WHITE BOOK

Proposals for improvement of the business environment in Serbia

2014

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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FOREWORD

Markets in Serbia, the region, and the EU are still facing significant challenges, the major ones being deflationary pressures and further stagnation. In such an environment economic agents adopt a "wait-and-see" attitude and this was the case in Serbia as well, particularly in the period preceding the elections. All this, coupled with the devastating floods that struck the country, may result in a recession in 2014.

Rebuilding investors' confidence is a priority for the Government, and this entails convincing the business community that a dynamic, favourable to the implementation of the long-awaited and much needed reforms Serbia needs, is existing. Considering the large political majority that came out from March elections, by far the largest in recent Serbian history, and accordingly the strong political mandate the new Government has, this is exactly what the investors are expecting: a clear and ambitious reform policy.

After having naturally focused its action on managing the consequences of the flood, the new Government launched an intense dialogue with all stakeholders to tackle the issue of reforms in different areas. This process resulted in tangible achievements. The new Labour Law, the new Law on Bankruptcy and the restart of the privatization process, along with the announced measures aimed at curbing the budget deficit, are clearly major steps in the direction of an improved business environment.

However, much remains to be done. Additional important reforms are expected with a view to better harmonizing the Serbian legislative frame with the EU acquis and accelerating the inflow of new investments. Among these reforms, the reform of the real estate and construction legislation is certainly instrumental in facilitating new investments. In addition, ensuring a fast and efficient enforcement of laws and regulations remains a key issue to be addressed by the Government. It is a long-lasting weakness that has to be overcome by improving the coordination and supervision of public administration. In key areas, like combating the grey economy and restructuring public companies, improving and speeding up the implementation of legislation is an imperative. It is a precondition for establishing a competitive level playing field and reducing the state budget deficit. This issue will also be at the heart of the EU accession process, as the EU will certainly not only assess the compliance of the national legislation with the EU frame, but also its proper implementation.

Because they have a long-standing presence in Serbia, the FIC members are well-acquainted with the reality of Serbia's business environment and know what needs to be improved to secure existing investments and attract new ones. Because they belong to international groups, our members also have knowledge of and experience in other markets and best practices. This unique combination of local and global expertise is what the FIC offers to the Government, other stakeholders, and particularly the EU, to help improve the business environment in Serbia. Through its committees, consisting of experts coming from our 130 member companies, which account for 18% of the country's GDP, the FIC will continue to strongly support the indispensable reform efforts Serbia has to pursue to become a successful and competitive economy, capable of increasing the standard of living of its citizens.

Frederic Coin
FIC President

FIC OVERVIEW

Over 130 companies with more than 96,000 directly employed workers[1], over EUR 22 billion of investments[2] and 18% of GDP[3] – that is the Foreign Investors Council (FIC) today. The main purpose of the association is to facilitate dialogue between the members which will yield the recipe for the improvement of the general business climate and which will then be presented and, in continuous communication, elaborated to the Government and other relevant stakeholders.

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

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

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

A key characteristic of relations between the FIC and the Government and other partners is, once again – trust. The FIC has been building this trust over the past 12 years mainly through the consistency and constructiveness of views and suggestions that it provides, but also through receptiveness, openness and consistency in dialogue. Therefore, we can proudly note that FIC is a regular participant in the process of changing regulations, and that at the request of the Government and other stakeholders FIC actively participates in defining new rules on the market.

The FIC is not a chamber and does not provide b2b services, consulting, training and similar types of support. Our full attention is devoted to analysis of regulations and exchange of opinions and experiences related to doing business conditions.

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

What were the key FIC activities in the last year?

Between two White Book editions, FIC analysed in detail over 15 regulations, by submitting more than 20 written initiatives, and participating in 13 public discussions about new draft laws. Topics that we tackled mostly related to 5 areas we defined as priorities:

1. Introduction of a coherent overall legal framework, in particular improvement of the bankruptcy procedure
2. Improvement of tax laws and their more consistent implementation
3. Creation of more flexible labour-related legislation

1 Data for 2014, source: FIC records

2 Data for 2014, source: FIC records

3 Data for 2013, sources: FIC records, National Bank of Serbia

4. Change of regulations on planning and construction to facilitate growth
5. Ensuring efficient market surveillance by changing the inspection regulations and more effective mitigation of shadow economy.

In addition to this, the FIC also engaged in the improvement of regulations related to payment deadlines, foreign exchange, consumer protection, payment transactions, trade, introduction of a register of disqualified persons, as well as in the field of agriculture, cosmetics, insurance, leasing, pharmacy and telecommunications.

With regards to the dialogue with the Government, at the end June 2014, FIC organized the Reality Check Conference, to track the record of implementation of the recommendations provided by the FIC, half a year after the White Book, and instigate positive changes in the most important regulatory areas. This conference gathers management of member companies, highest state officials, state administration and a limited group of diplomats, who within three working and a plenary session discuss key topics for the improvement of the business climate. This year, attention was focused on 9 topics: bankruptcy, labour regulations, implementation of tax laws, regulations on planning and construction, illicit trade, food safety, operative leasing, insurance and telecommunications. Working sessions produced conclusions, which were presented at the plenary session as guidelines for further work.

The Reality Check Conference clearly portrays one of the main characteristics of our regular dialogue with the Government – multilevel communication. Besides talks with top Government officials, great attention is devoted to active communication with state administration, carefully assessing specific regulatory problems and potential solutions. We believe that only the combination of clear political will and expert administrative support can produce good and implementable policies. Thus it is not unusual that, in the period between the two White Books, we organized over 15 meetings with top Government officials and representatives of state administration and 6 roundtables and presentations.

The year 2014 also marked the beginning of the FIC's active engagement in the process of European integrations. In October, on the eve of the opening of active accession negotiations, the FIC delegation met the Serbian negotiating team and subsequently travelled to Brussels where it held a series of meetings with four Directorates-General of the European Commission and the European External Action Service. We deemed that it was important to convey that Serbia should remain in the EU's focus and that we are ready to provide active support to both negotiating parties to better understand the particularities of the Serbian market and the modalities of its adjustment to European principles and standards.

Throughout the year, the FIC also engaged in an active dialogue with all other relevant stakeholders, international financial institutions, development agencies, embassies and, of course, other business associations. We also launched several joint initiatives with the American Chamber of Commerce (AmCham), NALED and the Privrednik Business Club. 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 conclusion, let us reiterate that the backbone of the FIC are its committees, within which representatives of member companies analyse specific regulatory areas and policies, and formulate joint conclusions and proposals. The FIC currently has eight committees, both cross-sectoral, like Human Resources, Anti-Illicit Trade, Legal and Taxation; as well as sectoral such as Food & Agriculture, Leasing & Insurance, Real Estate and Telecommunications& IT. The youngest one among them is the Anti-Illicit Trade Committee, formed in May this year, upon members' initiative that FIC more actively confronts shadow economy, as one of the most acute problems of the Serbian market.

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

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

CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

In a period of austerity, uncertainty and dramatic sustainability threats in many parts of the world, the concept of inclusive and smart economic growth continues to gain relevance, appearing to be the only possible answer to ever more complex and interdependent challenges in the socio-economic sphere. The urgency of challenges such as unemployment, social inclusion, and sustainability of local resources is recognized by the stakeholders across the spectrum, resulting in different forms of stakeholder-led initiatives: activists' campaigns, rise of socially responsible investments, government incentives etc. In consequence, over the past few decades, corporate responsibility and sustainability have become much better known concepts around the globe. It is now commonly accepted and expected that the business sector has a vital role to play in driving economic growth and inclusion, respecting human rights and social justice, and sustaining the natural environment. It is also clear that if any of the mentioned challenges are to be met, there will have to be a strong business involvement.

However, the debate, or the respective actions do not stop there. In a reality in which every country in the world is facing a common task - to restore and increase economic growth and job creation in a manner that is more inclusive, equitable and socially cohesive, while at the same time more environmentally efficient and sustainable - there is a need for far more collective action among companies, within and across business sectors, and more collaborative action between different sectors of society: business, public and civil. Large-scale and systemic impact through collaboration and synergy of resources is essential in order to achieve the desired goal.

Trends in Serbia do not differ in this regard - the awareness about the role that businesses play in the society beyond their bottom line, is rising both on the side of corporate entities and on the side of the citizens as their consumers/employees/members of the local community. Furthermore, in the past few years additional pressure to enhance cross-sector cooperation has come from the public's expectations. According to the results of the public opinion poll conducted in late 2013 by Smart Kolektiv and Ipsos Strategic Marketing, there has been a significant rise of citizens' expectations (15.5%) from the business sector to take responsibility for the common good, compared to a similar research conducted in 2005. Most importantly, 60% of citizens feel that public well-being can be achieved only through partnership and collaboration of all sectors of the society.

In addition to moving towards collaborative CSR actions through business or industry associations, and partnering with non-profits in identifying and tackling the most acute issues to be resolved, companies in Serbia are also increasingly measuring the social impacts of their activities and communicating them to the stakeholders. Each year, more and more companies publish specialized CSR reports, many of them using globally recognized methodologies such as the Global Reporting Initiative. Besides contributing to the culture of transparency and accountability in the society, this practice is also fully aligned with the latest Directive of the European Commission on disclosure on non-financial and diversity information, adopted in April 2014, which foresees the obligatory disclosure of information on policies, risks and outcomes as regards environmental matters, social and employee-related aspects, respect of human rights, anti-corruption and bribery issues, and diversity in board of directors for large companies. The importance of incorporating sustainability practices in all aspects of doing business is yet to be confirmed on Serbia's EU integration journey, during the recently initiated negotiations process.

Believing that cooperation with peers and competitors in the same value chain or industry sector, as well as multi-stakeholder engagement with governments, non-governmental organizations and other actors, is necessary in order to achieve a large scale and systemic impact,

WE REMAIN COMMITTED TO:

- Sustaining the adoption of an adequate legal framework, which will enhance and stimulate socially responsible behaviour of corporate citizens.
- Acting as best practice examples of good corporate governance and transparency in all aspects of doing business.

- Establishing and fostering multi-stakeholder and cross-sector dialogue in addressing the most acute social and environmental issues.
- Promoting CSR reporting, based on monitoring and measurement of impact and outputs.
- Supporting media in contributing to public awareness on CSR.
- Advocating for introducing CSR in university curricula, in order to educate future generations of business leaders.

INVESTMENT AND BUSINESS CLIMATE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Accelerate the rate of transition reforms with the dual goal of improving business conditions and bringing Serbia closer to the European Union.	2008		√	
Reduce and simplify bureaucratic procedures at both national and local level.	2011		√	
Create conditions for market competition in a well-regulated market by providing equal rights to all competitors, as well as a proper regulation of monopolies.	2008		√	
Conduct a well-balanced economic policy that will be conducive to business and attract investment.	2011			√
Promote exports as a key element of economic growth.	2013		√	

The macroeconomic aspects of the investment and business climate have had a rather mixed performance in the period between the two White Books. Growth stagnated and the expectation is that by the end of the year it might even be negative. Inflation, on the other hand, is showing a positive trend and is down considerably in comparison with last year, hovering around 2%. Foreign trade is another sector that registered positive developments. Exports grew by almost 8% and imports grew by just over 2%, bringing the foreign trade deficit down slightly. The expectation is that the trade deficit will reach around EUR 4 billion, down from last year's EUR 4.4 billion. Employment remains one of the most important and urgent problems. The rise in unemployment has been reversed, and now there is a trend of decline in unemployment. Currently, according to official statistics, it is just under 21%. However, it is still very high, in fact one of the highest in Europe. Furthermore, together with the reduction in the number of unemployed, there was a reduction in the number of employed, as well. We believe that movements in and out of the gray sector explain these unusual trends. As was the case last year, we feel the need to point out that the highest rate of unemployment was registered in the 18-30 age group.

Over the last 12 months, the dinar-to-euro exchange rate grew from 113 to about 119, which is probably one of the explanatory factors of the solid export growth performance. Serbia's credit rating remains unchanged, thus making borrowing abroad costly and the inflow of foreign investments less attractive.

The share of investments in GDP is still rather low, at around 20%, and not high enough to generate a higher growth rate, or to reverse the unemployment rate. Thus, Serbia remains reliant on foreign direct investments. In the past 12 months they were lower than expected. By year's end they are expected to reach EUR 1 billion, compared to EUR 1.2 billion in the previous year. Serbia continues to court investors from the EU, but also from China, the Emirates, Russia and other countries.

Two macroeconomic indicators that require maximum attention of the government are the fiscal deficit and the foreign debt. In the past year both have grown. The fiscal deficit at some point reached 8% of GDP, while foreign debt exceeded 60% of GDP, way above the statutory limit of 40% of GDP. Bold and painful steps were required to reduce both, and the Government developed a plan of fiscal consolidation. The objective is to curb the budget deficit to 3-3.5% over the next two years by reducing pensions and salaries of state employees, the number of public sector employees, and subsidies to state companies undergoing restructuring, and tackling the "gray economy" more aggressively.

Serbia is yet another step closer to the European Union. The negotiations officially started as of this year and both sides are now involved in the so called "screening process" that precedes direct negotiations by chapters. There is a chance that negotiations will commence by the end of the year or in the first quarter of 2015. Serbia is still making good use of the Central European Free Trade Agreement (CEFTA), and is a net exporter to all the signatory countries, now that Croatia has stepped out of CEFTA and into the European Union.

All in all, from a macroeconomic point of view, Serbia is still facing the very complex task of increasing production,

employment and exports, on the one hand, while at the same time reducing public expenditure.

Over the course of last year, the business climate improved in some aspects but not significantly.

If we look at the percentage of FIC recommendations that were accepted and converted into practice as an indicator of change, we will see that this year 37% were accomplished, as opposed to 47% for last year. That is only a rough indicator because in this comparison, the mere percentages do not take into account the fact that some of the changes have had, or will have, a much deeper qualitative impact. The best example is the Labour Law which has been dramatically changed and is expected to have a major impact. Together with the Labour Law the Parliament passed the Law on Bankruptcy, as well as regulations designed to contribute to fiscal consolidation. With the passage of these laws, and the drafting of others, the Government is showing a firm determination to change the investment and business environment for the better. A key element in the time to come will be implementation and the control thereof.

Two factors stood in the way of a more radical change. First, the general elections. As in other countries, the pre-election period is not conducive to change, the Parliament is dissolved and energy is spent elsewhere. Second, the devastating floods that hit Serbia in May, causing the diversion of both money and political energy towards unforeseen and unplanned problems.

