates for the first time the issuance of electronic money, which is defined as "electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a natural person or legal entity other than the electronic money issuer". Authorized issuers of electronic money under the PSL include Serbian-licensed banks, Serbian-licensed electronic money institutions, post office giro institutions, the National Bank of Serbia, and the Treasury.

The National Bank of Serbia is responsible for the authorization and supervision of payment institutions and electronic money institutions. The minimum pecuniary share capital of a payment institution depends on the type of payment services that the institution intends to provide, being set at EUR 20,000 for money remittance services; EUR 50,000 for the execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunications, digital, or IT device: and EUR 125,000 for all payment services envisaged by the PSL (that would also include services enabling cash to be placed on a payment account, including operations required for operating a payment account; services enabling cash withdrawals from a payment account, including operations required for operating a payment account and the execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider, or with another payment service provider; also, the issuing or acquiring of payment instruments). The minimum share capital of an electronic money

institution is set at EUR 350,000. Payment institutions and electronic money institutions are further subject to tight prudential and capital requirements. The National Bank of Serbia has adopted a set of 19 by-laws further regulating, inter alia, its enforcement powers (requiring information, undertaking inspections, and imposing penalties) and the decision on the authorization requirements process.

POSITIVE DEVELOPMENTS

The PSL marks a significant step towards the alignment of national payment services regulations with the regulatory framework of the European Union. The bulk of the provisions found in Directive 2007/64/EC on payment services in the internal market (the Payment Services Directive) and Directive 2009/110/EC on the taking up, pursuit, and prudential supervision of the business of electronic money institutions (the Second E-Money Directive) were thereby transposed into Serbian law.

The Law stipulates the development of a Single Account Registry. The National Bank of Serbia (NBS) obtains from banks data related to the date of opening and cancelling an account, as well as data on clients. Besides the name and surname, the data include the address and permanent residence or temporary residence, but the Registry shall not contain information on balance and changes in the account. The data from the Registry related to customers shall not be available to the public and they shall be subject to Article 74 of the Law and regulations governing the protection of personal data. Thanks to such a database, agents can access data on all civil accounts in banks, and they may block the funds even it is term savings. Agents will obtain data from the NBS on all personal accounts, and then, they will use such information to collect utility service debts, but also on the grounds of enforcing alimony and wage arrears from employers.

The legislation allows greater competition in the payment services industry previously dominated by banks. This should lead to a decrease in transaction costs for payment service users and improve the quality and efficiency of that service. It is still too early, however, to estimate the benefits, given that only six payment institutions have been registered since 1 October 2015; i.e. the date of application of the PSL.

The new law is expected to increase market discipline, as the relationship and obligations of the authorized payment service provider towards its clients are now regulated more strictly. Market participants are subject to tight authorization and prudential requirements. The National Bank of Serbia was given a wide range of supervisory and enforcement powers enabling it to secure the appropriate protection of consumers; the integrity and stability of the payment system; and pursue and complete other objectives of the PSL.

REMAINING ISSUES

The PSL introduced significant changes to payment services regulations and new and existing market participants may require additional time to adapt, despite the considerable vacatio legis period. In addition, the wording of certain provisions is ambiguous and requires active guidance of the National Bank of Serbia as the regulator for most aspects of the law.

One of the matters in respect of which there is a considerable degree of uncertainty is the scope of payment services requiring authorization by the National Bank of Serbia versus those that are exempted. For example, the PSL exempts "payment transactions executed by means of any telecommunications, digital, or IT device, where goods or services purchased are delivered to and are to be used through a telecommunications, digital, or IT device, provided that the telecommunications, digital, or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services". If, however, the operator acts "only as an intermediary" facilitating the payment transaction, such activity would trigger the application of the PSL. Therefore, whether an operator will benefit from the exemption and in this way avoid the registration and authorization requirements will depend on whether its role goes beyond merely that of intermediary in payment services. Nevertheless, qualification criteria are not specified. The example is especially significant given the potential volume of network payments processed.

In practice, certain issues also arise in relation to payments made to recipients outside Serbia or received from payers outside Serbia ("one-leg payment transactions"). In this respect, criteria as to when a payment service is deemed to be provided in Serbia (thus triggering the authorization requirement for the provider), as opposed to service actually provided abroad (thus requiring no authorization in Serbia), is lacking.

The correlation between the PSL and the Foreign Exchange Law (RS Official Gazette Nos 62/2006, 31/2011, 119/2012 and 139/2014) is, in certain instances, unclear or needs further

adjustments to make the provision of services smoother and facilitate full regulatory compliance. Specifically, a number of foreign electronic money issuers have been providing services to Serbian residents on the basis of Article 32 paragraph 2 of the Foreign Exchange Law, enacted before the PSL was adopted. The specifics of various business models related to the issuance, redemption, and distribution of electronic money (e.g. via agents, cards, etc.) make it difficult to determine whether a particular transaction still fits within the exemption under the Foreign Exchange Law.

The Decision of the NBS on detailed requirements and method for opening, managing and cancelling of accounts (RS Official Gazette No 55/2015) stipulates that in case of legal entities and entrepreneurs, a bank and the user of financial services may agree a different method for checking authenticity of the payment order requester so that they do not have to submit, along with a request for opening an account, a specimen signature card and a form of authorized persons, which provides a possibility to exclude a stamp as a means of identification. Other regulations, such as the Law on Companies (RS Official Gazette No 36/2011, 99/2011, 83/2014 – other laws and 5/2015), do not stipulate an obligation to use a stamp in transactions. Despite these possibilities provided by regulations, most banks still require the use of stamps to serve as identification of a payment order requester when it is a legal entity or entrepreneur, since they have not yet found any other method to check authenticity which would be reliable enough and which can prevent any abuse. With further technological development and the use of electronic payment orders instead of paper ones, it is necessary to regulate this issue under a single set of rules and in accordance with European practise so that the use of stamps in Serbia can be consigned to history books.

At the time of the preparation of this contribution, the decisions on issuance of permits for provision of payment services for 15 companies in total, having head offices in the Republic of Serbia (Belgrade, Novi Sad and Paraćin), were adopted. There was only one permit issued, on 13 October 2016, for the issuance of electronic funds, to "iPay see d.o.o. Beograd – Novi Beograd". The full economic and other benefits that the PSL brings will not be apparent until a sufficient number of market players are established and begin operations in Serbia. The sponsor of the PSL should analyse the reasons for the lack of a higher number of entrants and take appropriate measures to facilitate market entry.

As mentioned above, the rules set out in the Payment Service Directive have been transposed into the PSL. In the meantime, the implementation of the Revised Payment Services Directive better known as Payment Services Directive II, or PSDII, has commenced in the European Union, and the EU member states shall be obliged to implement the amendments in their legislations by 13 January 2018. The amendments were oriented towards the increase of consumer protection; security of payment transactions; competition in the market, greater choice and payment transactions safety, etc. Also, the scope of the Directive was widened by covering new services and market participants. The goals of PSDII are to contribute to a more integrated and efficient payment services market in Europe; promote competition through a regulatory framework encouraging new actors to emerger and encouraging the development of new methods of payment via mobile phones and the Internet in Europe; improve user protection from fraud and possible abuse by improving payment safety, including a more serious authentication of identity of clients in the process of electronic payment; and incentives for lower payment cost.

In order to continue with the harmonization process, the PSL should also be amended in the near future to reflect these and other changes.

FIC RECOMMENDATIONS

- Analysis of reasons why investments in the market have been modest since the PSL began to apply, and the identification of potential barriers to market entry. In this regard, the legislature should consider adopting the waiver option under Article 26 of the Payment Services Directive and amending the PSL to allow the establishment of so-called "small payment institutions". These institutions are subject to a special regime of less stringent authorization

requirements, but also face in return limitations in the scale of business and other specific conditions and restrictions.

- Further harmonization with the European Union's acquis.
- Publications and explanations by the National Bank of Serbia further detailing the scope of the PSL and the supervisory and enforcement approach of the regulator in order to improve legal certainty for companies entering or continuing in the market.

NON-PERFORMING LOANS

1.75

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Creation of a framework for licensing private professional valuators together with valuation standards and minimum criteria governing the activities of collateral appraisers.	2016	√		
Acceleration of the enforcement procedure in practice and harmonization with the situation in practice with the newly adopted Law on Enforcement.	2016		√	
Promoting out-of-court corporate debt restructuring in practice in accordance with the legislative framework and motivating investors to provide fresh money with super-seniority ranking over existing creditors under out-of-court voluntary debt restructuring.	2016		√	
Enabling assignment of corporate performing loans outside the banking sector in specific cases of distressed borrowers.	2016		√	
Clarify by the regulator the application of the definition of banking secrecy with regard to NPL transactions in order to facilitate NPL transactions.	2016		√	
Eliminating the impediments to loan write-offs by banks.	2016			√
Providing legislative framework for the recognition of synthetic sale arrangements (in order to avoid any misunderstanding whether such a concept is feasible under Serbian legislation).	2016			√
Strengthening of the institutional framework in order to accelerate the re-registration procedure for collaterals before the relevant authorities (i e real estate cadastres and pledge registries).	2016			√

CURRENT SITUATION

Non-performing loans (NPLs) have continued to accumulate since the financial crisis of 2008, which has had a strong impact on the balances and liquidity of banks. NPLs in Serbia have already reached levels which are high enough to negatively influence the capital adequacy ratio of banks and the stability of the financial market. Over the last few years, the economic situation has improved somewhat, as evidenced by increasing interest in NPLs being sold in the market by commercial banks and special vehicle companies. Serbia has also been heavily influenced by the market turn and has consequently been forced to address NPLs. Regardless of that fact, however, the banking sector in Serbia continues to remain relatively highly capitalised. Regardless of the causes for the continuous increase in NPLs, the burden imposed on banks by NPLs is a serious concern and source of stress for banks. According to official statistics maintained by the National Bank of Serbia (NBS), the ratio of NPLs is continuously monitored on a quarterly basis.

So far regulators have introduced certain regulatory measures to assist banks in resolving the problem of NPLs. Considering the current level of NPLs, the banking sector's ability to absorb potential loss is still considered to be stable. Serbia has given NPLs their due recognition by adopting amendments to certain by-laws that are directly connected to the way that banks may attempt to resolve their NPLs. Specifically, the NBS, as the main regulatory authority supervising, amongst other things, all banking and foreign exchange operations, amended the Decision on the Risk Management of Banks (hereinafter: Risk Management Decision). Amendments to the Risk Management Decision allowed for the possibility for banks to assign to any legal entity due receivables from NPLs disbursed to legal entities, entrepreneurs, and agricultural producers as well as undue loans disbursed to legal entities, entrepreneurs, and agricultural producers if such are classified as problematic under the decision regulating the classification of banks' balance sheet and off-balance sheet items. It is mandatory that the NBS be notified on each assignment at least 30 days prior to the conclusion of the relevant assign-

ment agreement regardless of the fact that there is no prior approval process existing in this respect. Moreover, the NBS undertook certain regulatory measures to relax mandatory NPL-related reservation requirements in order to stimulate faster collection of these receivables.

Since amendments to the Risk Management Decision were adopted in 2015, banks have not been required to attempt collection of their NPL receivables, and the assignee entity does not have to be a legal entity primarily engaged in financial activity (e.g. a bank, insurance company, etc.). The assignment of the same receivable to more than one party is no longer restricted. On the other hand, a requirement of notification to the NBS has been introduced. With these amendments to the Risk Management Decision, the legal framework for the assignment of receivables from NPLs has now been made somewhat clearer. Specifically, depending on whether an NPL was extended to a legal entity/entrepreneur/agricultural producer or an individual, it could be assigned either under the Risk Management Decision to any legal entity (if granted to legal entities and entrepreneurs), or under the Law on Protection of Consumers of Financial Services solely to another bank (if granted to individuals).

According to the NBS' regular quarter-based statistics, after the adoption of the Strategy, in the last quarter of 2016, the percentage of NPLs decreased by EUR 0.3 billion, amounting to a total of approximately EUR 3.2 billion, which, according to officially published data, currently equals an NPL rate of 19.5%. Of the total amount, the vast majority of NPLs are from the corporate sector (43.0%). Corporate NPL portfolios in Serbia consist of different categories of debtor companies, with the prevailing ones being construction companies. Retail NPLs account for 18.5% of the overall NPLs on the market. The non-financial sector in bankruptcy amounts to 28.7% of the overall NPLs, with the remainder (9.8%) falling to the financial and public sectors. The corporate sector remains the dominant source of NPLs, with the highest ratio made up by loans granted to manufacturing industry – 37.8%.

POSITIVE DEVELOPMENTS

Regulators have identified the importance of the matter and both the Government and the banking regulator are working closely to enhance NPL transfer options. Recently, the Government adopted the Strategy for Resolving NPLs (hereinafter: Strategy). This was an obligation that Serbia undertook with the signing of a Memorandum with the IMF in February 2015. The aim of the Strategy is to provide incentives for the establishment of an effective system for dealing with NPLs and to remove obstacles to further transfer and assignment of NPLs. The Strategy was prepared in cooperation with the IMF, the World Bank, and the EBRD. Together with the Strategy, the Serbian Government issued an Action Plan to be followed in the ongoing harmonization of financial sector legislation with EU standards over the next few years (2015-2017). According to the Strategy and Action Plan, the Government defined the main goals, as agreed with the IMF, which are expected to be fulfilled in a certain period in order to provide a better and easier manner of resolving problems with NPLs.

In addition, certain legislative interventions that were recognised as needed in relation to NPLs and agreed with the IMF have already commenced. For instance, the deficiencies that were present in the Mortgage Law which affected the enforceability of mortgages for several years (including by subsistence of lower ranked mortgages) were finally addressed by the amendments adopted in July 2015. These amendments are aimed at improving out-of-court foreclosure and better aligning incentives for debt restructuring. Also, the new Law on Enforcement introducing, among other things, the termination of enforcement procedures which are not finalized within two years of initiation, became applicable in July 2016.

As of 6 January 2017, the Law on Real Estate Valuers entered into force and became applicable as of 5 June 2017. The law sets out basic guidelines for conduct of licensed valuers and prescribes requirements that are to be met in order to become a licensed real estate valuer. The enactment of the law represents a step forward in the field of collateral valuation, which may be important for mortgaged loan agreements and other operations of financial institutions.

In May 2017, the NBS published through its official questions and answers available online on its website a very useful interpretation related to the provision of the Law on Banks dealing with banking secrecy exclusions. The NBS made clear that the formulation from Article 47 of the Law on Banks "other persons who, due to the nature of the activities they perform, have access to data which are classified as bank secrecy" should be interpreted as to include investors in NPLs as well as their legal and financial advisors in the transactions. This interpretation of article 47 of the Law on Banks for sure provides new impetus for the NPL

market and represents certain progress, but still the problem with banking secrecy exclusions should be resolved either by authentic interpretation of National Assembly of the Republic of Serbia or by changes to the Law on Banks.

REMAINING ISSUES

Notwithstanding the fact that the new Law on Enforcement became applicable in July 2016, long duration of the enforcement procedures still remains an issue in receivables collection practice.

The Litigation Law potentially prevents NPL acquirer from becoming party to on-going dispute, prescribing prior explicit consent of the counterparty.

Pursuant to the Law on Foreign Exchange Operations (FOREX Law), an NPL receivable deriving from a loan agreement between a Serbian bank and a Serbian borrower may not be assigned to a non-resident entity, which narrows possibilities for NPL transfer. In addition, a resident borrower shall inform NBS on any executed cross-border loan agreement, as well as on every change of a cross-border creditor, which may lead to problems in practice, such as obstruction of cross-border NPL assignment by resident borrower.

Promoting out-of-court corporate debt restructuring is still undeveloped in practice and despite the framework for voluntary corporate debt restructuring established in 2011 and amended by the new legislative framework in 2015, this mechanism remains profoundly underutilised in practice. Practically, the lack of new funding remains an important obstacle in the implementation of out-of-court voluntary restructuring plans as fresh money providers are permanently protected only in the event of insolvency. Such fresh money priority/super-seniority is not guaranteed within the out-of-court reorganization plans, which negatively affects investors' intention to provide fresh money during reorganization. Another potential obstacle for resolving distressed situations may also be the non-assignability of performing corporate loans outside the banking sector which may prevent effective resolution of large distressed borrower groups under restructuring.

The rules for tax deductibility of bad debt provisions/write-off for banks are often ambiguously interpreted in practice, which may affect banks' intention to dispose of such loans. In that regard, eliminating the impediments to loan write-offs by banks should be clearly legislated.

At beginning of the 2017, the Commercial Appellate Court passed a few decisions with an interpretation of Article 48 of the Law on Enforcement and Security (the "Enforcement Law") which may negatively impact the position of NPL creditors in enforcement collection of receivables acquired in NPL transactions. According to the above-mentioned interpretation of Article 48 of the Enforcement Law and court practice made on the basis of it, a receivable acquired on the basis of an assignment agreement by an entity which is not named as an enforcement creditor in the enforcement title cannot be collected in the enforcement procedure as Article 48 of the Enforcement Law does not recognize acquiring a receivable on the basis of assignment as valid ground for initiation of the enforcement procedure.

The currently applicable legislation does not explicitly recognise the synthetic sale arrangement and also the synthetic sale of NPLs is not specifically recognised by the relevant tax laws.

Finally, strengthening of the institutional framework of real estate and pledge registries is important for the acceleration of the re-registration procedure of mortgages and pledges in the name of the new creditor.

FIC RECOMMENDATIONS

- Acceleration of the enforcement procedure in practice and harmonization of the situation in practice with the newly adopted Law on Enforcement.
- Promoting out-of-court corporate debt restructuring in practice in accordance with the legislative framework and motivating investors to provide fresh money with super-seniority ranking over existing creditors under out-

of-court voluntary debt restructuring.

- Enabling assignment of NPLs between a Serbian bank and Serbian borrower to non-residents.
- Enabling NPL acquirer to become party to on-going dispute without consent of the counterparty.
- Adoption of authentic interpretation of Article 48 of the Enforcement Law by the National Assembly of the Republic of Serbia in regard to collection of receivables from NPL transactions bearing in mind the nature of NPL transactions.
- Clarify by the regulator the application of the definition of banking secrecy with regard to NPL transactions in order to facilitate NPL transactions either through changes to the Law on Banks or an authentic interpretation by the National Assembly of the Republic of Serbia of Article 47 of the Law on Banks.
- Eliminating the impediments to loan write-offs by banks.
- Providing legislative framework for the recognition of synthetic sale arrangements (in order to avoid any misunderstanding as to whether such a concept is feasible under Serbian legislation).
- Strengthening of the institutional framework in order to accelerate the re-registration procedure for collaterals before the relevant authorities (i.e. real estate cadastres and pledge registries).

FOREIGN EXCHANGE OPERATIONS

1.07

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 resident individuals to provide warranties and other security instruments by order and in favour of non-resident creditors.	2013			√
Simplify the bylaws as much as possible, 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 reporting communication with the NBS, through less formal procedures).	2012			√
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.	2013			√
Adjust and harmonise applicable legislation in this area, and resolve issues that are still unclear.	2012			√
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.	2014			√
Ensure that the relevant 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.	2014			√
Make better public availability of official interpretations and opinions of State authorities in the field of forex operations, especially the NBS (e.g. create a section answering to questions on its website).	2016			√
Create mechanisms enabling the conduct of some operations that are not controversial from the aspect of forex regulations, with only precise by-laws in that field still missing (e.g. foreign transactions impossible due to the lack of a specified payment code or when the specific purpose of the cross-border loans is missing in by-laws, etc.).	2016			√
Enable securitization of domestic receivables from certain categories of non-residents.	2016			√
Enable cross-border direct debiting in general (not just for electricity trading).	2016			√

CURRENT SITUATION

The issue of the necessity of further liberalization of the Law on Foreign Exchange Operations (the "Law") is still in focus and identified as one of the main priorities of foreign investors, and accordingly FIC members. Namely, despite the intensive activity of the FIC, notably its legal committee, in terms of numerous meetings and letters sent to the National Bank of Serbia ("NBS") and the Ministry of Finance, there has been no significant breakthrough in amending the key concepts of the Law, which would enable liberalization of foreign exchange (forex) operations in Serbia, thus creating a business environment necessary for attracting more foreign investments (which has been proclaimed the ultimate goal of the Serbian Government for more than a decade).

As of last year's edition of the White Book, only a few by-laws were slightly amended to further regulate the conditions and manner of foreign currency market operations, as well as the conditions and manner of payment, collection, pay-ins and pay-outs in effective foreign currency. For the purpose of liberalization, the NBS has issued its official opinion regarding the application of by-laws regulating international payment transactions. The significance of the aforesaid opinion is in creating more expedited and automatic international payment transactions, though only within a limited scope of certain types of inflow amounting up to EUR 1,000. Unfortunately, there have been no material changes in the Law, and a vast majority of recommendations and issues raised by the FIC in previous White Book editions have not been implemented.

Though the FIC has been informed about the fact that the Government has formed a working group supposed to work on a proposal of amendments to the Law with the aim to further liberalize forex operations in certain areas, we are not aware of its work or any progress made yet.

In conclusion, we see the necessity for the further liberalization of forex regulations as one of the key priorities for the Government, given that the existing Law is far more restrictive than similar laws in all neighbouring countries (save for Bosnia), something which, in our view, significantly affects the attractiveness of investing in Serbia (in comparison to other countries in the region) for foreign investors.

POSITIVE DEVELOPMENTS

Apart from adoption and amendments of aforesaid by-laws, 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.

In the aforementioned opinion, the NBS pointed out that banks' clients may issue a permanent payment order upon their prior consent that the future inflow generated from one payment instrument or one payment code shall be less than EUR 1,000 and that the bank shall be permitted to perform and credit the inflow to the client's account automatically and without prior consent of the client. This exception, however, refers only to cases when such inflows are prevailing in a company's business, and does not refer to transactions requiring the submission of documentation to the bank, which significantly narrows the scope of its application. The opinion also deals with the clarification of the form in which the client may inform the bank on a payment code, in the sense that the notification form may be regulated by the bank's general business conditions.

In addition, as of October 2015, when the Law on Payment Services became applicable, foreign electronic money institutions and payment institutions may participate in cross-border payment transactions with Serbian residents (two-way transfer of funds - to abroad and from abroad towards residents) without any additional licensing requirements, thus currently in Serbia there are 18 incorporated payment institutions doing business as well as one electronic money institution. Additionally, six electronic money institutions informed the NBS of their business in the Republic of Serbia.

REMAINING ISSUES

Despite partial liberalization in the field of forex operations during the past few years, applicable regulations in Serbia are still restrictive, aiming to protect and maintain macroeconomic stability.

For our part, we are of the opinion that the wording of the Law and its interpretation in practice should be adapted to the approach that prohibited operations are explicitly prescribed as such, whereas all the other activities should be considered permitted. That principle is already provided for by Articles 3.1 and 10.1 of the Law, however due to the legislative technique upon which the Law in its other parts prescribes which transactions may be performed by residents and non-residents, the prevailing interpretation in practice is that all the other non-regulated activities do not comply with the Law. Legal transactions continuously evolve, as well as the market itself.

Thus, the legislative technique listing permitted operations, whereas all the other are found prohibited, is neither possible nor purposeful. Such perennial approach results in impossibility to perform certain operations in practice due to a lack of respective norms, even though it seems that the legislature did not have the intention to exclude such operations. Also, it is evident that regarding certain issues, relevant authorities, through their interpretations, narrow down the scope of application for certain rules, thus limiting the activities of forex operations participants.

However, if the list of permitted transactions is to be kept, we consider that it is necessary to expand it whenever justified and possible, especially when it comes to groups of affiliates, when this 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", "cash pooling" and similar 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, whereas giving warranties and other security instruments under credit transactions between two non-residents abroad should be liberalized (at least when guarantee is given for the liabilities of the parent companies). Also, Article 26 of the Law unnecessarily sets out a strict framework for guarantee transactions between residents and non-residents, which creates difficulties for residents to obtain guarantees from non-residents for certain types of foreign trade transactions (e.g. a good performance guarantee which should be obtained by a resident (user) for investment works performed by a non-resident or branch office-resident founded in Serbia by a non-resident). Further to that, we consider that in order to liberalize forex operations there are grounds for the 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 recall 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. Along with liberalization, attention should also be paid to mutual harmonization of existing regulations.

Likewise, the possibility for resident individuals to invest in securities in foreign markets is limited to stocks and certain bonds. However, products such as derivatives, structural products, structural deposits, ETFs and investment funds in foreign markets are still inaccessible to Serbian citizens, so additional attention should be paid to the liberalization and amendment of this part of the Capital Market Law.

As rather important, we point out that issues of transfer, payment and collection of receivables under current and capital transactions are not adequately regulated, due to the fact that only Article 33 sets out the rule for all the types of permitted current and capital transactions, but only in regard to non-residents' transfers. Article 7 and Article 20 regulate transfer upon "carried out" foreign trade transactions and credit operations, whereas similar rules for other types of operations are to be established – e.g. receivables deriving from direct investments, receivables from guarantee transactions, real estate operations etc. The notion of carried out foreign trade transactions is not clear, leaving doubt as to whether it is possible upon Article 7 to transfer a receivable for down payment refund before the related operation is performed. Also, provisions on obtaining the Government's consent for certain operations, especially in Articles 7, 20 and 33, should be reconsidered, as they seem to be unnecessarily broad and limiting, especially when it comes to assignment of non-resident's receivables. Additionally, the concept of "the company with state capital" used by aforementioned articles is not clear and should be more precisely explained in order not to include the companies with minority state capital (in which cases obtaining the Government's consent seems inadequate).

In addition, it continues to be necessary to liberate cross border set-offs of mutual receivables and debts, pursuant to general rules of the contract law. We state that currently setting-off rules are set out only for certain types of operations, whereas for other operations (e.g. real estate operations), a legal gap remains, as does interpretation in practice that they are prohibited. Also, there is a strong need in practice to examine the possibilities of liberalization of deposit transactions of residents abroad, especially for companies subject to project financing by foreign banks and international financial institutions.

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

FIC RECOMMENDATIONS

- Adapt wording of the Law and interpretation in practice (by the NBS and the Ministry of Finance in particular) to approach upon which all the prohibited operations are explicitly prescribed as such, whereas other activities should be considered permitted.
- Adopt the remaining by-laws 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 the 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.
- Enable resident – legal entities to provide warranties and other security instruments under credit transactions of the parent companies abroad.
- Expand the framework for guarantee transactions provided for by Article 26 of the Law, especially in the area of foreign trade transactions (e.g. a good performance guarantee should be freely obtained by a resident (user) for investment works performed by a non-resident or branch office-resident founded in Serbia by a non-resident).
- Simplify the setting-off rules for all types of current and capital transactions, especially when set-off participants are affiliated parties, in order to enable global netting within the same group of companies.
- Ease reporting obligations (from the opening of a simple bank account to facilitated reporting communication with the NBS, through less formal procedures).
- Reconsider Articles 7, 20 and 33 so that the issues of transfer, payment and collection of receivables and debts be resolved adequately for all types of current and capital transactions, as explained above. Regulate the provisions on the transfer of debts from carried out 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) in order to avoid ambiguity in the application and interpretation thereof.
- Make better public availability of official interpretations and opinions of state authorities in field of forex operations, especially the NBS, which is particularly important for application consistency by all the participants (e.g. create announcement of official opinions on the regulator's website, create section answers to the questions on the website etc).

- Create mechanisms enabling the conduct of some operations that are not controversial from the aspect of forex regulations, with only precise by-laws in that field still missing (e.g. foreign transactions impossible due to the lack of a specified payment code or when the specific purpose of the cross-border loans is missing in by-laws, etc.).
- Enable securitization of domestic receivables from certain categories of non-residents.
- Enable cross-border direct debiting in general (not only for electricity trading).
- To liberalize the law in the part concerning the possibility of resident individuals to freely trade in securities abroad, including a complete liberalization of bond trading, structural products, structural deposits, ETFs, as well as investments in investment funds in foreign markets.
- Consider the possibilities of liberalization of deposit transactions of residents abroad, especially for companies subject to project financing by foreign banks and international financial institutions.

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009			√
Influence public opinion on the necessity for more decisive and efficient action against money laundering and financing of terrorism.	2009			√
Continue organizing adequate seminars and workshops to train 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 (RS Official Gazette Nos 20/2009, 72/2009, 91/2010, and 139/2014; hereinafter: 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 for Execution of Actions in Conformity with the Law on the Prevention of Money Laundering and Financing of Terrorism (RS Official Gazette Nos 7/2010 and 41/2011; hereinafter: the Rulebook).

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. Iran and the Democratic People's Republic of Korea [North Korea]). 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); and
- Country risk (e.g. countries with high crime rates and countries 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 2015, the Administration for the 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 compliance of statutory provisions in this area with new standards and with legislation of the European Union and to introduce the obligation

of payment service providers to collect certain information on payers and recipients of electronic transfers.

According to the draft Law on Amendments to the Law, all authorized persons of liable parties will no longer have an obligation to obtain the license. The Administration for the Prevention of Money Laundering did not organize professional licensing exams for entities subject to the Law since November 2013, so current provisions related to this area of the Law already do not apply in practice.

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 forfaiting 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 2015 and 2016 with an updated list of indicators.

The Administration for the Prevention of Money Laundering also adopted the 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 adopted the National Strategy for Combating Money Laundering and Financing of Terrorism with an Action Plan for its implementation, as well as the Decision on the Forming of a Permanent Coordination Group for Monitoring of the Execution of the National Strategy for Combating Money Laundering and Financing of Terrorism (RS Official Gazette No 37/2015).

The overall objective and purpose of the National Strategy is to strengthen particular parts of the system for combating money laundering and terrorism financing, contributing to the full protection of the financial system and the economy from the threat caused by money laundering, 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 2015, the Law on Restrictions on Disposal of Property with the Aim of Preventing Terrorism was adopted (RS Official Gazette No 29/2015), with the aim 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. The Government of the Republic of Serbia adopted the list of designated persons in 2015, and also later its amendments.

At the moment of preparation of this text, the proposal of the Law on the Prevention of Money Laundering and Financing of Terrorism is in the procedure before National Assembly, while the effects of the proposed Law will be seen in the upcoming period in line with the adopted Law.

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.

During 2015, the relevant state bodies worked on the implementation of activities defined in the Action Plan, which was adopted by the Administration; and during the execution of certain activities of the Action Plan, the relevant state bodies also considered other initiatives, processes, and plans of state bodies, as well as objective circumstances, which in turn caused the need for more flexibility in certain deadlines. Of 109 activities, 22 were completed, 39 were partially completed, whilst 48 remained unexecuted.

In 2015, the Administration organized several meetings with entities subject to the Law, in which representatives of interested parties could give their proposals and suggestions with the aim of improving the regulatory framework which governs the prevention of money laundering and financing of terrorism in the Republic of Serbia. In addition, the Administration published Check Lists on its website for some entities subject to the Law, based on which relevant supervisory activities are being conducted.

The Foreign Investors Council supports the initiative to improve the legal framework regulating the subject matter through new Draft of the Law on the Prevention of Money Laundering and Financing of Terrorism dated 3 October 2016, hoping that the new legal regulation will bring further legal security. Also, we support the initiative to harmonise the local laws with European legislation. At the same time, we propose to take into consideration specific legal framework of the Republic of Serbia ensuring that the new law will not be in collision with all other applicable laws and by-laws.