The goal of increasing Serbian competitiveness has not been reached yet. Opening a business still takes far too long, and involves too many instances. At some point or other, the Government started a number of initiatives designed to improve the business and investment environment. The comprehensive review of legislation (the so-called "regulatory guillotine") is still far from complete.

FIC RECOMMENDATIONS

We need to repeat some of the recommendations that have already been tabled in the previous White Books to stress their importance and the insufficient movement in the desired direction over the past years:

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

PILLARS OF DEVELOPMENT

Generally, it is impossible to provide a unified progress report on all pillars of development. While some made good progress, others had very little to show in terms of progress, and there were some that registered no progress at all. It can also be said that the Government does not view all these sectors as a special group of activities, which are important because of their spin-off or multiplier effects, but treats each sector differently.

Transport

There has been some progress in this sector, both in terms of aligning the relevant legislation with the European Union acquis, and improving the policy and performance on the ground, or in the air, as the case might be. In fact, the biggest positive development was the creation of Air Serbia with a strategic partner and the betterment of its operations. Some improvement was registered regarding road and inland waterways, but none regarding railways.

This sector was hit by the floods in May and some funds had to be diverted from investment into building new facilities into recovering old ones.

The previous White Book edition provided seven recommendations. Five registered some progress while two recorded no progress at all.

The current White Book edition offers twenty recommendations.

Energy

This sector also registered improvements over the past year. In particular, this is true of the continued passing positive legislation enabling the implementation of the Energy Law and the Law on Energy Efficiency. Also, there were developments in the funding of energy efficiency improvement and in the creation of competition in the electric energy market. Among the remaining issues, the most notable is the further alignment of by-laws and regulations with the new primary legislation.

The energy sector was also hit rather hard by the May floods, particularly the Kolubara open-pit mines and the Obrenovac thermal plant. It will take some time to get these facilities back into full operation.

The previous edition of the White Book offered eight recommendations, of which seven registered some progress and one none at all.

The current White Book offers seven new recommendations.

Telecommunications and Information Technology

The two sectors had a varied performance, with more progress recorded in telecommunications. A significant progress in telecommunications was accomplished by introducing fixed number portability, thus doing away with the previous monopoly. In information technology, the main progress is related to the implementation of e-Government at all levels.

The key issues that remain in telecommunications are related to the lack of implementation of technology neutrality and better coordination between the line ministry and other state institutions. In information technology the task ahead is to increase IT spending, develop private-public partnerships and improve data protection.

The previous White Book had 18 recommendations, eight for telecommunications and ten for information technology. Telecommunications recorded a higher success rate with significant progress made in one case, some progress in four cases, and no progress at all in three cases. In the Information Technology sector the success rate was weaker with some progress made in only three instances and no progress at all in seven.

The current White Book offers a total of twenty-two recommendations, twelve for telecommunications and ten for the IT industry.

Real Estate and Construction

For two years in a row this sector registered hardly any progress. There have been some improvements of the legislation, for example, the public discussion on amendments to the Law on Planning and Construction was organized, but it has yet to be adopted and proven in practice. The issuing of construction permits remains non-transparent and burdened with bureaucratic procedures. The Law on Restitution and Compensation has had no significant impact so far and the Law on Agricultural Land still prevents investments in agriculture by restricting ownership by foreign companies.

The previous White Book provided thirteen recommendations. Some progress was registered in only two cases, while as many as eleven recorded no progress at all.

This edition of the White Book offers fifteen recommendations, many repeated and a few new ones.

Labour Market and Human Capital

Significant improvements were introduced by the amendments to the Labour Law, making an important step in its harmonization with the European Union labour legislation. There are a number of novelties, many of which follow the recommendations of the FIC White Books. There are some issues which remain and could be improved in the Labour Law, Law on Prevention of Mobbing at Work, Law on Vocational Rehabilitation and Employment of Persons with Disabilities, Law on Employment of Foreigners, and in the area of staff leasing.

The Human Capital segment remains under the influence of the unfavourable global economic trends. The employment is weak, the influence of the gray economy remains high, while the educational system is still struggling to meet the needs of the market, particularly in offering practical knowledge that can be applied immediately. The supply of qualified workers has improved, but the waiting time for a job has still not been reduced.

The previous edition of the White Book had the highest number of recommendations for this pillar of development, twenty-eight for the Labour Market and four for Human Capital. The success rate here is also the highest with significant progress made in six cases (all six in the Labour Market area), some progress made in eight cases (seven in the Labour Market and one in Human Capital), and no progress in eighteen cases (fifteen in the Labour Market and three in Human Capital).

This year's edition of the White Book offers thirty recommendations, twenty-six regarding the Labour Market and four regarding Human Capital.

INFRASTRUCTURE

TRANSPORT

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Increase funding of maintenance and rehabilitation of major roads in order to stop the long-term deterioration of the road network.	2009		√	
Increase efforts in boosting institutional reform and capacity building in the area of infrastructure, with an emphasis on transport.	2009		√	
Introduce quality of the national road administration in order to enable it to provide an adequate institutional framework in this area.	2009		√	
Increase efforts to minimise the public costs of the reforms by charging users wherever reasonable and through increased private sector participation wherever there is sufficient scope for competition.	2009		√	
Set up an efficient road user toll system in Serbia and decrease road tolls in order to bring back transit tourists (passenger and cargo vehicles) to Serbian roads.	2009		√	
Creation of conditions for sustainable development of the transport system through stable sources of financing.	2013			√
Increase efforts towards more efficient manner of conducting of expropriation proceedings.	2013			√

CURRENT SITUATION

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

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

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

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

Inefficient implementation of land acquisition procedures is still one of the main reasons for the delay in the construc-

tion of Corridor 10. As the expropriation of land is incomplete, more than EUR 1 billion worth of loans approved by the EBRD, the EIB, and the World Bank have not been withdrawn. This hampers the work, jeopardizing three sections: Vladičin Han, the Bancarevo tunnel on the eastern branch from Niš to the Bulgarian border and Čiflik-Pirot.

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

POSITIVE DEVELOPMENTS

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

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

In 2014, Serbia was granted Category 1 rating by the US Federal Aviation Administration (FAA), which is a confirmation of compliance of standards for the establishment of direct flights to the US. The first direct flight from Serbia to the US is expected to take place in the year 2015.

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

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

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

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

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

REMAINING ISSUES

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

The restructuring of transport sector public enterprises so far mainly involved railway transportation enterprises. The railway subsector is defined by Directives and Regulations, commonly recognized as rail packages. So far, activities related to the introduction of EU standards resulted in the transformation of the Serbian Railways from a public enterprise to a joint stock company (JSC), and the enactment of the new Law on safety and interoperability of the railways in November 2013.

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

Corridor 10 - Due to ineffective investment planning, slow preparation of technical documentation and unresolved land property issues, construction works are not progressing as planned, and in some of the sections they haven't commenced yet. The construction of Route 4 (so called Corridor 11) has started, and investments in the road transport infrastructure in Belgrade, which should contribute to better interconnection with the transport corridors passing close to Belgrade, are under way.

The quality of roads has deteriorated due to lack of investment and maintenance.

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

The navigation conditions on the Danube River in Serbia are influenced by the critical sections (bottlenecks) on the fairway, unexploded ordnances (UXOs), sunken vessels dating back to World War II, and the necessity for an overhaul of the navigation locks Iron Gate I and Iron Gate II (Djerdap Dam). According to the Danube Commission recommendation, the minimum depth of the fairway needed for safe navigation is 2,5 m below the low navigation level (ENR - Etiage navigable et de régularisation)[1]. The majority of the bottlenecks occur on the stretch between km 1,430 and 1,250. On this stretch, of a length of 180 km, 24 bottlenecks[2] have been identified that restrict an efficient and safe navigation of standard convoys, taking due to sharp bends or narrow cross-sectional profiles. Navigation is especially difficult on the Danube sections belonging to Serbia. In addition to improving navigation on the Danube River, navigation conditions should also be improved on the Sava River in accordance with the Sava River Basin Master Plan defined and consultations with the Sava Commission.

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

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

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

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

The Roads of Serbia Public Enterprise has pointed out that revenues from tolls and funds from foreign loans are not even

1 Recommendations for defining the fairway dimensions, hydrotechnical and other structures on the Danube River, Danube Commission, Budapest, 1988, 2012

2 Feasibility Study for River Training and Dredging Works on Selected Locations along the Danube River, the Republic of Serbia, IPA 2010 funded project

sufficient for winter damage repairs, and that additional financial means must be provided for road maintenance; hence the proposal for an increase of already expensive tolls.

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

FIC RECOMMENDATIONS

- Efficient, quality, reliable and sustainable services contributing to a comprehensive and safe transport system in the Republic of Serbia as an integral part of the Trans-European Transport Network (in accordance with EU transport policy - Chapters 14 and 21). Increasing the effectiveness of the transport system by strengthening the policy and institutional framework, management capacities and implementation mechanisms.
- Improving the capacity and quality of transport infrastructure and services within the Pan-European Transport Corridors and the South East Europe Core Regional Transport Network.
- Promoting sustainable urban and suburban transport.
- Repair the existing damages, which are a consequence of the floods, with high-quality materials, in order to diminish the frequency of subsequent repairs.
- Increase funding of maintenance and rehabilitation of major roads in order to stop the long-term deterioration of the road network.
- Increase the quality control and inspection of materials when performing the works.
- Further strengthening of the capacities, particularly in the field of enforcement of regulations and inspections.
- Increase efforts to boost institutional reform and capacity building in the area of infrastructure, with an emphasis on transport.
- Introduce 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.
- Enter public-private partnerships in the vital transport areas that the state cannot fit, restructure or modernize independently.
- Invest additional efforts in opening the railway traffic market, in order to establish the necessary institutional structures.
- Increase efforts to minimize public costs of reforms by charging users wherever reasonable and through increased private sector participation wherever there is sufficient scope for competition.
- Set up an efficient road user toll system in Serbia and decrease road tolls in order to bring back transit traffic (passenger and cargo) to Serbian roads.
- Create conditions for sustainable development of the transport system through stable financing sources.
- Increase efforts to improve expropriation proceedings.

- Restructure public enterprises working in the transport sector, with a focus on railway transportation and introduction of result-oriented management.
- Introduction of cost-effective working methods which should contribute to better quality of transport infrastructure performance based on maintenance principles.
- Implementation of measures to improve intermodality features within the Serbian transport system.
- Introduction of purposeful infrastructure investment planning, taking into account spatial planning features and consequently effective modernization of transport infrastructure.

ENERGY SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continuation of the existing pace of adoption of by-laws necessary for the implementation of the Energy Law, with special attention given to avoiding unnecessary mistakes due to short deadlines.	2011		√	
Engagement of interested parties, i.e. investors, financiers and advisors in the sector (primarily the RES sector), in the procedure for the adoption of by-laws.	2011		√	
Simplification of procedures for issuing permits and approvals necessary for the development of energy projects.	2011			√
Closer co-operation between the government and potential investors and actively promoting investment opportunities in the renewable energy sector.	2013		√	
The Public Supplier should be a separate, newly formed company, independent of all government bodies and part of an existing publicly-held company; it should have a sustainable budget sufficient to meet all obligations the Public Supplier has under the Energy Law.	2013		√	
Increasing public awareness of the efficient usage of electricity.	2009		√	
The prices of electricity need to be re-evaluated, since it is necessary to ensure investments in new capacities and the rehabilitation of existing capacities.	2012		√	
Addressing special attention to defining the Public Supplier, with special regard to the sustainability of its budget.	2012		√	

CURRENT SITUATION

In 2013, the Law on Efficient Use of Energy was adopted. The new law, together with the by-laws that were already and that will be adopted based on it, for the first time establishes the basic legal framework in the area of energy efficiency in the Republic of Serbia. Among other, the Law on Efficient Use of Energy:

- regulates the institute of energy services as activities which, under normal circumstances, lead to verifiable and measurable or assessable increase in energy efficiency of

facilities, technical systems, production processes, private and public services and/or savings in primary energy;

- defines ESCO (energy service company) as a company which, by providing energy services, increases energy efficiency of facilities, of the technological process and of the services themselves and to a certain extent assumes the financial risk for the energy services provided by charging its services, entirely or partially, on the basis of the savings achieved through the measures implemented and the satisfaction of other efficiency/success criteria;

- prescribes the mandatory elements of the energy services agreement and introduces the legal institute of energy manager and energy advisor;

- regulates the procedure of energy audit, the determination of energy efficiency level and minimum requirements with respect to energy efficiency;

- establishes the framework of energy efficiency financing and provides a basis for energy efficiency incentives and other energy efficiency measures.

In relation to the planned construction of the South Stream gas pipeline, in 2013 the Serbian Government adopted the Decision on Amendments to the Spatial Plan for the South Stream Transnational Pipeline Area of Special Designation. The Law on Determining the Public Interest and Special Procedures for the Expropriation and Procurement of Documentation for the Construction of the South Stream Natural Gas Transport System was adopted as well, thus creating some of the important property rights related preconditions for the implementation of this project. In addition, at the beginning of July 2014, the Agreement on the Construction of the South Stream pipeline was signed between the South Stream d.o.o. as the investor and Centrgaz o.a.o. as the contractor selected through the tender. The overall value of this Agreement is approximately EUR 2.1 billion, and the completion of the first sections of the pipeline is expected by the end of 2016.

In June 2013, the Serbian Government adopted a decision to appoint EPS Snabdevanje d.o.o. Beograd as the public supplier of electricity within the territory of the Republic of Serbia. In July 2013, this company was issued the licence required for conducting its activities. At this point, conditions were met for the commencement of the public supplier's activities and for the separation of distribution and supply operations in the Serbian market, and for the further development of the renewable energy sources market, where producers conclude power purchase agreements (PPAs) with the same public supplier.

The adoption of the long-awaited Rulebook on Standard Model PPAs and Preliminary PPAs in July 2013 (as amended in 2014), and of the new Decree on Incentives for Privileged Energy Producers, is also relevant for the area of renewable energy sources. On the basis thereof the feed-in tariffs were slightly decreased in relation to wind power plants and solar power plants, whilst the tariffs for small hydro plants were slightly increased. Incentives were also introduced for biogas power plants using animal waste. On the other hand, the incentive measures for privileged producers of heating energy have not been adopted yet.

Finally, in December 2013, the first draft of the new Energy Law was presented to the public. This law is expected to eradicate the inconsistencies between the existing law and other regulations, and regulate more efficiently the entire energy sector in accordance with the obligations assumed by Republic of Serbia within the framework of the Energy Community Treaty. The public discussion related to the draft law commenced in late 2013, while the contributions of experts are still to be seen, due to the fact the Ministry of Mining and Energy of the Republic of Serbia is yet to introduce its own revised draft of the law to the public, (based on, inter alia, the input already received from the relevant stakeholders in the public discussion).

POSITIVE DEVELOPMENTS

In the second half of 2013 and the first half of 2014, the positive legislation trend commenced in the previous year continued, so more than 20 by-laws were adopted as of June 2014, enabling the implementation of the Energy Law and Law on Energy Efficiency.

Among the most important by-laws, we would point out the Rulebook on criteria for issuing energy permits, contents of the application and method of issuing energy permit, including criteria for the approval of energy facilities that do not require energy permits, providing for harmonization with the currently applicable Energy Law. From the perspective of power producers, the adoption of the Regulation on establishing a standard model contract and preliminary contract for the purchase of the total electricity produced is of great significance, since it regulates in detail the contractual rights and obligations of the privileged power producer and

the public supplier. Furthermore, on 24 February 2014, the Ministry of Energy and Mining has adopted the Rulebook on guarantees of origin for electricity produced from renewable sources, applicable from 1 January 2015.

Also, the adoption of the Decision on the establishment of a budget fund for the improvement of energy efficiency in the Republic of Serbia and the Rulebook on conditions for distribution and use of budget funds for the improvement of energy efficiency in the Republic of Serbia and the criteria for exemption from the obligation of performing energy audits, has been a step forward in the application and implementation of the Law on Energy Efficiency and stimulation of the use of renewable energy sources for generation of electricity and thermal energy for its own needs. The said Fund will be financed from appropriations provided from the budget of the Republic of Serbia for the current year, as well as grants and loans. The Ministry of Mining and Energy manages the Fund, and will take over the Fund's commitments after its dissolution. Furthermore, the Government of the Republic of Serbia has adopted the Conclusion on the adoption of the second action plan for energy efficiency of the Republic of Serbia for 2013-2015, in accordance with Directive 2006/32/EC on energy end-use efficiency and energy services.

In addition, following amendments to the current Methodology for determining the price of public electricity supply dated 1 January 2014, the right to public electricity supply at a regulated price is only granted to households and small electricity consumers. Other customers have to enter the free market to conclude a new contract on electricity supply because they are no longer entitled to public electricity supply at regulated prices. The new power purchase agreements with licensed suppliers should have been concluded by 31 January 2013. According to some estimates, by the end of 2013, around 3,200 customers who are connected to the medium voltage grid (of course in addition to customers connected to the high voltage grid) have entered the open electricity market which has 72 licensed electricity suppliers.

Projects implemented in 2013

In July 2013, NIS Gazprom Neft JSC Belgrade has finished the construction of a 0.85 MW cogeneration power plant located in Sirakovo, Veliko Gradište, with an annual electricity production of 6.12 million kWh. The total value of the project is around EUR 1.2 million.

In December 2013, Solaris Energy Ltd. Kladovo has finished the construction of Solaris 1, a 999 kW solar power plant in Velesnica, Kladovo, and a 2 MW transformer station on a separate plot, planned for two blocks of solar power plants. The total value of the investment is around 1.6 million EUR.

Additionally, in 2013 and in the first half of 2014, 4 pellet factories were constructed in locations throughout Serbia. The capacity of these factories ranges from 3t to 5t per hour.

New Projects

In 2013 and 2014, Continental Wind Partners, an international company, is progressing – through its Serbian subsidiary Vetroelektrane Balkana d.o.o. –on the permits required for the construction of the largest wind farm in Serbia with an overall power of more than 100 MW and an investment amounting to a couple of millions of euro. Although this project is currently facing certain regulatory challenges (caused to the greatest extent by the inadequacy of existing regulations and different interpretations by public authorities), the immediate settlement of all outstanding issues is in the best interest of both the prestigious international financiers and the state authorities of Serbia, so as to enable the implementation of this project in 2015.

Company MK-Fintel Wind a.d., through its two subsidiaries Vetropark Kula doo and Energobalkan doo, intends to start the construction of two small wind farms on the territories of Kula and Vršac by September 2014, with total installed power of about 16 MW, with a total investment value of about EUR 25 million . The completion of the two wind farms is expected tentatively in June 2015.

Slovak company Prima Energy has invested EUR 1.8 million in the construction of the first solar power plant in Vojvodina. The 1 MW solar power plant will be located in Beočin, on the Tancoš site, on a surface of 2.5 hectares. The completion of its construction was planned for May of 2014, but it has not been completed yet.

In the New Miloševo industrial zone, located in Novi Bečej, Kikinda-based company Solar 9580 Ltd. is planning to build a solar power plant with a capacity of 999 KW. A 1.6 hectares land site has been leased for a period of 49 years, and Solar 9580 Ltd. plans to invest about EUR 1.7 million in the project. The project is currently in the building permit approval process.

Investor Solaris Energy Ltd. Kladovo, which has already built solar power plant Solaris 1 with a capacity of 999 kW, plans

to build another solar power plant, Solaris 2, with the same capacity and at the same location by the end of July 2014. On a separate plot, a transformer station with a capacity of 2 MW has already been built, planned for both solar power plants. The value of this investment is estimated at EUR 1.25 million.

REMAINING ISSUES

It is expected that the new Energy Law, the draft of which is currently being revised by the relevant ministry following the public discussion at the beginning of 2014, will set out the main solutions for numerous regulatory issues in the energy sector, especially pertaining to the relation between the Energy Law and the Law on Planning and Construction. These open issues primarily relate to the dynamics of construction of energy facilities; phased commissioning, in a manner allowing for commercial and technical feasibility of large-scale projects; the transferability of the privileged power producer status, entitling investors to construct the connection to the distribution grid, i.e. transmission system (with supervision and ultimate ownership thereof by operators); the efficient mechanisms for ultimate unbundling of the function of production, transmission, distribution and supply of energy; as well as to the establishment of the basic principles and clear mechanisms that would allow for the adoption and/or amendment of the subordinate legislation necessary for the functioning of the market on arm's length basis, and the implementation of energy and energy efficiency projects.

There are still many areas where the laws are not specific enough and for which by-laws arising from previous energy laws are still in force. This should be the focus of legislative activity, especially bearing in mind that energy and environmental protection have a significant position, not only in the plans and projections of the Government, but the local authorities as well. This is especially important for areas that were not regulated in earlier versions of the Energy Law, and for that reason their application did not commence, as was the case, for example, with the Guarantee of Origin of electricity and PPA models.

Moreover, important missing by-laws under the Law on Efficient Use of Energy should be adopted as soon as possible, such as the Rulebook on Model Contract for Improving the Efficient Use of Energy and Reducing Operating Costs in Public Buildings, and Public Lighting. Also, other regulations necessary for the practical feasibility of energy efficiency projects should be amended, such as the Decree on Classification of Activities which currently does not envisage a classification number for energy services.

Finally, the issues regarding the efficiency and duration of procedures for the enforcement of the law and by-laws are of utmost importance, both at local and national level. This is more a practical matter that concerns the commitment of the state and local governments to improve co-operation with investors.

FIC RECOMMENDATIONS

- Allowing for the continuation of the efficient and transparent public discussion on the draft new Energy Law, taking into consideration the questions, comments and suggestions that have already been submitted by the relevant market players and other stakeholders, as well as new queries and suggestions resulting from the discussion to date, and the adoption of this law within a reasonable time period, and by the end of 2014 at the latest.
- Continuation of the existing pace of adoption and, where necessary, amendment of by-laws necessary for the practical implementation of the new Energy Law (bankable PPA models, model agreements for the construction of grids, harmonization of real estate and energy related regulations, etc.), with special attention to avoiding not only unnecessary mistakes due to short deadlines but also unnecessary delays that would prevent the implementation of projects that are already in the process of construction or where the necessary permits were already obtained.
- Engagement of interested parties, i.e. investors, financiers and advisors in the sector (primarily the RES sector), in the procedure for the adoption of by-laws.
- Simplification of procedures for issuing permits and approvals necessary for the development of energy projects.

- Closer co-operation between the government and potential investors and active promotion of investment opportunities in the renewable energy sector.
- Increasing public awareness of the efficient usage of electricity.
- The prices of electricity need to be re-evaluated to ensure investments in new capacities and the rehabilitation of existing capacities.

TELECOMMUNICATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introduction of number portability in fixed telephony should be implemented as soon as possible, as any further delays would harm further competition in this area; April 2014 as a date of completion of its implementation introduces legal uncertainty, given that by Rulebook on FNP it should have been implemented on December 1, 2012.	2011	√		
Ensuring access to state owned fixed network (local loop, ducts...) and wholesale services (wholesale broadband access, carrier (pre)-selection...) under reasonable terms for providing fixed telephony and broadband services.	2013			√
Encouraging the development of new telecommunication infrastructure and enabling the use of the existing alternative infrastructure for all types of electronic services.	2007		√	
The adoption of a new Frequency Assignment Plans for public mobile services based on the technological neutrality principle.	2010		√	
Making available the frequencies used for public mobile services in Europe in a timely manner – a decision on allocating the digital dividend at 800 and extension to 900, 1800 and 2600 MHz.	2010			√
Strengthening the capacities of the administration and the independent regulatory body with the purpose of growth and emphasising the role of the electronic communications market.	2011			√
Involvement of the industry in making strategic decisions.	2012		√	
Providing predictability of regulatory changes in order to ensure forseeable operating conditions and business environment to the industry.	2013		√	

CURRENT SITUATION

According to the official report of the Regulatory Agency for Electronic Communications (RATEL) for 2013, the telecommunications sector contributed 4.48% to the GDP of the Republic of Serbia in 2013. Also in 2013, revenues from telecommunication services amounted to EUR 1,55 billion, which is almost at the same level as in 2012. Total invest-

ments in the electronic communications sector reached EUR 262 billion, which is a 12% increase from the previous year. Considering the significant contribution of the telecommunications sector to the economy of Serbia, the Government of the Republic of Serbia should stimulate its further development.

Although technology neutrality was envisaged by the Law on Electronic Communications (2010), and its implementation confirmed once again in its amendments of 21 June 2014, as well as the Radio Frequency Bands Allocation Plan (2012), the regulatory body has been delaying its implementation for several months. This brings uncertainty to foreign investors and reflects the lack of rule of law in Serbia. It is also delaying significant investments which operators would have made into their network to enable the use the current spectrum based on technology neutrality.

Contrary to the recommendations and expectations of the entire telecommunication industry that the new Assignment Plan for Radio Frequency Bands at 900 and 1800 MHz used for mobile services would be adopted latest in 2014, the adoption of this document, as well as all of the related activities, has constantly been postponed to date. The related activities that were also postponed were the allocation of the spectrum and release of needed frequencies at 900 and 1800 MHz. As a consequence, this resulted in the reduction of investments in network development, postponing new technologies, and in a lower coverage and Internet speed in both urban and rural areas.

Having said this, we want to emphasize once again that the allocation of the existing spectrum bands, and the 900 and 1800 MHz spectrum bands not yet used by the operators, will bring to light the full benefits of the efficient and transparent use of the spectrum, as envisaged by the Electronic Communication Law. This process has to be finalized swiftly to provide the operators with access to the basic resource for their activities – the radio spectrum – on a non-discriminatory and transparent basis.

Despite the clearly expressed interest of mobile operators for the allocation of additional frequencies in 900 and 1800 MHz band, which would enable new investments, high-speed internet connections and better internet signal coverage in rural and urban areas, there has been no progress in this segment in 2014. One of the main obstacles is that the 900 MHz band is used by the military and the state has not been able to successfully conclude negotiations with the Armed Forces on its removal from that band.

The foreign investors' confidence in the timely implementation of the regulations has been undermined by the 16-months delay in the implementation of number portability in the fixed network, (the Rules of Procedure envisaged the start of number portability on 1 December 2012), but nevertheless, this process finally started on 1 April 2014. In practice there are some difficulties with implementation. In addition, the porting procedure itself does not make possible for the end user to keep his ADSL connection due to lack of wholesale service so called naked DSL, whereby investment opportunities in fixed broadband access segment have been jeopardized.

As regards other legislation of interest to the telecommunications sector, the Consumer Protection Law, adopted in June 2014, stipulates that all electronic communications services fall within the scope of services of general economic interest, same as stipulated by the previous law of 2010. Furthermore, the new law stipulates that its provisions apply to relations between consumers and traders "except if there are special provisions of the same purpose, regulating the same relations, providing higher level of protection in accordance with special regulations or legislation". This means that the consumer protection legislation (and its provisions on special obligations of the providers of services of general economic interest, including all electronic communications services) are not merely an addition to the sector-specific legislation with regard to the issues that the latter did not cover, but virtually always supersede the sector-specific legislation, notwithstanding its better adjustment to the nature of the services. Unlike the provisions of the new Consumer Protection Law, Directive 2011/83/EU on Consumer Rights stipulates that sector-specific rules prevail over the provisions of the Directive in case of discrepancy. Also, contrary to the provisions of the new Consumer Protection Law, the Government's proposal of the new Consumer Protection Law envisages, for instance, that Article 86 of the said proposal, which refers to the termination and suspension of services of general economic interest, will apply to issues that are not regulated by sector-specific legislation.

POSITIVE DEVELOPMENTS

A positive development is the introduction of fixed number portability, which contributes to breaking the monopoly

that has existed for years in this field, and introduces competition in fixed telephony. In the previous editions of the White Book, this was on the list of priorities and recommendations of the FIC Telecommunications and IT Committee.

Another step forward is the decision of the Constitutional Court of the Republic of Serbia to abolish as unconstitutional the para-fiscal tax introduced by the Law on Cinematography, stipulating that RATEL must allocate 10% of its annual revenues for the Cinematography Fund.

REMAINING ISSUES

The parliamentary elections in March 2014 led to the temporary suspension of most of the activities of the line Ministry. After the elections, the telecommunication sector remained a part of the current Ministry of Trade, Tourism and Telecommunications.

The lack of implementation of technology neutrality stipulated in the amendments to the Law on Electronic Communications (adopted on 21 June 2014) is a serious rule of law issue. It has been on the list of the FIC ICT committee's recommendations for a few years now. However, implementation is still lagging behind.