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 stepped up its activities and demands toward entities subject to the Law in 2015 and 2016, but there is still a lack of cooperation.

The Foreign Investors Council emphasises that during the process of drafting of the changes and amendments of the valid Law on the Prevention of Money Laundering and Financing of Terrorism it is important that further drafts of changes and amendments be delivered to public debate in which investors, companies, professional organisations and business associations as well as general public can participate. In this way, all interested stakeholders can deliver their comments in favour of further clarity, and companies can prepare internal procedures for application of different activities as proposed by the law.

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 cooperation 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.
- Consider Comments delivered by the Foreign Investors Council on 27 February 2017 to the available text of the Draft Law on the Prevention of Money Laundering and Financing of Terrorism.

LAW ON PERSONAL DATA PROTECTION

1.50

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 data protection statute in co-operation with the Commissioner.	2009			√
Adopt a new data protection law as soon as it is possible, based on the Model Law drafted by the Commissioner, and harmonized with the General Data Protection Regulation 2016/679.	2014			√
Adopt by-laws or issue precise instructions and standardized forms necessary to enable effective implementation of the data protection law, especially with regards to the procedure for obtaining data transfer approvals and processing of sensitive data.	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		√	

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 Law 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. The DP Law provides for 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 82 inspections in May 2017, and 46 of these resulted in a warning to controllers regarding irregularities in the processing of personal data. During the first five months of 2017, the Commissioner carried out 408 inspections, which represents a slightly bigger number than in the first five months of 2016. The number of warnings issued to controllers due to irregularities in the processing of personal data increased from 105 in the first five months of 2016 to 205 in the same period in 2017.

The Law's provision prescribing that consent to the processing of personal data must be in writing makes applica-

tion of the Law in certain instances impossible. For example, ticking a box (which does not amount to providing a written consent) is in reality the only option available to a website visitor to give consent to the processing of his personal data. In order to obviate this statutory hurdle, the Commissioner tends to accept notifications of data processing online if the processing has, as its ultimate purpose, conclusion of contracts with website visitors. The position of the Commissioner is based on a provision in the Law whereby, for processing of personal data the purpose of which is contract conclusion, consent of the data subject is not needed. The issue of the form of the consent thus becomes legally irrelevant.

It is also unclear whether a data controller has an obligation to notify the Commissioner about its intent to implement whistle-blowing scheme, or not.

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), 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 provided for either by a regulation or on the basis of a data transfer agreement. 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 Convention are not governed by the DP Law, and this generates significant legal uncertainty. As there are no standard rules, known to the data controllers and the general public, which the Commissioner follows in data transfer proceedings, the applicants for the transfer 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.

The Commissioner published the new Model Law on Personal Data Protection ("Model") in March 2017. The Model represents an endeavour of the Commissioner to offer to the public a document which would make the field of data protection closer to General Data Protection Regulation 2016/679 ("GDPR"). On the other hand, regardless of the fact that the intention of the Commissioner was to draft a document complied with the GDPR, Model solutions significantly differ from GDPR solutions. Discrepancies refer to the regime of transfer of personal data in countries which are not Convention signatories, in which case prior approval of the Commissioner for such transfer is required. This is for the reason that a relevant solution from GDPR is not included in the Model. The respective GDPR solution does not prescribe prior approval for transfer, but prescribes the use of EU contractual clauses, binding corporate rules, etc. Furthermore, one of the fundamental rights of data subjects – the right to data portability – is not provided for by the Model. The Model kept the solution from the current law that a data controller shall conduct data filing systems registration procedures in the Central Register, which is not prescribed by the GDPR. Moreover, data protection impact assessment should be prescribed by the Model, given that this is one of the most important innovations from the GDPR, which has a goal to increase the responsibility of a data controller. The equality of grounds for personal data processing should be one of the fundamental principles of this law, all in accordance with relevant provisions of the GDPR.

The Foreign Investors Council and other business associations have given numerous comments in order to improve the Model. On the other hand, one gets the impression that the Commissioner intended to make a balance between the need for compliance with the GDPR and current development of personal data protection by rendering the Model. Incomplete compliance with the GDPR may cause non-application of the provisions of the Law which are incon-

sistent with the GDPR. This is for the reason that the EU invested significant funds and efforts to make a major step forward in this area, i.e. to draft a regulation which would be applicable in all European countries, therefore it may not be reasonably expected that addressees of the Law in Serbia will have understanding for the said discrepancies. The addressees of the GDPR will have to invest significant funds in order to comply their business with this regulation, and therefore it may not be reasonably expected that they will make additional efforts to comply with particular provisions provided for by the Model.

Officials of the Commissioner's office have stated in meetings with business associations that they shall consider the suggestions of this association and that they will publish the final draft of the Model and make it available to the Government of Republic of Serbia and the National Assembly of the Republic of Serbia.

POSITIVE DEVELOPMENTS

In the first five months of 2017, the Commissioner resolved a total of 2,183 cases pertaining to personal data, compared to 1,040 cases resolved in the same period in 2016. Also in the first five months of 2017, the Commissioner issued 403 opinions pertaining to the application of the DP Law, a slight increase when compared to 396 opinions issued in the first five months in 2016. According to the monthly report for May 2017, the total number of registered data controllers has increased to approximately 2,150 in comparison to the same period in the previous year when 1,677 data controllers were registered.

In 2016, the Commissioner acted upon 18 requests for the transfer of personal data from Serbia. The Commissioner issued 8 decisions, authorizing the transfer in five cases, suspending the proceedings in three, while the Commissioner is to decide during 2017 on the ten remaining requests. It is to be hoped that the Commissioner will further reduce the legal uncertainty with regard to costly and time-consuming data transfer proceedings by establishing tangible requirements that companies interested in cross-border data transfers need to meet.

REMAINING ISSUES

According to the draft of the Serbian Government's Action Plan for Chapter 23 (on Judiciary and Fundamental Rights) of the EU acquis communautaire, released in September 2015, a new Personal Data Protection Law should have been enacted in the third quarter of 2015. On 4 November 2015, the Ministry of Justice released a draft Personal Data Protection Law (hereinafter referred to as: "Draft").

The Draft proposes solutions which are not in line with international standards, as embodied, in particular, in Directive 95/46/EC and the adopted GDPR. The disparity concerns, among other issues, the form of the data subject's consent (absence in the Draft of clear affirmative actions as a mode of expressing consent) and exemptions to the general rule that lawful data processing requires consent. The Draft contains slightly more details regarding territorial application than the DP Law (e.g. the Draft states that Serbian law does not apply to processing of the personal data when such data is simply in transit through the territory of the Republic of Serbia). Unlike the solution provided in the Directive 95/46/EC, which is linking the application of domestic law to the registered seat or permanent or temporary residence of the data controller as well as to the use of processing equipment in the territory of the state, the Draft is clearly giving priority to the very act of processing of personal data. The Draft lacks criteria for determining whether the data processing is carried out in the territory of the Republic of Serbia. It is unclear why the Draft deviates from the solution provided by the Directive 95/46/EC, and also from the legislative solutions in the region, all of which use as the criterion for application of the national law the residency of the data controller or the use of equipment in the territory.

Although the Draft defines video surveillance and biometric data processing, it omits provisions that would further address these issues.

As of the moment of publishing of the White Book, the Ministry has not informed the public whether it will continue the procedure for enactment of a law based on the Draft or propose a new Draft based on solutions from the GDPR. It seems like the Draft has been withdrawn from public debate, but the Ministry never confirmed this information.

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 2017 was approximately 10,500 compared to 8,651 in May 2016, but the number of filing systems maintained by var-

ious 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 in fulfilling their obligations under the DP Law, overly restrictive rules in the Law often result in an application for data transfer triggering months-long negotiations with the office of the Commissioner. 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.

The need for more precise and comprehensive legislative regulation in this area continues to be evident. Current legislative solutions applicable in Serbia lack clear rules governing important issues such as video surveillance, biometric data, the use of a citizen's personal identification number, online data processing, photocopying and scanning of documents, organizational and technical measures for ensuring safety of the data, the relationship between the controller and the processor of data, etc. In the absence of adequate statutory rules, 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 EU standards, in matters such as the form of the data subject's consent and exemptions to the general rule that lawful data processing requires consent.

Bearing in mind that at the moment of publishing of the White Book it is uncertain when the new Law will be rendered and to what extent it will comply with the GDPR, the members of the Foreign Investors Council think that it would be advisable for the Commissioner to issue an instruction for acting of data controllers and/or processors with a registered seat in Serbia when controllers and/or processors registered on the territory of the Republic of Serbia would be addressees of the GDPR.

FIC RECOMMENDATIONS

- Enact as soon as possible a new data protection law complied with the GDPR.
- 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 by-laws or issue precise instructions and standardized forms necessary to enable effective implementation of the data protection law, especially with regards to the procedure for obtaining data transfer approvals and processing of sensitive data.
- 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.
- The Commissioner shall issue an instruction for acting of data controllers and/or processors with a registered seat in Serbia when controllers and/or processors registered on the territory of the Republic of Serbia are addressees of the GDPR.

LAW ON THE CENTRAL REGISTER OF TEMPORARY RESTRICTION OF RIGHTS

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Significant changes should be made and certain provisions should be more precise (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the possibility that the Law is applied to business entities and their members/bodies acting bona fidae.	2015			√
It is necessary to regulate liability for entering incorrect data into Central Register	2016			√

CURRENT SITUATION

On 30 December 2015, the National Assembly of the Republic of Serbia adopted the Law on the Central Register of Temporary Restriction of Rights of Entities Registered in the Business Registers Agency (RS Official Gazette No 112/2015), which came into force on 7 January 2016 (hereinafter: the Law).

The Law envisages the establishment of a unique central register, i.e. an electronic database that will contain information on business entities, their owners, directors, representatives, and members of their bodies, whose business has been subject to criminal, misdemeanour, or administrative sanctions (hereinafter: Central Register).

From 1 June 2016, the date of the beginning of the implementation of the Law, founders, management, directors, legal representatives, and other bodies of a company may be subject to a temporary prohibition of conducting a business activity, starting a business, and taking any steps concerning shares in the company, money, etc.

The basis for a temporary restriction of rights are acts of the state or other relevant authorities containing legal facts or actions required by law in the form of legally binding or enforceable judgments, decisions, or other formal acts submitted to the Business Registers Agency (SBRA) for entry into the Central Register and which have temporary restriction as the legal consequence.

POSITIVE DEVELOPMENTS

The goal of introducing additional discipline in the operations of business entities in the Republic of Serbia and minimizing the possibility of abuse and causing damage to third parties - that is, to introduce sanctions for those who abuse their functions in business entities - is highly positive and is fully supported by the FIC, which has advocated for just that ever since its establishment.

The coordination of various authorities (such as, for example, the Ministry of Interior and the National Bank of Serbia) is carried out ex officio, in the sense of a timely exchange of data on business entities and their members and bodies, resulting in increasing the number of entities that are in the Central Register.

The number of these entities after the establishment of the Central Register was several dozen, but in time that number was raised to tens of thousands. As a reminder, in accordance with Article 20 of the Law, data from the Central Register pertaining to individuals to whom bans and security measures in judicial proceedings were imposed cannot be public and may be released only in accordance with the rules governing criminal records. The website of the SBRA has a special procedure for accessing certain data, requesting users to enclose a qualified digital certificate.

When the Central Register was established, an interested party could search the database by the identification number or name of a company or look through the entire list of entities whose rights are restricted. Due to an increase in the number of names in the database, this possibility to search through the entire list of companies or persons whose rights are restricted exists no longer.

Registered data gives a complete picture of the business reliability of any specific business entity, since it contains details of all restrictions imposed on the business entity, or persons performing the function of its bodies or representatives, which should remove the possibility of any business entity acting contrary to such restrictions, while at the same time increasing the business transparency level and security of legal transactions.

Since January this year, the Central Register has contained information of the National Bank of Serbia regarding enforced collection. At the beginning of this year, the number of imposed measures was close to 300,000, while the number of active measures of criminal records was 51.

REMAINING ISSUES

Article 3 of the Law prescribes grounds for temporary restriction, listing specified measures. Consequently, no other grounds for temporary restriction, except those listed, may be the ground for a temporary restriction.

The aforesaid grounds are not always necessarily a consequence of abuse of rights by the party/person whose rights would be restricted. In fact, there are numerous cases of business entities having their accounts blocked, or undergoing bankruptcy proceedings, where such account blockade or bankruptcy are not the consequence of any fraudulent activity; i.e. both members and bodies of business entities have acted bona fide. As an example, we point out the case of business entities that are in such a situation because the state or local authorities have failed to pay their debt to these entities, as well as the case of a supplier chain (notably in the construction industry) where account blockade or bankruptcy over one of the entities in the chain triggered a domino effect for other members in the chain below.

Some provisions of the Law are too general and imprecise and, as such, can produce a variety of negative consequences in practice.

In addition, we are of the view that the number of persons encompassed by the Law is too wide, and that only persons who undertook actions or supported actions that led to abuse should be made subject to restrictions imposed by the Law (members/shareholders and members of bodies).

It is necessary to additionally define legal consequences of the temporary restriction due to the fact that Article 5 only prescribes that they last during the validation period in the manner prescribed in Article 3 of the Law.

The Law should contain appropriate solutions regarding the liability for entering incorrect data, especially in a situation where there was no fraudulent intent. We emphasize this, keeping in mind the automated registration process, the public registry, and the weight of potential consequences resulting from the application of the provisions stipulated by the Law.

One of the issues, which existed during the drafting and adoption of the Law, is a situation where an over-indebted business entity opens a new company to which business is transferred, without discharging obligations of the previous company. The idea was to submit those companies to the Central Register as well, but it was withdrawn, so the topic of these fraudulent situations still remains open.

FIC RECOMMENDATIONS

- Significant changes should be made and certain provisions should be more precise (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the possibility that the Law is applied to business entities and their members/bodies acting bona fide.
- It is necessary to regulate liability for entering incorrect data into the Central Register.

LAW ON WHISTLEBLOWERS

1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to implement the Law, it is necessary to take educational measures (especially targeting citizens and employers), as well as the necessary administrative/technical measures.	2015		√	
It is necessary to specify the concept of an authorized body and the relationship of internal and external whistleblowing.	2015			√
It is necessary to appropriately predict criminal offenses in connection with whistleblowing, as well as any special penal responsibility for the grave violations of the rights of whistleblowers.	2015			√
It is necessary to regulate cases of retaliation for whistleblowing made by a third party who is not the employer, to adequately protect the whistleblower in such a situation.	2015			√

CURRENT SITUATION

The Law on the Protection of Whistleblowers (RS Official Gazette No 128/2014, hereinafter: the Law) entered into force on 4 December 2014 and has been applied since 5 June 2015.

This Law regulates whistleblowing, the whistleblowing procedure, the rights of whistleblowers, the obligations of the state and other bodies and organizations, and the 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).

In accordance with the Law, whistleblowing is the disclosure of information about violations of law, violations of human rights, abuse of public authority, danger to life, public health, safety, and the environment, and to prevent major damage; while a 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 retaliation against whistleblowing. It protects whistleblowers from adverse actions, defined as 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 which 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, a person who performs official duties, and a 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 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.

When it comes to internal whistleblowing, the Law obliges the employer to protect whistleblowers within the framework of their powers and from adverse actions as well as take the necessary measures in order to eliminate the adverse actions and 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 to conduct the proceedings in connection with whistleblowing. On the other hand, employers that have more than ten employees are obliged to regulate an internal procedure of whistleblowing by a general act. 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 was one year from the Law's date of entry into force, i.e. 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 15 days of receipt of the information. They are obliged to inform the whistleblower about the outcome of the conclusion thereof, within 15 days after completion of the procedure. An employer shall also, upon the request of the 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 relevant 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, the 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. 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 according to 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 competent; 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 the 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.

If during the proceedings a plaintiff has made it credible that he/she had been subject to adverse action in connection with whistleblowing, the defendant has the burden of proving that the harmful action is not causally related to the whistleblowing.

The Law prescribes possibility 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 Ministry of Justice adopted the By-Law on the Program for the Acquisition of Specific Knowledge Concerning the Protection of Whistleblowers (RS Official Gazette No 4/2015), in accordance with the Law, which was enacted on 24 January 2015. The 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 to 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 Internal Whistleblowing at an Employer That Has More Than Ten Employees, which was adopted by the Ministry of Justice and enacted 13 June 2015, after its publication in RS Official Gazette No 49/2015.

The By-Law also focuses on specific elements of internal whistleblowing, such as written and verbal whistleblowing; issuing confirmation upon receipt of information; methods of 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 needs 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.

Whistleblower protection, formerly, was regulated by the Law on Civil Servants, the Law on Free Access to Information of Public Importance, and the Law on the Anti-Corruption Agency, 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.). As a result, and because this matter cannot be set up without proper legislation in a comprehensive way, the Minister of Justice formed a working group in September 2013, which resulted in today's Law.

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 (i.e. the United Kingdom, Luxembourg, Romania, and Slovenia). In most countries, this kind of law is mainly related to labour disputes, while a whistleblower may be any person, including persons engaged in work, and not only persons who are employed.

Since the enactment of the Law, there has been an increase in the number of filed lawsuits and reports, while courts issue interim measures significantly faster than the prescribed legal limit. In the first year of implementation of the Law, courts received more than 300 cases in which whistleblowers are seeking protection, while the number of received proposals for an interim measure, based on the Law, increased from 16 to 36.

Also, the first verdicts in this field have been issued, including the first final decision. This shows that judges and other responsible persons understand the importance of the application of the Law as well as the urgency of the action. Keeping in mind the fact that numerous court procedures have been initiated in order to protect the rights of the whistleblowers, it could be concluded that progress has been made in the education of individuals to whom the Law is applied and that they are familiar with their rights and obligations, as well as that employers until now have adopted all acts that they are obliged to apply on the basis of the Law, and that employees and other working engaged persons have been informed about possibilities provided by the Law.

REMAINING ISSUES

The adoption of this Law represented an important step for the Republic of Serbia. In terms of the application of the Law, there is still room for its improvement.

The Law does not specify more closely the nature and function of the authorized body, and does not define the relation-

ship 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 the 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 the vagueness of certain provisions or predictions of modalities of violation of the rights of whistleblowers and their protection. For example, the Law remains powerless in situations where retaliation for whistleblowing is made by a third party, and not the employer.

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. The right of whistleblowers to fair compensation, in addition to the already incriminated abuse of whistleblowing, would yield far better results in implementation of this Law.

FIC RECOMMENDATIONS

- In order to implement the Law, it is necessary to take educational measures (especially targeting 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 whistleblowing, as well as any special penal responsibility for the grave violations of the rights of whistleblowers.
- It is necessary to regulate cases of retaliation for whistleblowing made by a third party who is not the employer, to adequately protect the whistleblower in such a situation.
- Introducing rules on remuneration.

LAW ON NOTARIES

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further amendments to legal provisions regulating the number of public notaries and increase the number of appointed public notaries.	2015			√
Further reduction of fees for services of public notaries, to levels appropriate for the purchasing power of individuals and the financial strength of businesses.	2015			√
Further implementation of regulations regarding public notaries and comprehensive education of all participants in the process.	2015			√

CURRENT SITUATION

The Law on Notary Public (hereinafter: "the Law") implementation started on 1 September 2014 and introduced a Public Notary as a judicial occupation into the Serbian legal system.

The goals of introducing notaries public were to help to relieve the judiciary, ensure an efficient execution of actions before a notary public, improve legal certainty of certain actions and procedures bestowed to notaries public, and introduce protection for special categories of persons. The Law has been amended several times, in what clarified the responsibilities of notaries in Serbia. Thus, some courts have been relieved, while citizens have been getting used to the service of a notary public. After almost three years of business practice and work of notaries, we may say that the aims of introducing this judicial occupation into the Serbian legal system were achieved, and that today, we have an efficient, available and reliable occupation which manages to meet various legal needs of citizens and businesses. It seems that a gradual introduction of a notary public into the Serbian legal system turned out to be a good solution because both citizens and legal entities have been gradually informed and got used to the fact that the transactions which used to be within the competence of courts are now the competence of notaries.

POSITIVE DEVELOPMENTS

After the law became applicable and notaries public launched their work, a need arose to amend and supplement the Law on Notary Public, and this took place on several occasions. Approved amendments and supplements of the Law, among other things, introduced new authorizations of a notary public, so starting with 1 March 2017, the verification of signatures, transcripts and manuscripts was entrusted to notaries public. This means that there is no parallelism regarding responsibilities in the mentioned area among courts, municipalities and notaries: all of the mentioned actions are executed by notaries. Therefore, all kinds of verifications of named or unnamed contracts, regardless of the power of their legal form, are performed by notaries. Contracts and statements on pledge, for which the most restrictive form of a public notary record is to be made, and notarized exclusively by notaries, while in the case of less formal contracts, parties may draft such contracts by themselves, with the help of an attorney, but must have the same notarized by a notary public.

Since mid-2016, inheritance proceedings as transactions entrusted to courts have been executed before notaries. Citizens, just like before, are to submit a request for discussion on inheritance to a court, and then the court, in the form of a special decision, entrusts the matter to a notary public. At determining a notary public, for the purpose of decrease of costs, it is appropriate for the president of the court to name a notary public from the territory of the court covering the municipality in which the testator had residence. Notaries execute and draft death certificates and the minutes on inventory of a person who passed away, as well as inheritance proceedings entrusted to them by courts.

REMAINING ISSUES

The disproportionate number of named notaries, as well as the fact that notaries have not been named in more than 12 municipalities and cities in Serbia, remain issues which have not been successfully resolved. Even though it is in the jurisdiction of basic courts to notarize non-public documents (solemnization), in said cities and municipalities, until notaries are named, the issue of drafting Notary Public

records will remain unresolved, and citizens will have to go to the nearest municipality or city with appointed notaries in order to be provided with this service.

What still remains a burning issue in this area is the prices for services of notaries. We have noticed that the price for services of notaries is mainly higher than the one earlier charged for the same service charged by courts and municipalities, especially regarding the verification of statements on pledge, the price of which can now reach several thousand euros. The price for the notarization of a signature for legal entities is also higher than it was before. On the other hand, inheritance proceedings are no more a flat rate service as they were when they were handled by courts, but the costs of these proceedings are now clarified and qualified on the grounds of the amount of inheritance.

Finally, we regret to note that crowds in notary public offices are similar to those in courts before, and it is now up to the notaries to employ more people in order to provide an easy functioning of legal transactions with citizens and companies.

The implementation of regulations regarding notaries public as an already established legal institution in the legal system presents a comprehensive process of great importance, so it is necessary to continue with the further implementation and harmonization of the notary public as a legal institution important for the everyday life.

FIC RECOMMENDATIONS

- Further amendment of legal provisions governing the number of notaries and an increase of number of appointed notaries.
- A further decrease of fees for services provided by notaries, and harmonization with financial means of companies and citizens.
- Hiring a larger number of employees by notaries.
- Further implementation of regulations governing notaries public and comprehensive education of all participants in this process.

TAX

1.14

A. CORPORATE INCOME TAX (CIT) 1.00

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, as well as to better define provisions of the CIT Law, in order to introduce greater flexibility in this area.				
Primarily, by-laws should provide guidelines with respect to taxation of permanent establishments.	2010			√
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).	2012			√
However, some of the problems require amendments to the CIT Law:				
Make provisions of the CIT Law more precise in order to allow taxpayers a proper application of withholding tax on services in practice, as well as to amend other relevant provisions of the CIT Law in order to reduce the administrative and financial costs of the application of this tax for domestic and foreign legal entities by introducing monthly or quarterly tax filings (instead of for each transaction separately).	2016			√
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.	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 a payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account.	2010			√
Taxation of corporate reorganization, as currently applicable legislation completely lacks provisions for the taxation of such reorganization. Provisions regulating this area should be introduced in the CIT Law.	2011			√
Introducing a system of new tax incentives for investments in fixed assets amounting to less than RSD 1 billion in the form of a tax credit or reduced corporate income tax rate for a certain period, and in proportion to the investment made.	2014			√
Revise the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes in order to implement a proportional tax rate for groups II to V, as well as to determine a more realistic estimation of the useful life of fixed assets (for example, a tax rate of 20% or 30% is more appropriate for company cars nowadays).	2015			√
Regulate tax depreciation calculation in a manner that does not lead to expenses of tax depreciation being permanently unrecognized.	2014			√
Change the rules regarding tax deductibility of impairment expenses, so that it is clear that a decrease of fair value of assets does not represent an impairment expense. In this way, increases and decreases of fair value of assets would be treated in a fair way.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Tax recognized depreciation expense should be allowed for fixed assets acquired before 2013 (present in the accounting records on 1 January 2013) and whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in Serbia. We suggest this change should be implemented in the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.	2015			√
Further clarify the method of calculation and recognition of tax depreciation cost for the first group of fixed assets on 31 December 2003, which caused numerous dilemmas and controversial interpretations in practice;	2016			√
Introduce provisions in the CIT Law which would clearly regulate the treatment of liquidation remainder below the level of invested capital.	2015			√
Amend the provisions of the CIT Law in order to recognize a resident tax credit for capital gains tax paid abroad, up to the amount of corporate income tax which would be payable on such capital gains.	2016			√

CURRENT SITUATION

The taxation of companies in Serbia is governed by the Law on Corporate Income Tax (hereinafter: the CIT Law) and ratified international agreements. The CIT Law is supplemented by several by-laws governing the implementation of its provisions.

The latest amendments to the CIT Law were made at the end of 2015 (RS Official Gazette No 112/2015), most of its provisions entering into force 1 January 2016.

The most significant change is the introduction of withholding tax on the income of non-resident legal entities coming from services provided or used, or which will be provided or used in the territory of the Republic of Serbia. This tax was applied 1 March 2016, but its application in practice still causes certain issues and concerns.

Other changes are related to the harmonization and recognition of expenditures for tax purposes; compliance with the law governing accounting; and certain refinements of existing provisions aimed at eliminating doubts regarding their application in practice as well as bringing them in line with explanations given in the opinions of the Ministry of Finance.

As for international treaties, over the course of 2016 and the beginning of 2017, double tax treaties with the following countries came into force: Luxembourg, the Republic of Korea, Kazakhstan, Armenia, and Norway (new treaty which replaced the old one from 1986).

POSITIVE DEVELOPMENTS

In the last year there were no changes to the Corporate Income Tax Law and relevant by-laws.

REMAINING ISSUES

- Administrative burdens, legal uncertainty, and additional costs are caused by extending the tax liability arising from withholding tax on services on the income of all non-resident legal entities. Specifically, Article 40 of the CIT Law provides that the income of non-resident legal entities derived from services provided or used, or which will be provided or used in the territory of the Republic of Serbia, is taxable. In practice, it is not always clear which services are considered provided or used in the territory of the Republic of Serbia, while there are no additional guidelines nor instructions by the relevant authority in terms of adequate and accurate application of such provisions, leading to legal uncertainty, additional costs, as well as the potential civil or criminal responsibility of taxpayers. Additional financial and administrative burdens for non-residents and domestic companies is caused by: (i) gathering and translating documentation necessary for the application of the tax exemption specified in agreements on avoidance of double taxation; (ii) potential refund

of taxes paid in the event that the necessary documentation could not be obtained at the time withholding tax was applied; and (iii) an administrative burden for domestic companies for filing tax returns for withholding tax upon payment of each individual fee for services rendered, and especially a daily submission of tax returns for which there is no obligation to pay withholding tax. This also causes additional costs for the Tax Administration as processing, audit and keeping of such documentation requires additional human, IT and other resources.

- 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 where a foreign business is not registered in Serbia, etc.
- The 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, often resulting in non-deductible marketing expenses, which represents a discrimination of taxpayers for whom such expenditures are necessary for their business activities.
- Occasionally, interpretations by 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 legal uncertainty and 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 reorganization remains unclear as currently applicable legislation completely lacks provisions regarding the taxation of such reorganization.
- The rules on tax depreciation of non-current assets were not substantially amended since they were introduced in 2004 and their application in the contemporary business environment causes numerous difficulties and issues. It is unclear in which tax depreciation groups to classify specific assets, such as wind turbine masts and equipment installed on them (generator, rotor, blades), and the depreciation periods are often inappropriate considering the economic and useful life of assets (oil rigs, hotels, shopping malls, hangars, warehouses, etc.; leasehold improvements, etc.) or the nature of the business activity (concessions, public-private partnerships), etc. All immovable property is depreciated at an annual rate of 2.5% (i.e. over 40 years) while actual useful lives vary depending on their type and use.
- 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 said asset, as well as in cases where 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 the Republic of Serbia. Ministry of Finance issued an opinion in 2017 which created additional dilemmas about cessation of tax depreciation for written-off assets.
- Tax depreciation is not calculated on fixed assets purchased before changes to the CIT Law from the beginning of 2013, and whose individual value was below the average gross salary at that time.
- During 2015 and the first half of 2016, the Ministry of Finance published opinions regarding the method of calculation of the cost and recognition of tax depreciation for the first group of fixed assets on 31 December 2003, causing numerous dilemmas and controversial interpretations in practice.
- The Ministry of Finance issued an opinion in 2017 regarding the method of calculation of tax depreciation of assets in case of acquiring the bankruptcy debtor as a legal entity, and took the position that tax depreciation should be calculated in the same way as before opening the bankruptcy. We are of the view that this is a debatable interpretation and that it would be more appropriate to calculate tax depreciation on the basis of proportionate share of purchase price allocated to relevant assets.
- Accounting regulations, i.e. International Financial Reporting Standards, provide for the possibility to opt between cost model and fair value model for certain types of assets (investment property, biological assets, financial assets). The CIT Law does not have clear rules regarding assets measured at fair value. Unrealised gains from the increase of fair value of assets are taxed before the asset is disposed of, i.e. before the gain is realised.
- The CIT Law does not make a 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 an impairment expense which is non-deductible until such assets are sold. On the other hand, every increase of fair value of assets is immediately taxable. This results in an unfair increase of taxable income for taxpayers.

- The CIT Law does not specify the treatment of losses arising from liquidation, or bankruptcy estate, which is less than the capital invested in a company ceasing to exist in the process of liquidation or bankruptcy.
- The CIT Law does not contain provisions recognizing a resident capital gains tax paid abroad, leading to double taxation in cases where Serbia has not signed an agreement on the avoidance of double taxation with such a country.

FIC RECOMMENDATIONS

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, as well as to better define provisions of the CIT Law, in order 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:

- Make provisions of the CIT Law more precise in order to allow taxpayers a proper application of withholding tax on services in practice, as well as to amend other relevant provisions of the CIT Law in order to reduce the administrative and financial costs of the application of this tax for domestic and foreign legal entities by introducing monthly or quarterly tax filings (instead of for each transaction separately).
- 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 a payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account.
- Taxation of corporate reorganization, as currently applicable legislation completely lacks provisions for the taxation of such reorganization. Provisions regulating this area should be introduced in the CIT Law.
- Introducing a system of new tax incentives for investments in fixed assets amounting to less than RSD 1 billion in the form of a tax credit or reduced corporate income tax rate for a certain period, and in proportion to the investment made.
- Revise the CIT Law and Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes. It is necessary to reform the current tax depreciation regime per groups of assets: to adjust the depreciation rates to types of assets, manner and intensity of their use, and their useful life; review the grouping of assets in depreciation groups; and supplement the lists of assets in

groups, as well as define rules for specific business activities, such as concessions and public-private partnerships. Tax depreciation rules should not cause permanently non-deductible costs. Change the rules regarding tax deductibility of impairment expenses, so that it is clear that a decrease of fair value of assets does not represent an impairment expense. In this way, increases and decreases of fair value of assets would be treated in a fair way.

- Tax recognized depreciation expense should be allowed for fixed assets acquired before 2013 (present in the accounting records on 1 January 2013) and whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in Serbia. We suggest this change should be implemented in the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.
- Further clarify the method of calculation and recognition of tax depreciation cost for the first group of fixed assets on 31 December 2003, which caused numerous dilemmas and controversial interpretations in practice.
- In case of acquiring a bankruptcy debtor as a legal entity, tax depreciation should be calculated based on a proportionate share of purchase price allocated to relevant assets.
- The historical cost model should apply to taxation purposes for non-current assets, for which IFRS provides the possibility to choose between historical cost or fair value model, irrespective of the choice made, in order to have uniform and equitable tax treatment of taxpayers.
- Amend the rules relating to tax deductibility of impairment expenses, so that it is clear that decreases of fair value of assets accounted for under the fair value model do not represent non-deductible impairment, so that increases and decreases of fair value are treated in an equitable way.
- Introduce provisions in the CIT Law which would clearly regulate the treatment of liquidation remainder below the level of invested capital.
- Amend the provisions of the CIT Law in order to recognize a resident tax credit for capital gains tax paid abroad, up to the amount of corporate income tax which would be payable on such capital gains.

B. PERSONAL INCOME TAX 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend the PIT Law so to establish clear rules and procedures on taxation of expatriates in Serbia who remain on foreign county payroll. More precisely, to determine who (individual-income recipient or the local entity) and when is obliged to report income received from abroad for working activities in Serbia and pay tax.	2016			√
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.	2008			√
The provision stipulating 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			√
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.	2015			√
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.	2015			√
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.	2015			√
A special bylaw should closely regulate the calculation of per diems during business trips and reimbursement of costs incurred (documentation, define and refine the concept of per diem, etc.), as well as the calculation of costs when using a private vehicle for business purposes.	2016			√
It is necessary to clarify the calculation of the costs of using private cars for official purposes	2016			√

CURRENT SITUATION

The Ministry of Finance has passed more official rulings stating that compensation for unused annual leave paid out to an employee who has not used the respective leave during the period of his/her employment shall be treated as a salary. Since the Labour Law has already defined such payment as compensation for damages, it clearly provides no space for interpreting said payment in a different manner from the tax point of view. Such an interpretation by the Ministry of Finance does not just decrease the level of legal certainty, it shows the lack of cooperation between the relevant state bodies (e.g. the Ministry of Finance and the Ministry of Labour, Employment, Veteran and Social Affairs).

Instead of clarifying, the official opinions issued by the Ministry of Finance with regard to the tax treatment of a no-interest loan granted to an employee have just given the base for different interpretations regarding tax treatment of said loan. These opinions do not clearly state if such a no-interest loan or a loan with interest lower than market value should be considered as a benefit or not. Furthermore, they add to the complexity by stating "return of the

loan within a reasonable time", providing no legal grounds (there is no relevant legislation) in support of such an interpretation. By delivering such a vague answer, they created more doubts on the part of the employer.

The last amendments to the Personal Income Tax Law introduced incentives in the case of hiring new employees (a refund of 65%-75% of paid taxes and contributions). These respective incentives can be used until the end of 2017. Due to the fact that one of main goals of the Serbian Government is to attract foreign investors, it is expected that these new incentives will be introduced or those already existing remain applicable after 2017.

POSITIVE DEVELOPMENTS

As there were no new amendments to the Personal Income Tax Law, nor any clarifications given in the form of official opinions or explanations by the Ministry of Finance, we have not noticed any significant positive developments regarding problems emphasized in the WB 2016.

REMAINING ISSUES

The issue of personal income taxation of expatriates who remain on a foreign payroll (assigned workers) still remains. Despite the fact that they are obliged to pay taxes themselves, the authorities, we are informed, ignore the fact that such taxes are paid and point a request toward the local entity to calculate a report and pay taxes due. Such a position derives from their understanding of Serbian legal entities to whom these expatriates are being assigned as the end payers, the ones who bear these costs at the end.

The Personal Income Tax does not provide sufficient rules regarding the compensation of expenses to individuals for business trips abroad in terms of procedure: documents that have to be presented to authorities or a non-taxable amount of compensation. As such, tax authorities apply the By-Law on the Compensation of Expenses and Severance Pay to Employees in State Bodies, despite the fact that there is no provision of the law referring to application of the by-law. However, the Ministry of Finance, as well as the Ministry of Labour, Employment, Veteran and Social Affairs has issued more opinions stating that the respective by-law should be applied. Yet, we are of the opinion that such an interpretation is in collision with the provisions of the PIT Law.

As employees' profit participation is treated as "other income", the Personal Income Tax Law should be amended in the direction of its being treated as salary. It is for this reason that the respective income is obtained in connection with work performed by employees.

The provisions of the Personal Income Tax Law envisage that adult members of the household of a sole proprietor are subsidiary and responsible for their own property for the tax liability of the sole proprietor, which is not in line with the relevant provisions of the Company Law and the Law on Enforcement and Security.

Since the Ministry of Finance published the opinion that qualified "team building" expenses as a fringe benefit of an employee, it has completely changed the tax treatment of such an expense, not just from the Personal Income Tax point of view, but also that of Corporate Income Tax. The fact that the practice before was completely different, it has created additional confusion on the taxpayers' side, consequently deepening legal uncertainty. It is our opinion that in the opinion in question the economic nature of team building is not recognized by the Ministry of Finance – it is an investment by a company that has its purpose in increasing productivity of employees by organizing joint activities.

Due to the fact that tax authorities did not unify their standing regarding tax credit for taxes paid in another state, taxpayers face difficulties when exercising their right to use a tax credit. Such practice is not in line with the relevant provision of the Personal Income Tax Law and so generates legal uncertainty.

The Personal Income Tax 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 the like). 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 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.

The Personal Income Tax Law specifies in a particular way the tax base for personal income tax calculation of Serbian residents who are assigned abroad in order to perform work for entities that are residents of the Republic of Serbia. For them the personal income tax base consists of the salary that is based on the law, the general company regulation, and the employment contract they would earn in the Republic of Serbia. The Law does not define anywhere the concept of "assigned worker " nor the concept of "assignment". For this reason, it is unclear to what persons this relates and whether it relates to assignment in the sense of legislation that regulates assignment of employees for temporary work abroad, and which recognizes various types of assignment (work abroad, professional training, and development). Also unclear is the tax treatment of different costs incurred by the employer in assigning a worker outside of Serbia, and for which there is exemption from tax payment in the practice of other states, i.e. moving costs, apartment costs, etc.

In practice, it is not possible to register for mandatory social insurance a foreign person who is assigned to work in Serbia (such a person who has not concluded an employment contract in Serbia but continues with employment with the foreign employer), although such assignment is permissible. Such assignment is recognized by the Law on Pension and Disability Insurance and the Health Insurance Law, given that insured persons are also specified as foreign citizens and persons without citizenship who are employed in the territory of the Republic of Serbia by foreign legal entities or private individuals, unless otherwise specified by an international agreement, and for international organizations and institutions and foreign diplomatic and consular offices, and if such insurance is specified by international agreement.

Also, in practice it is not possible for Serbian citizens to register for mandatory social insurance if they conclude an employment contract with a foreign employer and perform work in the territory of Serbia. Such engagement is recognized by the Labour Law which specifies that this law shall apply to employees working in the territory of the Republic of Serbia, with a domestic or foreign legal entity or private individual. Also, such a type of engagement is also recognized in the Law on Pension and Disability Insurance and the Health Insurance Law, given that the definition of insured persons includes Serbian citizens who are employed in the territory of the Republic of Serbia with foreign or international organizations and institutions, foreign diplomatic and consular offices, or with foreign legal entities or private individuals, unless otherwise specified by an international agreement.

Such practice leads to great legal uncertainty, given that on the one hand it could be interpreted that there is an obligation for insurance, while on the other hand it is not possible to register for insurance. Without the status of an insured person, an individual cannot be entitled to any rights from social insurance, nor can s/he make any payments of social contributions. Owing to such practices, social insurance funds receive less money, while private individuals and legal entities are exposed to legal uncertainty, where private individuals are at a further disadvantage due to the fact that they are unable to join the system of mandatory insurance and to realize their rights arising from this insurance.

FIC RECOMMENDATIONS

- The Ministry of Finance and Ministry of Labour, Employment, and Veteran and Social Affairs should work with each other towards the same goal that would eventually lead to the opinion that the compensation for unused annual leave days by an employee is treated in the manner defined by the Labour Law; i.e. damage compensation.

- Take a clear position with respect to the tax treatment of no-interest loans (or loans with interest lower than market ones) granted to an employee by an employer. The opinion issued by the Ministry of Finance on this subject did not contribute to its clarification at all.
- The Personal Income Tax Law should be amended in order to establish clear rules and procedures on taxation of expatriates paid by foreign entities. It is very important to determine whether it is the individual or the local entity that will report the income and when it should be done.
- The application of schedular taxation of personal income remains a problem in the Serbian system, to which there is no adequate solution. This system was abandoned as unclear and unfair by the 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.
- Provisions that introduce subsidiary guarantees of adult members of the household with their own property in case sole proprietors do not fulfil their tax liabilities.
- Reconsider the position of the Ministry of Finance with respect to the tax treatment of "team building" expense and adjust it to its economic nature.
- Standardize the position and practices of the tax authorities to facilitate the taxpayer's legal right to use tax credit for taxes paid in another state.
- It is strongly recommended to pass the appropriate by-law that will regulate in detail the calculation of per diems during business trips and reimbursement of costs and the calculation of costs for the use of a private vehicle for business purposes.
- Amend the PIT Law while observing the IAS rules, all with the aim of eliminating taxation of income not yet received; i.e. to ensure that tax liability corresponds with the moment of acquisition of the right to dispose of securities by an employee.
- The concept of "assignment" must be clearly defined in the sense of the Personal Income Tax Law, to which persons the special rule for calculating the salary base relates to, and it must be clearly specified that certain costs of the employer that are related to the assignment are not part of personal income and are therefore not subject to personal income tax (e.g. moving costs, accommodation, etc.), and in accordance with the best practices in other states and with what is already prescribed for state officials who are posted abroad for work, given that the substance of the cost is completely identical and there is no basis for making a difference between these two categories of employees.
- The process of social insurance registration, above all software for registration, given that this is done electronically, must be harmonized with regulations and must permit foreign individuals assigned to work in Serbia to register for mandatory social insurance, without having concluded an employment contract in Serbia, including Serbian citizens employed with foreign entities. Also, it is necessary for Serbia to expand its network of social security conventions, as this is closely linked to this issue, and in order to avoid the risk of double payment of contributions, which has negative ramifications for labour force movements.

C. VALUE ADDED TAX 1.27

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
We are of the opinion that the issue regarding registration of foreign entities for VAT cannot be appropriately solved by an Opinion or Explanation issued by the Ministry of Finance. It is necessary that the Law itself be amended. Amendments should be done in such a way as to correspond to the best practices in EU Member States. It is necessary to define that registration is an obligation, but not in cases where supply is rendered to entities which are not VAT payers or when a VAT payer as recipient is not a VAT debtor. Moreover, it is necessary to define that the VAT payer is a VAT debtor for the supply of goods conducted by a foreign entity. We believe that the provisions on registration are closely related to provisions on VAT reimbursement to a foreign taxpayer and that it is crucial the position of a foreign taxpayer be perceived as a whole in the course of amendments to the Law.	2016	√		
The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks treating 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 rule for the place of supply of services should be revised in accordance with the EU VAT Directive.	2011	√		
VAT Law amendments should specify that, in the case of financial leasing, the base for VAT assessment should not include interest (interest should be VAT exempt), in the manner in which this has been applied in the Member States of the European Union.	2013			√
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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of a mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or a credit note. This practice also corresponds to a usual business practice. Insisting on exclusively one approach represents an imposition of additional costs, whereby from the VAT collection point of view, there is no reason why both approaches cannot be applicable.	2014			√
The provision of the VAT Law dealing with the 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 (including reorganization in line with the bankruptcy legislation) were opened, or in the event of an out-of-court settlement.	2014			√
The rulebook regulating the 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.	2014			√
The Ministry of Finance and the Tax Administration should take the initiative in establishing reciprocity with all European countries with respect to VAT refunds for all foreign entities.	2015			√
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 a change in status, when the supply of goods and services in such is subject to VAT.	2015			√
It should be specified that, in case of the return of goods, regardless of the expiration date, the supplier of goods may issue a credit note or the purchaser may issue an invoice, depending on their mutual agreement. This approach cannot jeopardize collection of VAT because, regardless of who issues the credit note, the same VAT rate is applicable.	2016			√
It is necessary to specify that in the case of supplies in the field of construction, parties may chose taxation in line with the general principle – that is, VAT charged by supplier. Namely, in the Member States of the EU, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment. Bearing in mind this motive for the determination of the recipient as tax debtor, there is no reason to prevent the supplier from assessing VAT, nor to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor.	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to decrease administrative burden, correcting an error made in a VAT return for the previous tax period through a VAT return for the current tax period (without the submission of an amended VAT return) within a certain time period (e.g. within 6 months from the submission of the VAT return in which an error has been made, which would be separately disclosed in the VAT return for the current tax period) should be enabled, with payment of penalty interest.	2016			√

CURRENT SITUATION

The 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, 142/2014, 83/2015 and 108/2016; hereinafter the "VAT Law").

The Law on Amendments to the Law on Value Added Tax was adopted in December 2016. The amendments relating to the place of supply of services go into effect starting 1 April 2017, while the remaining amendments are effective starting 1 January 2017. The requirement for submitting the summary of VAT calculation along with the tax return has been moved to 1 January 2018.

The most important changes enacted in December 2016 relate to new rules regarding the place of supply of services and VAT registration for foreign entities.

The new rules on the place of supply of services are largely harmonized with EU rules. Thus, one of the significant recommendations from the White Book has been accomplished.

The other significant amendment relates to rules on VAT registration of foreign entities. With the amendments of these rules, VAT registration of foreign entities has been largely harmonized with the best practices in other countries, to a greater extent than was the case previously. The amendments clearly specify the obligation of foreign entities to register as VAT payers when conducting supplies to final consumers in the Republic of Serbia, which directly affects Serbia's budget revenues. In this way Serbia has joined the latest world trends with respect to taxation of services provided electronically to final consumers, which is of exceptional significance in view of the volume and speed of development of the digital economy. The new rules decrease legal uncertainty, risks of different procedures, and administrative burdens on both foreign companies and the Tax Authority.

POSITIVE DEVELOPMENTS

The December 2016 amendments to the VAT Law changed the rules related to the place of supply of services, resulting to a large extent in harmonization with EU rules.

Rules have been changed with respect to VAT registration of foreign entities, contributing to progress with respect to harmonization of this rule with the best practices and a decrease in legal uncertainty and risk of different interpretations, including the administrative burden on foreign entities and the Tax Authority.

REMAINING ISSUES

The 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 the 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 three by-laws). Although there were several announcements related to the adoption of a uniform rulebook in 2016, it is still uncertain when it will be published.

In the case of financial leasing, 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 advance payment is made, depending on which occurs earlier. In case there is no advance payment, VAT should be accounted for at the moment the service is rendered, something 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 rather 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 so cannot know what the taxable amount is.

VAT legislation provides that in cases where 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) containing certain obligatory items. VAT legislation does not provide for 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 practices 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 the 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 if the foreign entity does not perform any taxable supplies in Serbia, under the condition that other requirements specified by the VAT Law are met. This provision is not harmonized with the amendments of the rules of VAT registration of foreign entities. Namely, according to the latest amendments, a foreign entity is not required to register for VAT if it conducts supplies of goods and services to an entity that is a registered VAT payer in Serbia. However, if such entity purchases goods or services in Serbia that are subject to VAT payment, it is not entitled to claim a VAT refund, because it will be participating in supply that is taxable in Serbia. The only way for such entities to get a VAT refund is to register for VAT in Serbia, although they do not have this requirement, and this leads to an increase in costs both for foreign companies and the Tax Authority. This is not in line with European Union rules that apply to VAT refunds to foreign entities with headquarters outside the European Union (Directive 13). Namely, a VAT refund to a foreign taxpayer should be permitted even when a foreign taxpayer performs taxable supply in Serbia, but is not required to register for VAT for such supply, and instead the VAT calculation is performed by the service beneficiary, as the tax debtor.

Another problem associated with VAT refund to a foreign taxpayer concerns the fact that a refund is possible under conditions of reciprocity. In the previous period, the list of countries with which there is reciprocity has been expanded, but not sufficiently so. Serbia continues to have reciprocity with a relatively small number of countries. Besides this, there are countries that do not have reciprocity as a legislative requirement for a tax refund, such that doubt is created whether it is considered that reciprocity with such countries exists and how it is to be proven that in certain countries the reciprocity rule as a refund requirement does not exist.

This also negatively affects Serbian companies, given that due to a lack of reciprocity they are unable to exercise their rights to a refund of VAT paid in other countries also applying 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).

The new Rulebook was enacted in 2014, defining in which cases the return of goods is not regarded as a new supply subject to VAT. In general, unsold publications ("remitenda") and the return of goods whose expiration date

determined by the manufacturer has expired or is expiring is not regarded as a new supply. However, in practice, it is questionable how the term "remitenda" is defined, as well as in which cases it will be determined that the expiration date of goods has expired. Moreover, the Rulebook does not define precisely that the return of goods due to reclamation is not a new supply, e.g. when the wrong goods have been delivered or in larger quantity than was ordered. All of this leads to legal uncertainty and possible differences in interpretation by both the taxpayer and the tax authorities.

The amendments also define new rules regarding assessment of VAT in the case of supplies in the field of construction. The rules relate to the classification of business activities, which results in numerous questions and uncertainties in practice, because, in substance, the classification was not drafted for tax purposes. Consequently, taxpayers have to deal with legal uncertainty due to the different interpretation of taxpayers themselves and tax authorities. Due to this divergence in interpretation, taxpayers face the risk that tax authorities assess output VAT to the supplier, although the recipient as the taxpayer assessed VAT, or that the input VAT deduction is disputed to the recipient who assessed output VAT because tax authorities deem that the obligation to assess VAT is on the side of the supplier, even though none of these two approaches is to the detriment of the state budget.

The VAT Law specifies that supply shall not be deemed to have occurred in the case of transfer of a portion of assets, if the acquirer is a VAT payer or becomes a VAT payer through such transfer, and continues to perform the same commercial activity as the transferor. However, a by-law stipulates that a portion of assets relates to a business unit that permits independent performance of commercial activity by the acquirer, and whose transfer at the moment of transfer prevents the transferor from performing such commercial activity. As a result of the introduction of the aforementioned, additional requirement, for the transferor to be prevented from performing the subject commercial activity, in practice there are numerous practical problems in determining what is considered to be a portion of assets that is VAT exempt, compounded by ineffectual solutions in which the subject exemption cannot be applied because there is no possibility for the transferor to be fully prevented from performing a particular commercial activity, except in the case of the dissolution of such an entity.

The VAT Law specifies that a taxpayer is required to keep records that allow for the control of proper VAT calculation and payment, and is required to prepare a summary of VAT calculation for each tax period. If the taxpayer fails to submit a summary of VAT calculation with his tax return, it shall be deemed that the return had never been filed. The Rulebook on the Form, Content, and Method of Keeping VAT Records and Form and Content of the Summary of VAT Calculation (Off. Gazette of RS No90/2017), which goes into effect on 1 January 2018, specifies significantly greater requirements in terms of mandatory elements that records must include and methods for keeping them. New rules require mandatory VAT records to encompass information on VAT invoices segregated into specific taxable and exempt supplies according to the type of supply and VAT treatment. The summary of VAT calculation is prepared based on such records. It must be noted that in practice VAT records are not kept manually, but are generated from accounting records, except in the case of small entrepreneurs and legal entities that have a small number of invoices during a tax period. The keeping of accounting records and posting to journals according to accounting rules, which includes mandatory application of the chart of accounts prescribed by special rulebooks, is never performed according to requirements of the Rulebook, and invoices are never classified by categories specified by the Rulebook. As a result, implementation of new rules on VAT records requires changes in accounting programs and imposes new costs on taxpayers. Due to the large number of categories, there is a high risk of error in classifying individual invoices, but with the correct application of VAT treatment, such that it is questionable of what value such information is to the Tax Administration. Besides this, the preparation of the summary of the VAT calculation will provide the Tax Administration with higher level information, but such information will not allow for control to be carried out from Tax Administration offices. Rather, it will require an infield control of invoices. Also, the fact that someone conducts certain transactions does not mean that they are a high-risk taxpayer. Thus, we believe that such record keeping and summary of calculations provides limited informative value for the purpose of risk analysis by the Tax Administration. In view of the aforementioned, the question is raised about the effectiveness of the new rules in terms of keeping VAT records, both from the perspective of the taxpayer and from that of the Tax Administration. We emphasize that such a method of keeping records and of submitting summaries of VAT calculations, in the form that is prescribed in Serbia, cannot be observed in comparative practice.

The Law specifies that a VAT refund shall be made within 45 days of the deadline for filing the tax return, or within 15 days for predominant exporters. In has been noted that in practice the Tax Administration is late in making VAT refunds. Also, it has been noted that VAT is not refunded because a tax audit has been initiated or because there is an outstanding debt on other grounds. Neither does the VAT Law, nor the Law on Tax Procedure and Tax Administration specify that VAT shall not be refunded for the duration of the tax control, or because there is an outstanding debt on other grounds. Moreover, the Law on Tax Procedure and Tax Administration specifies that if no refund is made to the VAT payer within the deadline specified by the VAT Law, interest shall be accrued as of the next day after the expiry of such a deadline. We emphasize that a VAT refund is not the result of error or oversight on the part of the taxpayer, but a key mechanism for the functioning of this form of taxation. All delays in VAT refunds directly impact the liquidity of companies that are required to make payments that include VAT to their suppliers by statutory deadlines, and on which depends the ability of their suppliers to regularly settle their tax liabilities.

FIC RECOMMENDATIONS

- The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks treating 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.

- VAT Law amendments should specify that, in the case of financial leasing, the base for VAT assessment should not include interest (interest should be VAT exempt), in the manner in which this has been applied in the Member States of the European Union.

- 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.

- 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 a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or credit note. This practice also corresponds to a customary business practice. Insisting on exclusively one approach represents an imposition of additional costs, whereby from the VAT collection point of view, there is no reason why both approaches cannot be applicable.

- The provision of the VAT Law dealing with the 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 (including reorganization in line with the bankruptcy legislation) were opened, or in the event of an out-of-court settlement.

- The rulebook regulating the 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 rules on VAT refunds to foreign entities need to be harmonized with the latest amendments on VAT registration of foreign entities, as well as with European Union rules with respect to VAT refunds to entities outside of the European Union. Namely, it is necessary to prescribe that an entity performing supply for which VAT registration is not mandatory should be entitled to a VAT refund, where such supply is taxable in Serbia and where its recipient has the obligation of VAT calculation, as the tax debtor. The Ministry of Finance and the Tax Administration should take the initiative in establishing reciprocity with all European countries with respect to VAT refunds for all foreign entities, and the Ministry of Finance should clarify required treatment for foreign entities from countries in which there is no legislative requirement of reciprocity for VAT refunds.

- 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 a change in status, when the supply of goods and services in such is subject to VAT.

- It should be specified that, in the case of return of goods, regardless of the expiration date, the supplier of goods may issue a credit note or the purchaser may issue an invoice, depending on their mutual agreement. This approach cannot jeopardize collection of VAT because, regardless of who issues the credit note, the same VAT rate is applicable.

- It is necessary to specify that in the case of supplies in the field of construction, parties may choose taxation in line with the general principle – that is, VAT charged by supplier. Also, in the case when a supplier calculated and paid VAT, and the tax authority considers that the recipient should have calculated VAT, as the tax debtor, the recommendation is for the supplier's invoice to be considered the correct invoice, and that administrative proceedings should not be initiated against either the supplier or the recipient. Namely, in the Member States of the EU, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment, where the subject, special rules apply when the supply is performed by a construction subcontractor, but not when the supply is performed by the main contractor to the investor. We emphasize that the biggest problem in practice occurs precisely with respect to supplies between main contractors and investors, given that in this case the investor can be an entity that purchases services of the current maintenance of facilities and similar services (i.e. the investor does not have to be active in construction). Bearing in mind this motive for designating the recipient as tax debtor, there is no reason to prevent the supplier from assessing and paying VAT, or to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor.

- In order to decrease administrative burden, correcting an error made in a VAT return for the previous tax period through a VAT return for the current tax period (without the submission of an amended VAT return) within a certain time period (e.g. within 6 months from the submission of the VAT return in which an error has been made, which would be separately disclosed in the VAT return for the current tax period) should be enabled, with payment of penalty interest.

- With respect to the transfer of a portion of assets, the by-law should be harmonized with the VAT Law, and with comparative provisions that can be found in EU member state regulations, and which are based on the practice of the European Union's Court of Justice, whereby the requirement would be deleted for the transferor to be prevented from performing the specified commercial activity at the moment of transfer, in order for the transfer of assets to be a VAT exempt transaction. Also, the by-law should specify that the transfer of a portion of assets should constitute a transfer of a set of tangible and intangible assets (and not only tangible assets, which is often the case in practice), which would accomplish harmonization with the practices and regulations that are applicable in the European Union.

- With respect to VAT records and the preparation of the summary of VAT calculation, which will be effective starting on 1 January 2018, we believe that it is necessary to reconsider the adopted Rulebook and requirements that relate to the keeping of records, above all in terms of effectiveness of categorization of transactions, as has been the case so far, and reduction of the number of categories in which invoices are recorded. We believe that it is completely unfair for a tax return to be considered not to have been filed if unaccompanied by a summary calculation, especially in a situation in which the taxpayer filed the tax return and paid the calculated VAT in a timely fashion.

- The processing of requests for refunds reported in VAT returns should be harmonized with the VAT Law and the Law on Tax Procedure and Tax Administration, which means that the fact that a tax audit has been initiated or because there is an outstanding debt on other grounds cannot delay a VAT refund. The Ministry of Finance needs to issue a binding explanation in line with the VAT Law and the Law on Tax Procedure and Tax Administration, and for the Tax Administration to act in line with it.

D. PROPERTY TAX 1.13

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The provisions of Article 7 of the Law should be harmonized with the provisions of the Law on Accounting.	2015			√
Provisions of the Property Tax Law which determine the method of the calculation of property tax base using the zoning method should be revised in order to avoid the negative consequences of the current regulations in the next fiscal years.	2014			√
It is recommended that the implementation of corrective factors in the determination of the market value of real estate be advised.	2014			√
It is advisable to institute a greater level of monitoring in the zoning of each municipality (be it at the level of the ministry or through a separate body) and organize the training of personnel in order to avoid situations in which neighbouring properties that are territorially spread out in different municipalities are taxed differently.	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is recommended that local tax authorities be obliged, by the Law, to publish data on all real estate sales per zone, as well as data used for the calculation of average market prices.	2015		√	
Prescribe in the Law the method of calculation of the property tax base of real estate classified as held for sale, or inventories, according to IFRS 5 and IAS 2, respectively. It is recommended that the property tax base of such real estate be calculated based on their fair value as assessed by a certified appraiser on the last day of the year preceding the year for which the property tax is calculated, regardless of whether the fair value is stated in the business records of the taxpayer or not. In case the fair value of real estate is not assessed by a certified appraiser, the tax base would be calculated using the average prices published by the local tax authorities.	2015			√
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 tax authorities.	2015			√
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.	2014			√

CURRENT SITUATION

Property tax is governed by the Law on Property Taxes (RS Official Gazette No 26/2001; FYR Official Gazette of No 42/2002 – decision CC; and RS Official Gazette 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 has been amended several times, with significant changes adopted in 2013. These changes refer to the method of determining a real estate property's tax base and the introduction of the property tax self-assessment principle. Namely, 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 that use the fair value method according to the International Accounting Standards (hereinafter: the IAS), the 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 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.

Introducing a concept of the market value as the property tax base was primarily focused on resolving the issues in the determination of the tax base for small taxpayers and natural persons, while at the same time the specifics of accounting records and valuation of property for medium and large legal entities were neglected.

The last amendments to the Law were in 2014, which referred to the elimination of misdemeanours for bodies performing the verification of signatures of the contractual parties to an agreement, something now governed by the Law on the Transfer of Property (RS Official Gazette No 93/2014, 121/2014, and 6/2015).

POSITIVE DEVELOPMENTS

Compared to the previous year, there have been no significant improvements in the area. Still, certain progress was noticed with some major municipalities such as Belgrade, Novi Sad, Niš, and Kraljevo in determination of an average price per square meter of construction land in 2017, given that no significant variation in prices was noticed with said municipalities in comparison to 2016.

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 that in mind, it should be noted that the Law on Accounting (RS Official Gazette 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 enterprises are obliged to apply and medium-sized enterprises may opt to apply IFRS for small and medium-sized enterprises (hereafter: IFRS for SME), as well as that micro businesses may opt for 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. Municipalities are granted discretionary authorization in the determination of zones in the process of ascertaining the market value of real estate.

Zoning is not mutually co-ordinated between municipalities. Specifically, each local municipality enacts a decision on zoning for their territory on the basis of utility development in the area but the procedure of utility development estimation is not transparent enough. There are 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, or zones were being changed within the municipality, although there was no change in the level 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 published by certain local tax authorities for the purpose of determining the property tax base for 2014 were 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 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 aforementioned. This trend of increasing prices of construction land continued in 2016, with the exception of some local governments (such as Belgrade and Kragujevac) where, comparing to 2015, the price of construction land has been reduced to a certain extent, but only in the most developed zone. No significant variations in price per square meter of construction land in 2017 were noticed compared to 2016 in major local governments such as Belgrade, Novi Sad, Niš, and Kraljevo. Big fluctuations in the published prices of construction land within a short period of time indicate that the sample, based on which local tax authorities calculated 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 a result of the aforementioned issues, 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 aforementioned 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 that previously described. As a result of the measurement of real estate according to IFRS 5 and IAS 2, they can be carried at fair value in one tax period, and at a value which is not equal to the fair value in the other. The property tax base changes accordingly.

The tax authorities have been given exclusive rights regarding the determination of the tax base of property transfer tax. Internally determined market prices unknown to taxpayers are being used in practice for the purposes of the determination of a tax base while the contractually determined price is often rejected without a clear explanation as to why such a price was not found to correspond to market price.