Although the Radio-Frequency Bands Allocation Plan, which envisages the release of new frequencies with a view to contributing to the further development of ICT in Serbia, was adopted in October 2012, it has not yet been fully implemented yet. Specifically, there has been a significant delay in the adoption of the Allocation Plan, although both operators and the state would benefit from the allocation, distribution, release and sale of new frequency spectrum bands.

Competitive performance of alternative operators in the fixed telephony and Internet access markets requires a clear segmentation and favourable conditions for profitable business development, which in turn requires compatibility of price levels in the wholesale market regarding price levels in the and retail market prices.

There is still a need to promote cooperation and coordination of activities between the line Ministry and other state institutions relevant for the telecommunications area. Positive steps towards improving cooperation among the national authorities are insignificant. In order to resolve this issue, an organized and planned approach should be adopted. This is particularly evident with the introduction of new telecommunication services, when clarifications and legal opinions are requested from several different ministries (on taxes and foreign exchange regime under the competence of tax authorities and Ministry of Finance). Taxes on digital contents and foreign exchange regime when operators attempt to enable their customers to use different digital applications are an example of this.

FIC RECOMMENDATIONS

Special emphasis should be placed on the following:

- Implement the revised Law on electronic communications adopted on 21 June 2014 as soon as possible with regard to implementation of technology neutrality on current spectrum bands.
- Adoption of the new Assignment Plans for Radio-Frequency Bands at 900 and 1800 MHz for public mobile services, including re-distribution of the existing spectrum and release and sale of additional spectrum.
- It is necessary that the regulatory body re-examine the business conditions in the fixed telephony wholesale markets and internet access. The relationship between wholesale and retail markets has to be based on a clear economic rationale.
- In order to achieve market effects of the introduction of number portability service in fixed telephony, the regulatory body needs to check whether operators are meeting their obligations. Similarly, in order to develop the wholesale broadband access markets, and facilitate the selection of operators with continuity of services pro-

vided across fixed infrastructure, it is necessary that the wholesale market offer be improved by introducing the "naked DSL" service.

- Strengthening capacities of the Government and of the independent regulatory authority to enable growth of the electronic communications market.
- Participation of the sector in the strategic decision-making process.
- RATEL should continue with building the capacities and reputation of an independent and competent regulatory authority, simplify processes, increase the efficiency in providing support to operators with full transparency and establishment of equal standards for all players on the Serbian telecommunications market.
- Providing predictability of the legislative frameworks so as to create predictable business conditions for telecommunications operators.

And some sector-specific recommendations:

- Stimulating the development of new telecommunications infrastructure and enabling the use of the existing alternative infrastructure for all types of electronic services.
- Adoption of the new Allocation Plans for Radio-Frequency Bands at 900 and 1800 MHz for public mobile services.
- Support of the responsible Ministry to enable the sale of digital contents and their payment through monthly mobile service bills (operator billing) – this is currently impossible due to restrictive interpretation of the Law on Foreign Exchange Transactions.
- Urgent release of frequencies used for public mobile services in Europe – decision on the allocation of digital dividend at 800 MHz and expansion to 900, 1800, 2100 and 2600 MHz.

IT INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The government should be committed to further development of an IT regulatory framework which would in turn enhance the country's appeal to foreign investors over the long term. Furthermore, the effects of legislative changes already introduced should be closely monitored and effectively implemented.	2012		√	
Quick wins and tangible results already achieved in the area of e-Government should be continued, especially in the following areas: administrative fees, applications for various documents, and tax applications.	2012		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The government should refrain from introducing any measures approaching online censorship and remain committed to an open Internet as that which is most conducive to innovation, social development and commercial interest. The government should keep an open ear and regular contact with the e-community and initiatives coming from this sector.	2012			√
In order for the sector to continue growing in crisis times, the government should refrain from imposing any burdensome taxes and encourage the development of start-ups and high technology companies.	2012			√
The new government should pay special attention to the area of e-health as a major area for improvement especially in terms of electronic records. Educating the citizens and health workers on the implementation and usage of those systems would be equally important.	2012			√
There should be further networking of administrative bodies, agencies and Ministries, e.g. the Ministry of Interior, the Tax Administration, the Ministry of Labour, the Ministry of Justice, etc.	2012			√
Attention should be given to further development of e-school programmes through active dialogue between all relevant stakeholders, principally the Ministry of Education and the ministry (or agency) responsible for ICT and IT Community.	2012			√
With regard to Serbia's membership in the Open Government Partnership, special emphasis should be placed on the transparency of the functioning of administrative bodies and the use of new technologies by these bodies.	2012			√
There is a need for better coordination of software and hardware acquisition procedures among the different government bodies (ministries, agencies, directorates) both within the public tender procedure and prior to it in the context of investment planning.	2013		√	
It is necessary to clarify the application of the withholding tax (WHT) in the IT industry because the current legislation leaves room for arbitrary interpretation by tax and other authorities. Due to the unclear legal framework, domestic IT companies find themselves in a less favourable position than foreign suppliers especially in the context of public tenders.	2013			√

CURRENT SITUATION

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

POSITIVE DEVELOPMENTS

There have been quite a few positive developments in the IT sector in Serbia in recent years. More notable examples include the adoption of the Strategy for the Development of Information Society in Serbia until 2020; the introduction of an e-Government program in various state bodies, such as courts, municipalities, and police administrations; the

introduction of the possibility to file and pay VAT online; and Serbia's membership in the Open Government Partnership (which implies the fulfilment of multiple requirements, such as improving the transparency of public finance, adequately regulating data protection issues, and free access to information). The Information and Communications Technology (ICT) legislation has seen significant changes; however, it has mostly been to the benefit of liberalization and competition in the sector. Regulations and decisions adopted by the state Regulatory Agency for Electronic Communications (RATEL) have introduced nine ex-ante regulated electronic communications markets in Serbia, as well as the determination of appropriate SMP operators. The companies established as significant market power (SMP) operators have seen an increased regulatory burden, including stricter oversight, price controls, minimum quality of service requirements, requirements concerning public and transparent offers for certain services, universal service requirements, etc.

The e-Government programme in Serbia has significantly progressed over the past five years, though further improvements are necessary. Whilst significant tools were developed, in practice the availability of online forms and information is still limited, and paper correspondence is often still required. However, the e-Government portal now hosts a variety of services and the Tax Administration seems to have made decisive steps in streamlining and expanding its IT infrastructure, so there are numerous positive developments. E-Government is a key element of the reform of Serbia's state administration. It will make administration more efficient, which will in turn attract more foreign investment. The e-Government initiative should be strengthened by setting up a government council to coordinate activities of the various government bodies. This is necessary so that any new e-Government services can be implemented in a more efficient way. Additional coordination is in line with the new government's intention to better coordinate various activities across the ministries. In the context of e-Government this may include joint projects on integration of the various disparate information systems in different ministries, better interoperability and shared human resources from individual IT departments.

The National Bank of Serbia produced a draft Law on Payment Services in May 2014, providing incentives for prompt introduction of e-money, which is of great significance. This draft law introduced the concept of electronic money for the first time in Serbia's legal history. The legal framework for e-money is based on the Second Electronic Money Directive (2EMD), and it allows for the establishment of e-money institutions and issuers. This would be a huge boost for the digital economy, since legalizing e-money as a form of payment would open up exciting opportunities for new e-businesses and allow the introduction of new Government-to-Customer (G2C) and Government-to-Business (G2B) e-services in the context of e-Government.

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

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

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

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

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

Distribution of digital content from services such as Google Play, Apple Store, Amazon, and others is still not possible, and this hampers the further development of the IT industry.

REMAINING ISSUES

- Low IT spending (just 11.6% of the EU average) is a critical sign that the Serbian Government should pay more attention to IT spending, which may influence the overall growth of the Serbian economy.

- Public-Private Partnership (in the IT area) is still at an early stage, despite the fact that it might offer significant success in areas of cost improvement, especially at the municipal level. Besides such benefits, it might also provide new revenue streams for government institutions at various levels.

- Data protection remains a sore issue in IT matters, as evidenced by several high-profile and publicized cases concerning the improper retention or use of data. Although the Information Commissioner's office appears highly respected and active in the field, it appears that the judiciary and administrative organs are not entirely supportive of its efforts. The Model of the new Law on Personal Data Protection, published in June 2014 by the Commissioner for Information of Public Interest and Personal Data Protection, envisages the liberalization of cross-border data transfer in states that are not members of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe, by removing the obligation to request a consent for transfer from the Commissioner in case the person to whom the data refer has given his/her consent for transfer. In the absence of such consent or in the case of fulfilment of a condition for transfer without consent, the Model Law sets out the procedure in which the Commissioner acts when giving its approval of transfer. Among other, the Model Law explicitly stipulates that the consent for data processing can be provided either in writing, verbally, or by a conclusive action. Considering that the above would contributes to the setting up of a clear legal framework for the IT industry, in line with the EU acquis, it should remain in the final wording of the new Law on Personal Data Protection.

- There is a worrying trend for business and the freedom of expression concerning the behaviour of the Games of Chance Administration, which tried to pressure internet service providers (ISPs) to block foreign gambling websites (e.g. bwin), so as not to jeopardize its legal monopoly. This, as well as a few other acts on the part of the government (another example – a high-profile minister demanded the takedown of a satirical Twitter account) could potentially signal steps towards Internet censorship.

- VAT increase, from 8% to 20% for IT Equipment.

- Since the procedures for assessment of conformity of radio and telecommunications terminal equipment bearing a CE mark are still in place, there is space for the further simplification and shortening of these procedures, if not their removal.

FIC RECOMMENDATIONS

- The government should be committed to further development of the IT regulatory framework, which would in turn enhance the country's appeal to foreign investors over the long term. Furthermore, the effects of legislative changes introduced so far should be closely monitored and effectively implemented.

- Quick wins and tangible results already achieved in the area of e-Government should be continued, especially in the following areas: administrative fees, applications for various documents, and tax applications.

- The government should refrain from introducing any measures approaching online censorship and remain committed to an open Internet, as that which is most conducive to innovation, social development and commercial interest. The government should keep an open ear and regular contact with the e-community and initiatives coming from this sector.

- In order for the sector to continue growing in crisis times, the government should refrain from imposing any burdensome taxes and encourage the development of start-ups and high-technology companies. Accordingly, VAT for IT equipment should be decreased from 20% to 8%.

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

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

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

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

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

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

REAL ESTATE AND CONSTRUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Law on Planning and Construction impacts five very important fields: spatial planning, construction, urban construction land, restitution and legalisation. All these fields should be separately regulated as soon as possible through systematic legislation in co-operation with the NGO sector.	2009			√
Conversion against compensation and legalisation to be defined by the new law(s) in a different manner that would be constitutionally acceptable, politically sustainable and implementable in practice.	2013			√
Authorities must introduce transparency and consistency in their own work at all levels and ensure a high level of control of all relevant institutions. Authorities should publish all opinions and interpretations of regulations provided on their websites.	2009			√
The permit issuing process should be further simplified, while the land development fee, along with other construction start-up costs, must reflect an effort to reduce the existing and subsequent operational costs in order to facilitate market expansion and accelerate the process of attracting further investments.	2009			√
The penalty provisions under the Law on Planning and Construction should be amended to be more adequate and stringent, since they are currently limited only to pecuniary fines.	2009			√
Penalty provisions for public authorities and public utility companies should be changed from non-pecuniary to pecuniary, especially in cases when investors pay a consideration for services and the services are not provided in due time. In such cases, the consideration for untimely services should be decreased.	2012			√
The legal framework defining the relationship between the investor and the main contractor should be improved in accordance with the internationally recognised best practices (including, especially, the FIDIC legacy), by amending the Law on Contracts and Torts.	2010			√
The Draft Law on Management and Maintenance of Residential Property should be developed and adopted following public consultations. The complete legislation defining ownership rights of residential owners and their obligations with regard to management and maintenance, indispensable for the proper functioning of residential property management and maintenance, should also be developed.	2009			√
The Law on Financial Leasing must be harmonised with the current real estate regulations, in particular where it pertains to the possibility of registering an existing real estate lease in the public real estate registry, which must be clearly prescribed either by the law regulating leasing or the Law on Cadastre and State Survey.	2009			√
The Mortgage Law should be changed completely, as it contains too many omissions and uncertain provisions and is not in line with the new Law on Planning and Construction.	2010			√
The Law on Agricultural Land and the Law on Co-operatives should be amended in order to allow foreign investments in agriculture and the acquisition of agricultural land by foreign individuals and companies, as well as protect the acquired right of ownership of agricultural land.	2012			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Shorter time limits for registration within the Real Estate Cadastre need to be introduced and clearer guidelines in law implementation within the Real Estate Cadastre's activities need to be provided in a transparent manner, so that the cadastral procedures become swift and predictable. Online access to cadastral data should be unlimited and free, and the issuing of simple documents, such as title deeds and copies of cadastral plans, should be possible immediately on the spot.	2012		√	
Dialogue, communication and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other organisations dealing with real estate on the other, with respect to strategic issues, with the goal of improving the real estate market in the best interest of all.	2009		√	

CURRENT SITUATION

The Law on Planning and Construction, adopted in September 2009, amended in April 2011 and December 2012, and the related Constitutional Court decisions from 2013 remain the FIC's main area of interest.

The Law is very complex, since it impacts several very important fields: spatial planning, construction and urban development land, and in a way this causes difficulties in its implementation.

Five years after its enactment, it is fair to conclude that the ultimate impact of this Law and its amendments has significantly fallen short of expectations.

One of the most important objectives of the Law was the privatization of development land in the Republic of Serbia through the conversion of land use rights to ownership rights. Specifically, the Law provides several alternative conversion procedures, the most significant of which is conversion against compensation. The latter provides the possibility for companies that acquired land through privatization, bankruptcy or foreclosure to convert their land use rights to ownership, subject to payment of a compensation equivalent to the difference between the market value of the development land and the costs of acquiring land rights. However, the legal solutions introduced with regard to conversion against compensation did not yield the anticipated results in practice, even after the Law was amended in April 2011. Due to numerous problems with the conversion procedure encountered in practice, the latest amendments to the Law have temporarily, until 24 December 2013, enabled the issuing of construction permits to entities entitled to conversion against compensation, based on the land use right. In May 2013, the Constitutional Court of Serbia granted the motion for assessment of the constitutionality of the provisions of the Law on Planning and Construction governing conversion against compensation in respect of construction land and suspended the implementation of these provisions until the final decision on their constitutionality. Finally, in November 2013, the Constitutional Court declared the disputed provision unconstitutional, in the part related to the manner for determining land use fees . Although this should not be the case, the procedure of conversion against compensation was practically suspended until the enactment of a new regulation that would govern this field.