In the case where the calculation of the property tax base is based on usable property surface and corresponding price per square meter, it often happens in practice that the technical documentation and the cadastral books data on a specific property does not comply with the data on usable property surface declared by the taxpayer in the property tax return. The Law does not specify methodology to be used by the taxpayers in determination of the usable property surface for the purpose of the property tax base determination (e.g. devices to be used, the method of measurement, if the measurement should be carried out by a civil construction expert). Measurement of the usable property surface assumes great administrative efforts for the taxpayers given the non-existence of clear guidelines in the Law regarding this matter.

On the other hand, when a property tax base is equal to the fair value of the property declared by the taxpayer in accordance to the relevant IAS/IFRS the tax authorities fail to comprehend the way of determination of the property fair value in practice (e.g. in case where the fair value of the property varies each year). It is often the case in practice that during an audit, the tax authorities require from the taxpayer to present a valuation of an independent appraiser to ensure that fair value is properly declared.

No less attention should be paid to time and administration required in preparation of a single property tax return. Namely, the tax return PPI – 1 includes annexes and sub-annexes to be submitted for each property separately, but all of them being part of one tax return. This means that, in practice, a tax return may contain tens and even hundreds of related annexes/sub-annexes.

Finally, a special problem arises from the fact that such a complex method for determining the tax base and the property tax liability does not fulfil its primary purpose – to provide to the tax authorities an easier and simpler way of an office audit of the calculation, bearing in mind that the property tax is determined by way of self – taxation. The fact is that tax authorities, during an audit of the property tax calculation, often cannot confirm the calculation made by the taxpayer because the information stated in the return may not necessarily correspond to the information available to the tax authorities in the case of an office audit (e.g. land registry). In addition, in order to perform an office audit of the submitted property tax return, the tax authorities enter the data declared in the return manually in the computer software first which significantly slows down the process of debiting the taxpayers, as well as the audit process.

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 calculation of the property tax base using the zoning method should be revised in order to avoid the negative consequences of the current regulations in the next fiscal years. It is necessary to establish solid criteria on which the utility development of the zone will be determined to avoid legal uncertainty of the taxpayers.
- In particular, it is recommended that the implementation of corrective factors in the determination of the market value of real estate be advised. Corrective measures should be conditioned with the purpose and the surface of the object, as well as the quality and age of the property. It is advisable to institute a greater level of monitoring in the zoning of each municipality (be it at the level of the ministry or through a separate body) and organize the 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 that local tax authorities be obliged, by the Law, to publish data on all real estate sales per zone, as well as data used for the calculation of average market prices.
- Prescribe in the Law the method of calculation of the property tax base of real estate classified as held for sale, or inventories, according to IFRS 5 and IAS 2, respectively. It is recommended that the property tax base of such real estate be calculated based on the fair value as assessed by a certified appraiser on the last day of the year preceding the year for which the property tax is calculated, regardless of whether the fair value is stated in the business records of the taxpayer or not. In case the fair value of real estate is not assessed by a certified appraiser, the tax base would be calculated 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 the work of tax authorities.
- The usable area of the property should be equal to the area declared in the land cadastre (where the property has been registered in cadastral books), which will then be adjusted for certain parts of the property. Such an approach would relax the process of the tax determination and audit.
- To enhance understanding of the tax authorities in the area of the accounting standards in case when the fair value of the property is being used as the property tax base. In addition, to insist on greater consistency of the tax authorities in the application of the Law and rulings issued by the Ministry of Finance in case of taxation of specific property components such as storage and depot facilities.
- It is advisable to simplify the form of the property tax return and accompanying documents in order to reduce the number of items declared in the return, considering the fact that such a reporting requires additional administrative efforts by the taxpayers and also adds no value to the tax authorities in case of an office audit. To introduce the electronic submission of the property tax return in order to speed up the process of the tax return filing as well as the process of auditing of the tax returns. It is recommended that the filing of the tax returns for all local tax governments is facilitated via a single portal; i.e. to introduce a unified software solution in all local 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 1.20

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 eliminate legal uncertainty with regard to 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; i.e. oblige the Tax Administration to provide answers to questions. Amending the PTA Law in a way that the opinions of the Tax Administration sent by email are binding for the Tax Administration.	2014			√
Amending Art147, para 1 of the PTA Law, as to read that an appeal suspends the tax collection;	2016			√
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			√
Defining the responsibility of persons in the Tax Administration, who do not comply in their work with the laws, i.e. decisions of the second instance authorities and courts.	2016			√
Amending the PTA Law to allow taxpayers to file the amended tax returns an unlimited number of times.	2014			√
Abolishing the provision of the PTA Law which prohibits the Business Registers Agency from erasing a taxpayer from the register, registering status changes or amending 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 statutory deadline for tax audit duration, and presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the deadline, both for the Tax Administration and the Ministry of Finance.	2011			√
Provisions that regulate preventive tax audits and advisory activities of tax inspectors should be introduced into the PTA Law in order to align the provisions of PTA Law with the LIS.	2016		√	
The authority to decide upon the appeals against the first instance decisions of the Tax Administration should be transferred to the Ministry of Finance to provide more certainty to taxpayers.	2016	√		
Special tax departments should be established within the Administrative Court with judges exposed to more training to gain better understanding of tax issues.	2011			√
Before full transition to electronic filing of tax returns, enable taxpayers who wish to file tax returns electronically to do so.	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Ministry of Finance should issue a unified rulebook for every tax, and instructions, manuals and similar acts adopted in accordance with the Act on Tax Procedure and Tax Administration, which concern the application of tax laws, should be made availabe publicly.	2016			√
The Serbian Ministry of Finance and the Tax Administration should intensify their activities in implementing the FATCA agreement and cooperate more closely with Serbian financial institutions in this process.	2016			√
As a general remark, the laws should be adopted and/or amended in the regular procedure and not in a urgent procedure, as to enable the very important public debate.	2013			√

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 December 2016, (PTA Law);
- The Law on General Administrative Procedure, RS Official Gazette No 33/97, last amended in May 2010, which was applicable up to June 2017; and RS Official Gazette No 18/2016, applicable from June 2017 (GAP Law);
- The Law on Administrative Disputes, RS Official Gazette No 111/2009, (AD Law);
- The Law on Inspection Supervision, RS Official Gazette No 36/2015, (IS 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. 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, while the rules of the IS Law further specify the activities of the Tax Administration regarding inspections. 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, i.e. beginning 1 July 2017 against second-instance decisions of the Ministry of Finance).

The PTA Law was amended once since the last issue of the White Book at the end of 2016. The most important amendment by far relates to the transfer of competences for second-instance decisions to the Ministry of Finance. Other amendments include: clarification of the activities of the Tax Administration regarding the withdrawal/temporary reinstatement of TINs and regarding the procedure applicable to secondary tax liabilities; introduction of misdemeanour penalties for non-residents performing supplies in Serbia that omit to appoint a tax representative. Finally, the law explicitly stipulates that the tax procedure is to be performed in accordance with the provisions of the law applicable to inspections.

The Ministry of Finance has also issued/amended several rulebooks related to the PTA.

POSITIVE DEVELOPMENTS

The transfer of competence for second-instance decisions from the Tax Administration to the Ministry of Finance should generally represent a significant improvement and should improve the quality of the proceedings, both first and second-instance. Since this provision is only applicable as of July 2017, the exact effects are yet to be determined.

Additionally, by introducing specific misdemeanour penalties for non-residents that omit to appoint a tax representative, legal uncertainty regarding consequences of such omissions is removed, especially when bearing in mind the relevant changes of the Value Added Tax Law.

Finally, by explicitly stating that the tax procedure is to be performed in accordance with the provisions of the law applicable to inspections, the first, but necessary, step was made towards the harmonization of the PTA Law with the IS Law.

REMAINING ISSUES

- The existing regulatory framework governing tax procedure still does not provide sufficient protection to taxpayers against the discretionary decisions of tax authorities.
- 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.
- More often than not, tax inspectors do not apply the substance over form principle in good faith. This fact regularly leads to highly unfavourable decisions for taxpayers, which are practically impossible to change.
- Tax authorities routinely fail to comply with the deadlines for the issuance of decisions on appeals filed by taxpayers.
- The existing rules regarding delayed execution of tax administrative acts via requests submitted to the second-instance authority do not provide for clear conditions for delaying execution, providing the second-instance authority with a very broad-set discretionary right.
- Rules that relate to the possibility of a tax refund in the event of existence of matured tax liabilities in another respect are unclear and do not take into account whether such tax liabilities are deferred or disputed (e.g. an appeal of tax assessment issued by the Tax Authority). As a result of the foregoing, taxpayers are in a situation wherein uncollectible tax liabilities result in a complete discontinuation of the tax refund.

  When the tax refund relates to a refund declared in the VAT return, regulations do not specify whether a refund is to be discontinued due to initiated tax audit or if there is an outstanding debt on other grounds. A VAT refund is not the result of error or oversight on the part of the taxpayer, but a fundamental mechanism for the functioning of this form of taxation. It is precisely because of this that the delay in a VAT refund due to an initiated tax audit or other reason seriously jeopardizes the liquidity of businesses and their ability to continue to settle their obligations regularly towards the state and suppliers.
- The statutory 30-day deadline for issuing binding opinions upon request of taxpayers is usually not observed, so in practice taxpayers wait on said opinions for long periods of time, sometimes more than a year. Along with frequent changes in tax laws and an insufficiently clear legal framework, this issue contributes to legal uncertainty and the 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, as well as during the period after receiving notification that a taxpayer's TIN was temporarily withdrawn, and until such a TIN is reinstated, 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 further aligned with provisions of the IS Law. The IS Law 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.
- 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. the taxpayer still has to settle the previously disputed tax, even if he eventually does win the case, the litigation and legal costs, inflation

and the fluctuations of the foreign exchange rate usually result in taxpayers receiving a 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 has not yet signed 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 eliminate legal uncertainty with regard to 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; i.e. oblige the Tax Administration to provide answers to questions. Amending the PTA Law in a way that the opinions of the Tax Administration sent by email are binding for the Tax Administration.
- Amending Article 147, para 1 of the PTA Law, so as to read that an appeal suspends the tax collection.
- Introducing provisions via a rulebook or similar by-law, providing for clear conditions for the deferral of the payment of the tax liabilities.
- Amendments to the LTPTA are required to clearly define procedures for acting on requests for refunds when the payment of a tax liability is deferred or disputed.
- When the refund is declared in the VAT return, it is necessary to harmonize procedure with the VAT Law and the LTPTA, which means that the fact that a tax audit has been initiated or because there is an outstanding debt on other grounds cannot delay a VAT refund. The Ministry of Finance needs to issue a binding explanation in line with the VAT Law and the LTPTA, and for the Tax Authority to act in line with it.
- 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.
- Defining the responsibility of persons in the Tax Administration who do not comply with the laws in their work , i.e. decisions of the second instance authorities and courts.
- Amending the PTA Law to allow taxpayers to file amended tax returns an unlimited number of times.
- Abolishing the provision of the PTA Law which prohibits the Business Registers Agency from erasing a taxpayer from the register, registering status changes, or amending 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 statutory deadline for tax audit duration, and presumption of a positive decision in the case

of a failure by the Tax Administration to issue its decision within the deadline, both for the Tax Administration and the Ministry of Finance.

- Provisions that regulate preventive tax audits and advisory activities of tax inspectors should be introduced into the PTA Law in order to align the provisions of PTA Law with the IS Law.
- Special tax departments should be established within the Administrative Court with judges exposed to more training to gain better understanding of tax issues.
- Before a full transition to the electronic filing of tax returns, enable taxpayers who wish to file tax returns electronically to already do so.
- The Ministry of Finance should issue a unified rulebook for all taxes, while instructions, manuals, and similar acts adopted in accordance with the Act on Tax Procedure and Tax Administration, concerning the application of tax laws, should be made available publicly.
- The Serbian Ministry of Finance and the Tax Administration should intensify their activities in implementing the FATCA agreement and cooperate more closely with Serbian financial institutions in this process.
- As a general remark, the laws should be adopted and/or amended in the regular procedure and not in an urgent procedure, as to enable the very important public debate.

F. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM 1.29

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Reforms need to be continued by ensuring a consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues.	2013			√
The FIC holds that the draft Law on Fees for the 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.	2013			√
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.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adoption of the Law on Fees for the Use of Public Goods and the Law on the Financing of Local Governments.	2014			√
Apply the business signage tax ceiling to the obligation of one taxpayer, regardless of the number of facilities with displayed business signs that they have in the territory of any one municipality or whether they have more business facilities on other municipality territories in the territory of Serbia (banks, insurance companies, telecom companies, etc.)	2014			√
The FIC believes that any new tax burden, or increase to the existing one, 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			√
The FIC is of the opinion that competence for resolving second-instance proceedings should be assigned to the Ministry of Finance. Also, the specialization of the Administrative Court for tax matters, or at least the establishment of a special department within the Administrative Court with sole jurisdiction over tax disputes, would be of great benefit.	2016	√		

CURRENT SITUATION

The World Bank's Doing Business 2017 report ranks Serbia 47th out of 190 economies. In the area of tax payment, Serbia is ranked 78th, which is an improvement compared to Doing Business 2016, in which Serbia was ranked 143rd. Tax payment and dealing with electricity access, are still 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) the total tax rate as a percentage of profit.

Progress in the area of tax payment has been made mainly due to the introduction of an electronic system for filing tax returns and paying value-added tax and social security contributions, as well as due to abolishing the construction land usage fee. The FIC is of the view that the tax system is suffering significant negative reviews due to, amongst other things, the existence of a number of parafiscal levies in parallel with existing taxes 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 charges actually impose an obligation which does not provide (at all or in adequate proportion) a specific service, right, or good in return. An additional problem is that the provisions governing this area are not unified, but rather are dispersed throughout various laws and secondary pieces of legislation governing different legal areas.

The authorities recognize this fact, which is why parafiscal reform was carried out in late 2012, abolishing 138 parafiscal levies. The reform also envisaged the adoption of the Law on Fees for the Use of Public Resources. In fact, the Ministry of Finance prepared a draft law which was the subject of a public debate 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, nor to abolish or review particular parafiscal levies, nor to seek solutions to curb the practice of uncontrolled parafiscal levying. The last initiative of the Ministry of Finance was the preparation of the draft of the new Law on the Financing of Local Governments.

In addition, on 1 January 2017, provisions of the Commercial Chambers Law entered into force, according to which every company is to become a member of the Serbian Chamber of Commerce and is requested to pay membership fees to the Serbian Chamber of Commerce, which adds to the problem of parafiscal charges.

POSITIVE DEVELOPMENTS

The draft of the new Law on the Financing of Local Governments prepared by the Ministry of Finance proposes to decrease the number of non-tax and parafiscal levies. How-

ever, the next steps in this field must be the adoption of this law and its adequate implementation.

In 2016 the Law on Tax Procedure and Tax Administration was amended so that the second instance authority in charge of appeals against the decisions of the Tax Administration will be the Ministry of Finance. This provision is effective as of 1 July 2017. The same provision applies to all parafiscal charges collected by authorities which apply the Law on Tax Procedure and Tax Administration; i.e. the Ministry of Finance shall decide in the second instance about appeals against a range of parafiscal charges.

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 yet been abolished.

According to NALED and USAID, businesses in 2015 were paying 384 non-tax levies, of which 247 were parafiscal levies, while in 2016, in accordance with data available in the registry of non-tax and parafiscal levies of NALED, this number was increased to 403.

Bearing 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 displaying business signs (business signage tax). Business signage tax costs for remaining taxpayers has significantly increased since the regime for the payment of the business signage tax changed. The overall liability of a business entity for business signage reached significant amounts, inter alia, due to diverse practices amongst local governments.

Furthermore, the FIC has warned of the growing issue of the unequal implementation of tax regulations and inconsistency of tax laws and by-laws (e.g. the Tax Administration does not recognize documented operating expenses incurred in relation to a business activity not listed in the Articles of Association or other relevant acts of a company, despite the fact that such an obligation is not envisaged under the Company Law and that the respective practice is not in line with tax regulations). Additionally, issues also occur where tax authorities act in accordance with mandatory acts pertaining to the implementation of tax regulations (explanations, opinions, instructions, guidelines, etc.), issued by the minister responsible for finance or other body authorized by the minister. In relation to the aforementioned, it is unclear whether the opinions issued by Fiscal System Department pertaining to the implementation of international accounting standards, which have an influence on the interpretation of tax regulations, are mandatory.

One of the remarks in the World Bank's Doing Business 2017[1] report was that the amount of property tax and eco tax was increased in Serbia in 2016. Eco tax is to be paid for: (i) the use of residential and business buildings, apartments, and business premises for habitation or conducting business activity, including the use of land in order to conduct business activity; (ii) conducting business activity that influences the environment; (iii) transport of oil and oil derivatives, as well as raw materials and products, semi-finished products, and chemical and other dangerous substances from the industry or for the industry in the territory of a local government with the status of endangered environment in an area of importance to the Republic of Serbia. The Law on the Protection of the Environment delegates to local governments the right to determine the amount of eco tax in accordance with the Rulebook on Criteria for Determining and the Maximum Allowed Amount of Eco Tax.

The FIC reiterates that the introduction of new taxes and duties, or increasing existing ones, 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.

1 http://www.doingbusiness.org/~/media/wbg/doingbusiness/documents/profiles/country/srb.pdf

FIC RECOMMENDATIONS

- The FIC holds that reforms need to be continued by ensuring a 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 the Use of Public Resources should be completed with a comprehensive analysis and alignment with solutions and tendencies of sectoral 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 the Use of Public Goods and the Law on the Financing of Local Governments.
- Apply the business signage tax ceiling to the obligation of a single taxpayer, regardless of the number of facilities with displayed business signs that they have in the territory of any one municipality or whether they have more business facilities in other municipality territories in the territory of Serbia (banks, insurance companies, telecom companies, etc.)
- The FIC believes that any new tax burden, or increase to the existing one, 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.
- The FIC is of the opinion that the Administrative Court should be specialised for tax matters, or that at least a special department within the Administrative Court with sole jurisdiction over tax disputes should be established, to the great benefit of all parties.
- To abolish obligatory membership in the Serbian Chamber of Commerce and thus obligation of paying a membership fee as parafiscal charge.

ENVIRONMENTAL REGULATIONS

1.78

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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		√	
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 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, thereby significantly reducing quantities deposited in landfills.	2014		√	
Stimulate investments into treatment of animal waste and ensure adequate solutions for such waste.	2015			√
Stimulate local communities to provide conditions for the collection and selection of communal waste from households.	2016		√	
Permanent education of the population in the field of waste selection and environmental protection.	2015		√	
Continue developing local and regional waste management plans.	2009		√	
Continue introducing by-laws in order to secure a proper implementation of changes to regulations in the field of environmental protection.	2016			√

CURRENT SITUATION

Compared to 2016, this year represents the continuation of the implementation of activities in the field of environmental protection. The procedure of the announced amendments for the legal and by-law documents in this field is not yet complete, although amendments and changes to certain laws are being processed and waiting for adoption by the Parliament of the Republic of Serbia.

The Ministry of Environmental Protection announced the operation of a Green Fund of the Republic of Serbia as a budget financed fund, with the purpose of recording resources intended to finance the preparation of implementation and development of programs, projects, and other activities in the scope of preservation, sustainable use, protection, and improvement of the environment, as well as a better and more efficient payment of ecological fees. Actual activities and operation of this Fund have not been presented yet, and one of the reasons is also a lack of experts in the relevant ministry and local community system, especially for areas that are highly demanding, including engineers and management in scope of water and waste.

In particular, the Ministry of Environmental Protection has been re-established by changes to the Law on Ministries, thus emphasizing the importance of this area and investment in further improvement of the environment.

Packaging waste is collected pursuant to the Waste Management Law and the Law on Packaging and Packaging Waste. However, there is no system-wide solution for the disposal of pesticide packaging waste in Serbia.

The Rulebook on Methods and Procedures for Scrap 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 scrap tires over 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 current incentives for the re-use of waste as an 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 incentives for the different types of waste treatment has led to disruption in the waste oil and waste tire market, depriving operators licensed for thermal treatment of waste oil and waste tires for energy purposes of permanent and stable sources of alternative fuels.

The Minister of Agriculture and Environmental Protection stated that new regulation is being planned in order to define financing of the recycling industry, according to the principle of predictability and clear control criteria.

The problem of hazardous waste treatment and permanent disposal is still present. New facilities for hazardous waste treatment are necessary, being that an EU directive stipulates that, starting from 2020, it will no longer be possible to export semi-treated hazardous materials. This means that Serbia will have to build facilities within the next three years for the full treatment of hazardous waste. In addition, it is necessary to encourage and develop the field of use of alternative fuels as an energy source for companies that have facilities for the preparation and use of these materials and integrated permit for the operation of these plants. In this manner, synergy would be achieved and the problem of permanent disposal of waste will be solved while reducing the consumption of non-renewable energy sources in parallel, and the companies that use this type of fuel would provide better competitiveness in the market.

The growing problems created by urban waste landfill (fire, emissions, etc.) require a systematic resolution of this field and development of public-private partnerships where the cities, in cooperation with world-renowned companies in this field, would create conditions to invest through this partnership in solving problems at landfills, permanent waste management, and construction of recycling centres.

It is necessary to continue with the campaign and education of citizens in terms of waste sorting at the household, as well as with creating conditions by local governments for the disposal of specific types of waste (municipal, solid waste, etc.), which would directly influence the better management of waste in the subsequent processes of permanent disposal.

POSITIVE DEVELOPMENTS

The founding of the Green Fund of the Republic of Serbia, as one of the key mechanisms in financing programs and projects in the area of environmental protection, has enabled the financing of projects and subsidies aimed at environmental protection, while significant investments into large infrastructure projects in the field of waste management and waste water management infrastructure have also been announced. Procedures to forge public-private partnerships for communal waste management and its permanent disposal have commenced as well.

Additionally, legal conditions for sorting household communal waste and the obligations of local communities to create conditions for the collection and separation of such waste have been created.

The Twinning Project, "Improvement of a Hazardous Waste Management System in the Republic of Serbia – An Integrated Plan on Hazardous Waste Management," that had the purpose of supporting Serbia in its fulfilling standards in the scope of environmental protection via institutional construction and improvement of ecological infrastructure, has been completed. It is expected that the outcome of this project shall lead to better waste management in Serbia, especially hazardous waste. This will result in a more effective use and re-use of valuable waste components, better environmental protection, and protection of people from hazardous substances, leading to an overall improvement of the quality of living of Serbian citizens. Project results will also help Serbia better prepare for the Chapter 27 negotiation process for accession to the European Union, which refers to the environment and climate change.

On 29 May 2017, the Parliament of the Republic of Serbia adopted the Paris Agreement on fighting climate change. Thus, Serbia became one of the signatory countries that ratified the Paris Agreement and committed itself to contributing to the decrease of greenhouse gas emissions on a global level that will limit the temperature increase below 2°C globally.

Over the past several years, Serbia introduced state-of-the-art global technology for the recycling of specific waste flow, and so has a leading position in the region. Indeed, it is the only country in the Balkans that is using technology used in Vienna and Athens.

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.

Even with forming the Green Fund, the system of incentives for investing in environmental protection is still underdeveloped (clean production, pollution reduction, energy efficiency, waste reduction, environmental investments, recycling, etc.).

No thermal treatment of hazardous waste is being done and such waste is not being collected for reasons including a lack of permits and a lack of appropriate preparation lines for this type of waste.

A lack of adequate means for the treatment and proper disposal of animal waste is a huge problem throughout Serbia.

A lack of trained experts in the field of environmental protection.

New facilities for hazardous waste treatment are required.

FIC RECOMMENDATIONS

- 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 the thermal treatment of waste to solve the issue of permanent waste disposal, thereby significantly reducing quantities deposited in landfills.
- Stimulate investments into the treatment of animal waste and ensure adequate solutions for such waste.
- Stimulate local communities to provide conditions for the collection and selection of communal waste from households.
- Permanent education of the population in the field of waste selection and environmental protection.
- Continue developing local and regional waste management plans.
- Continue introducing laws and by-laws to secure a proper implementation of changes to regulations in the field of environmental protection.

top

SECTOR SPECIFIC

top

FOOD AND AGRICULTURE

1.21

A. FOOD SAFETY

1. FOOD SAFETY LAW 1.36

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Establish the Expert Council for Risk Assessment in the Field of Food Safety in accordance with Article 23 of the Law.	2015	√		
Base food safety strategy on risk analysis. Classify importers based on risk analysis.	2015			√
Enable the work of all departments of the National Reference Laboratory and create the conditions under which the Laboratory can carry out all its statutory activities.	2015			√
Facilitate the acceptance of certificates of foreign accredited laboratories.	2015			√
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 those parts which create the confusion.	2014			√
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?).	2014			√
Clearly define the term "special control", mentioned in Article 70, and define whether a special control differs from the already defined "official control".	2014			√
Clearly define the responsibilities under Article 12.	2014			√
Article 30 should clearly define what is meant by proof of food safety (analysis in accredited laboratories) and frequency of analyses.	2014			√
Fully harmonize the Rulebook on Food Declaration, Labelling and Advertising with EU Regulation 1169/2013.	2015	√		
Pass the Rulebook on Criteria for General Food Safety at the Level of Food Retailers.	2014			√

CURRENT SITUATION

The Food Safety Law was adopted in 2009, with jurisdiction in the area of inspection being split between the two relevant ministries: the Ministry of Agriculture, whose phytosanitary, veterinary, and agricultural inspectorates are responsible for the official control 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 new types of 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: 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 would remain responsible for control of foodstuffs of animal origin. Furthermore, it was announced that the Directorate of the National Ref-

erence Laboratories would not be a part of the Ministry of Agriculture, but rather an independent authority in accordance with EU practices. However, these announced amendments to the Law have yet to be passed. In May 2015, the same ministry announced the finalization of the new Food Safety Law, scheduled to enter Parliament by the end of the year at the latest. The Ministry said changes would only be made to those provisions that have yet to be fully harmonized with EU legislation, the end effect of which would further contribute to the improvement of food safety monitoring in Serbia.

Thereafter, in the period from 15 October to 3 November 2015, a public debate on the Draft Law on Amendments to the Law on Food Safety was conducted. It was planned that this Law would be amended in December 2016, but this has been postponed. In April 2017, the same Ministry announced that by the end of 2017, amendments to the Food Safety Law would be adopted, while preparations for work on the drafting of a new Food Safety Law will be launched in 2018.

However, as of the end of June 2017, these announced changes were not passed.

Although the Food Safety Law was adopted in 2009, it has yet to be fully implemented. 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 NRL, envisaged by the Law, include activities in the fields of food safety, animal health, plant health, agricultural and decorative plant seedlings, residues, milk, and the Plant Gene Bank.

The NRL opened on 9 March 2015, with work divided into the following sections: the Phytosanitary Laboratory; the Laboratory for Food and Animal Feed and Milk Quality Testing; the Laboratory for Physical and Chemical Testing of Food and Testing of Veterinary Drug Residues, Pesticides, and Other Harmful Materials in Food and Animal Feed; the Seed Laboratory with Plant Gene Bank; and the Department of Organic Production. However, though 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). This means, among other things, that the required conditions for risk analysis, envisaged under the Law, have yet to be met. The NRL's Plant Gene Bank started its activity, and the Ministry of Agriculture announced that it will fully equip the Laboratory for Physical and Chemical Testing and the Laboratory for Milk by the beginning of next year, something hugely important for assuring food and milk safety and quality. Still, despite these announcements by the relevant institutions, the pace at which the Law is currently being implemented is not satisfactory. The causes preventing the National Laboratory from carrying out all its statutory duties must be identified and eliminated. Thus, the situation here is exactly the same as it was; i.e. at the end of May 2017, announced changes were yet to be in force.

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, in order 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 food safety testing, which is based on testing finished products, the 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 and overall costs, making imported products less competitive than domestic products. Risk analysis would facilitate the classification of food business operators into low-risk and high-risk, which, on the one hand, would 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, whilst, on the other hand, the same would enable the allocation of inspection resources to the testing of risky products. Risk analysis would reduce the workload of the inspectorates and relieve pressure on their limited resources. Furthermore, Article 38 of the Law and Article 8 of the Rulebook on the Manner of the Establishment and Organization of a Rapid Alert System for Food and Feed stipulate that the Expert Council must also participate in the rapid alert system. Specifically, the Law stipulates that the line minister

for public health affairs issues a licence for the placement of new food products on the market, of genetically modified food, and genetically modified animal feed on the basis of the prior opinion of the Expert Council. These are all additional and pressing reasons for the immediate formation of the Council and for bringing the activity of the National Reference Laboratory to its full capacity.

Another important issue here 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 yet to begin.

A measure that could additionally contribute to the improvement of the general situation in the field of food safety would be the formation of a Food Safety Agency, the equivalent of which exists 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), itself responsible for the exchange of important information on controlling the content and quality of food. Such an agency is not envisaged under Serbian legislation.

A working group was formed within the Ministry of Agriculture in April 2015 with the aim of ensuring the compliance of rules on the maximum allowable residues of pesticides in food and feed and on food and feed for which the maximum allowable amounts of residues of plant protection are determined, (Annex 4 – maximum permitted levels of certain contaminants in food and feed of plant and animal origin), with current EC Regulation No 1881/2006. The working group, however, has determined that these requested changes and harmonization with the aforementioned EU regulation is not necessary, and so producers, importers, and exporters of food in the Republic of Serbia still face problems in business with products for which there are still different test parameters in place. And in 2017, the most common problem when importing raw materials for foodstuffs is the permissible limit for metal residues.

POSITIVE DEVELOPMENTS

During 2017, there has been some improvement in the issue of risk assessment in the context of food safety. On 28 April 2017 the Expert Council for Risk Assessment in the Field of Food Safety was formed to, among other things, prepare expert and scientific opinions about risks related to food and feed for ministries, other public administration bodies, food business operators, and consumers.

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 prescribed requirements. If a sample conforms to prescribed requirements, the costs of laboratory analyses and super-analyses are covered by 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 does 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 such analysis is unfavourable, unless otherwise prescribed by the Law. Revenues generated by the state from this fee are kept in a separate account in the national budget. The amount of the fee has been set by the Government.

However, in practice, it is only importers who 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 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 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 one 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 authorities.

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 frequency of analyses specified.

In addition, there are several inconsistencies with respect to the relevant by-laws.

At the beginning of 2017, 8 March 2017 to be exact, the Rulebook for labelling and advertising of food was published (RS Official Gazette No 19/2017), entering into force eight days after publication, applicable from 15 June 2018. There are different attitudes related to its implementation because it is not clearly defined whether it is necessary to harmonize and alter all declarations by 15 June 2018, and whether products declared in accordance with the Rulebook for the declaration, labelling, and advertising of food (RS Official Gazette No 19/2017). can be marketed before 15 June 2018 or only after that date (For more information, see "Quality control and labelling of 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 (i.e. hygienic and sanitary prerequisites, preparation of premises, and sampling units).

FIC RECOMMENDATIONS

- Fully harmonize the Food Safety Law with EU regulations.
- Equalize the status of importers and domestic producers in terms of costs of analysis.
- Base the food safety strategy on risk analysis. Classify importers based on risk analysis.
- Enable the work of all departments of the National Reference Laboratory and create the conditions under which the Laboratory can carry out all 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 those parts which created the confusion in the first place.
- 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 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.
- Pass the Rulebook on Criteria for General Food Safety at the Level of Food Retailers.

2. SANITARY AND PHYTOSANITARY INSPECTIONS 1.18

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			√
It is necessary to clearly separate fee for the import from laboratory analysis, which would provide the fixed fee, not variable and dependent from the choice of inspectors.	2015			√
To adopt new Law on Food Safety.	2013			√
To adopt Amendments to the Rulebook on declaration, labelling and advertising of foods .	2015		√	
To harmonize inspections regulations with the Law on Inspection Control.	2015			√
The inspection control to be carried out in accordance with risk analysis.	2015		√	

CURRENT SITUATION

The responsibilities of the Phytosanitary Inspectorate and the Sanitary Inspectorate in the field of food safety are defined by the Law on Food Safety (RS Official Gazette No 41/2009) (hereinafter: the Law). The Phytosanitary Inspectorate of the Ministry of Agriculture, Forestry and Water Management is responsible for food of plant origin at the primary phases of production; in the import, transit, and export phases; and for food of mixed origin during the phases of import and transit, along with the Border Veterinary Inspectorate. The Sanitary Inspectorate of the Ministry of Health is responsible for the control of new foods, dietary products, and food for children - infant milk substitutes, dietary supplements, and salt for human consumption, as well as for the production of additives, flavourings, non-animal enzyme products, and drinking water of all kinds.

The work of inspection services is regulated by the Law on Inspection Oversight, which entered into force in April 2015; in application since April 2016. Inspection services, whose regulations and practices are specific and complex, including the Phytosanitary Inspectorate, are developing the models of application of this law in their sectors. Harmonization of sectoral regulations with this Law was supposed to be completed by April 2017, but this did not happen.

The Ministry of Health is in the process of preparing for adoption the Law on Sanitary Inspection, which would regulate the tasks of sanitary supervision, the manner and procedure of performing sanitary supervision, areas and facilities subjected to sanitary supervision and the sanitary conditions that these facilities must fulfil; as well as spell out the powers, rights, and responsibilities of sanitary inspectors in the sanitary supervision procedure.

POSITIVE DEVELOPMENTS

Compared to previous years, there has been some progress in the work of the Phytosanitary Inspectorate in terms of the number of products sampled and sampling frequency, which leads to the conclusion that there is a kind of a beginning of the monitoring process.

Based on experiences gained during the implementation of the Food Safety Law adopted in 2009 and on identified deficiencies of the Law, the draft of the new Law was prepared which should improve control of food and increase the level of food safety in a unique way. Public consultations on the Draft Law Amending the Law on Food Safety were held in the period from 15 October to 3 November 2015. It was planned that this law would be amended in December 2016 but that was postponed. Thus, Amendments to the Food Safety Law remained the highest priority of this Ministry in 2017. Meanwhile, adoption of a completely new Law is planned for 2018.

In March 2017, the Ministry of Agriculture published a Rulebook on the declaration, labelling, and advertising of food (RS Official Gazette No 19/2017), which will be applicable from June 2018, and which has mostly been aligned with EU regulation EC 1169/2011.

REMAINING ISSUES

One of the causes of problems in the work of phytosanitary and sanitary inspectorates is a lack of application of risk analysis envisaged under the Law on Food Safety and the Law on Inspection Oversight. Risk analysis should speed up the customs clearance process and the process of the release of goods. It should also reduce the workload of inspectorates and relieve the pressure on their limited resources. On the other hand, importers assessed as "low risk" would also benefit from the faster issuance of documents through the savings in money and time. At this time, inspectors themselves determine when and which goods should be sampled. This practice results in a high number of sampled goods; in the same SKUs being sampled within a short period of time; in the sampling of goods before the expiry of the period of six months (period of the validity of laboratory analysis); and in seizure of the goods in quarantine during the period of analysis.

Companies bear the high costs of sampling and analysis of imported goods. Article 70 of the Law on Food Safety is not being applied – this article determines that the costs of analyses and super analyses of all samples shall be borne by the party from which the sample was taken if it is determined that the sample does not comply with the prescribed characteristics. If the sample complies with prescribed characteristic, costs of the laboratory analyses and super analyses should be borne by the budget of the Republic of Serbia. Nevertheless, inspectors require that companies indicate that the costs would be borne by the importer. Their interpretation of Article 70 of the Law on Food Safety is that it applies only to raw materials, although there are also different interpretations depending on the

place of the customs clearance of goods. The Draft Amendment to the Food Safety Law is omitted from Article 70, paragraph 5, which places importers in an unequal position in relation to domestic producers, since according to the Draft Law on Sanitary Control, it is clearly stipulated that the import costs are to be borne by the importer, regardless of the compliance of goods. In this way, importers of food and raw materials in the food industry will be faced with hidden parafiscal charges. Coupled with insufficiently clearly defined criteria as to when and for what reason laboratory analysis is made of samples of imported goods, this leaves room for abuse by the inspection service. The FIC's remark on this foreseen amendment to the Food Safety Act was not accepted by the Ministry, with the explanation that the new legal solution would be in the interests of the importer, or that the amount of the fee would be paid for each import, regardless of whether or not laboratory analysis was carried out. According to the Ministry, that fee will include all import costs and be lower than the current total cost, as no further payments will be required for further analyses to be carried out based on risk analysis.

The Draft Law Amending the Food Safety Law defines the overview of executive regulations for the implementation of the Law Amending the Food Safety Law, but not the deadlines for their adoption. We believe that the most important regulations that need to be passed on the basis of this Law and which should regulate the situation in this area are:

- A rulebook on the manner and methods for: conducting an official control, approval, and certification system; the manner of cooperation with both the customs authority and relevant authorities of EU Member States and third countries; the manner of examination; the manner of sampling; the criteria for determining deadlines for conducting official control; and reporting on conduct by official controls.
- Regulation on the amount of fees for performed official controls.
- A rulebook on the methods of sampling and testing of food and feed in the procedure of official control.

A particular challenge is encountered in beer imports and sampling, since only an analysis conducted by domestic laboratories of each lot/batch number, provided by the importer, is regarded as sufficient evidence of product safety. This is not in accordance with the Guidelines in the Official Sampling of Food and Animal Feed of Plant and Mixed Origin during Import issued by the Directorate of Plant Protection.

An additional problem exists when importing bases used in the production of fruit wines as well as some components used for the production of beer (sugar syrup), which has a shelf life of five days from the date of production, which means that they must be used immediately after unloading. On the other hand, the decisions of the Phytosanitary Inspectorate on permitting import customs clearance prohibit selling goods on the market or their production until a final decision is reached, or until the result of analysis is obtained. Bearing in mind that microbiological analysis takes at least seven working days, this means that the results of the analysis are completed when the validity period of the base has expired.

Although the rules on the declaring, labelling, and advertising of food have been in force since 2013, there was uncertainty in the interpretation of provisions of the Rulebook by the Phytosanitary Inspectorate in the previous period, preventing a greater number of importers from securing a normal way of doing business. At the beginning of the implementation of the new Rulebook on the declaration, labelling, and advertising of food (RS Official Gazette No 19/2017), we can expect that the ambiguities from the previous Rulebook will be removed.

FIC RECOMMENDATIONS

- The consistent application of standard operating procedures by inspection services in terms of costs, timeframes, and mechanisms implemented on the ground.
- Discretionary rights of inspection services 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 different inspection services, and differs even within the same inspection service, 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 when there is no fixed timeframe for completing border inspection and validation formalities. This timeframe varies based on factors unknown to the importer. The length of time between the unloading of a shipment and the release of goods into circulation ranges anywhere from three to 20 days, depending on whether the inspector samples goods for analysis or not, then on the laboratory to which the inspectors sent the samples, as well as various other factors.
- Importers should be protected since they bear the financial burden of possible loss or destruction, as samples taken from original packages often damage the goods and its packaging.
- Barriers to trade should be removed 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, and consequently importers cannot plan the time of release of goods, which in turn affects their plans for monthly volumes, promotional activities, etc.
- It is necessary to clearly separate the fee for import from laboratory analysis, and instead provide a fixed fee, not variable and dependent on the choice of inspectors.
- To adopt a new Law on Food Safety.
- Adopt enforcement regulations under the Food Safety Law within a reasonable time and harmonize them to the greatest possible extent with EU regulations.
- To harmonize inspection regulations with the Law on Inspection Oversight.
- Inspection oversight, meanwhile, should be carried out in accordance with risk analysis.
- Equalize the status of importers and domestic producers in terms of cost analysis.
- Modify the Decisions of line inspectorates so that the use of raw materials in production is permitted without the right to put the finished product into free circulation until the raw material analysis results are obtained.

3. QUALITY ASSURANCE, DECLARATIONS ON FOOD PRODUCTS, NUTRITION AND HEALTH CLAIMS 1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Fully align the Rulebook on Food Declaration, Labelling and Advertising (RS Official Gazette No 85/2013, 101/2013) with EU Regulation 1169/2011; adopt Regulation (EC) No. 1169/2011 of 25 September 2011 of the European Parliament and of the Council on the provision of food information to consumers, to enable better and more uniformed food labelling.	2015		√	
Adopt the Guidelines for the Implementation of the Rulebook on Labelling, providing necessary guidance and examples modelled to EU regulations, to avoid different interpretations and inconsistent application.	2016			√
Adopt amendments to the Law on Food Safety pursuant to the relevant EU legislation.	2013			√
Define the responsibilities of the institutions for the interpretation of regulations on food safety and make the official position of the Ministry binding for all stakeholders in the chain.	2016			√

CURRENT SITUATION

The Rulebook on Food Declaration, Labelling, and Advertising (RS Official Gazette No 85/2013 and 101/2013), in force since 5 April 2015, brought food labelling rules closer to European standards, even if not yet fully in line with Regulation (EU) No 1169/2011. These rules allow more flexibility to manufacturers, but the conflicting interpretation of these rules by relevant inspectorates and laboratories still remains an issue. The new Rulebook on Food Declaration, Labelling and Advertising (RS Official Gazette No 19/2017) was published in March 2017, went into force on 16 March 2017, and will be applicable from 15 June 2018.

The Rulebook on Nutrition and Health Claims has been in preparation since 2013. This Rulebook will prescribe the requirements for labelling, advertising, and presentation of food in the context of nutrition and health claims, and should be aligned with Regulation (EC) 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, which means that, after its publication, authorized claims from the EU Registry can be used on the product. In this way, food business operators, especially those exporting food to the EU, will have a standardized product communication approach to local and export markets. At the moment, the labelling of food products making nutrition claims is regulated only by Article 30 of the Rulebook on the Declaring and Labelling of Pre-packaged Foods (Official Journal of Serbia and Montenegro, No 4/2004, 12/2004 and 48/2004). The labelling of food products making health claims is regulated by the general principles under Article 30 of the Law on Food Safety (RS Official Gazette No 41/09), prohibiting the misleading of consumers, and by Article 11 of the Law on Advertising (RS Official Gazette No 6/16), prohibiting misleading advertising.

POSITIVE DEVELOPMENTS

The new Rulebook on Food Declaration, Labelling, and Advertising (RS Official Gazette No 19/2017) has been mostly harmonized with the relevant EU regulation, and the most significant changes relate to the mandatory listing of the nutrition declaration, the equalization of the rules for country of origin labelling, and distance selling. The aim is to comply with the relevant EU legislation regarding the mandatory labelling of nutritional information on the product, and revise labelling elements that are locally regulated, or unclear in terms of implementation.

REMAINING ISSUES

Jurisdiction for the interpretation of regulations in the area of food safety has not been defined by the Food Safety Law, which has led to laboratories interpreting regulations, effectively preventing inspectors, as the designated authority, from making decisions in line with the official position of the Ministry which issued the rulebook. The legal assessment and determination of non-compliances is the exclusive responsibility of inspectors, pursuant to Article 37 of the Law on Inspection Oversight. At the same time, the official position issued by the relevant ministry is not binding for inspection services. All of the above has led to difficulties for food business operators and major constraints in long-term business planning.

The draft amendment to the Law on Food Safety defines the overview of executive regulations for the implementation of the Law on Amendments to the Food Safety Law, but not the deadlines for their adoption. We believe that the most important regulations that need to be passed on the basis of this Law, and which should regulate the situation in this area are:

- Rulebook on food quality requirements.
- Rulebook on conditions and methods of production and marketing of food for which quality requirements are not prescribed.
- Rulebook on nutrition and health claims.
- Rules on food with altered nutritional composition.

Examples below illustrate daily operational problems:

- Subjective approach of laboratories that control the food and the relevant inspectorates in evaluating the accuracy of the product label or product name, although the Rulebook provides a definition in Art. 17 and 18 of the name of the food referring to specific legislation, while in the absence of specific legislation allows the use of the common name, the descriptive name, or the name used in the country of the manufacturer.
- Different interpretations of the "field of vision", even though this is defined in the Regulation.
- Subjective approach in assessing the elements that could mislead consumers.
- Although the Rulebook on Food Declaration, Labelling, and Advertising (RS Official Gazette No 85/2013 and 101/2013) applies to food intended for the final consumer, the relevant inspectorate requires that even raw materials and semi-finished products intended for further processing be marked according to this Rulebook. Given that this is not applied in the EU, suppliers of raw materials do not fully label these commodities, but in B2B relations, as a rule, the supplier submits all relevant information to the customer in the documents accompanying the goods and, in advance, when signing the sales contract. Because of this issue, the authorities will often prevent their circulation on the market until the labelling is fully aligned with the labelling requirements in the Rulebook, even though the producer does not require additional information on the product because these are contained in the documents accompanying the goods. This causes long delays in production and the supply chain for domestic producers.

The Rulebook on Nutrition and Health Claims is still not finished; i.e. it is uncertain when it will be passed and put into effect, which leads to the presence of inadequately declared products on the Serbian market. This may result in consumer rights being compromised because consumers may be provided with inaccurate claims not allowed in Europe.

FIC RECOMMENDATIONS

- Adopt the Guidelines for the Implementation of the Rulebook on Labelling, providing necessary guidance and examples modelled on EU regulations, to avoid different interpretations and inconsistent application.
- Adopt amendments to the Law on Food Safety pursuant to the relevant EU legislation.
- Adopt enforcement regulations under the Food Safety Law within a reasonable time and harmonize them to the

greatest extent possible with EU regulations.

- Define the responsibilities of the institutions for the interpretation of regulations on food safety and make the official position of the ministry binding for all stakeholders in the chain.

4. MILK PRODUCTION QUALITY STANDARDS 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 as fully independent, properly staffed, and technically equipped.	2010			√
Streamlining the NRL's 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 establishing 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 NRL would be an umbrella authority.	2010			√
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. The EU has a similar system; for instance, in France, dairy plants and farmers share 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.	2014			√
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 projects essential for competitive growth in milk production, and consequently for the improvement of raw milk quality.	2014			√
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 supplies. The goal is to make a selection and stimulate farmers opting 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 are production costs due to the economy of scale effect.	2015			√
Adoption of an action plan to raise the number of registered farms. Farm registration is necessary to allow exports to the EU. Farm registration regulations should be amended to simplify the procedure and make it more efficient.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2015			√
Formation of a development bank for supporting the development of agricultural production.	2015			√

CURRENT SITUATION

The food industry still faces numerous challenges where the production and sale of finished products are concerned. The domestic market's purchasing power, which has been stagnating for a 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.

The 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 decided 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 the building of 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, 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 the Russia–EU relations. 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.

The Ministry of Agriculture and Environmental Protection established in mid-April 2015 a working group for milk which made provisional protective measures (levies) on imports of milk and milk products from the EU. The group also made changes to existing legislation on the maximum levels of pesticides in food and feed and the maximum permissible content of aflatoxin M1 in raw milk, with 0.05 mcg/kg increased to 0.25 mcg/kg, applicable from 5 April 2016 till 10 October 2017.

Next change in the legislation was in Septembar 2017, 01.09.2017. when the maximum levels of pesticides in food and feed and the maximum permissible content of aflatoxin M1 in raw milk, with 0.05 mcg/kg increased to 0.25 mcg/kg again. This change is applicable from 07 October 2017 till 30 November 2018.

POSITIVE DEVELOPMENTS

Specific measures by the Serbian Government, and a positive signal for the improvement of conditions for the domestic production of milk and dairy products is the introduction of temporary protection measures (levies) on the import of milk and milk products from the EU in 2015. The main objective of this measure is to maintain the primary production of milk and dairy products by alleviating disturbances on the domestic market arising from increased imports of milk and milk products from the EU, and to find a sustainable business model for the primary production of milk. The situation in the first half of 2016 remained exactly the same and it is not clear at what point existing protective measures will be abolished.

What has improved somewhat is the fact that the testing of the quality of raw milk has increased, and is carried out in authorized national laboratories. It should be noted, however, that this is a quality testing of raw milk according to domestic rules, whose criteria are lower than those in the EU.

REMAINING ISSUES

The quality of raw milk in Serbia needs to improve and be harmonized with EU standards by 2020.

The Food Safety Law was adopted in 2009. In May 2013, and again in May 2015, changes were announced but still not finalized by the end of May 2017, and national laboratories are still not functioning fully, as provided for by the Law on Food Safety.

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 as fully independent, properly staffed, and technically equipped.
- Streamlining the NRL's 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 establishing 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 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. The EU has a similar system; for instance, in France, dairy plants and farmers share 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 projects essential for competitive 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 supplies. The goal is to make a selection and stimulate farmers opting 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 are 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 exports 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) 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adoption of the Draft Law Amending the Law on Plant Protection Products and its application.	2010			√
Full alignment with EU standards and proper implementation of the registration andre-evaluation process of plant protection products in the Republic of Serbia to ensure food safety and consumer protection, as well as fair competition between foreign and local companies.	2010			√
Consistent enforcement of decisions taken	2012			√

CURENT SITUATION

After eight years of implementation, the impact of the Law on Plant Protection Products (PPPs) adopted in 2009 still fall far short of expectations.

The adoption of the draft amendments to the Law on PPP should put an end to the long-term parallel application of two conflicting laws currently in force: the old one from 1998, and the more recent one from 2009.

Foreign investors are confident that the situation will improve immediately after the adoption of the proposed amendments, but until that happens, the registration of new PPPs in Serbia will proceed according to the 1998 Law, which is not in line with the harmonized process of registration of plant protection products in the European Union.

We would like to commend the joint work of the Plant Protection Directorate and the Twinning partner from the UK on the re-evaluation of the registered plant protection products. However, the result of the work of the Plant Protection Directorate and the Twinning partner can be applicable only once the Law on PPPs from 2009 enters into effect in its entirety.

Therefore, we will keep stressing the need for adopting the Draft Law on Amendments to the Law on PPPs.

If this does not happen, the Twinning project might be unsuccessful, and the Republic of Serbia will remain in the distant 1998 in the area of registration of plant protection products and completely disconnected from the harmonization process.

REMAINING ISSUES

The problem of shortage of staff in the Ministry of Agriculture, specifically in the Plant Protection Directorate, needs to be solved. Solving this problem and harmonizing national laws with EU acquis would facilitate work and prevent long delays in making decisions on registration.

Delays in this area of work affect to a significant extent not only the foreign investors' business, but also prevent Serbia's agricultural producers from reaping the benefits of new technologies which foreign investors could be bring to the country.

Foreign investors and local agricultural producers require a strong commitment by state bodies to adopt international standards. This is the only way for Serbian food producers to become competitive on a global scale.

We believe that the harmonization of Serbian legislation with the EU acquis is the right solution that could not only help increase the safety of consumers in Serbia, but also contribute to increasing food exports to the European Union countries.

FIC RECOMMENDATIONS

- Adopt the Draft Law Amending the Law on PPPs and ensure its application.
- Fully align with EU standards and implement a harmonized system for the registration of new plant protection products, as well as a re-evaluation of already registered plant protection products in the Republic of Serbia.
- Establish the same conditions for registration of plant protection products for all companies registering PPPs to ensure food safety for consumers (in Serbia, as well as for purpose of exporting food products to other countries).

B. LIVESTOCK PRODUCTION 1.40

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Intensification of livestock production and increasing the participation of this sector in total agricultural production.	2016			√
Encouraging producers to improve the species composition of livestock and increase the meat and milk yield per animal.	2016		√	
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 feed for livestock.	2012			√
A group of experts should be established to develop a long-term sustainable development strategy in close contact with farmers.	2012			√

CURRENT SITUATION

According to the first estimates of agricultural experts, the value of agricultural production in Serbia in 2016 was around USD 5 billion, about 8% higher than in 2015.The value of livestock production in Serbia in 2016 was USD 1.62 billion, which was lower than in the previous year, accounting for 32.43% of the total value of agricultural production.

If we analyse achieved growth in livestock production last year, livestock breeding in Serbian agriculture has a complex role that is reflected in the process of valorization of labour and production potentials. Concerning rural development, it should be noted that livestock farms provide continuous employment of labour and more regular incomes in comparison to crop production farms. Livestock farming is becoming an increasingly important source of renewable energy.

Without the development of livestock production, Serbian agriculture will continue with inadequate usage of its natural resources, especially land, and inefficient usage of the existing labour force, with the result that Serbia will remain an exporter of cheap raw materials.

POSITIVE DEVELOPMENTS

In 2016/2017, the Autonomous Province of Vojvodina allo-

cated about 70% more subsidies and grants than in the previous one-year period from its agricultural budget. There are a number of funding lines available:

- grants for the improvement of livestock production on farms and introduction of EU standards at facilities for meat and milk production and processing in AP Vojvodina;
- grants for support to young people in rural areas in the territory of AP Vojvodina in 2017;
- loans for the purchase of quality breeding and fattening livestock in 2017 with an interest rate of 1.5%.

Refunds reach up to 60% for registered agricultural farms, and up to 70% for young people under 40, women, and users of agricultural subsidies from the territory of the province where labour conditions in agriculture are hampered.

In December 2016, the following laws were adopted:

- Law on Subsidies in Agriculture and Rural Development. (RS Official No 10/13, 142/14, 103/15, 101/16).
- Law on Agriculture and Rural Development (RS Official Gazette No 41/09, 10/13, 101/16).

In the first half of 2017, the following regulations were adopted:

- Rulebook on support for cattle breeding for quality breeding animals (RS Official Gazette No 21/17).
- Rulebook on the use of support for organic livestock production (RS Official Gazette No 41/17).

REMAINING ISSUES

Once Serbia enters the EU market, domestic livestock production will face new challenges, such as market competition, reduced possibility of protection from imports, implementation of standards (HACCP, ISO, GLOBAL GAB etc.), reduced level of domestic support, and others. Some of the items that require immediate attention are:

- Production of food that satisfies the safety needs of consumers;
- Subjective and incoherent interpretation of the rules, laws, by-laws and regulations in different regions and by inspectors individually. This would make business easier and more straightforward for big producers that operate in several jurisdictions in Serbia where they have to deal with these problems. This implies the education of inspection and surveillance services and the rendering of unique rulebooks and interpretation of legislative requirements across the board;
- Development of a general, co-ordinated, and integrated national system for disease control and monitoring;
- Introduction of modern technologies in the selection, reproduction, and improvement of the animal genetic pool;
- Increasing the technological level of production to achieve competitiveness in the world market.

FIC RECOMMENDATIONS

The basic directions of development in livestock production in the following period should be directed towards:

- Elimination of the balance deficit of certain products of animal origin, increasing consumption per capita, and export growth.
- Ensuring the requirement of a safe animal health system, the compliance and quality of food of animal origin, adequate veterinary control of animals intended for the production of milk, meat, and eggs – everything from a food chain to the identification of animals, and on that basis, a long-term, systematic incentive for livestock production.
- Technology modernization of total cattle breeding, improvement of the genetic characteristics of cattle, improving milk and meat types of cattle, improving nutrition conditions, and increasing the share of high quality fodder in nutrition, as well as care and health care.

TOBACCO INDUSTRY

1.86

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is important for the focus of all relevant State institutions with Work Group combating tobacco smuggling to be shifted on 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 Foreign Investors Council 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.	2013		√	
Open dialogue between the Serbian Government and the tobacco industry in order to adopt the amendments on Excise Tax Law that would define the excise tax calendar for the period of 2017-2020.	2016	√		
Efficient adoption of the new Law on Advertising -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.	2016		√	
Taking into account the overall additional restrictions that are included in the Ministry of Health's Action Plan Draft, the Foreign Investors Council believes it is necessary, prior to its adoption by the Government, 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.).	2013			√
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		√	
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. 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 Foreign Investors Council 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.	2014			√
The Foreign Investors Council strongly supports European integration process of the Republic of Serbia and the harmonization of domestic legislation with EU acquis. The Council also 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.	2015		√	

CURRENT SITUATION

The tobacco industry is consistently one of the strongest and most vibrant sectors of the Serbian economy, despite high regulation and economic crises. The export of tobacco and tobacco products has continued to increase, reaching almost EUR 325 million in 2016. At the same time, fiscal revenues from the sale of tobacco products contributed more than 14% of total budget revenues in Serbia in the previous year (more than EUR 1.15 billion). The 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. Considering 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, one that is gradually being harmonized with EU directives in this field, is crucial to ensuring the sustainability and further development of the industry.

In previous years, the tobacco products market noticeably shrank, but in 2016 that trend stabilized with the recovery of the legal market. It can be concluded that this is the result of concrete Government measures to combat the grey market in 2016. Nevertheless, the illegal market still has an approximately constant level of illegal cut tobacco and an increasing level of illegal cigarettes.

POSITIVE DEVELOPMENTS

The adoption of a multi-year plan on excise taxes for cigarettes and tobacco products (the new excise calendar entered into force on 1 January 1 2017 and will be valid until the end of 2020) set by the Law on Excise Taxes is 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).

The clearly expressed readiness of the highest state authorities to combat illegal activities in the market and declaring 2017 the "Year of the fight against the grey economy," present a clear and positive step forward in this area. Accordingly, the Government of Serbia has established a Working Group on Combating Tobacco Smuggling, chaired by the Director of the Police.

The first results are reflected in the increase in the volume of seizures, especially those of illegal tobacco, but also increasing volumes of illegal cigarettes as well. However, the increased activity of bodies controlling the application of the regulations will remain without effect if not accompanied by appropriate court rulings.

REMAINING ISSUES

- Illegal trade in tobacco products - In 2016, the positive trend of increase in revenues from excise taxes on tobacco products was continued (RSD 91.8 billion, compared to RSD 90.3 billion in 2015). But, in addition to market stabilization, an increased negative impact of the illegal cut tobacco market is still noticeable, which jeopardizes the viability of the entire supply chain within the tobacco industry (growers, processors, manufacturers, distributors, and retailers), as it does on 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 the illicit trade in tobacco products, which can be seen, primarily, through the seized quantities of tobacco and cigarettes. According to the Customs Administration, 77,000 cartons of illegal cigarettes were seized during 2016, which is five times more than in the previous year. Also, more procedures were initiated against various offenders in the illicit trade of tobacco and tobacco products by the Ministry of Interior, which shows a more serious approach in this field. However, there still is a clear lack of adequate reaction from the prosecutor and courts.

- Excise Tax Law - The Excise Tax Law is a step in the right direction because it represents further harmonization with the European Union in the field of tobacco taxation. Bearing in mind the importance of tax policy in the field of tobacco and its predictability for both state revenue and the tobacco industry, it is of great importance to have an open dialogue with all interested parties. The main element that is incorporated in the Law is the new excise calendar for the period of four years (2017-2020), which envisages a gradual and transparent increase in excise taxes on tobacco products.

- Law on Advertising - The current Law on Advertising, which entered into force in May 2015, 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 more precise compared to the previous version, therefore diminishing the possibility of arbitrary interpretation and leading to difficulties in the implementation of the Law, for both the relevant inspection services and the tobacco industry. The Foreign Investors Council encourages the efficient application of the new Law on Advertising, thus enabling uniform rules of competition for all participants.

- For the most part, the existing Tobacco Law is compliant with all EU directives, except with Directive 2014/40/EU, which was supposed to be implemented for the most part during 2016 by the Member States with a deadline for compliance of two to six years. The length of the transition period shows precisely the complexity of such a Directive, even for EU member states whose administrative capacities surpass local ones. At a moment when the legal market for tobacco and tobacco products is in the phase of sensitive consolidation and recovery, we think that it would be counterproductive to jeopardize such a trend with amendments to the existing regulations in order to prematurely align them with the Directive. More precisely, those amendments would impose additional levies and obligations exclusively to entities operating legally on the market, whilst they would have no impact on entities dealing in illicit trade, or might even stimulate their competitiveness. On the other hand, the Council supports possible amendments to the Law that would be addressed to further combat the illegal market of tobacco and tobacco products, one that would be adopted in consultation with the industry and professional community.

- Harmonization of regulations with EU acquis - EU membership is the main foreign policy priority of the Government of the Republic of Serbia. A key segment of membership negotiations is the adoption, implementation, and enforcement of EU acquis, divided into 35 chapters.

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 in some EU member states. Any hasty changes to legislation can lead to further distortion of the legal market for tobacco and tobacco products which will result, primarily, in a 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 said Directive. This approach would certainly lead to 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 necessary for all the relevant public institutions, led by the working group for combating tobacco smuggling, to continue to focus on efficient implementation of the law in order to combat the illegal tobacco market, which has a significant negative effect on all of society. The Foreign Investors Council 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.

- Continue with the practice of open dialogue between the Government of the Republic of Serbia and the tobacco industry in all important matters concerning business conditions in the market of tobacco products. The Foreign

Investors Council strongly supports this kind of dialogue, per the principles of participation, transparency, accountability, effectiveness, and coherence.

- Efficient implementation of the Law on Advertising. The Council believes that the regulator must ensure efficient implementation of the rules in the field of advertising of tobacco products that would create a level playing field for all market participants.

- 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. 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 Foreign Investors Council 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.

- The Foreign Investors Council strongly supports the European integration process of the Republic of Serbia and the harmonization of domestic legislation with EU acquis. The Council also 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 under way) and to make a timely decision regarding decisions it deems most appropriate.