Another important objective of the Law – the legalization of 1.3 million illegal structures in the Republic of Serbia – still remains fully unattained. In June 2013, the provisions of the Law on Planning and Construction related to the legalization of illegal structures were declared unconstitutional, and the already slow and ineffective process ground to a halt. Subsequently, a new Law on Legalization was enacted, which came into force in November 2013, and apparently made the legalization process even more complex and costly than was the case with the previous regulation, particularly due to a significant increase of the volume of required supporting documents, and of the land development compensation fee. Less than a year after the implementation of this Law, there are indications that government representatives have started actively working on identifying new solutions to expedite the resolution of this important issue.

Land Ownership and Real Estate

Privatization of urban development land previously owned exclusively by the state, through the conversion procedure foreseen under the 2009 Law on Planning and Construction, was very slow, and at the end of May 2013, the Constitutional Court of Serbia temporarily suspended the provisions of the Law related to conversion against compensation. Even after the Constitutional Court's decision of November 2013 abolishing this temporary measure, conversion did not start functioning properly.

Amendments to the existing Law on Planning and Construction or the adoption of a new one are necessary and the general impression is that conversion of land use rights to ownership will no longer be applicable, at least not in its current form. According to publicly available information, it appears that the FIC's proposal to abandon conversion against compensation has not been accepted. It is likely that according to the new solution, the land under the building or the land required for the regular use of the building will be converted without compensation, however, for the conversion of the remaining land, a compensation will be paid according to the market value. Nevertheless, according to the latest announcements, conversion may be dropped from the Law on Planning and Construction and instead be included in the Property Law to be adopted in 2015.

A large share of real estate in prime locations in Belgrade and other cities is still in municipal ownership and is leased, but not under the current market conditions. Such a practice discourages renowned retailers from entering the Serbian market. This anomaly greatly contributes to the "grey economy", thus reducing budget revenues. Positive effects in this respect may arise from the restitution of nationalized property, bearing in mind that a significant share of business premises, currently owned by municipalities, was actually nationalized, and that its restitution to private owners could produce positive effects on the market.

Certain problems in transaction structuring may be caused by the broad interpretation of the Law on Payment Deadlines, according to which the payments related to real estate transactions are subject to the limits provided under this Law.

The residential property management and maintenance policy has not changed since 1995, when the existing Law on Management and Maintenance of Residential Property was adopted. This Law does not foresee a model of professional residential management (this is currently a voluntary service performed by the president of the residents' council), nor is it sufficiently binding on residential owners. The generally accepted organization model still heavily reflects co-operation with public utility companies, with an option to engage some privately-owned enterprises for maintenance purposes.

Construction

The issuing of construction permits is still insufficiently transparent, lengthy and heavily burdened by bureaucracy.

A major problem with respect to the procedure for issuing construction permits is still the fact that most of the development land is not covered by a relevant planning document, which is a precondition for the issuing of the location and construction permits. The current legislation has proved ineffective in encouraging competent authorities to prepare and adopt all necessary planning documents in a timely manner.

Poor infrastructure and bureaucratic procedures in public utility companies involved in this process are still a major problem in the construction sector. The reform of this sector is crucial for the entire procedure. Despite numerous announcements related to the introduction of a one-stop-shop system for investors, aimed at facilitating and shortening bureaucratic procedures, this idea has still not been implemented.

An additional problem with respect to the procedure for issuing construction permits is that land ownership rights, as a rule, must be acquired before applying for a location permit preceding the construction permit. In addition, an unnecessary burden is created by insisting that a fee be paid for conversion of agricultural land to development land before the location permit is issued. Furthermore, the location permit is unjustifiably tied to the name of the applicant and not to the real estate, which limits the possibilities for its transfer to the real estate buyer if the real estate was bought prior to the commencement of construction. Seeing as how there has not been any improvement to date in regulating the conversion process, there is a justified concern that the future development of the real estate sector will considerably slow down.

The current legislation has failed to resolve land property rights and there are very few investors and financial institutions willing to take on this investment risk.

Additionally, the existing legal framework defining the relationship between the investor and the main contractor is not in accordance with internationally recognized best practices.

Real Estate Cadastre

The Cadastre Project in Serbia was completed in May 2012, but there are still sporadic problems related to its completion, due to pending appellate procedures initiated during the establishment of the real estate cadastre.

Additional problems are created by disputable and inconsistent interpretations of applicable legislation by the real estate cadastre administration, the slow registration procedure and the inefficiency of the competent ministry in issuing decisions on appeals. It is noted that the real estate cadastre administration in Belgrade is particularly inefficient, where decision making in the first instance lasts, on average, several months. Having to wait for days for simple documentation such as an extract from the real estate registry or a copy of a parcel plan and for months for simple registrations in the cadastral records, is unacceptable.

The digitalization and regulation of cadastral plans still has not been completed and there are many inconsistencies in practice between the data contained in the cadastral operate and the corresponding cadastral plan. This slows down investments significantly, especially those related to larger areas of land, i.e. a larger number of cadastral parcels.

Also, the non-functioning utility installations cadastre creates problems for businesses, due to legal uncertainty with respect to property rights and inability to establish encumbrances on installations.

Restitution

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

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

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

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

Besides, the Law contains numerous ambiguities, and therefore administrative rules and case law will significantly affect the final result of the restitution procedure.

Real Estate Leasing

Amendments to the Law on Financial Leasing from May 2011 introduced the option of financial leasing of property. However, the new legislative framework has not been fully developed, and so far it remains inapplicable in practice, with the exception of a few leased office buildings. The main issues related to the application of the Law on Financial Leasing arise from high costs and tax treatment of leasing.

Mortgage

After eight years of application, the shortcomings of the Law on Mortgage have become apparent in practice. In combination with certain restrictive interpretations of the provisions of the Law on Mortgage by the public real estate registries, this calls for material amendments to mortgage regulations in Serbia.

The lack of a security agent, a common institution in large financial transactions, is only one of the shortcomings that make it imperative to change the Law on Mortgage.

Provisions of the Law on Mortgage related to extrajudicial settlement by means of a forced sale need additional elaborations that would eliminate the existing uncertainties and potential obstructions of the proceeding itself. It is particularly important to mention here that the Law's provision prescribes that, in case of extrajudicial sale, the rights of lower-ranking creditors remain reserved. According to the interpretation of the cadastre, this means that the buyer of a mortgaged real estate acquires the real estate with all the lower order mortgages. This is one of the reasons why an increasing number of mortgage creditors opt for court enforcement, which is encouraged by positive experiences of enforcement through private bailiffs, in accordance with the new Law on Enforcement and Security.

Agricultural Land

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

The provision of the Law on Co-operatives entitles newly founded agricultural co-operatives to claim agricultural land formerly owned by co-operatives from its current owners. This provision was aimed at restitution of agricultural land to the original owners who were forced to transfer their ownership to agricultural co-operatives under socialist legislation enacted after WWII. In practice, this provisions has been misused by newly founded agricultural co-operatives who do not even perform agricultural activities, to claim high-value agricultural land from privatized agricultural companies. Decisions of the Ministry of Finance and Economy in 2013 show a tendency to allow this abuse of the law.

POSITIVE DEVELOPMENTS

In the past year, no significant progress in the real estate sector has been observed.

Land Ownership and Real Estate

The Law on Cadastre and State Survey introduced a very important clause that all property registered in the cadastre should also be appraised. This opens the possibility for the state to regulate and organize this process through the adoption of rules and procedures, by applying the methodology of mass and individual evaluations.

Construction

The overall provisions for acquiring permits of the amended Law on Planning and Construction have simplified this process; however, this has yet to be proven in practice.

Several municipalities have already established one-stop information offices for foreign investors, which has significantly improved access to required information, resulting from the lack of information and/or unskilled staff.

Last year, the Government enacted a Decree establishing the Rapid Response Office. This Office will be performing professional, administrative and operational tasks for the Government, in order to improve the conditions for attracting foreign investments and increase efficiency in the implementation of projects significant for the state. The effects of the office's work are yet to be seen.

Legalization

The adopted Law on Legalization came into force on 1 November 2013. The effects of this Law are yet to be seen in practice.

Real Estate Cadastre

Several organizational units within the cadastre on the territory of City of Belgrade have commenced with a project set to solve simple problems within 5 days from the request's submission. This project yielded good results and increased the efficiency of the cadastre's work in resolving requests from the current year, but the processing of requests dating back to before 2014 drastically slowed down

REMAINING ISSUES

Land and Real Estate Ownership

The application of the Law on Planning and Construction did not yield the expected results. In addition, the already inefficient conversion-against-compensation system was suspended by the Constitutional Court of Serbia in late May 2013 and has not been implemented even upon the final decision of the Constitutional Court in November 2013.

Municipalities have failed to deprive investors of state-owned development land in cases where users did not finalize construction within the stipulated period of time.

A clearly defined policy for sanctioning local authorities for the non-fulfilment or untimely fulfilment of their obligations has still not been provided.

No significant improvements were made in recent years with regard to residential property management and maintenance. The 1995 Law on Management and Maintenance of Residential Property foresees the adoption of by-laws further regulating this field, but none have been drafted yet.

Public utility companies were contracted to finance residential property maintenance for corrective maintenance works and emergency services, and funds were raised for investment maintenance, which was often not feasible in practice.

In 2013, the new Law on Special Conditions for Registration of Ownership of Buildings without Construction Permits was adopted, but did not show any significant effect in practice.

Construction

The overall process of issuing permits remains non-transparent, lengthy and heavily burdened with red tape, primarily as a consequence of the difficult and time-consuming process of collecting all of the required documents. The announced "one-stop-shop" concept has not been introduced yet.

Real Estate Cadastre

Inconsistent interpretation of the relevant regulations by cadastral authorities, which are often not in line with other Laws, lengthy registration procedures and additional difficulties caused by slow decision-making by the competent ministry concerning appeals on decisions, remain substantial problems in practice.

The cadastre of public utility installations has not been established yet, which creates uncertainty in the property rights area and prevents the registration of encumbrances thereon.

Restitution

The Law on Property Restitution and Compensation provides in-kind restitution as the basic model of redress. However, the numerous exceptions are an indication that compensation will be the most prevalent form of redress. The latter embodies an attempt to reconcile the conflicting interests of persons entitled to restitution and persons with acquired rights in respect of confiscated properties (in most cases, foreign investors).

Progress in the implementation of this Law is still awaited. Therefore, the impact of the Law on Property Restitution and Compensation has yet to be seen. In the restitution procedure, the Restitution Agency interprets regulations in a manner that hinders or even precludes foreigners' rights to restitution or compensation.

Agricultural Land

Provisions of the Law on Agricultural Land restrict ownership by foreign individuals and foreign companies and prevent investments in agriculture. In some cases, the stringent interpretation of these provisions leads to public condemnation of foreign investors who acquired agricultural land through acquisition of agricultural companies.

Newly founded agricultural co-operatives seek the restitution of agricultural land from privatized agricultural companies. The existing Law on Co-operatives, which allows partial restitution of former "co-operative property" to newly founded agricultural co-operatives, may be subject to abuse, and Serbian authorities tend to allow this. The current law and misinterpretations thereof jeopardize existing investments in agriculture and investors' acquired rights thus creating an adverse legal environment for future investments in agriculture.

FIC RECOMMENDATIONS

- The Law on Planning and Construction impacts several very important fields: spatial planning, construction, and urban development land. All of these fields should be separately regulated as soon as possible through systematic legislation in co-operation with the NGO sector.
- Conversion against compensation must be defined by the new law(s) in a different manner that would be constitutionally acceptable, politically sustainable and implementable in practice. The FIC recommends that the institute of conversion against compensation be abolished and that the conversion itself be executed without a fee.

- Authorities must introduce transparency and consistency in their own work at all levels and ensure a high level of control of all relevant institutions. Authorities should publish all opinions and interpretations of regulations provided by them on their websites.

- The permit issuing process should be further simplified, while the land development fee, along with other construction start-up costs, must reflect an effort to reduce the existing and subsequent operational costs in order to facilitate market expansion and accelerate the process of attracting further investments.

- The penalty provisions under the Law on Planning and Construction should be amended to be more adequate and stringent, since they are currently limited only to pecuniary fines.

- Penalty provisions for public authorities and public utility companies should be changed from non-pecuniary to pecuniary, especially in cases when investors pay a fee for services and the services are not provided in due time. In such cases, the fee for untimely services should be decreased.

- In addition to the existing mechanisms for sanctioning a responsible person for the violation of the deadline for issuing a building permit, the Law should also envisage additional consequences, in the form of reduced fees for land development, as a form of accountability of the State or local government.

- Allow construction of a facility on the basis of right of use, i.e. without previous conversion.

- Adopt a Law on Real Estate Investment Trust (REIT), which would regulate this area and resolve the problem of double taxation. This Law, along with additional Government activities, should resolve the problems arising from the underdeveloped real estate market.

- 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.

- The Draft Law on Management and Maintenance of Residential Property should be developed and adopted following public consultations. The complete legislation defining ownership rights of residential owners and their obligations with regard to management and maintenance, indispensable for the proper functioning of residential property management and maintenance, should also be developed.

- The Law on Financial Leasing must be harmonized with current real estate regulations, in particular where it pertains to the possibility of registering an existing real estate lease in the public real estate registry, which must be clearly prescribed by the Law on Cadastre and State Survey.

- A new, modern Mortgage Law should be adopted. The Mortgage Law should be changed completely, as it contains too many omissions and ambiguous provisions and is not in line with the new Law on Planning and Construction.

- The Law on Agricultural Land and the Law on Co-operatives should be amended to allow foreign investments in agriculture and the acquisition of agricultural land by foreign individuals and companies, as well as to protect the acquired right of ownership of agricultural land.

- Shorter time limits for registration within the Real Estate Cadastre should be introduced and clearer guidelines

for the implementation of the law by the Real Estate Cadastre's should be provided in a transparent manner, so that the cadastral procedures become swift and predictable. Online access to cadastral data should be unlimited and free, and the issuing of simple documents, such as title deeds and copies of cadastral plans, should be made possible immediately on the spot.

- 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.