INSURANCE SECTOR

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
LIFE AND NON-LIFE INSURANCE/COMPOSITE COMPANIES AND SHARED SERVICES				
It is necessary to eliminate, as much as possible, discrimination between composite players and those who meet the legal obligation (having separate companies for life and non-life insurance) through amendments to the Law on VAT defining "Shared Services" for separate companies with the same shareholder as non-taxable services turnover, as governed by EU laws.	2015			√
INSURANCE FOR NATURAL DISASTERS				
We believe that a strategy should be constituted/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 would be 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.	2015			√
Considering the social impact these kinds 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.	2015			√
THE LAW ON PERSONAL INCOME TAX				
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.	2015			√
CORPORATE GOVERNANCE ISSUES				
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.	2015			√
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.	2015			√
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.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
To simplify the procedure for the recognition of foreign qualifications and reinstate to former requirements.	2015			√
MOTOR THIRD PARTY LIABILITY INSURANCE MARKET				
Influence resolving and change of the Tax Administration approach to tax treatment of MTPL policies distribution.	2016			√
Create a level of playing field in line with European standards and change the regulatory framework leveraging best practices already present in other markets as well as those in line with European Union standards. Possible initiatives being:	2013			√
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.	2013			√
Allow liberalization of MTPL commissions and allow insurance companies to pay the MTPL commission in line with market conditions, imposing limitations only by its own loadings, with possible general limitation of the amount of loading.	2016			√
Allow insurance companies to perform car registrations on their own business premises.	2013			√
Revise the number and timelines of mandatory technical checks for newer vehicles.	2013			√
Decrease the number of technical checks with increasing the quality of their basic services, which would returned technical checks to its core business and would benefit to the road safety.	2016			√
Develop a joint project with OUS and the police to enable online sales of MTPL policies.	2015			√
LAW ON INSURANCE				
Adoption of amendments to the provisions of the Law on Insurance pertaining to the obligation to notify/inform policy holders and insured persons.	2015			√
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.	2013			√
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.	2015			√
Adoption of a new set of laws on insurance: the Insurance Supervisory Law – ISL, Insurance Contract Law – ICL and Insurance Brokers and Agents Law.	2013			√
LABOUR LAW				
Correct with by-laws: either: the Insurance Law which would, on the same basis as with insurance agents, liberalize engagement of persons for the purpose of insurance sales or other work in the form of work contracts outside of employment contracts (temporary and periodical work contracts, special service contract and contract on additional work, etc.);	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
either: adjust the Labour Law in Articles 197, 198, 199, 201, and 202, which would make possible work contracts outside of employment contracts, without the described limitations; additionally, restore into the Law, by using by-laws, the previous Articles of the Law pertaining to the representation activities which the new Labour Law does not recognize.	2015			√
DRAFT CIVIL CODE				
Opening of opportunities for investing in investment funds abroad in excess of 25% of the share capital, if the local market cannot offer better conditions.	2016			√
Remove provisions of the Draft Civil Code that alows for the possibility to contract an informal insurance agreement, but keep the provisions on the electronic signing of policies, in addition to the use of the mechanical signature on the screen of the electronic device (Art. 1407 para. 7)	2016			√
Redefine the liability insurance provisions and introduce an optional, additional period for filing a claim at the time when picking up the claim form.	2016			√
Redefine the provisions on the method of deliveruing the notice, providing for the option to make an agreement on the notice form, without the obligation of delivering a written notice by registered mail (Art. 1427 para. 1. and 1471. para. 1)	2016			√

OVERVIEW OF THE INSURANCE MARKET 1.00

CURRENT SITUATION

There are 23 insurance companies in Serbia. 19 companies are engaged exclusively in insurance activities, while four companies are engaged in reinsurance activities. As far as insurance companies are concerned, five of them are life insurance companies, eight are property insurance and accident insurance companies and six are composite companies.

The market is still very concentrated: i) the market leader, Dunav, holds 26% of the market share; ii) the three largest insurers hold 61% of the market share; and iii) the five leading insurance companies hold 80% of the market share.

The majority foreign-owned companies (17 out of 23) undoubtedly dominate the market accounting for 70% of total revenues (62% in non-life insurance premiums and 94% in life insurance premiums).

Based on the data for the year 2016, the insurance market recorded a premium of RSD 89.1 billion (EUR 722 million), which is a nominal and real increase of 10.1% and 8.4%, respectively.

The following changes were observed in 2016 relative to the previous year:

- the balance sheet total has increased by 12.4% to RSD 215.6 billion;
- the capital has increased by 13.4% to RSD 50.8 billion;
- technical reserves have increased by 13.2% to RSD 148.4 billion, and their principal amount has been invested into government securities, both in life and non-life insurance;
- the total premium has reached the level of RSD 89.1 billion, with a growth rate of 10.1%;
- the share of non-life insurance of 74.1% in total premium, with a permanent decrease, is still dominant; the non-life insurance premium has recorded a growth of 7.2%, while the motor vehicle liability insurance, property insurance and comprehensive motor vehicle insurance have recorded growth;
- life insurance has increased its share in the total premi-

um from 23.9% to 25.9%;
- the number of insurance companies has been reduced from 24 to 23, while the number of employees amounting to 10,954 has recorded a 0.9% growth.

LIFE AND NON-LIFE INSURANCE

CURRENT SITUATION

Insurance companies and their activities are regulated and managed according to the new Insurance Law, adopted in December 2014, and in more detail according to the relevant by-laws of the National Bank of Serbia (NBS).

Other significant legal sources are the Law on Compulsory Traffic Insurance, as well as the by-law / Regulation on Voluntary Health Insurance adopted by the Government of the Republic of Serbia. The lateral relevant legal source is the Law on Traffic Safety.

The NBS is the authority responsible for the issuing and revocation of insurance companies' operating licenses and for supervising the insurance sector. Moreover, it issues opinions on the laws governing this area. The Ministry of Finance is the authority responsible for the preparation of amendments to the key laws. The Ministry of Interior is responsible for the preparation of drafts and for the implementation of the Law on Traffic Safety.

The Insurance Law regulates the following areas:
- issuance of operating licenses to insurance companies – mandatory conditions related to property, organization, internal documents, business policy and business plans;
- common organizational conditions for insurance companies – requirements related to the Memorandum of Association and Articles of Association, mandatory bodies (Shareholders' Meeting, Supervisory Board and Executive Board), as well as the relevant and appropriate requirements for their appointment;
- issues related to actuaries and internal auditing;
- reinsurance;
- activities of insurance agents and brokers and the relevant business licenses;
- supervision of insurance activities by the NBS.

The following areas are regulated by the Law on Compulsory Traffic Insurance (hereinafter referred to as the "LCTI"):
- basic contractual elements of the LCTI;
- Association of Insurers and its authorizations;
- price limitation procedures (including the Association of Insurers and the NBS);
- legal framework of LCTI policies.

The following areas are regulated by the by-law on Voluntary Health Insurance:
- approval by the Ministry of Health of the issuance and revocation of licenses for voluntary health insurance;
- mandatory priority of social components of health insurance (no client can be denied insurance);
- requirements for providers of private voluntary health insurance, even if one set of requirements was already met when the licenses were issued to companies for doing business with this type of insurance, and duality will continue to create confusion.

COMPOSITE COMPANIES AND SHARED SERVICES

CURRENT SITUATION

Pursuant to the Insurance Law, an insurance company may not concurrently operate in the field of life and non-life insurance (Article 24). However, this Law i) allows for excep-

tions for composite companies through an alternative solution (Article 25), and ii) denies this possibility to other companies, which inevitably leads to discrimination against both current and future investors.

This issue was introduced in the FIC White Book back in 2013, as a consequence of discrimination between the composite market participants and those who have met their legal obligation, prescribed by the then applicable Insurance Law, by separating the companies engaged in life insurance from non-life insurance companies.

In order to solve the problem, a provision has been included in the Insurance Law (Article 26) requesting the limitation of inequality by allowing the separated companies, with the same shareholder, to jointly perform:

(i) conclusion of insurance contracts;
(ii) promotional and related marketing activities;
(iii) general, professional, administrative and technical support activities.

REMAINING ISSUES

In the course of 2015 and 2016, initiatives were launched with the Ministry of Finance in order to obtain a neutral tax treatment of "joint services". However, in the Opinion of the Ministry of Finance No 011-00-332/2016-04 of 17 May 2016, "Joint Services" of separate companies with the same shareholder in 2016 are defined as trade in services performed by a VAT payer and subject to VAT in accordance with the Law.

This interpretation by the Ministry of Finance and the obligation to pay value added tax actually foils the intention of the Insurance Law to moderate discriminatory treatment of non-composite companies, which means that we are back to square one.

FIC RECOMMENDATIONS

- It is necessary, to the largest possible extent, to minimize the discrimination between composite market participants and those participants who have, by fulfilling their legal obligations under the previous Insurance Law (by separating the companies engaged in life insurance from those engaged in non-life insurance activities), been brought into an unequal position, through amendments to the Law on Value Added Tax which would provide that the "Joint services" for separated companies with the same shareholder are defined as the trade in services which is not taxable, as regulated by the Laws of the European Union.

INSURANCE COVERAGE FOR NATURAL DISASTERS AND OTHER ACTS OF NATURE 1.00

CURRENT SITUATION

Due to its geographical complexity, Serbia is prone to natural disasters and other acts of nature, which are relatively frequent (2005, 2006, 2010, 2014 and 2015in this century only). Even after the catastrophic floods in 2014, which resulted in damages exceeding EUR 1.5 billion, the number of sold insurance policies against natural disasters and other disasters did not drastically increase in 2015. This despite the fact that western Serbia was impacted by floods in 2015 as well, only on a much smaller scale than in the previous year, furthermore, no official information about its effects was made available until present.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

In Serbia, insurance in general, but particularly insurance coverage against natural disasters and other acts of nature, is regarded as an expense or a charge, not as a means of transferring risks and for this reason the growth rate is the lowest in Europe.

FIC RECOMMENDATIONS

- We believe it would be necessary to establish / prescribe a strategy for insurance against natural disasters and other acts of nature to ensure that in the event of a major adverse event, a significant share of claims would be transferred to insurance companies. It would be important to avoid new charges on existing contracts that would result in additional expenditures for a small number of the insured who now have insurance coverage, a measure already proposed by the Ministry of Finance.

- Given the social effect of this type of measures, the implementation could be carried out gradually, as follows:
  (i) through introduction of mandatory insurance for all state-owned and public property and infrastructure;
  (ii) through the introduction of mandatory coverage for all property designated as collateral for financing;
  (iii) through the introduction of mandatory coverage against natural disasters and other acts of nature, including fire insurance, for all property, on the basis of the French model.

THE LAW ON PERSONAL INCOME

CURRENT SITUATION

Taxation of natural persons is regulated by the Personal Income Tax Law, last amended in July 2014. The Law currently does not exclude the life insurance premium or insurance benefits from 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

- Amendments to the aforementioned articles of the Law to create conditions for the introduction of tax relief for all types of life insurance premiums, whichwould not only stimulate the development of the insurance sector, but also create the conditions for improving the social function of these types of insurance, i.e. provide the necessary protection and financial resources to the policyholder's dependants in the event of an accident, at the same time relieving the state from the obligation to provide for these persons. Also, tax treatment and rights arising under tax regulations in the event of the conclusion of a contract on pension plans would also be equated with the tax treatment and the rights they have under a life insurance contract.

CORPORATE GOVERNANCE ISSUES 1.00

CURRENT SITUATION

The long-awaited amendments to the Insurance Law did not yield a less conservative approach in all its aspects and, unfortunately, those related to corporate governance have affected management operations since the end of the year 2015. The articles of the law on governing bodies and their structure/function are certainly a cause for great concern.

Currently, members of the supervisory board are elected by the Assembly, adequately represented at the highest level by the insurance company shareholders. At the same time,

they are all members of the governing bodies in financial sector entities. The only limitation relates to membership in another joint-stock insurance company. The rules on the composition of the executive management are stipulated by the Law on Companies, which prescribes that insurance companies can choose whether they want to have one or more executive directors.

REMAINING ISSUES

In examining the implementation of insurance legislation in the countries in the region: Romania, Bulgaria and the Czech Republic, it has been established that there are no such limitations or exceptions pertaining to the governing bodies in controlled/controlling companies or members of the same group.

First, the new Insurance Law strictly defines that no alternative choice can be made with regard to the executive function - only the Executive Board is recognized as an essential part of the company management, which must consist of at least two members. When concluding business transactions and taking legal actions, the chairperson of the executive board must provide the signature of another member of the executive board, where a member of the executive board may not have a deputy.

In addition, the supervisory board must have at least three members, including the president, with at least one third of its members being independent members. On the one hand, how many people outside the financial world and top managers are there, who are not members of the executive/supervisory Board of another financial entity, who would be able to offer expertise, excellence and supreme support in terms of insurance activities? On the other hand, even more problematic is the issue of whether an independent member, someone who is not fully involved in the insurance business on a daily basis, will be able to represent the best interests of shareholders in terms of all major, strategic decisions/actions adopted on behalf of an insurance company.

At least once a year, the shareholders' general meeting must be notified, in writing, of detailed data on salaries, fees and other remuneration paid to the members of the supervisory board and the executive board, and all contracts between the joint-stock insurance company and these entities and other related entities able to generate profit for these entities , as well as of the proposal of the supervisory board on salaries, benefits and other remuneration which can generate benefits for these entities in the next year.

Finally, the limitation regarding membership in the management of the company is too strict, since a member of the management or of the supervisory body or a proxy in another insurance/reinsurance company or another financial sector entity may not be a member of the company management. At least one member of the supervisory board, or one member of the executive board, must have active knowledge of the Serbian language and must have permanent residence in the Republic of Serbia, while other members of the executive board must have permanent residence in the Republic of Serbia and must be full-time employees in a joint-stock insurance company. The special by-law, i.e. Decision on the implementation of the provisions of the Insurance Law related to the issuance of a license for the performance of insurance/reinsurance operations and certain approvals of the National Bank of Serbia prescribe more detailed requirements for the position of a member of management, as well as the evidence, documents and information which the joint-stock insurance company is obliged to attach to the request for obtaining the necessary approval. These requirements also partly create difficulties for non-residents, as they need to have their diplomas or other evidence of education verified by the Serbian authorities, which requires additional time and costs for the companies submitting the request.

FIC RECOMMENDATIONS

- Insurance companies should be allowed to determine the number of executive directors, under their Memorandum of Association – Articles of Association, i.e. these articles should be harmonized with Article 417 of the Law on Companies of the Republic of Serbia – which allows companies to choose whether they will have one or more executive directors.

- The election of the members of the supervisory board should be left to the competence of the shareholders' general meeting, which could then decide whether an independent member should be elected or not –it is not necessary to have such a restriction in place.
- The membership in management should only be limited to another joint-stock insurance company and/or another holding company engaged in insurance activities, and only to the Republic of Serbia. With this exception, a person may not be appointed as a member of management if he/she is a member of management in another joint-stock insurance company, with which the insurance company shares the same shareholder.
- The requirements related to the submission and recognition of a foreign diploma should be simplified, i.e. the previous requirements should be reinstated.

AUTO INSURANCE MARKET 1.00

CURRENT SITUATION

Auto Insurance (AI) is by far the most important segment of the insurance market in Serbia (34% of total in 2016) and the technical inspection facilities performing the compulsory annual inspection of all motor vehicles are definitely the most important distribution channels for these insurance policies. Article 44 and 45 of the Law on Compulsory Traffic Insurance prohibits the payment of any commission to these technical inspection facilities – whether directly and/or through related parties – which exceeds 5% of brokerage premium. This provision of the law has been ignored by the market for many years, with noticeable differences in the practices of individual companies, which paid the commission rates up to 50% regardless of the legal prohibition. Regardless of the increase in minimum tariff (up to 45% since 1 July 2014), which provided the market with the "necessary oxygen" in terms of the cash flow and profitability, the above practice brings into question the sustainability and predictability of the overall insurance market.

In 2015, 2016 and 2017, the AI market has deteriorated as a consequence of the new approach by the Tax Administration, in the distribution of AI, in connection with the payment of the lease of office space used for the purpose of selling automobile liability insurance by entrepreneurs. By its interpretation, the Tax Administration has transferred the tax liabilities to insurance companies, instead of to entrepreneurs, charging large fines to companies, which responded by filing action against the Tax Administration. As a result, business conditions in the market have worsened and some insurance companies have withdrawn from the active automobile insurance market.

Currently, companies operating in full compliance with the law and its strict interpretation by the National Bank of Serbia are not significant participants in the AI market. A company cannot last in today's market, let alone expand its presence, without a more or less aggressive violation of legal provisions.

The National Bank of Serbia has launched activities to ensure the enforcement of the law, but these did not effectively solve the problem.

The choice between losing a very important part of the portfolio and doing business in the grey zone is unacceptable for any foreign investor. A fair interpretation of the applicable legal provisions and their direct and uniform enforcement are the necessary prerequisites for a functional market, as well as for compliance with the rule of law, the applicable law of Serbia and European legal standards.

The most important branch of insurance in the Serbian insurance market is still burdened and marked by poor market conduct and illegal practices aimed at rewarding the main distribution channels (technical inspection facilities) in accordance with the market requirements in the amount of 20-25% of concluded premium and a new unpredictable approach of the Tax Administration. This phenomenon currently limits the attractiveness of the market to potential

and/or present foreign investors, as well as their willingness to make further investments in Serbia.

Activating the Internet as a distribution channel for brokerage in automobile insurance policies is a possible option. This distribution channel has become very relevant in mature markets because the significant reduction in distribution costs in conjunction with price liberalization brings significant value and profit to end-users and insurance companies.

FIC RECOMMENDATIONS

- Influence bring about a change in the Tax Administration's approach to the tax treatment of distribution of AI policies
- Ensure equal market conditions i and change the regulatory framework in order to apply the best practices already existing in other markets, in accordance with the European Union standards.
- Liberalization of AI prices would have immediate benefits for both the traditional distribution channels (independent outlets) and development of promising alternatives, such as the online distribution and sales outlets in banks.
- Insurance companies should be allowed to register cars at their own premises.
- Review the number and schedule of compulsory technical inspections for newer vehicles.
- Develop a joint project with the Association of Serbian Insures and police in order to enable the online sale of AI policies.

LABOUR LAW

CURRENT SITUATION

The new Labour Law adopted in 2014 also defined the conclusion of non-standard employment contracts, i.e. contracts on occasional temporary work, service contracts, vocational training contracts and supplementary work contracts (Articles 197, 198, 201 and 202), restricting insurance companies from engaging the active population in the sale of insurance policies as follows:

- temporary and occasional employment contracts are limited to 120 days (if insurance companies intend to engage agents under this type of contracts, a 120-day period is a limiting factor);
- Insurance companies are not allowed to hire insurance agents under a service contract, since this position is already envisaged by the job systematization of insurance companies (direct or internal sales network);
- an agreement on vocational training is not an adequate form for the engagement of insurance agents either, as its term is limited, and monetary compensation is not considered as income;
- a supplementary work contract is provided as an option only for already employed persons, thus preventing insurance companies from engaging the working population potentials (requires the consent of the current employer, etc.).

The new Insurance Law partially liberalized non-standard employment relationships in agency companies, for insurance agents, banks, post offices and leasing companies as authorized representatives, where non-standard employment contracts may be concluded (contracts on occasional and temporary work, service contracts, supplementary work contracts).

In developed insurance markets, insurance companies and

external sales can conclude such types of employment contracts, thus liberalizing the labour market and allowing the possibility of additional work for the working population, all subject to education and certification, either by the insurance company, or by the supervisory authority (in this case, the NBS).

In the event of such liberalization, insurance companies would be able to expand their sales network, hire more sales agents, and predict and plan sales costs more easily and accurately, which in turn would contribute to the overall development of the insurance industry.

FIC RECOMMENDATIONS

- The Insurance Law should liberalize the hiring of insurance sales agents and other under non-standard employment contract (service contract, contract on temporary and occasional work, supplementary work contracts etc.), on the same basis as in the case of insurance agency companies,
- or revise the Labour Law, Articles 197, 198, 199, 201 and 202, to allow non-standard forms of employment, without the current limitations. Additionally, the Articles of the previous law on agency activities, currently not stipulated by the new law, should be reinstated in the Labour Law and by-laws.

INSURANCE LAW 1.00

REMAINING ISSUES

Article 62, paragraphs 5 and 6 of the Law requires at least one member of the supervisory board, and/or one member of the executive board to have active knowledge of the Serbian language and permanent residence in the Republic of Serbia, while other members of the Executive Board must have permanent residence in the Republic of Serbia, and all members of the executive board must be full-time employees in a joint-stock insurance company.

Upon analysing the aforementioned provisions of the Law, through the prism of separated companies, it has been concluded that the latter will have to duplicate the aforementioned functions and thus be directly punished for complying with the law. When Paragraph 3 Item 1 of the same Article is added to this, which stipulates that a member of a management body may not be a person who is a member of the management or supervisory body or a procurator in another insurance, reinsurance company or any other financial sector entity, the separated entities have additional difficulties in the election of their members and procurators. This will result in an unequal market position, which is contrary to Article 84 of the Constitution, which provides that everyone shall enjoy an equal legal position in the market, that any acts restricting freedom of competition are prohibited and, finally, that foreign and national entities shall be equal in the market.

The new Insurance Law has made significant progress towards compliance with the currently applicable EU legislation. The legislator's intention to achieve a high level of compliance with current European practices is evident, as well as to create a conducive environment for further work in this field, since the new supervisory regime for insurance and reinsurance companies – Solvency II – has become applicable in the EU on 1 January 2016 . This will bring significant changes in the business practices of insurance companies in the EU.

The law allows insurance agency activities in insurance agency companies, and brokerage activities in insurance brokerage companies, to be performed by persons authorized by the National Bank of Serbia, on the basis of employment or non-standard employment relationships.

The insurance agency activity, as a supplementary activity, subject to the prior consent of the National Bank of Serbia, can be performed by the following:

- a bank with registered seat in the Republic of Serbia, established in accordance with the law governing banks;
- financial leasing provider with registered seat in the Republic of Serbia, established in accordance with the law

governing financial leasing;
- public postal operator with registered seat in the Republic of Serbia, established in accordance with the law governing postal services.

In addition, insurance brokerage/insurance agency activities may also be performed by persons who are not subject to the Insurance Law, provided that the amount of the annual insurance premium per insurance contract does not exceed the amount of EUR 100, that the contract is not concluded for a period longer than five years, and that it does not relate to compulsory or life insurance.

The law introduced some new provisions regarding the content and manner of notifying i.e. informing the policyholders and the insured prior to the conclusion of the insurance contract, as well as throughout its validity term. These provisions are expected to lead to problems in practice, since insurance companies are not always able to obtain evidence that they have provided the required information to all the insured, especially in the case of collective insurances. We should bear in mind that other laws apply to issues related to the protection of rights of users, such as: the Law on Protection of Financial Service Users and the Consumer Protection Law, and they lead to the risk of possible multiple punishment of insurers.

Equal treatment must be guaranteed to all participants in the insurance market. In that sense, amendments to the law should enable the merger of companies that carry on life and non-life insurance business separately, if the companies have the same shareholders, or if those shareholders have a controlling share in both companies. The law envisages the joint performance of activities for separate companies engaged in life insurance or non-life insurance activities, respectively, when both companies have the same shareholders, but this does not resolve the controversial issues (for example, the tax treatment of joint activities).

In order to establish a more precise and systematic structure the insurance business should be regulated by three different laws, modelled on the laws of some European countries, in accordance with EU guidelines and directives: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on Insurance Brokers and Agents. While the ISL deals primarily with the relationship between the supervisory authority and the insurance company, as well as with status issues, the ICL defines the relationship between the insured and the insurer, i.e. their mutual contractual obligations, and the Law on Insurance Brokers and Agents regulates the sale of insurance through other licensed persons or alternatively a tripartite law.

FIC RECOMMENDATIONS

- Adoption of amendments to provisions of the Insurance Law on notification/provision of information to policyholders and insured persons.
- Facilitate the merger of insurance companies engaged in life insurance and non-life insurance activities separately, if such companies have the same shareholders, i.e. if those shareholders hold the controlling share in both companies.
- Regulation of tax issues related to the joint performance of activities in separate companies engaged in life insurance and non-life insurance activities, respectively, if such companies have the same shareholders;
- Adoption of a new set of insurance laws: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on Insurance Brokers and Agents.
- Amendments to Article 82, paragraph 4 of the Law so that in collective insurance contracts the insurer shall be obliged to inform the policyholder and enable the latter to inform the insured covered by that collective policy. Specifically, the obligation to provide information in collective policies should be transferred to the policyholder, or if that is not acceptable, it should at least be shared with the policyholder. Many companies include such a provision in their collective insurance contracts, but with the current legal definition it is not valid in case of court proceedings.

INSURANCE CONTRACT LAW

CURRENT SITUATION

Insurance contracts are currently regulated by the provisions of the Law on Contracts and Torts (hereinafter: LCT), which regulates the relationships under an insurance contract with a total of 69 articles. However, the relationships arising under insurance contracts are not fully regulated by the LCT, for two reasons. First, a number of provisions governing insurance contracts are found in other laws and by-laws (e.g. the Insurance Law, the Law on Compulsory Traffic Insurance, the Decree on Voluntary Health Insurance, by-laws of the National Bank of Serbia, etc.), while there are various other laws which do not regulate the specific substance of the contractual relationship in insurance, but have an impact on the relationships arising from insurance contracts (e.g. Consumer Protection Law, Electronic Document Law, Electronic Signature Law, Personal Data Protection Law, etc.). Second, certain matters directly related to insurance contract relationships are not regulated by the LCT (or not regulated at all). In this sense, there are no provisions in the law of the Republic of Serbia which specifically regulate insurance brokerage agreements and insurance agency agreements, as well as co-insurance contracts or reinsurance contracts.

As is evident, there is a loophole, since certain insurance contract-related relationships are not regulated at all, and unwritten rules established in the insurance practice are applied, while on the other side, there are too many sources of law are applicable to the relationships arising under insurance contracts, which leads to legal uncertainty.

In addition to all of the above, the provisions of the LCT governing the insurance contract also have certain gaps, as evidenced in practice over the past 39 years of application of this law. First of all, this refers to liability insurance, which is regulated by only one article. Also, changed social circumstances, technological development and modern supranational regulations (EU) require that certain amendments be made to the provisions of the LCT.

The legislator has, of course, recognized some of these needs for amending the provisions of the LCT governing insurance contracts and has, in the Preliminary Draft of the Civil Code of Serbia, provided certain amendments with regard to the current regulations of the LCT. However, as it seems at the moment, certain areas will remain outside the reach of the Civil Code provisions (regulation of insurance brokerage and insurance agency contracts, etc.).

FIC RECOMMENDATIONS

It is recommended that the issue of insurance contracts be excluded from the Civil Code provisions and be separately and comprehensively regulated under a special Insurance Contract Law, for the following reasons:

- Alignment with changed circumstances
  Current regulations need to be aligned with the changed life circumstances. The insurance market is in constant development, so insurance contracts are present in our everyday lives more than most other contracts. Its specificity entails the need for this matter to be regulated by a law which would unify and regulate in detail all its elements, characteristics and enable all stakeholders to familiarize with it in an easier, simpler and more transparent manner. We should also bear in mind that the people's awareness of the need for insurance and, therefore, insurance coverage, is vastly higher now than at the time when the LCT, which now only partially regulates this area, was adopted. It is therefore necessary that the insurance contract law be aligned with modern trends, business and means of communication, since the way in which insurance functions today is considerably different relative to the time when the Law on Contracts and Torts was adopted, and should be adjusted accordingly. Due to the clients' changed needs, their more frequent opting for stipulating contracts online, without wasting any additional time, it is necessary to amend the current legal regulations governing the electronic signature of documents to enable the conclusion of insurance contracts on the Internet without a qualified electronic signature, which most people do not have. Therefore, a two-factor authentication protocol for the conclusion of a contract online can be proposed.

- Faster and easier adoption of the Law and subsequent amendments to the Law
  We should not neglect the fact that the adoption of the Civil Code is a slow process and may not be expected to happen in the coming years. The needs of the insurance market have long required different and more detailed regulation of insurance contracts. Adoption of the missing laws would be much easier and faster, than the adoption and entry into force of the Civil Code.

  Also, due to the specific importance of the subject matter of the insurance contract, the need for amendments to insurance contract-related regulations arises more often than in the case of the other aforementioned contracts regulated by the LCT or the Civil Code. This is especially the case in the process of accession of the Republic of Serbia to the EU, where legislative activities in this area are very lively and dynamic, with constant efforts being made to improve the regulatory framework. Such regulatory changes would be practically impossible or very difficult if the subject matter of the insurance contract remained within the scope of the Civil Code. On the other hand, the Insurance Contract Law leaves sufficient flexibility for amendments in accordance with the stated needs.

- Good comparative experiences
  A separate Insurance Contract Law is not an unknown concept in the world. It is present in Germany, France, UK, Spain, Portugal, Luxembourg, Sweden, Belgium and many other developed countries, and proved to be a very good solution. Serbia should be guided by the positive experiences of developed countries and apply European standards. In this way, Serbia would be the first country in the region to follow the example of the developed European countries in this area.

  The tendency at EU level to regulate the insurance matter separately is a sufficient indication that there should be a separate law in Serbia as well that would exclusively regulate insurance contracts.

- Consolidation of the subject matter of the insurance contract law
  Certain provisions of the insurance contract law are already contained in other laws and regulations, and not only in the Law on Contacts and Torts (in the Insurance Law, which is a statutory law, but also in the Regulation on Voluntary Health Insurance, in the by-laws of the NBS, in the Law on Consumer Protection, etc.). On the other hand, there is a part of the matter which is directly related to insurance contracts and is therefore of great importance, but is not regulated by our positive regulations at all. In Serbia's national legislation, there is no law specifically regulating insurance brokerage contracts and insurance agency contracts, or co-insurance contracts or reinsurance contracts, whose presence and significance in the insurance market may not be ignored. Accordingly, the whole matter related to insurance contract relations should be systematized and consolidated. This would facilitate their application because they would be governed by one regulation. The consolidation of the subject matter of the insurance contract law would make this area more accessible, and would at the same time create the conditions for minimizing the lack of knowledge of regulations. Integrating the matter comprehensively in a single law would certainly minimize the possibility of loopholes in the future.

- Significance of insurance contracts
  The legal and economic importance of insurance in the modern world, and in Serbia as well, should not be neglected. This area is very specific and complex, so it would be desirable to have it regulated by a lex specialis. This would ensure that insurance contracts are regulated in a comprehensive manner and increase the security of business transactions, thus minimizing the space for loopholes. In addition, the economic importance of the insurance contract justifies the use of special legislation which would ensure that the legislature devote greater attention to the matter than would be the case if it were just regulated together with other contracts within the Civil Code.

DRAFT CIVIL CODE

CURRENT SITUATION

The public debate on the Draft Civil Code has been concluded. The current text of the Code contains over 480 alternative solutions whose fate will depend on the results of the public debate (there are only two proposed alternative solutions in the part related to insurance, articles 1394 and 1479).

The proposed solutions seek to improve and complete the existing legislative solutions in line with current scientific knowledge and the needs of business and judicial practice in the realization and protection of civil rights.

One of the innovations introduced in the Civil Code is Article 1399 - "Abuse Clause", in the Civil Code section of the common provisions for property insurance and personal insurance, which stipulates that a clause which has not been "specifically negotiated" shall not be binding for the policyholder. This issue leaves much doubt as to its the specific application in practice. The question arises as to what the legislature intended by the terms "special negotiation" and "simple and understandable language" in Article 1399.

The obligations of the insurer prior to the conclusion of the insurance contract are regulated in Article 1402 of the Civil Code, although this issue is already regulated by Article 82 of the Insurance Law. Thus, the same issue is regulated in several different laws in several different ways.

The Insurance Law stipulates a fine for insurance companies in the event of non-compliance with Article 82 of the Law, while the Civil Code stipulates that, in the event of a violation of the obligation to provide information by the insurer, the insured shall have an opportunity to request termination of the contract and compensation of damages.

POSITIVE DEVELOPMENTS

The Civil Code provides for the following improvements:

- the obligation to provide information to insured persons in collective insurance has been transferred to the policyholder of a collective insurance; otherwise the insurer shall be entitled to compensation of damages from the policyholder
- the possibility to issue a policy in electronic form with a mechanical signature.