LABOUR

LABOUR RELATED REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Labour Law:				
Forcing international companies to accept a complex salary system just for Serbia, different than in other countries, creates a barrier to foreign investments and increases investment costs. Work performance should not be mandatory part of salary and employee and employers should freely agree on the salary stucture and benefits, so that salary system that stimulates work is created.	2009			√
We suggest that salary compensation during leave from work be equal to the amount of the base salary increased by seniority.	2008		√	
Employment-related paperwork should be simplified by introducing the electronic delivery of documents and electronic databases and implementation of electronic signature rules. In that regard, Article 122, paragraph 5 of the Law (requiring the employee to sign the written certificate on the payment of each salary) should be repealed.	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			√
Stipulate that, in addition to the cases listed in Article 171, an annex to the employment contract can also be signed in other cases, based on mutual agreement between the employer and employee.	2009		√	
We propose that the legal limit of 12 months for a fixed-term employment contract should be extended to 36 months. In addition, 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.). The parties should be free to contract for whatever purpose they deem appropriate.	2010		√	
The currently stipulated minimum three working weeks of annual leave within a calendar year (if used in parts) should be amended in order to provide full compliance with ILO Convention No 132. In the same spirit, we propose that the possibility of a different agreement between employer and employee should also be stipulated.	2010	√		
It is important to change the method of calculation of redundancy severance payment by basing this amount only on the years of service of the employee with the current employer. Only as a last alternative the rest of the severance payment (namely for the remaining number of years of employment with previous employers) would be borne by the State or by the NES at their own expense.	2010	√		
We propose to establish the limit of one month for the suspension measure under Article 170, paragraph 2 of the existing Labour Law.	2010		√	
Since the only disciplinary measure in the Labour Law is temporary suspension, we propose that deduction of a portion of salary should be explicitly provided in the Labour Law as a possible disciplinary measure and the amount of such a deduction should not exceed 20% of the employee's contracted monthly base salary.	2010	√		

We propose that the employer has the right to temporarily (up to 30 working days) transfer an employee to another appropriate position (with the same employer) with no obligation of concluding an annex to the employment contract (e.g. when it is necessary to carry out the work of an employee who is on annual leave, short-term sick leave, etc.), where so required by the work process with the employer.	2010	√		
The possibilities for the introduction of overtime work should be extended, i.e. should not be related to sudden and unexpected occurrences only. The employer and employees should be free to agree on the occasion and purpose of overtime work. Employers should have the right to introduce manager compensation that would include compensation for overtime work performed by managers in the company.	2012			√
Povisions on the protection on pregnant employees or employees on maternity leave, childcare leave or special childcare leave should define: (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 90 minutes' daily break/working hours reduction by 90 minutes for breastfeeding, encompasses the regular daily break during working hours, and that there is no right to an additional daily break.	2013			√
"It is required to define more precisely the provиsions on the protection of trade union representatives: (i) Establish the right to protection for presidents of representative trade unions only or stipulate the minimum number of trade union members required in order for the president of such trade union to be eligible for protection. (ii) Define more precisely what is considered as placement into an "unfavourable position". (iii) Explicitly stipulate that in a situation where a collective agreement or an agreement with the union on the number of trade union representatives who enjoy protection has not been concluded, appointed or elected trade union representatives are not protected."	2013		√	
The industry-wide collective agreements:				
The extended application of industry-wide collective agreements should be abolished, while the relevant provisions on extension should be amended, i.e. repealed in full. Otherwise, the Ministry of Labour should provide for a more restrictive compliance check before extending the application. This does not mean that employers – members of the FIC – agree with the extended application of industry-wide collective agreements.	2011		√	
The Law on Vocational Rehabilitation and Employment of Persons with Disabilities:				
The working ability assessment and issuing of a decision on assessed working ability should be performed by the same body in order to accelerate the procedure. We suggest assigning the procedure to a competent body other than the FPDI, considering that the FPDI already has a significant workload. Also, the list of documents required by the authorities from the employee should be reasonably decreased.	2009			√
We believe that a more efficient manner for achieving a higher employment rate of PWD would be stimulating employers to employ such persons by way of incentives.	2009			√

The Law should enable the employer to initiate the procedure for the establishment of current employees' disability, rather than leave it to employees alone.	2011			√
The Law on Foreigners:				
Obtaining temporary residence permits is an excessively complicated and time-consuming process. Enhance practical application of the Law, e.g. by shortening the period of time for issuing a residence permit; reduce the number of documents required during the procedure for acquiring a residence permit, etc.	2009			√
Work permit term of validity should reflect the need of the employer officially confirmed by the term of the employment contract (which may be concluded even for an indefinite term).	2013			√
Protection of the Citizens of the Federal Republic of Yugoslavia Working Abroad:				
The Law should be renamed to begin with, updated, and harmonised with the terminology of the Labour Law and other relevant regulations and, above all, adjusted to the new business environment, with open possibilities for local companies to do business abroad through their employees. In addition, swift mobility of the labour force should be facilitated, with the aim of reducing administrative barriers and unnecessarily long procedures.	2009			√
Alternatively, this Law should be repealed and the basic issues related to the protection of Serbian employees working abroad should be regulated by the Labour Law.	2009			√
Staff leasing:				
The concept of staff leasing should be regulated by a separate regulation or possibly by the announced amendments to the Labour Law, which would govern all important issues with respect thereto (such as relation of employer and individual, employer and service user, employee and service user, occupational health and safety, etc.).	2009			√
The concept of staff leasing should be regulated in such a manner that the relationship between the leased staff and the users of staff leasing services should not result in the creation of an employment relationship.	2010			√
The conditions for the issue of operating permits and the content of general business conditions for staff leasing agencies (including the fee for issuing operating permits to staff leasing agencies) should also be regulated by the law. The law would thus create legal certainty, thereby removing the possibility of discretionary decisions being handed down (e.g. by ministries) with regard to these important issues.	2010			√
Shift work:				
The proposal is to completely eliminate shift work as grounds for salary increase, thus leaving this matter to be regulated entirely by the employer's internal document.	2012	√		
Alternative is to stipulate the dispositive norms on shift work. Salary increases should be limited for jobs that, by their nature, entail regular and continuous shift changes and for which shift work is implied as a working condition and incorporated into the base salary. Consequently, salary increased by a certain percentage would only be paid in cases of occasional shift work, whereas only the hours worked in the second shift would constitute the basis for salary increase calculation.	2012	√		

The Law on Prevention of Mobbing at Work:				
Consider the possibility of amending Article 31 of the Law. Specifically, the burden of proof in court proceedings is on the employer as defendant, which significantly violates the concept of equality between litigators. Also, one of the main legal principles is that onus probandi should be on the claimant, not the defendant.	2011			√

CURRENT SITUATION

The most significant change in the employment legal framework in 2014 was definitely the enactment of comprehensive amendments to the Labour Law that came into force on 29 July this year.

The Foreign Investors Council welcomes amendments to the Labour Law, especially having in mind that these amendments implemented (partially or in their entirety) 65% of recommendations to the Labour Law provided in last year's White Book edition. Amendments to the Labour Law are definitely a significant improvement of employment-related legislation of the Republic of Serbia and a positive step towards its harmonization with the EU labour legislation. Amendments to the Labour Law introduced also numerous novelties that will contribute to attracting and maintaining foreign investments.

As the most important novelties introduced by the amendments to the Labour Law, we would underline increase of maximum duration of definite term employment, abolishment of obligation to pay increase salary for shift work, change of the calculation basis of the salary compensation, change of redundancy severance calculation, introducing of disciplinary measures – monetary fine and up to 15 days suspension, shortening of deadline for submitting claim to the court against a resolution of an employer, introducing that the court will not return an employee to work if the dismissal was grounded but the employer breached procedural rules and change of provisions related to extended application of collective agreements.

The industry-wide collective agreements for the construction and construction materials industry, for the agriculture, food and tobacco industry, and water management, ceased to be applicable in 2014. Consequently, the number of industry-wide collective agreements which were extended to all employers in certain industries by decision of the competent minister decreased to one – for the chemical and non-metal industry (applicable until the end of 2014).

Other than the above, there was no significant legislative activity in the labour regulation area in 2014. Therefore, legislation that entered into force from 2010 to 2014, discussed in previous editions of the White Book, including the Law on the Prevention of Mobbing at Work, is still in the focus of interest and constitutes the relevant labour framework.

The Law on the Prevention of Mobbing at Work was adopted in 2010 and was not amended since. The Law regulates in detail all mobbing-related matters in terms of definitions, rights, obligations, procedures, etc. The lion's share of the Law deals with the procedure for protection from mobbing. In that respect, both the procedure before a mediator and, subsequently, the procedure before a competent court are potentially available to employees. The burden of proof in such court procedures is on the employer, provided that the employee shows a prima facie case of mobbing. It should be highlighted that the employer is liable for the damage caused by its representative or by an employee to another employee. The Law also introduces numerous obligations for employers with regard to the prevention of mobbing. The court practice in this area is still relatively undeveloped, and another the problem is that the court proceeding last for a long period of time and the principle of urgency is not respected.

Staff leasing, although frequently used in practice (and to a certain extent tolerated by labour authorities), is still not regulated by Serbian law. As a result, there is a significant degree of legal uncertainty in this area.

POSITIVE DEVELOPMENTS

As already noted above, amendments to the Labour Law implemented 65% of the FIC recommendations stated in White Book 2013. This means that the authorities acknowledged the importance of regulating labour relations to attract and maintain foreign investments.

The main novelties introduced by the amendments to the Labour Law include:

- Extension of the maximum duration of fixed-term em-

ployment to 24 months. The Law also prescribes specific circumstances in which a fixed-term employment contract may exceed 24 months, specifically:
  - work on a specific project (until the completion of such a project);
  - work with a newly established employer (up to 36 months);
  - with unemployed individuals who have up to 5 years of service left to retirement (until fulfilment of retirement conditions).
- Abolishment of the obligation to pay increased salary for shift work.
- An employer is obliged to pay an increased salary to an employee only for the years of service with the current employer.
- Change of the basis for the calculation of salary compensation, so that the new basis is set to the average salary over the previous 12 months.
- Decrease of the retirement payment to 2 average salaries in the Republic of Serbia.
- Obligation to disburse redundancy pay only for the years of service with the current employer.
- Abolishment of the application of a specific regulation (Decree on the compensation of expenses and severance of state officials) to payment of per diems for business trips abroad.
- Introducing options for employers to issue disciplinary measures for breaches of workplace discipline or work duty, i.e.:
  - suspension (without salary) for the duration of 1 to 15 working days;
  - pecuniary fine in the amount of up to 20% of the basic salary, and for the duration of 1 to 3 months;
- extension of the statute of limitations for the termination of employment on grounds of breach of work duty and workplace discipline up to 6 months as of the establishment of facts constituting grounds for termination, and one year as of the occurrence of such an event.
- Shortening of the notice period in case of termination based on underperformance – at least 8 days, maximum 30 days.
- Introducing the option that if the court determines that the grounds for employment termination were justified, but that the employer breached provisions of the Law related to the termination procedure, the court will reject an employee's claim to be reinstated in his/her job, and will award compensation of damages amounting up to 6 salaries.
- Shortening the deadline for the filing of an appeal by an employee against a decision that breached an employment-related right to 60 days.
- Change of provisions related to the protection of trade union representatives from dismissal.

REMAINING ISSUES

Although comprehensive amendments to the Labour Law have recently been enacted, certain problems discussed in the previous editions of the White Book still persist and their solution requires additional amendments to labour regulations. Given that regulations listed in the section below are considered particularly important for attracting and maintaining foreign investments, the FIC reiterates the following:

Labour Law

Amendments to the Labour Law introduced a number of positive solutions and will solve a number of problems encountered in practice. However, certain novelties introduced by the amendments impose additional obligations or problems on the employer, such as:
- 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 where a number of employees with different educational level is engaged, and all of them 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 that (i.e. construction sites);
- The impossibility to contract a notice period exceeding 30 days in case of termination of employment by an employee may also be problematic for employers, especially in case of directors and other management staff when it is extremely difficult to find an adequate replacement in such a short period of time;
- The provision that a payslip represents an executive document may be problematic in practice;
- Introducing high misdemeanour fines for employers may represent an obstacle for opening new positions.

Also, some of the already existing provisions of the Law still require action by lawmakers, and specifically:
- The salary structure and calculation are very complex;
- The salary compensation for sick leave, national holidays, annual leave, annual vacation, paid leave, etc., is calculated

using a base representing the average salary in 12 preceding months (Articles 114, 115, 116). In the case of high one-off payments in one month (such as annual bonuses), the salary compensation could be higher than the salary itself if the employee had not been absent. Additionally, this results in the employers' inability to plan their budgets;

- Generally, the employment-related paperwork and records that should be kept with each employer are overly voluminous;
- Certain categories of employees cannot be unilaterally made redundant by the employer even if they consent to it (pregnant women, women on maternity leave, childcare leave or special childcare leave, trade union representatives). On the other hand, if they sign an agreement on termination, they cannot enjoy the entitlements under unemployment insurance;
- Fixed-term employment is limited to 24 months and may last longer only in special cases, and the conditions for that are quite restrictive as well;
- 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 the grey economy;
- The 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;
- The provisions stipulating additional protection for pregnant employees or employees on maternity leave, childcare leave or special childcare leave are somewhat unclear, which may cause uncertainties in their practical implementation. In particular, it remains unclear: (i) if the right to protection is provided only to women who notify the former employer within 30 days following the delivery of the decision on employment termination that their pregnancy existed at the moment of termination, or if such protection is also provided to women whose pregnancy commences after the receipt of the decision on employment termination, but within the said 30 days' period after the delivery of the decision on employment termination; and (ii) if 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. Thus, 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 change of salary or internal reorganization of positions is often caused by real economic difficulties that employers face in the current business climate, as well as by the needs of the work process and organization: hence, it is not necessarily a way of hampering trade union activities.

Industry-Wide Collective Agreements

In 2014, industry-wide collective agreement for the construction and construction material industry and Industry-wide collective agreement for agriculture, food and tobacco industry and water management ceased to be valid, due to the expiry of their term of validity.

After the said two collective agreements expired, the number of applicable industry-wide collective agreements extended to all employers in the relevant industries by decision of the line minister decreased to one – for the chemical and non-metal industry.