REMAINING ISSUES

Despite minor improvements introduced by the Civil Code, many issues remain unanswered and unregulated, and left to the will and arbitrary interpretation of the parties, consequently, the dilemmas that have emerged in practice so far will not be resolved. Also, the Civil Code seeks to regulate certain issues which are already regulated by other laws, which will only complicate the situation and contribute to legal uncertainty.

The new Insurance Law allows investments in investment units of investment funds, but the Decision on Insurance Funds Investments stipulates that up to 25% of the technical reserves created on the basis of this type of product can be invested in investment units of one fund. There are few investment funds in the Serbian market, which additionally discourages this type of investment. Furthermore, Article 137, paragraph 3 stipulates that insurance funds invested abroad may not exceed 25% of core capital, which further limits the investment possibilities and, based on that, possible development of new products.

FIC RECOMMENDATIONS

- Opening of possibilities for investment in investment funds abroad above 25% of core capital if the local market is unable to offer better conditions.

LEASING

1.13

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Initiate amendments to the Law on Value-Added Tax concerning interest taxation, to abolish VAT charged on interest contained in the leasing fee.	2009			√
Amend the Law on Financial Leasing to explicitly transfer the obligation to settle unpaid parking tickets to the lessee, allowing the Parking Services to directly collect the payment from the lessees that are registered in the Registry of Motor Vehicles kept by the Ministry of Internal Affairs.	2016			√
Regulate operating leases by law and enable finance lease providers to provide operating leases as well. By extending the jurisdiction of the National Bank of Serbia (NBS) to this type of leases 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 leases are a consequence of strict limitations that apply to finance leases (primarily to individuals). The regulation of operating leases could result in the equalization of the rules for both types of leasing. Operating leases should be defined as a type leasing in which all risks and benefits are transferred to the client. This basic principle of differentiation between finance and operating leases 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 lease contract in relation to the economic lifecycle of the leased asset.	2016			√
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, so the insurance company may request recourse by leasing user instead of leasing company.	2012			√
In developing a programme of incentives for the economy, (industry, agriculture, etc.), and drafting laws and regulations in this matter, policy makers should envisage the possibility of using bank loans and other forms of financing such as financial leasing to support the implementation of incentives. Given the fact that finance leases are also a suitable way of funding, they should be included in the subsidized programmes of the Government of the Republic of Serbia in order to improve the competitiveness of the financial market and offer favourable form of financing.	2016		√	
Leasing and Insurance companies should be on the same level playing field as banks in the context of Article 85 of the Law on Personal Income Tax, i.e. in the case of write-off of receivables they should not be required to pay additional personal income tax if they have previously met statutory requirements. Amendments should include a simple change in adding the word "insurance company" or "lessor" next to the word "bank customer".	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2015			√
Launch an initiative for the partial reduction of liabilities of leasing companies in the context of prevention of money laundering and terrorism financing by determining the types of transactions and the materiality threshold.	2016			√

CURRENT SITUATION

The development of leasing in Serbia dates back to the beginning of 2003, when the Law on Financial Leasing was adopted. There are 16 leasing companies currently operating in Serbia, 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. As a result of market competition, it is expected that the number of active leasing companies will adjust to the market needs and drop in the future. This will contribute to further affirming the quality and high standard leasing services offered by market leaders so far.

In the last three years the leasing market has been stable, and the value of leasing contracts has shown an upward trend again. This 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 leasing contract term and minimum deposit), made leasing a serious competitor to other available sources of funding on the market. Despite these positive developments, further improvements in the field of leasing development are still necessary, taking into account that leasing is a very important source of mid-term and long-term funding, because it is an cost-effective solution for the procurement of funds required for business by corporate companies, especially small and medium enterprises.

POSITIVE DEVELOPMENTS

In previous period the following was done over the course of 2015:

The new Insurance Law, applicable from 27 June 2015, stipulates in Article 98 stipulates that leasing companies may engage in insurance brokerage and agency activities. In addition, the National Bank of Serbia (NBS) issued a decision on the implementation of the stipulations of the Insurance Law on insurance brokers and agents, thus providing leasing companies with precise rules for acquiring operating licences for conducting these activities and other detailed conditions for insurance agency activities. In 2015 and 2016, leasing companies were implementing the procedure for obtaining the prior consent form the NBS, and a part of the procedure has now been successfully completed. This is very important for improving profitability and competitiveness in the sector and is much appreciated by the Serbian leasing industry.

REMAINING ISSUES

1. Interest in financial leasing is taxable

Law on Value Added Tax (RS Official Gazette No 84/2004, 86/2004 - corr., 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 - adjusted RSD amount, 68/2014 - as amended, 142/2014, 5/2015 - adjusted RSD amount, 83/2015, 5/2016 - adjusted RSD amount, 108/2016 and 7/2017 - adjusted RSD amount), treats products and services of financial institutions in a different manner when defining the subject of VAT taxation.

Specifically, Article 4, item 2a) of the Law clearly states that the turnover of goods under a leasing contract is subject to VAT. Pursuant to the aforementioned Law, the VAT base is the value of the leased asset and interest.

On the other hand, in Article 25 of the same Law, the legislature envisaged that credit and insurance services are exempt from VAT.

Different tax treatment of products and services of financial institutions has led to increasing the costs of financing through leasing in comparison with other types of financing, and consequently less favourable for certain segments of clients, given that VAT on interest is an additional cost, which means that financial leasing companies are placed in an unfavourable position.

2. Leasing companies are charged parking fees incurred by users 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. These decisions further envisage that any user of public car parks violating the provisions of these decisions by failing to pay the parking fee will be obliged to pay a fine. In the 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.

3. Operating leases are not regulated by the law and financial leasing companies cannot provide operating leases

The operating leases are not regulated by special regulations, but exclusively by the Law on Contracts and torts (Official Gazette of the SFRY No 29/78, 39/85, 45/89 – Const. Court of Yugoslavia Decision and 57/89, Official Gazette of SFRY No 31/93 and Official Gazette of SCG No 1/2003 - Constitutional Charter) in Chapter XI - Lease, the Rulebook on criteria on the basis of which it is determined when the delivery of goods under a lease or lease contract is considered as the sale of goods (RS Official Gazette No 122/12) and a number of other legal acts regulating the exploitation of rights and obligations as of the lease itself (the object of an operating lease). Therefore, operating leases are not subject to the supervision of regulatory bodies in charge of financial leasing. With recent amendments to the Financial Leasing Act, financial leasing providers are allowed to engage in the lease of the leased asset, but exclusively assets leased under a financial leasing contract that were returned. This is a negligible part of the overall operating lease market, i.e. lease of movable properties in the Republic of Serbia. In fact, the total value of movable properties leased by companies engaging in business activity 7711 - Renting and leasing cars and light motor vehicles, which are partially or majority-owned by foreign financial institutions only slightly exceeds 15% of total investments of financial leasing companies operating in Serbia. This form of financing, i.e. the temporary use of movable assets (under a long-term lease), is present everywhere in the world as yet another way of procuring and using fixed assets where the beneficiary at the end of the lease term has no option to purchase the property it has used. Operating leasing, by its very nature, (customers, suppliers, way of financing fixed assets, marketing strategy, etc.), is much closer to financial leasing than to classical short-term rent (rent-a-car). The Rulebook on the criteria on the basis of which it is determined when the delivery of goods under a leasing agreement or lease is considered as sale of goods was a big step forward for all leasing companies engaged in long-term leasing in Serbia, because it clarifies some of the dilemmas related to tax policies, primarily to the proper classification of financial and operating lease transactions. However, there is still a need for concrete legal solutions for operating leasing in Serbia, and above all, for amendments to the Financial Leasing Law, in terms of enabling financial leasing companies to provide long-term lease services, not only for items returned in financial leasing business activities, but also for newly purchased ones. This would be sufficient reason for even more financial leasing companies to start offering this type of service, i.e. financial products, and all of this under the supervision of institutions responsible for supervising the activity of financial leasing companies.

4. Guarantee Fund may have the right to file recourse claims from leasing companies for the damage caused by the lessee when using the leased asset

According to the Law on Financial Leasing the Guarantee Fund of the Association of Serbian Insurers has the right to recourse, upon payment of the compensation of damages by the owner of the means of transportation for the amount paid for damages, plus interest and costs.

The Insurance Law is not aligned with the Law on Financial Leasing, which introduced a completely new legal transaction into the legal system of the Republic of Serbia that, according to the definition of the rules of liability for the use of the leased asset, is in conflict with the existing rule on the Guarantee Fund's right to file a recourse claim against the owner of the means of transportation. The fact that the lessor is not in a position to influence the behaviour of the lessee or other parties using the leased asset and 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.

Currently, leasing companies are facing recourse requests by the Guarantee Fund of the Association of Serbian Insurers, which they can reject on grounds of 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.

5. Financial leases are not included in the financing options in some of the state financial incentives programmes

Financial leasing as a form of financing is not envisaged by the Law on Incentives in Agricultural Production (RS Official Gazette of the Republic of Serbia No 10/2013, 142/2014, and 103/2015). Specifically, Article 3, regulating the types of incentives, provides support in the form of loans, but not financial leasing, which prevents leasing companies from participating in these programmes together with banks. One of the conditions is that the basic asset purchased for the purpose of performing activities in agriculture must be exclusively owned by the recipient of the incentive, which by unilateral interpretation excludes the acquisition of that asset through financial leasing, where the financial leasing company has legal ownership and the recipient of the incentive (lessee) has economic ownership. Also, one of the conditions for obtaining incentives is that the agriculture producer should not dispose the basic asset acquired with the incentives within a specified time limit. If the fixed assets acquired with the use of incentives are acquired through a financial leasing contract, monitoring compliance with this condition by the relevant authority would be an extremely complex if not impossible task, as financial leasing would be regulated by special acts, stipulating that the recipient of the subsidy cannot repay and/or dispose of the fixed asset before the expiry of the term prescribed by the incentive agreement, so that the financial leasing company would have the additional role of controller, on behalf of the relevant authority.

A positive example is the Decree of the Government of the Republic of Serbia on establishing the Small Business Support Programme for small companies to purchase equipment in 2016 and 2017. This programme included leasing companies along with the banks.

6. The leasing and insurance companies in the case of write off of receivables from personal income taxpayers

When a leasing company or insurance company fails to recover a debt from a customer through the courts, and subsequently adopts a decision to write off the irrecoverable debt, that company is still obliged to pay a 20% personal income tax rate because written-off receivables have the status of "other revenues". This is defined in 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 annual personal income tax base, and consequently, a person unable to settle its debt to a leasing or insurance company, i 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.

7. High level of required capital requirement for leasing companies for leasing real estate in the amount of EUR 5 million

The high capital requirement 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. At the meetings organized by the USAID, representatives of the ALCS and NBS concluded that the aforementioned legal changes in order to reduce the required capital made sense and that they will be supported by the NBS.

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 leas-

ing operations involving immovable property 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 is EUR 5 million for leasing companies to perform leasing operations involving immovable property is limiting the development of this sector. Applying the same capital requirement to leasing of movables and leasing of immovable property would create a conducive environment for the development of this type of leasing in Serbia.

8. The initiative to amend the Law on the Prevention of Money Laundering and Financing Terrorism in the part related to financial leasing

Actions and measures that leasing companies are obliged to take in order to prevent and detect money laundering are the same as for banks. Leasing transactions are conducted exclusively through accounts with banks and leasing companies do not operate with cash. All cash flows should be already subject to control by the banks in terms of prevention of money laundering, which means that these activities are duplicated. Bearing in mind that leasing companies do not operate with cash transactions and their limited resources, there is a need to launch an initiative for abolishing this requirement for leasing companies.

9. The registration of the leasing contract with the Business Registers Agency in electronic form

According to Law on Financial Leasing, the lessor is obliged to submit the request for registration of financial leasing contracts within seven days from the date of delivery of the leased asset. The lessor submits an application with supporting documents (contract, invoices, etc.) physically in paper form. Apart from being outdated, this procedure of filing documents also entails additional costs for leasing companies and slows down the process.

Switching to fully electronic applications is necessary, in accordance with the Law on the Procedure of Registration with the Serbian Business Registers Agency, where Article 11 stipulates that electronic applications shall be submitted to the Agency by the user application for receipt of electronic documents. This law has created a framework for the use of electronically signed document. However, a significant number of lessees is still not using this option, so its application would be limited initially.

FIC RECOMMENDATIONS

- Initiation of amendments to the Law on Value-Added Tax concerning interest taxation, to abolish VAT charged on interest contained in the leasing fee.
- Amendment to the Law on Financial Leasing to explicitly transfer the obligation to settle unpaid parking tickets to the lessee, allowing the Parking Services to directly collect the payment from the lessees that are registered in the Registry of Motor Vehicles kept by the Ministry of Interior.
- Regulate operating leases by law and enable financial lease providers to offer operating lease services as well. By extending the jurisdiction of the National Bank of Serbia (NBS) to this type of leasing as well, one part of the financial flow would be included under the NBS surveillance and control system, which would lead to even greater safety of the financial system. The NBS has long considered that operating leases are a consequence of strict limitations that apply to finance leases (primarily to individuals). The regulation of operating leasing could result in the equalization of the rules for both types of leasing. Operating leases should be defined as a type of leasing in which all risks and benefits are transferred to the client. This basic principle of differentiation between finance and operating leases 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 term of contract should be defined, as well as the maximum term of the leasing contract in relation to the economic life of the leased asset.

- The Insurance Law should be harmonized with the Law on Financial Leasing, specifically the provisions on the right of the Guarantee Fund to seek recourse upon payment of damages caused by a vehicle not covered by mandatory insurance from the owner i.e. registered user of the means of transport, so that the insurance company may seek recourse from the lessee and not from the leasing company.

- In developing a program of incentives for the economy (industry, agriculture, etc.) and drafting laws and regulations on this matter, policy makers should envisage the possibility of using other forms of financing, including bank loans and financial leasing, to support the implementation of incentives be. Given the fact that finance leases are also a suitable form of funding, they should be included in the subsidized programmes of the Government of the Republic of Serbia, in order to improve the competitiveness of the financial market and the offer of favourable form of financing.

- Leasing and insurance companies should enjoy the same treatment as banks regarding Article 85 of the Law on Personal Income Tax, i.e. in the case of write off of receivables they should not be required to pay additional personal income tax if they have previously met statutory requirements. Amendments should include a simple change such as adding the word "insurance company" or "lessor" next to the word "bank customer".

- 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 finance lease operations, the monetary share of the lessor's founding capital may not be below the Serbian dinar (RSD) equivalent of EUR 500,000 at the official median exchange rate on the date of payment, for leasing movable as well as immovable property.

- Launch an initiative to exclude in total leasing companies from obligations envisaged by the Law on prevention of money laundering and terrorist financing or to partially relax some of the requirements for leasing companies envisaged for the prevention of money laundering and terrorist financing.

- In order to improve the registration process of the leasing contract with the Serbian Business Registers Agency (SBRA), it is necessary that the SBRA:
  - develop a user application for electronic registration of leasing contracts;
  - in addition to the signed electronic document, also allow the electronic registration of leasing contracts signed in person.

OIL AND GAS SECTOR

1.70

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to increase the legal certainty of companies, it is vital to regulate the area of the collection of parafiscal charges by establishing a functional audit system and by reducing the number of existing taxes and charges imposed by public service providers, and by establishing better control in prescribing new taxes and charges both at the local and national level.	2015			√
It is necessary to increase the predictability of business operations by involving and consulting industry representatives in the process of enactment or in the amendment of existing laws, regulations, and by-laws which may have impact on their businesses.	2015		√	
Bearing in mind that a certain number of inspections conducted in 2015 were part of planned activities by inspection authorities and not due to legal obligations, with respect to licenses for warehousing and the wholesale trade of oil products, and to ensure that minimum technical requirements are met by retail and wholesale energy companies, it is still necessary to establish a system of mandatory and regular controls in order to ensure that requirements are being met for holding the aforementioned licenses by amending the Energy Law.	2016		√	
The activities of intensive control of the presence and concentrations of marking fluid in oil products and improvement of regulations in line with suggestions made by energy companies should be continued as they have proven to be a successful approach in fighting illegal trade.	2013		√	
We note that it is still necessary to enact the Law on Explosive Substances accompanied with related by-laws which would define activities in the area of the manufacture and marketing of explosives and other hazardous substances.	2014		√	
For the purposes of a detailed regulation of retail channel sales, the following related by-laws must be enacted in addition to the adopted Law on Amendments to the Law on Fire Protection and the Law on Flammable and Combustible Liquids and Flammable Gases: the Rulebook on the Construction of Facilities for Flammable and Combustible Liquids and on Warehousing and Loading/Unloading of Flammable and Combustible Liquids, and the Rulebook on the Construction of Filling Stations for Motor Vehicles and on Warehousing and Loading/Unloading Fuels.	2016		√	
The current Rulebook on the Construction of Filling Stations for Motor Vehicles and Warehousing and the Warehousing and Loading/Unloading of Fuels (Official Gazette of SRFY, No. 27/1971) and the Rulebook on the Minimum Technical Requirements for Trading in Oil Products and Biofuels (RS Official Gazette No 68/2013) should be amended or new regulations enacted which would uniformly regulate requirements for the construction of automated unmanned filling stations and requirements for trading in oil products and biofuels.	2016			√
The percentage of the total fiscal burden imposed on oil products sold in the Republic of Serbia should be reviewed and reconciled with that of neighbouring countries.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Inspection of oil products imported into the country for the purpose of re-export should be reinforced through the coordinated actions of the relevant authorities, taking into consideration abuses which occur in relation to these declared goods.	2016		√	
Activities of the relevant authorities with respect to the import, sale, and use of base oils should be coordinated. The introduction of mandatory marking of base oils should also be reviewed	2016		√	

CURRENT SITUATION

Crude oil prices trended lower in 2016, averaging below USD 50 per barrel. Consequently, oil prices adversely affected companies operating in the petroleum and gas sector both globally and, to a considerable extent, in Serbia. In 2016, the market players recorded a year-on-year drop in profit and investments. The downward price trend continued in 2017 as well, producing the same side effect on the companies that operate in the sector.

On the other hand, the encouraging economic trends in 2016 and at the beginning of 2017, due to continued fiscal consolidation and increasingly enabling business environment in the Republic of Serbia, contributed to improvement in business conditions. Additionally, the fact that the government authorities recognized the need to fight illegal trade should be acknowledged. The measures implemented against illegal trade contributed not only to the increase in the volume of trade in oil products in the Republic of Serbia, but also to the increase in revenues collected from excise taxes on oil products by approximately 13% on an annual basis.

Legislative activities of significance for the oil and gas sector also continued in 2016. Primarily, the Decree on Amendments to the Decree on Monitoring the Quality of Oil Products and Biofuels was adopted, which stipulated the requirements, method and procedure for monitoring the quality of oil products, additionally harmonized with the EU practice. Likewise, the Decree on Amendments to the Decree on Marking of Oil Products was adopted, which although can still further be refined, had significantly helped in fighting illegal trade in this sector, and which, for the first time, established control over certain end users of oil products. In the forthcoming period, new regulations relevant for the sector will be drafted and enacted. Specifically the Law on Greenhouse Gas Emission Reduction, which will introduce systematic and continuous monitoring of greenhouse gas emissions, primarily from industrial and energy plants; the Decree establishing the programme for the implementation of the Energy Sector Development Strategy in the period from 2017 to 2023, which will define strategic energy projects, set measurable goals and indicators of their achievement, determine priority projects under the programme, and other regulations.

The fiscal burden on products in the oil and gas sector in Serbia remains among the highest in the region. According to 2016 data, diesel fuel prices in Serbia were among the highest in the region. Diesel fuel in Serbia (EUR 1.159) was more expensive compared to the selling prices in Slovenia (EUR 1.147), Greece (EUR 1.147), Romania (EUR 1.105), Bulgaria (EUR 1.007), Montenegro (EUR 1.000), Bosnia and Herzegovina (EUR 0.971) and Macedonia (EUR 0.838), and only slightly cheaper than in Croatia (EUR 1.181) and Hungary (EUR 1.206).

A high fiscal burden on diesel and high selling prices encourage illegal trade in oil products, predominantly reflected in blending diesel fuel with non-excisable products and its subsequent sale as motor fuel. Presently, base oils are generally used in blending, which are imported as intermediary products for lubricant production, however, instead in production they are used as a substitute for diesel fuel, exclusive of associated excise tax and VAT.

In addition, it should be pointed out once again that the fiscal burden on LPG significantly impacted its price, and drastically reduced consumption of this product. Compared to the countries in the region, the LPG price in Serbia (EUR 0.614) was higher than in Montenegro (EUR 0.600), Croatia (EUR 0.563), Macedonia (EUR 0.496), Bulgaria (EUR 0.455), Romania (EUR 0.438) and Bosnia and Herzegovina (EUR 0.435), and only slightly lower than the price in Slovenia (EUR 0.615), Hungary (EUR 0.641) and Greece (EUR 0.698).

POSITIVE DEVELOPMENTS

The marking and controlling of oil products is still exercised on a regular basis. In 2016, market inspectors collected 6,659 fuel samples, with an insufficient concentration of markers found in only 39 samples (29 diesel fuel and 10 unleaded fuel samples – 0.6% in total). This was the average in European countries in 2016 as well. Control by market inspection authorities helped reduce violation of regulations and customer complaints about the quality of fuel. This was facilitated by introducing risk analysis and specialized software for the monitoring of the results of inspections. Additionally, within the scope of the petroleum quality monitoring activity in 2016, 3,773 samples of gasoline, diesel, gasoil 0.1, and heating oil were analysed. As a result, 145 samples, or 3.8% of the total number of analysed samples, were found to not comply with regulations in terms of quality.

It should be noted that, since February 2017, with the adoption of amendments to the Decree on Marking of Oil Products and to the Decree on Monitoring the Quality of Oil Products, inspectors have also been allowed to test fuel tanks of trucks, buses, and agricultural machinery. These regulations make the process of surveillance over the trade in oil and oil products complete and in line with EU requirements. The same decrees also introduced an innovation in laboratory inspections. Since February 2017, inspectors have been required to analyse samples taken within a maximum of four days from the sampling, thus enabling government authorities to respond faster.

Also in 2016, based on the activity plan of inspection authorities, energy companies were subjected to control in order to determine whether they met the requirements for holding a license for:

- Storing oil, oil products, and biofuels; Trading in oil, oil products, biofuels, and compressed natural gas;
- Trading in motor and other fuels at transportation vehicles fuelling stations.

State authorities have revoked some licenses, either temporarily or permanently, from energy companies in which irregularities were observed with respect to meeting requirements for holding such licenses and carrying on such business activity.

By enacting the Conclusion of the Government of the Republic of Serbia on the Prevention of Illegal Trade in Oil Products on 29 May 29 2017, the action to prevent illegal trade in oil products continues through the mutual cooperation of the Ministry of Interior, the Ministry of Finance, the Ministry of Trade, Tourism, and Telecommunications, and the Ministry of Mining and Energy.

Furthermore, by entry into force of the Rulebook on Technical Standards for Fire and Explosion Protection at Petrol Stations for the Supply of Road Transportation Vehicles, Small Boats, Small Industrial and Sports Aircraft, special technical standards are now defined for fire and explosion protection during the construction of new facilities and the extension, adaptation, reconstruction, and renovation of existing petrol stations. Within the scope of this Rulebook, decisions on fire safety were adopted, ones which we proposed for years to be stipulated by the Rulebook on the Construction of Petrol Stations for Motor Vehicles and on Fuel Storage and Transloading.

Also, by enacting by-laws on the basis of the Law on Commodity Reserves in 2015, a procurement plan was devised for the establishment of mandatory reserves of oil and oil products. Rulebook on Defining Annual Program for Establishment and Maintenance of Mandatory Reserves of Oil and Oil Products are enacted on an annual basis.

REMAINING ISSUES

The institutional resolution of parafiscal charges, including the identification and reduction of existing charges, and also control over the introduction of new charges, has not yet been adopted, notwithstanding announcements by the relevant authorities. It should be noted that legal entities were proposing to regulate this issue through the Tax Law, the Law on Compensation for the Use of Public Property, and the Introduction of the Public Register for Parafiscal Charges.

Last year (2016) saw a drastic increase in the import of base oils, by around 66,000 tons, while base oil requisitions for lubricant production in Serbia are around 40,000 tons annually. Apparently, imported volumes are significantly higher than the actual consumption of base oil for the purpose of lubricant production. Considering that base oils cannot be used for any other purpose, it may be concluded that the surplus is non-purposefully being blended with motor fuels, i.e. as a substitute for diesel fuel, causing a consequent loss in the budget of the Republic of Serbia of around EUR 30 million, due to evasion of excise taxes and VAT.

A progress has been observed in regulating the production and trade of explosives and other hazardous substances. However, institutional improvements are still called for in this area.

FIC RECOMMENDATIONS

- In order to increase the legal certainty of companies, it is vital to regulate the area of parafiscal charge collection by establishing a functional audit system and by reducing the number of existing taxes and charges imposed by public service providers as well as by establishing better control in regulating new taxes and charges both at the local and national level.
- The necessity of increasing the predictability of business operations still exists, by involving and consulting industry representatives in the process of enacting or amending existing laws and by-laws that may have an impact on their businesses and also by consistent enforcement of the existing regulations and activity of competent authorities and institutions.
- Although, in 2016, within the scope of planned activities by inspection authorities, a number of inspections were conducted with respect to licenses for storing and trading in oil products in wholesale, and controls to ensure that minimum technical requirements were met by retail and wholesale energy companies, it is still necessary that the Energy Agency establish a system of mandatory and regular controls in order to ensure that requirements are met for holding said licenses over the entire license validity period (not just at the moment of their issuance).
- Having proven to be a successful approach to fighting illegal trade, intensive control of the presence and concentrations of markers in oil products should be continued, as should improvement in regulations by adopting suggestions made by energy companies.
- It should be noted that it is still necessary to enact the Law on Explosive Substances, supported by related by-laws, all of which would define activities in the area of the manufacturing and marketing of explosives and other hazardous substances.
- With a view to precisely regulating the retail channel, in addition to the adopted Rulebook on Technical Standards for Fire and Explosion Protection at Petrol Stations for the Supply of Road Transportation Vehicles, Small Boats, Small Industrial, and Sports Aircraft, a new Rulebook on the Construction of Facilities for Flammable and Combustible Liquids and on the Storage and Transloading of Flammable and Combustible Liquids, harmonized with the Law on Fire Protection, still needs to be enacted.
- The Rulebook on the Minimum Technical Requirements for Trading in Oil Products and Biofuels (Official Gazette of the Republic of Serbia, No. 68/2013) should be amended or new regulations enacted that would simultaneously regulate requirements for the construction of automated unmanned filling stations, as well as requirements for trading in oil products and biofuels.
- The percentage of the total fiscal burden imposed on oil products marketed in the Republic of Serbia should be considered.
- Inspection of oil products imported into the country for the purpose of re-export should be reinforced through the coordinated actions of the relevant authorities, in view of abuses to which such goods declared for this purpose are subject.

- It is vital to establish an improved coordination between the relevant government authorities regarding the import, placement, and use of base oils and control of their use, for the reason of which the introduction of marking base oils should be reconsidered, which the government has undertaken under Article 337, Paragraph 2 of the Energy Law; as well as to consider the measures under fiscal policy for the purpose of minimizing abuse of imported base oil that is not used as feedstock in oil and lubricant production.

PHARMACEUTICALS

1.47

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. Representatives of the pharmaceutical industry should to be included in the legislative process.	2013	√		
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.	2013		√	
Setting up a clear framework for the negotiations process between the NHIF and the pharmaceutical industry, including a mandatory consultations stage. As a result of the negotiations, the two sides should conclude a Managed Entry Agreement, 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.	2013	√		
Serbia's health budget must be financially consolidated; to ensure continued growth of the budget for medicines at double rate compared to the rate of GDP growth and the health needs of the insured in the Republic of Serbia. Make the budget more transparent to increase business predictability and safety of investment in the health and pharmaceutical sector.	2013		√	
Equalize customs duties for finished medicinal products and raw materials for medicines production.	2013			√
The same tax treatment should be applied to the whole pharmaceutical sector, in the field of import of finished products and raw materials.	2014			√
Adjust the VAT rate for raw materials to the rate applied to finished medicinal products.	2013			√
Abolish VAT on donations of medicines and medical devices to health institutions.	2014			√
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.	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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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			√
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.	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. 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.	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			√
The new Law on Waste Management should not introduce additional, financial burdens for pharmaceutical companies.	2015			√

CURRENT SITUATION

Key factors that contribute to positive performance of the healthcare system in each country are regular drug supply and access to modern therapies. However, adequate supply of medicines and access to therapies are not sufficient for its normal functioning; healthcare requires a systematically established and functionally efficient link between its three underlying pillars: manufacturers, wholesalers and healthcare institutions (public and private). Furthermore, production of medicines is one of the most important branches of the economy and an important factor in the overall productivity and health of the nation, not only in Serbia but all over the world. For the foregoing reasons, the importance of this industry is immense and manifold. The health of the nation is one of the most important, if not the most important factor of productivity and economic growth, directly linked to investments in health and inasmuch to prevention and treatment. In this context, healthcare outcomes are related not only to investments in prevention and promotion of healthy lifestyles but equally to quality of treatment and functional efficiency of the stakeholders that lie at the heart of the system – the healthcare institutions and pharmacies.

International companies present in Serbia are the major contributors to regular drug supply and the leading providers of access to modern therapies. On the other side, the local pharmaceutical industry is very important for a regular drug supply and the efficient functioning of the healthcare system and the Serbian economy as a whole. It employs approximately 6,500 people; contributes to export growth with around EUR 180 million annually; generates around EUR 50 million in public revenues (tax, contributions, customs duties and other applicable fees).

At the same time, 10% of the Serbian GDP is spent on financing healthcare needs. It is important to underline that only 60% of that amount is covered by state resources (National Health Insurance Fund, Ministry of Health, local governments), while 40% of healthcare costs are covered by out-of-pocket payments. This means that a considerable share of the funding is shifted to private individuals. By comparison, in the EU member states, public spending is in the range from 70% to 80% of total healthcare costs.

Approximately 18% of the overall healthcare budget in Serbia is allocated for medicines. Even though compared to previous period, the first steps forward were made in 2016 in increasing access to modern therapies relative to the previous period, resulting in Serbia's significant progress on the European Healthcare Consumer Index, this is not sufficient. Further strategic thinking and decisive actions are required in relation to efficient management of the healthcare budget, bearing in mind the extent of the health risks and the needs for modern treatments for all diseases, especially for serious ones. Without treatment of such diseases, there would be no healthcare system positive outcomes, a healthy nation, the increase of productivity, economic growth or sustainability.