In the previous editions of the White Book, the FIC discussed the adverse effects of such extended application of collective agreements on the attractiveness of the business climate in Serbia. All arguments previously raised against the extended application of collective agreements are still relevant: (i) the agreement of two parties is extended to a third party that did not participate in its negotiation, which creates additional legal uncertainty in an already unstable Serbian market; (ii) such extended application gave the industry-wide collective agreements the legal status of law without undergoing the regular parliamentary procedure for passing a new law; (iii) the decision on extended application is of a political nature, and it is questionable if the legal requirements for its adoption have been met; (iv) the content of the industry-wide collective agreements is not in line with the principles of a modern market economy (e.g. setting the base salary based on coefficient and the minimum wage etc.).

The FIC welcomes amendments to the Labour Law in the part related to extended application of industry-wide collective agreement. A new legal provision envisages that the decision on extended application of industry-wide collective agreements is reached by the Government, based on the request of one of the signatories of the collective agreement, upon suggestion of the relevant ministry, and opinion of the Socio-Economic Council. Moreover, the decision on extended appli-

cation may only be reached if the said industry-wide collective agreement is binding for employers employing more than 50% of employees in a specific industry branch.

We are of the opinion that above amendments to the Labour Law will lead to a decrease of the number of industry-wide collective agreements with extended application, especially having in mind the condition related to the number of employees bound by the agreement (which is a condition that will be hard to achieve).

Although these amendments are a step forward, we are of the view that the provision on extended application of industry-wide collective agreement should be deleted from the Labour Law, so that this option does not exist.

Law on the Prevention of Mobbing at Work

The actions perceived as mobbing must be specified in the employee's claim but in practice these are not easy to define, so problems may arise in the interpretation of the wording of the verdict later, because in the case of repeated mobbing, only actions that were specifically mentioned are prohibited and no other types of abuse that may occur between the same parties.

Article 6, paragraph 3 of the Law defines the term of "perpetrator of mobbing". The Law is not precise enough in this context because it stipulates that the responsible person of the employer as a legal entity can be a perpetrator of mobbing, among others. Specifically, the term "responsible person" is not precisely defined by this Law, or any other special regulation, and consequently it is not clear whether the legislator had in mind only the legal representative, or all/certain members of the governing bodies (which is especially problematic in the case of banks, and legal entities that have more than one governing body: Management Board, Executive Board, Supervisory Board).

It is clear that Article 27 of the Law aims to protect employees who file a legal claim for mobbing from the retaliation of employers, however, the lack of precision and the unsuitable application of this provision could lead to abuse. Specifically, in practice it can happen that a legal claim for mobbing is filed on the same date as the date delivery of the Decision on Termination of Employment (or soon thereafter), but that they are completely unrelated. Similarly, an employee could file a legal claim for mobbing, if he/she estimates that he/she will be dismissed for some reason, to make it difficult for the employer to justify the reasons of dismissal.

It is still unclear which particular lawsuit protects a person dissatisfied with the outcome of the proceedings for determining an employee's liability (Article 23 of the Law) considering that Article 29, paragraph 2 of the Law entitles such an employee to initiate proceedings before the court, while at the same time limiting his/her possibilities by paragraph 3 of the same Article.

Finally, Article 31 of the Law imposes the burden of proof in court proceedings on the employer, which significantly violates the concept of equality between litigants. Also, one of the main legal principles is that onus probandi should be on the claimant, not the defendant.

Law on Vocational Rehabilitation and Employment of Persons with Disabilities

With respect to the issues concerning the implementation of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities, we emphasise the following:

- The difficulty for employers is the shortage of adequate staff, while, on the other hand, there are business activities for which it is practically impossible to employ a PWD (e.g. construction, etc.).
- Although there is a possibility for current employees to undergo 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]).

Employment of Foreigners

Certain provisions of the current Law on Foreigners and Law on Employment of Foreigners, as well as the applicable procedures for their implementation might prevent timely issuance of temporary residence permits and work permits. Despite expectations that the proposal of the Law on Employment of Foreigners, which was at the time of drafting of this text forwarded to the National Assembly for adoption, would bring significant improvements, unfortunately, we must conclude that the proposed Law does not bring any fundamental changes.

Firstly, the duration of the procedure for obtaining a temporary residence permit is too long (as a rule, one month). During this period, foreigners cannot apply for a work permit, which often prevents them from assuming

their positions in a timely manner.

Also, the limitation of the validity of a temporary residence permit and work permit to only one year and the necessity of their renewal is another administrative burden for foreigners and their employers, especially since the same procedure is practically repeated, without introducing any new element in the decision-making process.

Due to the limited duration of the work permit, only fixed-term employment contracts can be concluded with foreign employees. Consequently, the employer is required to renew the employment contract with a foreigner every year, based on the renewed work permit, which is an administrative burden for employers.

Foreigners who apply for a work permit with the National Employment Service (NES) upon acquiring a residence permit are faced with an additional bureaucratic procedure which, amongst other things, requires the submission of an opinion that the NES itself has already issued to the same foreigners during the procedure for acquiring a residence permit.

Law on the Protection of Citizens of the Federal Republic of Yugoslavia Working Abroad

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

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

Staff Leasing

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

FIC RECOMMENDATIONS

Because the regulations listed herein are considered particularly important and vital for attracting and maintaining foreign investments, the FIC has previously provided and still has a number of suggestions on how to improve the situation. To this end, here we will underline the most important recommendations on how to improve the existing legal framework and practice:

Labour Law

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

- We 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, and still be entitled to unemployment benefits.

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

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

- 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 business premises, or some other adequate place for keeping these documents.

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

- Misdemeanour fines must be decreased.

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

- 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.

- A more precise definition is required as to what is considered a placement of trade union representatives into an "unfavourable position".

Industry-Wide Collective Agreements

- The relevant legal provisions regulating the extended applicability of collective agreements should be repealed in full. Otherwise, the Government should provide for a more restrictive compliance check of the relevant industry-wide collective agreements with the Labour Law before introducing their extended application to all employers operating in the affected industries. The latter does not mean, however, that employers – members of the FIC – agree with the extended application of industry-wide collective agreements.

Law on Vocational Rehabilitation and Employment of Persons with Disabilities

- The working ability assessment and issuing of a decision on assessed working ability should be performed by the same body in order to accelerate the procedure. We suggest assigning the procedure to a competent body other

than the FPDI, considering that the FPDI already has a significant workload. Also, the list of documents required by the authorities from the employee should be reasonably decreased.

- 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.

- 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 Foreigners

- Obtaining temporary residence permits is an excessively complicated and time-consuming process. Enhance practical application of the Law, e.g. by shortening the period of time for issuing a residence permit; reduce the number of documents required during the procedure for acquiring a residence permit, etc.

- 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).

Protection of Citizens of the Federal Republic of Yugoslavia Working Abroad

- The Law should be renamed to begin with, updated, and harmonized with the terminology of the Labour Law and other relevant regulations and, above all, adjusted to the new business environment, with possibilities for local companies to do business abroad through their employees. In addition, swift mobility of the labour force should be facilitated, by reducing administrative barriers and unnecessarily long procedures.

- Alternatively, this Law should be repealed and the basic issues related to the protection of Serbian employees working abroad should be regulated by the Labour Law.

Staff Leasing

- The concept of staff leasing should be regulated by a separate regulation or possibly by the announced amendments to the Labour Law, which would govern all important issues with respect thereto (such as relation of employer and individual, employer and service user, employee and service user, occupational health and safety, etc.).

- The concept of staff leasing should be regulated in such a manner that the relationship between the leased staff and the users of staff leasing services should not result in the creation of an employment relationship.

- 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.

Law on the Prevention of Mobbing at Work

- The concept of the responsible person in a legal entity should be defined in a more specific way.

- It would be of practical use to formally remove any doubts as to which lawsuit protects a person dissatisfied with the outcome of the procedure for determining the responsibility of the employee.

- Finally, we recommend that Article 31 of the Law be amended so as to shift the burden of proof to the employee.

HUMAN CAPITAL

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The global economic crisis continued to influence the labour market significantly in 2014. Reduced economic activity and consumption worldwide brought about a reduction in exports and economic activity in Serbia and the reduction in income of the Serbian population resulted in a decline in demand for domestic and imported goods. Such trends in the real sector inevitably led to reduced demand for labour, as a measure of economic activity. In a market economy, reduced demand leads to a decline in employment or to a reduction of wages, a reduction in the number of working hours or a combination thereof.

According to the Statistical Office of the Republic of Serbia, the unemployment rate in Serbia in 2014 is 20.8%

The labour market in Serbia shows the same trend as the rest of the economy – that of decline. In order to reduce expenses, many companies have decided to reduce their headcount. This trend continued in 2013 – employers downsized their workforce in order to reduce costs. The Government has tried to balance the growing budget deficit and the needs of the economy for tax incentives to slow down the downsizing process.

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

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

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

POSITIVE DEVELOPMENTS

The Government of Serbia and its ministries have undertaken some measures in the times of crisis. The Government endorsed the National Employment Action Plan for 2013, which is a tool for the implementation of active

employment policy. This employment plan defines the targets and priorities of the Government's employment policy and identifies programmes and measures to be realized in order to achieve the set targets and enable sustainable employment growth.

The Government of Serbia has adopted an education development strategy for the period until 2020. This strategy is concerned with identifying goals, objectives, directions, instruments and mechanisms of development of the education system in the Republic of Serbia in the next ten years; in other words, it attempts to shape the development of this system in the best way known to us. The circumstances in which this strategy developed are almost entirely different from those in which education in Serbia developed in the modern era. Two centuries ago, Serbian education thrived on the waves of the Enlightenment, shaped by scientific advances and the emerging industrial revolution. Today, education in Serbia faces a number of challenges of scientific, humanistic, social and other development, with great technological changes, the real revolution, globalization and general mobility of everything that can move, from capital to cultural patterns. With all the layers of the past preserved, the society in Serbia is dramatically different today than it was two centuries ago, and the circumstances in which Serbia is developing today are ever more different from those in which the modern Serbian state emerged.

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

The most significant change in the employment legal framework in 2014 was the enactment of the amendments to the Labour Law that came into force on 29 July this year.

In 2013, the Ministry of Labour continued activities aimed at improving the status of people with disabilities through various projects. A number of activities and projects were also aimed at the economic empowerment of women.

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

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

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

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

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

REMAINING ISSUES

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

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

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

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

FIC RECOMMENDATIONS

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

LEGAL FRAMEWORK

In comparison with the analysis of the legislative activity in Serbia presented in last year's edition of the White Book, evident progress has been made, in terms of further intensification of the legislative activity, with the aim of creating a better, more predictable business climate and fully harmonizing the legal framework with the EU legislation. This progress could have been more visible but for the slowdown due to the elections held this spring. However, it should be stressed that the acceleration of reforms following the elections has been very affirmative so far, which gives cause for hope that this pace will be preserved in the following period as well.

In the past year several key laws have been adopted or amended in various fields relevant to the overall legal framework.

The most important changes, and the related positive developments were brought about by the adoption of amendments to the Bankruptcy Law and the adoption of the new Consumer Protection Law. The Bankruptcy Law is considered as a systemic law, given the high number of bankruptcy proceedings, and the numerous open issues that arose in its practical implementation. The general impression is that amendments to this law eliminated numerous inconsistencies, and introduced more precise rules aimed at speeding up the bankruptcy procedures and better protecting creditors.

The new Consumer Protection Law also introduced numerous novelties and is a positive step forward in the process of harmonization with the EU legislation in this field. This Law introduced a wider range of consumer rights and to a certain extent facilitated the protection of their rights by eliminating certain fees, introducing misdemeanour liability of traders for unfair trade practices, and similar. Furthermore, a significant novelty of this law is the definition of and the regulation of the procedure for the protection of consumers' common interest.

The aforesaid legislation, together with the recently adopted Labour Law, Privatization Law and the announced Law on Planning and Construction, are expected to have significant positive effects on the legal framework, and additionally contribute to the acceleration of full harmonization with EU legislation.

For positive effects of the said laws to be fully visible and applicable in practice, all relevant by-laws must be adopted in the envisaged time frame, whereupon the practical results of their application would be visible.

Notwithstanding the evident positive step forward, there are still areas in which further progress must be made. In some of these areas a more or less intensive legislative activity is already underway, which should result in the improvement or adoption of new laws in the forthcoming period.

The areas showing a sign of the upcoming changes are Capital Markets Law and Data Protection Law. In respect of the Capital Markets Law, undoubtedly there is a need for amending the currently applicable law, firstly because this is an area of exceptional importance for foreign investors, and secondly because it is continuously changing and developing. To that end, the currently applicable law, which was adopted more than three years ago, is to a certain extent outdated and has to be harmonized and aligned with the latest trends and EU practices in the field. In that sense, we expect that the working group, which was formed more than year ago, will intensify its work.

The Data Protection Law contains certain inconsistencies that were noted in its implementation. Also, certain provisions of this law have to be amended and fully aligned with the existing practices and EU directives. However, this area is constantly evolving and the effort of competent authorities to keep up with EU trends is clearly visible. Consequently, a draft of the new law was recently prepared by the Commissioner for Information of Public Importance and Personal Data Protection, which is, in any case, a solid base for harmonization with EU legislation in this area.

No progress was registered in the preceding period in the legislative activity in the field of foreign exchange operations and public private partnerships (PPP). Specifically, foreign exchange operations, although significantly liberalized in the last years, are still rather restrictive in certain segments. To that end, and having in mind the importance of this law and related by-laws (e.g. the act on financial derivatives), the focus in the upcoming period should be on its further liberalization and full harmonization with the announced new Capital Markets Law. Similarly, no progress was registered in the area of PPP, despite the undoubted importance of this legislation and the need for its implementation, especially on the impending large infrastructure projects. Accordingly, current legal framework should be improved as to be fully applicable and efficient.

In spite of recent positive changes, the judiciary area will also remain in focus in the forthcoming period, and will require enhanced efforts to increase its efficiency.

LAW ON BUSINESS COMPANIES

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

There are two major reasons for the adoption of the Company Law: (i) elimination of problems in the application of certain provisions of the previous Law on Business Companies and (ii) harmonization with legislation of the European Union.

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

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

POSITIVE DEVELOPMENTS

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

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

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

The Company Law now clearly gives shareholders the possibility to make additional payments without raising the equity contributions. Furthermore, it has clarified that additional contributions provided under the previous Law on Business Companies are to be treated as shareholder loans.

As for the provisions on applicable jurisdiction, the Company Law now clarifies that its jurisdictional provisions do not mean that such jurisdiction is exclusive. Therefore, parties are free to agree to jurisdictions of other courts, as well as arbitral tribunals. A new set of rules for squeeze-out and buy-out procedures was introduced. Also, the market value of the shares of a public JSC is now precisely defined (compared to the calculation formula contained in the previous Law on Business Companies).