First, the overall mortality of Serbia's population is approximately 46% higher than the EU average (14.2/1000 vs. 9.7/1000). Average life expectancy is Serbia is also significantly lower relative to the EU average (74,7 vs. 80,2 years). Cardiovascular diseases, cancer, diabetes and chronic obstructive pulmonary diseases are a major threat to the health and life expectancy of the Serbian society. The gravity and complexity of the problem is illustrated by the discrepancy between the cancer incidence rate (18th in Europe) and mortality rate (2nd in Europe). Undoubtedly, the treatment of serious diseases, such as cancer, is very expensive. In 2017 round EUR 50 million or 2.7% of HCIF (Healthcare Insurance Fund) funds will be spent for this purpose (C list of expensive medicines). Bearing in mind the said discrepancy in the cancer incidence and mortality rate, it is clear that access to crucial medicines that could decrease such a high mortality rate is insufficient. This problem has been recognized by healthcare authorities in Serbia (National Health Insurance Fund – NHIF), which is reflected in the fact that significant steps forward were made in previous year. Even so, it is important that such a trend be continued.

Second, in addition to ensuring the regular drug supply and continuous improvement of access to therapies, another important step would be to expand the indications for the medicines already available and included in the NHIF list, in order to improve the quality and outcomes of treatment. With respect to this, the crucial factor for efficient treatment and consequently positive outcomes for the healthcare system as a whole, is the continuing acknowledgment of the authority of healthcare experts, further improvement of decision-making transparency and the inclusion of healthcare and pharmaceutical experts in the decision-making process. This equally applies to patient associations who are primarily affected by the decision-making process and because it is not only a practice but the standard in the EU.

Third, places that provide access to therapies, whether through direct application or prescription, are healthcare institutions. Private healthcare institutions are successful, operating with standard liquidity and more or less profitably as hospitals, community health centers and pharmacies. However, healthcare institutions owned by the state and with far more unfavorable financial performances are in the majority. The most acute problem is the inability of over-indebted healthcare institutions, specifically a group of 25 state owned pharmacies, including community health centers with their own pharmacies, to repay their debt to drug wholesalers amounting to almost RSD 3 billion that they cannot pay on their own. The hospitals' debts that were partially settled in the previous period are on the rise again. This seriously affects the liquidity of drug wholesalers, disrupting the normal supply of state-owned pharmacies and hospitals and reveals the need for urgently finding a systematic solution to the problem.

Fourth, the absence of a systematic solution for the sustainability of state-owned pharmacies is an urgent problem and also a very relevant one, for healthcare beneficiaries and manufacturers, wholesalers and pharmacies, equally. In relation to this issue, 12% retail margins for drugs are unsustainably low and far below comparable margins and prescription taxes in other countries and no amount of business acumen can compensate that. This problem mostly affects state-owned pharmacies that have a dominant share of drug sales according to CIN.

Fifth, unregulated privatization of state-owned pharmacies without a solid base in the public-private partnership regulatory framework is a process that started in 2017. Local governments lead that process in the sense that, as founders, each one individually and according to its priorities, tries to get rid of the pharmacies that cannot be managed successfully, accepting to service the debts from their own resources. The defect with this approach is the absence of centralization and direct Government involvement, resulting in solutions that are less favourable for everyone: the local governments, the wholesalers and the creditors.

Sixth, the incomplete regulatory framework, which is non-compliant with the EU acquis in many important aspects, causes great uncertainty in the healthcare sector and makes the decision-making procedures at various levels, including Government and NHIF, insufficiently transparent and legislative solutions hardly applicable in practice. The new stipulation in the Draft of the new Law on Pharmacies, which forbids the vertical integration of production, wholesale and retail, with a retroactive effect, puts legal and investment security into question. If this stipulation were be accepted it would represent a breach of the stabilization clause in the Law on Investments at the expense of local and foreign investors – current founders of vertically integrated pharmacies. It would also send the message that invested capital in Serbia does not enjoy any security, as new business terms can be expected with every change of the law and will be of the kind that could not have been foreseen at the moment when Serbia was selected as the place to start a business. Deadlines for important decisions are usually not being met.

POSITIVE DEVELOPMENTS

The NHIF allocated additional RSD 1 billion for innovative medicines in its 2017 budget. The negotiation process between pharmaceutical companies and the NHIF started in the second half of 2016. This process ended with the signing of special agreements that precisely define the terms for the addition of 20 innovative medicines, previously prioritized by the Central Commission for Medicines, become enlisted in the NHIF list. Thus, special agreements are introduced for the first time, clearly stipulating the respective share of financial obligations of the NHIF and medicine license holders.

REMAINING ISSUES

1. Gaps in the process of including medicines on the Reimbursement List

The Rulebook on criteria for including medicines on the Reimbursement List, as a key by-law in this matter, needs to be amended to include much clearer and specific criteria for the selection of medicines covered by the obligatory health insurance.

Even though the first Management Entry Agreements were signed between the NHIF and pharmaceutical companies in late 2016, and all steps were taken according to the decisions of the Central Commission for Medicines concerning the prioritization of therapeutic areas and medicines, the Rulebook needs to be amended to define the criteria for prioritization. The NHIF has failed to comply with the agreed deadlines for the submitted requests and, as a consequence, the number

of new INNs pending reimbursement approval is very high and continuously increasing. The NHIF is still not required to forward the relevant authority's decision 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 instituting an administrative procedure before the Administrative Court.

2. 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 and opened the first negotiation chapters), WTO, CEFTA, EFTA, and bilateral relations through the Free Trade Agreement (FTA) with Russia, Belorussia, Kazakhstan and Turkey, Serbia's customs policy does not envisage 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).

The Law on Payment Deadlines in Commercial Transactions (RS Official Gazette No 119/2012) contributed to the unequal treatment of local manufacturers and importers, as local manufacturers are required to collect payments 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 EU standards, and are only creating additional expenses for the industry. An example is the control label on the outer packaging of medicines, introduced in 2011, in an attempt to efficiently prevent forgeries.

Amendments are required to be made to the Law on Waste Management (RS Official Gazette No 36/09, 88/10 and 16/16), as a precondition for the adoption of systematic and sustainable by-laws, in the first place the Rulebook on pharmaceutical waste management in order to define the obligations of all participants in the process of pharmaceutical waste management; to clearly differentiate the terms, obligations and actions, especially in the segment related to pharmaceutical waste management collected by the citizens, specifically for the manufacturer, license holder and distribution license holder.

3. The ''duality'' of medicine prices

The pricing of medicines is subject to strict administrative control, and is a very lengthy, non-transparent process, also involving a second pricing procedure:

a. According to Article 58 of the Law on Medicines, after the market authorization is obtained from ALIMS, the Government, in agreement with the Ministry of Health and 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 the 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 in October 2015 based on the exchange rate of 7 July 2015. Although the RSD exchange rate grew in the meantime, the NHIF has not yet applied this rate for reimbursed products. All this resulted in additional losses to pharmaceutical companies.

b. Only once the Government reaches a decision on the maximum wholesale price of a medicine, can a marketing authorization holder submit an application for the inclusion of the medicine on the List of Medicines described 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 price in reference countries (Italy, Slovenia and Croatia) and on prices of medicines already included in the List of Medicines. Thus, the administrative procedure for determining the

price of every medicine on the Reimbursement List is repeated a second time, 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.

c. List of Medicines
Article 30 of the Rulebook on criteria for inclusion in the List of Medicines of April 2014 envisages that the difference in the price between original and generic A-list medicines with the same or similar pharmaceutical properties and in the same dosage may not exceed 30%, which is co-paid by patients. The availability of medicines is thus limited, primarily 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 greater availability of original and branded drugs.

4. Illiquidity of the pharmaceutical sector

The overdue amount owed to wholesalers by state-owned public health institutions under public contracts exceeds EUR 35 million (of which approximately EUR 23 million EUR is the past due debt of pharmacies and health centers), with the debt growing by an average monthly rate of 235 million RSD. State-owned public health institutions are not capable of repaying this debt, or even a tiny portion of it, since total claims of wholesalers towards state public health institutions now exceed RSD 10 billion.

This huge burden is carried by wholesalers and other drug suppliers financing the debt of the state public health system. Consequently, their capabilities to provide continuous supply to pharmacies and hospitals are limited. Such conditions are not sustainable – if the liquidity of wholesalers comes under further pressure, the consequences will be felt by all other stakeholders in the pharmaceutical sector: producers, importers and, finally, private pharmacies as well.

All attempts to have debt repayment organized in a comprehensive way, and on a similar basis for all affected institutions, proved futile. All of this creates additional insecurity for the pharmaceutical sector. Even though wholesalers tried to resolve the issue by showing readiness to extend the payment terms and local municipalities were ready to commit to granting long-term financial support to their institutions for debt repayment, it was not possible to implement the agreements.

5. Administrative procedures and market authorization

The state administration is slow in issuing various permits, decisions, approvals of import trade and distribution of raw materials and finished products. Often there is a lack in 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 medical product on the market is the issuing of a marketing authorization by the ALIMS. The law stipulates that this procedure must be completed within 30+120 days, with the possibility of a fast-track procedure and a deadline of 30+150 days for medical products registered in the EU, through the so-called centralized procedure. In practice, the already fairly long timelines are regularly overrun. Similarly, according to existing legislation, the relevant timelines for the approval of variations (15 to 90 days) are not being met in the past 2 or 3 years, with further postponement of deadlines for several thousand submitted variations, advertising and promotional material approval (up to 60 days) that in reality takes 4 to 6 months.

According to the Law on Controlled Psychoactive Substances (RS Official Gazette 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 results 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 Agency for Medical Products and Medical Devices of Serbia (ALIMS) still does not comply with the deadlines for issuing marketing authorizations and regularly misses the official deadlines stipulated by the current Law on Medicines (30 + 30 + 210 days) for nationally registered medicines. In practice, the timelines are around a year and with respect to the accel-

erated procedure for registration of medicines registered in the EU through the Centralized Procedure (30 + 150 days), the timelines are between 8 and 10 months in practice.

In addition to delaying the registration process, the ALIMS is also significantly delaying the process of renewal of existing Marketing Authorizations (MA) for medicinal products, so that the MA regularly expires prior to the approval of the renewal by the MA, consequently, the importer is not able to provide continuity in the market supply. This puts importers at risk (due to commitments under public contracts), and not only them but also the license holders as they cannot ensure market supply continuity in accordance with the obligations towards the National Health Insurance Fund.

ALIMS still does not apply the provisions of the current Law on Medicines that allow for the issuance of permanent licenses for medicines, which would significantly relieve its operations and enable them to devote themselves to solving other requests despite the clear interpretation of the Ministry of Health that Article 43 of the current Law clearly defines this possibility.

The biggest delays occur in the procedure for the approval of change to the license (variations). It significantly impedes the supply of medicines to the Serbian market because these changes in the production process are not approved in a timely manner. This subsequently leads to the inability of the manufacturer to release the drug in Serbia due to such delays. When it comes to safety variations, this leads to a significant delay in the availability of up-to-date information on the use of medicine to patients.

6. 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.

There are still significant restrictions in the transfer of the prescription status of medicines from Rx to the OTC because ALIMS is overly stringent in assessing the effects of the switch to OTC from the aspect of safety so that many OTC status medicines in large European countries are still on the prescription lists in Serbia.

FIC RECOMMENDATIONS

- ALIMS must respect the existing timelines prescribed by the Law on Medicines regarding new registrations, renewals and variations of the Marketing Authorization, as this would allow for prompter availability of new drugs, as well as continuity in the market supply of registered medicines.
- The ALIMS should start issuing permanent marketing authorizations along with the renewal of existing registrations to enable the timely approval of other items for the variation of the license, thus allowing patients in Serbia to receive adequate information about the medicine as well as regular supply of the market with medicines.
- There is a need to expand the list of medicines that can be issued without a prescription (in accordance with practices in the EU), while removing these drugs from the reimbursement list. Licensing deadlines for the production or sale of psychoactive controlled substances in the Republic of Serbia should be shortened and harmonized with regulatory practices in the region. This will strengthen the competitiveness of domestic pharmaceutical companies and encourage exports.
- The ALIMS should create a digitalization strategy to enable the electronic submission of all requests that currently involve extensive unnecessary paperwork.

- The legal framework must be completed and harmonized with the EU acquis; transparency and predictability of business and legal security are the basic prerequisites for the sustainable functioning of the pharmaceutical industry in Serbia. Representatives of the pharmaceutical industry should be included in the legislative process.

- 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 Medicines Committee could determine the amount of financial resources that have been freed up and are available for innovative therapies and for broadening the indications of already listed generic medicines.

- In the upcoming period, the NHIF should rely more on Managed Entry Agreements (MEA) since it is the only way for ensuring greater availability of innovative drugs whilst sustaining the stability of the financing of the health system. With that in mind, it is necessary to establish a clear framework for the negotiation process between the NHIF and the pharmaceutical industry, including the mandatory consultation phase between the two sides. As a result of negotiations, both sides should aim to conclude a Managed Entry Agreement (an agreement that defines the entry of a product on the reimbursement list), which would ensure sustainable financing for the product. Flexibility should also be increased with respect to the models of specific contracts (since each product has its own specifics that need to be incorporated in the contract). Maybe the most important first step should be the introduction of a MEA model which would enable the market authorization holder to commit to lower the price of the drug in the tender process without changing the "visible" price on the reimbursement list.

- The added value of innovations in the healthcare sector should be recognized, as it is the basis for accomplishing the highest quality public health system and reducing treatment expenses; access to innovative therapies needs to be improved and accelerated, especially for groups of patients in biggest need. Local and foreign pharmaceutical companies share the same goal –provide the best possible therapy to all patients in Serbia

- Striving for further consolidation of Serbia's health budget is of the utmost importance; to significantly increase efficiency or resources management and spending control; create favorable circumstances for a sustainable increase of the budget for medicines and harmonize this increase with the health needs of the insured in the Republic of Serbia.

- It is necessary for the state/Government to have a stand regarding the future of its health institutions, primarily pharmacies. If state-owned pharmacies do have a future in their present status, the strong recommendation is that their entrustment to private partners should be conducted according to the law, where private-public partnerships are crucial. They guarantee legality, transparency and maximize the benefits for everyone involved.

- It is necessary for the state/Government to reassess the management and general framework of state-owned health institutions operations in order to ensure its sustainability. This also refers to retail margins of drugs financed by the NHIF which are too low; the contracting process between the NHIF and state-owned health institutions that do not guarantee the coverage of basic needs of these institutions; the participation of founders in managing the institutions and, finally, accountability for the consequences of bad management.

- State-owned healthcare institutions need to settle their debt to wholesalers as soon as possible to ensure the regular supply of required medicines to these institutions.

- Equalize custom duties for finished medicinal products and raw materials for medicines' production.
- The same tax treatment should be applied to the whole pharmaceutical sector, in the field of import or finished products and raw material.
- Adjust VAT rate for raw materials to the rate applied to finished medicinal products
- Abolish VAT on donations of medicines and medical devices to health institutions
- Abolish the outer packaging control labels on medicines as an unnecessary expense for the industry, as it merely creates an illusion that it can effectively protect against forgeries.
- Amend the Law on Waste Management (RS Official Gazette No 36/09, 88/10 and 16/16) as a precondition for the adoption of systematic and sustainable by-laws, in the first place the Rulebook on pharmaceutical waste management, in order to define the obligations of all participants in the process of pharmaceutical waste management; clearly differentiate the terms, obligations and actions of the manufacturer, license holder and distribution license holder, respectively, especially in the segment related to pharmaceutical waste management collected by the citizens.
- 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 price 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 market authorization.
- A new 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 list.
- 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.
- 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 regulatory practices in the region. This will strengthen the competitiveness of local pharmaceutical companies and boost exports.

PRIVATE SECURITY INDUSTRY

1.80

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continue monitoring the application of the Law on Private Security, while continuously insisting that its implementing by-laws be harmonized with EU models of legislation to the extent possible, while at the same time taking into account local specificities.	2009		√	
The goal of the law's adoption and application is normative, not fiscal regulation of the security industry; therefore, the principle of cost-effectiveness must be taken into account, which means having reasonable costs that would certainly, by the end of the process, be transferred to the user of security services.	2011			√
Support the Ministry of Interior in its commitment to inspect all entities that are in the grey area to ensure that they comply with the adopted Law to the fullest extent.	2016	√		
Change by-laws to allow and enable distance learning as a legitimate way of training potential candidates for obtaining a security licence.	2015			√
The Government should encourage close co-operation between security sector stakeholders (both the public and private sectors).	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 Europe having such a sector of the economy without a law regulating its functioning, Serbia finally got its Law on Private Security at the end of 2013. The adoption of the law is key, but by no means the only step towards the regulating and proper functioning of the private security industry in the Republic of Serbia.

The long-held misconception that the mere adoption of the Law on Private Security would 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 licensing activities, have been faced with high costs for these activities, and thus their prices are uncompetitive. Meanwhile, companies operating in the grey economy generate significant profits, enter the market with the lowest prices, intending to use their "privileged" position after expiration of the time limits that have been provided for full compliance with the Law on Private Security (1 January 2017).

Previous activities in the field of transformation and full implementation of the law show that many companies still have certain expectations, hoping that certain changes will be implemented in order to "mitigate" licensing requirements.

It is expected that there will be orchestrated pressure (through trade unions, associations, and interest groups) to once again extend the deadline for licensing and the full implementation of the Law.

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. In fact, 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 public procurement of security services, the most common criterion is the lowest bid, and in most cases the contracting authority (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 employment 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 Interior (MoI) has opened channels of communication with the industry, which is of the utmost importance. Finally, after more than a decade of attempts by stakeholders to influence the adoption of the Law, state authorities have realized the importance of bilateral communication, and so have formed an Expert Council for the improvement of private security, private investigator activities, and public-private partnerships in the security sector.

REMAINING ISSUES

Upon passing the law and by-laws, the legislators did not take into account the economic possibilities of the security industry, or 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 programmes are too ambitious, extremely comprehensive, and overloaded with topics, while the mandatory 101 theory classes alone take at least two working weeks to complete, for which the trainees will have to use their annual leave.

The process of training and obtaining licenses for individuals lasts too long, i.e. three months on average. During this time, such persons cannot perform private security operations, while companies which provide security services have difficulties in engaging licensed employees.

The MoI is under no obligation to inform such companies as employers whether their employees have obtained the license, i.e. whether their licenses have been withdrawn due to failure to meet some of the requirements for their issuance.

It is not precisely determined on what grounds persons may be engaged to perform private security services, especially when it comes to extraordinary and temporary engagements.

Due to a highly set bar in terms of requirements, and a slow and expensive procedure for obtaining licenses in accordance with the Law, we are faced with a dramatic shortage in the workforce in the labour market, and an extremely difficult legal employment status of those engaged to provide private security services, which is not regulated by the law.

The mandatory programme is extremely rigid, and lacking modern practices, such as dual education, distance learning, etc.

The accredited training centres (active ones) are only available to employees in the major cities in Serbia, and not in small towns.

FIC RECOMMENDATIONS

- Continue monitoring the application of the Law on Private Security, while continuously insisting that its implementing by-laws be harmonized with EU models of legislation to the extent possible, while at the same time taking into account local specificities. The goal of the law's adoption and application is normative, not fiscal, regulation of the security industry; therefore, the principle of cost-effectiveness must be taken into account, which means having reasonable costs that would certainly, by the end of the process, be transferred to the user of security services.
- Determine the legal employment status of all persons engaged in private security operations, i.e. those employed in this industry.
- Consider the possibilities for shortening the time and reducing the scope of the training programme, as well as speeding up the process of obtaining relevant licenses.
- Perform a security check, which is one of the preconditions for obtaining the license, prior to the commencement of the training programme, in order to avoid unnecessary administrative problems and unreasonable expenses related to persons who fail the security check.

- Consider performing medical examinations for a period longer than one year, at least for persons who perform private security operations without carrying any weapon.
- Determine an express liability of the MoI to inform the employer on any change in the status of the license of individuals, especially bearing in mind the fact that a security officers' ID is issued upon request of the employer's company and is returned to the MoI in case of employment termination.
- Precisely determine the possibility of engaging persons based on any agreement but the employment agreement, for any case of temporary and extraordinary engagements, all in accordance with the Labour Law, if such a person has the relevant license required for these operations.
- Precisely determine the meaning of the term "as of the date of change" in relation to the obligation to submit a notice to the MoI on the conclusion of the agreement, i.e. annex to the agreement on security services. It should be specified whether such a period is calculated from the agreement/annex to the agreement signature date or from the date of commencement of the security service provision, since very often in practice the agreement, i.e. the annex to the agreement signature date, does not coincide with the date of commencement in the security service provision, and that the change, specified by the agreement/annex to the agreement (e.g. the scope of work or authorization for security officers) occurs much longer after the conclusion of the agreement/annex to the agreement.
- Support the Ministry of Interior in its commitment to inspect all entities that are in the grey area to ensure that they comply with the adopted law to the fullest extent.
- Change by-laws to allow and enable distance learning as a legitimate way of training potential candidates for obtaining a security licence.
- The Government should encourage close co-operation between security sector stakeholders (both the public and private sectors).

HOMECARE PRODUCTS AND COSMETIC INDUSTRY

1.13

BIOCIDES AND CHEMICALS IN 2016 AND 2017

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
BIOCIDES AND CHEMICALS				
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	2015		√	
SANITARY INSPECTIONS AT THE BORDER-CONTROL OF CHEMICALS AND BIOCIDAL PRODUCTS				
The control system for imported products should focus primarily on documentation (product dossier) and should not involve laboratory analyses of the safety of general use items	2015			√
The Government needs to encourage coordination between the Ministry of Health, the Sanitary Inspectorate, the Ministry of 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 defi ned 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	2015			√
Once again, the chemicals sector should be regulated only by the Law on Chemicals, as chemicals are defi nitely not general use items	2015			√
SEPARATION OF CERTAIN CLEANING PRODUCTS IN RETAIL STORES				
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	2014			√
IMPLEMENTATION OF THE LEGISLATION RELATED TO UNIT PRICING IN SERBIA				
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 offi cial decision or by-law is required from the Ministry of Trade to defi ne price per wash load as the offi cial unit in order to increase transparency and avoid misleading consumers, and make a step forward in harmonizing with EU regulation (EU Member States already have the obligation to communicate price per wash load)	2015			√
COSMETIC INDUSTRY				
Administrative procedures for adopting regulations on cosmetic products and other general use products must be accelerated This includes preparation of the Law on Safety of General Use Products, harmonized with EU regulations, in the shortest possible time, and the adoption of appropriate by-laws (Rulebook on Safety of Cosmetic Products)	2013			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The system for the control of all cosmetic products in Serbia should be based on internal market control, as is the case in EU Member States, while import control should focus mainly on documentation (product dossier) Harmonization with EU technical requirements, through the adoption of the Rulebook on Safety of Cosmetic Products, is just the first step towards the harmonization of market control with the EU In order to achieve this, in addition to the adoption of new regulations, the practice of the authorities should be changed, ie the focus should be moved from border control to in-market control, so that all cosmetic products are treated the same way	2013			√

CURRENT SITUATION

Regulatory harmonization in the area of chemicals, biocides, and detergents has become a regular topic, as well as the regulatory framework for the annual registration of chemicals.

Even though it seems at first glance that this area is in compliance with the principles and provisions of EU regulations (except for detergents, where crucial changes are necessary), the practice shows numerous challenges. It is true to say that importers, being foreign investors, are treated differently and unfavourably in comparison to domestic market participants – in terms of the existence of illegal imports and placement on the market, notably in the area of control; i.e. law implementation that falls into the area of different authorities (i.e. the Ministry of Environmental Protection - the environmental protection control sector, the environmental protection sector where the registries are kept; as well as the Ministry of Health, sanitary supervision departments, the Customs Authority, trade inspectorates, prosecutors' offices etc.)

POSITIVE DEVELOPMENTS

The responsible ministries, in their supervisory role, apply control lists for the implementation of the Law on Inspection Oversight that indicate in the medium term which of the market participants are doing business in compliance with the law (assessed as mid or low risk), and which should be under close watch of inspectors and the focus of their surveillance.

The Ministry of Environmental Protection has conducted activities concerning the control of entry into the Temporary List of Biocides that, as a consequence, led to a number of inspections of entities importing and selling biocides.

REMAINING ISSUES

Even though a control of entry into the Temporary List of Biocides was performed, it seems that the impact, i.e. results, are weak and that there is no liability for violations, with the consequence that market participants have been continuing with such misconduct; no sanctions have been imposed on persons and stakeholders that took part in illegal import and sale on the market, especially in the area of biocides, where sale is irregular and is not based on an official decision – biocide licence issued prior to import. The above poses significant challenges for the industries and reveals deviations in practices. The application of the latest changes to laws and their interpretation of chemicals and biocides remain in focus.

Information kept with e-registries and other official data kept by different state bodies seems to serve merely an informative purpose, where the bodies often claim such data is too weak to file administrative proceedings. Our view is that this is not in line with the tendencies and innovations being introduced under the general administrative procedure (e.g. data from the Register of Chemicals and Biocides are used for an illustrative purpose). It is essential to develop and improve the mutual cooperation and coordination between the respective governmental bodies, representatives of the industry, and scientific institutions.

During the import and customs procedure of goods falling into categories of chemicals and biocides, we are convinced that (due to, inter alia, the nature of such products, traceability, and inventorying as part of sale on the market) the Customs Authority should assess whether an importer

person in charge of labelling-forwarding agent-appointed person holds a valid official decision that the biocides are duly registered with the Temporary List of Biocides for filing a technical dossier (by applying this approach, we find that illegal import being also a part of the fight against the grey economy, would be significantly lower or put under better control).

SANITARY INSPECTION AT THE BORDER – CONTROL OF CHEMICALS AND BIOCIDAL PRODUCTS

CURRENT SITUATION

The latest amendment to the Law on Chemicals 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 (RS Official Gazette No 92/2011), and Rules of Procedure on requirements for the safety of general use items that may be placed on the market as the relevant by-law.

Every year, according to the Law on Chemicals, chemicals have to be entered into 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

No positive developments at all.

REMAINING ISSUES

Imprecise changes made to the Law on Chemicals have resulted in broad interpretations and views taken by the relevant bodies, and are seen as a step back, a legal uncertainty, and so, unfortunately, there have been no positive developments since last year.

The latest amendments to the Law on Chemicals again impose costs of laboratory analyses on importers, significantly prolonging the period of time from the moment of submitting import documentation to that of launching the sale.

Placement of chemicals is regulated, once again, together with trade of products of general use, despite the fact that a separate piece of law (that is in compliance with EU regulations) was enacted specifically to regulate this issue – the Law on Chemicals and, to the extent relevant for the field, the Law on Biocide Products.

FIC RECOMMENDATIONS

- It is important that the Customs Authority be introduced to the process of (import) product control; the importer, when importing a biocide, must provide a valid decision showing that the biocide has been duly registered on the Temporary List of Biocides by providing a technical dossier for each biocide being imported, irrespective of such products having one or several product variants (e.g. flavour, different trade names, etc.)
- The control system for 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 Environmental Protection, the Sector for Chemicals, and the Ministry of Trade - trade inspectors, because the chemicals and the biocides are currently under the jurisdiction of three ministries.

- Significant improvement of rule application through intra-body discussion and coordination is highly necessary, thus bringing to initiation and leading to an end of misdemeanour proceedings and commercial offences for irregularities on the market, having as a result an increase in illegal imports and illegal commerce.
- 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, RS Official Gazette 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 (RS Official Gazette 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 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 European 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. 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 to 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, and 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.

All detergent and softener producers 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 have supported communication of price per wash load together with price per pack. However, there have been no positive developments in terms of understanding and acceptance from the authorities' point of view.

POSITIVE DEVELOPMENTS

No positive developments since last year.

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, the 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.

Official authorities have not yet (but should) issue a statement specifying pricing information to be officially communicated to consumers, considering that 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 sale 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.

FIC RECOMMENDATIONS

- In the context of having different types of concentrations it is important for consumers to know the price per

wash load and not only the price per kilogram or litre. 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 price per wash load).

COSMETIC INDUSTRY

CURRENT SITUATION

Safety of cosmetic products is regulated by the Law on Safety of General Use Products (RS Official Gazette No 92/2011) and 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).

The control of cosmetic products is the responsibility of the Ministry of Health, Sanitary Inspection Department, and Inspection Affairs Sector.

During import, cosmetic products are subject to control by the border sanitary inspection and cannot be sold on the market before a decision, issued by the sanitary inspector approving the import of goods, is obtained. The official control by sanitary inspection includes evaluation of all the evidence, i.e. documentation relevant for the determination of safety, provided by the importer. According to the Law, the official control may also include inspection sampling and laboratory examination if the inspector suspects the safety of the product or if safety cannot be determined in another way. The problem often faced by importers in practice is that inspection sampling and laboratory examination are very often performed as part of a regular process and not just in the aforementioned situations. This creates instability and uncertainty in terms of doing business, but also in terms of costs (with the costs of examination being borne by the importer). Due to laboratory examination, the whole process of official control may last up to ten days, sometimes even longer, which affects the normal flow of business.

Another problem which exists is nonconformity of the regulations on cosmetic products in the Republic of Serbia with the appropriate regulations of the European Union. Bearing in mind that the by-law is dating back more than twenty years and that the Law, although from 2011, has been harmonized with regulations of the European Union to a very small extent, there are huge differences to the regulations of the European Union in terms of the way of control, labelling, physico-chemical properties, etc., creating problems to companies operating in this sector.

Harmonization of regulations on cosmetic products with the relevant EU legislation is planned as a part of Serbia's EU accession process. The adoption of cosmetics legislation is the responsibility of the Ministry of Health.

Within the Ministry of Health in May 2012, a working group for the preparation of a by-law was formed and in April 2013 it completed a draft of the by-law, harmonizing it, to the greatest possible extent, to the Cosmetics Regulation of the European Union. However, due to a lack of legal basis in the existing Law, the by-law has not been adopted. In the meantime, a new working group was formed in October 2015 by the Ministry of Health with the task of preparing a new Law of Safety of General Use Products. The preparation of the new Law is ongoing, albeit very slow, mainly due to a lack of administrative capacities.

POSITIVE DEVELOPMENTS

Unfortunately, there have been almost no positive developments since last year. The work on the preparation of regulations is going on continuously, but very slow because of involvement of very small number of experts / members of the working group.

REMAINING ISSUES

Problems in the cosmetics sector are the consequence of Serbian regulations not being harmonized with those of the European Union. The biggest differences exist in the

way of control of imported cosmetic products (pre-market control in Serbia and in-market control in the European Union for all cosmetic products), and in technical requirements and reference values, which leads in turn to the need for additional labelling, additional analyses, etc.

Although prepared, the by-law is "waiting" for the adoption of the Law. As for the Law, due to the fact that the current law has transposed EU regulations to a very small extent, it was determined that, instead of amendments, a new law has to be written instead.

FIC RECOMMENDATIONS

- Administrative procedures for adopting regulations on cosmetic products and other general use products have to be accelerated. This includes preparation of the Law on Safety of General Use Products, harmonized with EU regulations, in the shortest possible time, and the adoption of appropriate by-laws (Rulebook on Safety of Cosmetic Products).

- The system for the control of all cosmetic products in Serbia should be based on internal market control, as is the case in EU Member States, while import control should focus mainly on documentation (product dossier). Harmonization with EU technical requirements, through the adoption of the Rulebook on Safety of Cosmetic Products, is just the first step towards the harmonization of market control with the EU. In order to achieve this, in addition to the adoption of new regulations, the practice of the authorities should be changed, i.e. the focus should be moved from border control to in-market control, so that all cosmetic products are treated the same way.

top

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top

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