Although there were no adequate legislative changes to the Company Law in 2013, there have been some positive developments in the practice of the SBRA. For example, the SBRA has done away with its previous practice whereby it allowed registration of restrictions on a corporate representative's authority to sign, other than the notation of a requirement of a co-signatory. The new practice is now fully in accordance with provisions of the Company Law providing that representation restrictions other than the requirement of a co-signatory's signature are not binding on third parties. Another positive development was that SBRA managed to establish a solid practice and has adopted guidelines in dealing with certain situations which were not well regulated under the Company Law.

REMAINING ISSUES

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

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

There are other drafting inconsistencies, such as the provision prohibiting a single-member LLC from acquiring its own share that is not in accordance with the Company Law's provisions on status changes.

Certain corporate procedures do not have clearly defined rules, making their application extremely difficult and in certain cases even impossible. For example, the procedure of a forced buyout of shares has created many practical uncertainties, since it is unclear at what point in time must the share price be determined and by whom, and what is the validity period of a decision on a forced buyout. Also, in the practice of the SBRA, a problem arises in situations when additional payments have to be returned to a person who exited the company in the meantime.

As discussed earlier, the provisions of the Company Law on denominating the company's share capital in Serbian dinars, although generally perceived as a positive development, created a number of problems in their application. Namely, SBRA converts all the amounts of the paid-in capital from EUR into RSD at the exchange rate valid at the time of payment. Due to fluctuations of the exchange rate, this practice has led to a situation where the amounts of registered, paid-in capital contributions did not match the total amounts of the paid-in capital. It also happened that the amounts of capital contribution did not reflect the respective share of each shareholder in the company.

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

The provisions of the Company Law restricting the powers of representatives to represent the company are still inconsistent with the relevant provisions of the Law on Contracts and Torts, which is saedeses materiae for this area. Furthermore, the actual application of the Company Law provision that states that a procurist's authority can be limited by the requirement of a countersignature by another authorized representative has proven problematic in practice, as it is

not clear whether it requires the countersignature of one of the procurists/more procurists and thatof a legal representative at the same time, or only of one of the above mentioned representatives. Furthermore, it is not clear whether the limitation of the procurist's representation power by the countersigning requirement is considered as a joint or single procura. In some cases the SBRA considered this issue as a collective procura and in others as a single procura.

The Company Law still does not provide the possibility of having limited liability for partners in a partnership. This is very much needed for partners in business partnerships, since they too should be allowed to enjoy the protection of limited liability, whereby any risks to third parties could and should be covered by liability insurance.

The Company Law still leaves uncertainty as to when a company's Articles of Association enter into force. Specifically, whether a company's Articles of Association are subject to the opinion given by the Constitutional Court in its Decision IUo No. 328/2009 from 29 April 2010, according to which a company's general acts enter into force no earlier than eight days after publication.

Although the Company Law seems to clarify several matters that have proven to be problematic in the implementation of the previous Law on Business Companies, it has evidently introduced several new concepts and regulated certain matters differently. However, it is also obvious that several issues, such as financial assistance rules, are unnecessarily and strictly regulated.

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

FIC RECOMMENDATIONS

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

CAPITAL MARKET TRENDS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Government should take all necessary actions to increase activity on the capital market in Serbia, including motivating foreign investors to issue dinar-denominated bonds and initiating Serbia's first big IPOs. At the same time, the announced IPOs of big public (or former public) companies should finally be organised.	2012			√
Improvement in the cooperation of the Securities Commission and the Ministry of Economy and Trade and capital market participants is visible. We strongly encourage such a positive change and wish to emphasize that this cooperation must be continued and enhanced.	2012		√	
The Draft Law on Securitisation should be prepared and submitted to the National Assembly for immediate adoption.	2009			√

CURRENT SITUATION

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

Generally, the regulatory changes may be evaluated as positive since they are directed towards harmonization with EU regulations and IOSCO principles making the Serbian capital market more attractive to both domestic and foreign investors.

Unfortunately, three years after a thorough legislation reform, the new regulatory framework has not yet found a practical use, even though it would be the only appropriate measure of success. The Serbian capital market is still too small to evaluate numerous novelties introduced by the new regulatory framework, especially the Law on the Capital Market.

However, in practice, certain problems were identified in the implementation of legislation governing the capital markets due to non-compliance of a number of separate regulations that directly or indirectly regulate the capital market, which were adopted at different times. This problem was recognized by the relevant ministry and thorough preparation of amendments to the regulations governing the capital market is in progress to complete their harmonization.

So, the general conclusion regarding the capital market in Serbia remains the same this year, meaning that it takes more than just regulatory reform to stimulate capital market growth in Serbia. Nevertheless, we do consider that the regulatory reforms were necessary, and hope that the new regulatory framework, accompanied by economic measures that are to be introduced will eventually result in the improvement of the Serbian capital market and an increase of foreign investments.

The idea of adopting the Law on Securitization seems to have been completely abandoned.

POSITIVE DEVELOPMENTS

The Law on the Capital Market, which became applicable in November 2011, introduced numerous changes which, in general, may be interpreted as positive. The new law regulates the procedure for the public offering of securities in a clearer way, which will hopefully result in first big initial public offerings in Serbia. Also, it is expected that the novelties introduced by the Law could reduce the costs of security issuance.

In addition, it should be mentioned that the Securities Commission adopted required by-laws for the implementation of the Law on the Capital Market. The regulatory work of the Securities Commission has been very extensive and includes more than 20 different by-laws (mostly in the form of rulebooks).

The amendments to the Law on Investment Funds have also introduced several important positive novelties. Namely investment restrictions for investment funds have been reduced, so the assets of investment funds may be invested in securities issued by the investment fund's custody bank as well as by a broker-dealer company and the bank representing the managing company in relation to securities trading.

The amendments to the Law on the Takeover of Joint-Stock Companies were also aimed to rectify certain shortcomings of the law noticed in practice. The amendments included, among others: i) an extension of deadlines for the publication of a takeover bid and delivery of the bid to shareholders; ii) the possibility of acquiring, under certain conditions, preferential shares and shares in unlisted companies through a takeover bid; iii) defining 'acting in concert' in more detail; iv) the obligation of a bidder acquiring a share within a one-year period following the closing of the bid—for a price higher than the one offered in the bid—to pay the same higher price to the shareholders who sold the shares in the bid process, etc. The Law on the Takeover of Joint-Stock Companies no longer regulates the squeeze-out or buy-out mechanism, as these are now regulated by the Company Law.

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

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

As a final point, we have to commend the constitution of the Financial Stability Committee that was formed in December 2013 as a body founded by the Government of the Republic of Serbia, the National Bank of Serbia, the Deposit Insurance Agency and the Securities Commission. As announced by the Government, this Committee should help cooperation and coordination of work of the members as the advisory body. Its tasks will be review and assessments of the issues and measures to be taken with a view to preserving financial stability. The Committee should meet at least once quarterly and will be chaired by the National Bank of Serbia Governor. The practice will demonstrate the actual authority, influence and effectiveness of this body, as well as eventual benefits of its work for financial stability, and, indirectly, the Serbian capital market.

REMAINING ISSUES

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

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

The capital market in Serbia is still a shallow and insufficiently liquid market. Municipal bonds are still rare, and even 3 years after the adoption of the Law that brought a clearer legal framework relating to the initial public offering, still not a single initial public offering has been conducted.

Unfortunately, it seems that the Working Group which was formed in March 2013, tasked with amending regulations on securities to ensure the harmonization of regulations in the domain of securities and eliminate identified problems occurring in practice because of discrepancies, has stopped or held up its work, as FIC has not been informed on any activities of this Working Group since autumn 2013.

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

FIC RECOMMENDATIONS

- The Government should take all necessary actions to increase activity on the capital market in Serbia, including motivating foreign investors to issue dinar-denominated bonds and initiating Serbia's first big IPOs. This means all legal and political obstacles should be removed in order to attract international financial institutions and other investors to issue dinar-denominated bonds. At the same time, the announced IPOs of big public (or former public) companies should finally be organized. In addition, state and municipal bonds could be issued for the financing of infrastructural and other large communal projects.
- Improvement in the cooperation of the capital market participants is visible. Also, formation of the Financial Stability Committee is welcomed as acknowledgement of the importance of closer coordination between all the relevant institutions whose work affects the market. We strongly encourage such a positive change and wish to emphasize that this cooperation must be continued and enhanced.
- 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.
- The Draft Law on Securitization should be prepared and submitted to the National Assembly for immediate adoption.

JUDICIAL PROCEEDINGS

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The Serbian government conducted a series of legislative reforms affecting the organization of the judiciary and judicial proceedings. These reforms partially continued throughout 2013. Specifically, a new organizational scheme of courts was established by the Law on Court Organization (Official Gazette of RS No 116/2008, 104/2009, 101/2010, 31/2010 - as amended, 78/2011 as amended, 101/2011 and 101/2013). The new Law on Enforcement and Security (Official Gazette of RS No 31/2011,99/2011, 109/2013 - Decision of the Constitutional Court and 55/2014) and the new Law on Civil Procedure (Official Gazette of RS No 72/2011, 49/2013 – Decision of the Constitutional Court and 74/2013) are now being applied in their entirety, while the new Law on Public Notaries (Official Gazette of RS No 31/2011, 85/2012, 19/2013 and 55/2014 – as amended) - introducing the public notary system for the first time since World War II – was expected to become applicable as of September 2012, but later amendments postponed this until September 2014. On 1 January 2014, the new network of courts was established by the Law on Seats and Jurisdictions of Courts and Public Prosecution (Official Gazette of RS No 101/2013), whereby the number of court units was significantly reduced from 102 to 29, while the number of first instance courts was simultaneously increased, from 34 to 66. This solution finds its justification in the economic unsustainability of the high number of court units, the costs of which were disproportionately higher over the past four years in relation to the scope of their work. With the latest legal solution the protection of the right to trial within a reasonable period was improved, among other, so that as of 21 May of 2014 in addition to the constitutional appeal, the citizens of Serbia have one more remedy at their disposal - filing a motion for the protection of the right to trial within a reasonable period to a directly higher court.

The decision not to reappoint a significant number of judges and prosecutors implemented in late 2009 was revised by the High Judicial Council of Serbia, starting 15 June 2011, at the request of the European Union and the Council of Europe, as well as on account of several hundred complaints filed with the Constitutional Court of Serbia. The review of the reappointment of judges was completed on 30 May 2012. The aforementioned discharge of more than 800 judges, and the dismissal of a number of administrative staff in the courts, created a real problem for courts in terms of coping with the case load. The situation also got worse in terms of the overall quality and quantity of resolved cases. In the largest (i.e., best equipped and most overburdened) 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. Simply put, courts are overwhelmed with cases, and despite official statistics showing positive results of this reform, the situation in reality seems worse than before.

Dispute Resolution

The application of the new Law on Civil Procedure that started on 1 February 2012 and established strict deadlines for activities of the parties and courts, was stalled in the first four months from going into effect, due to the courts' inability to eliminate the backlog of cases. The new law introduced, inter alia, new rules on the service of court documents; a shortening of the evidence-producing procedure; the summoning or notifying of parties and the court

via e-mail; a deadline for issuing an appellate decision (9 months, if it is decided without scheduling a hearing); the option to use audio and video equipment at hearings; stenographers; and clear and strict deadlines to produce evidence at a hearing. It also ensures equal rights for the party applying for a legal remedy and its opponent in terms of prescribing an equal deadline to submit legal remedy and to submit the response to such legal remedy. The new law introduced a timeframe for the main hearing, as a new concept aimed at providing a better concentration of hearings in which evidence may be produced. The practise and decisions of the Constitutional Court indicate that certain provisions of the new Law on Civil Procedure are unsustainable, so the latest amendments, which came into force on 31 May in 2014, provided to harmonize the composition of the court with the Constitution of the Republic of Serbia, expand the circle of the authorized representatives of the party, and reduce the threshold for filing a revision to satisfy the need for social balance.

The Law on Public Notaries, which governs the organization and activities of public notaries, applies as of 1 September 2014.

The Legal Practitioners Act (Official Gazette of RS No 31/2011 and 24/2012 – Decision of the Constitutional Court) established additional requirements for becoming an attorney-at-law – successful completion of the attorney's exam, the implementation of which began on 17 May 2012. Also, this law has introduced one more significant novelty – 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. The Law introduced the possibility for foreign attorneys to register with the Bar Association of Serbia, and to, after three years of continuous practice of law in the Republic of Serbia.

Arbitration proceedings in Serbia are governed by the Law on Arbitration (Official Gazette of RS No 46/2006), adopted in 2006. This Law is fully compliant with the 1985 UNCITRAL Model Law on International Commercial Arbitration. However, the Law on Arbitration does not completely conform to the 2010 UNCITRAL Arbitration Rules, which prescribed many amendments. On the other hand, the mediation procedure is governed by the Law on Mediation (Official Gazette of RS No 18/2005). However, the National Assembly has enacted a completely new Law on Mediation in Dispute Resolution mid-year, applicable as of 1 January 2015, when the currently applicable Law on Mediation will cease to be valid. Mediation and arbitration in some matters (such as labour law, activities of tourist agencies, etc.) are governed by separate laws or regulations. Both arbitration and mediation are rarely used in practice, primarily due to lack of their promotion as a more efficient and cheaper option for dispute resolution.

Enforcement

The new Law on Enforcement and Security came into force on 17 May 2011, and its application started on 17 September 2011 (i.e. on 17 May 2012 in relation to private bailiffs). The most significant characteristic of this law is the introduction of the institute of private bailiff, as a new branch of the legal profession, which should provide for more efficient enforcement proceedings. Also, unlike previous solutions, the new Law on Enforcement and Security now explicitly prescribes that the enforcement may also be conducted based on a foreign credible document, which greatly facilitated enforcement proceedings in case of non-fulfilment of obligations in international trade in goods and services.

POSITIVE DEVELOPMENTS

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

Enforcement

One of the expected positive developments is the start of work of the so-called private bailiffs, who conduct their activities either as or in the form of a partnership. Their role is to ensure more efficient enforcement proceedings, and the first private bailiffs started to work on 31 May 2012. The creditor is required to decide, already in the motion for enforcement, whether the enforcement will be conducted by the Court or by a private bailiff. If the enforcement proceedings was commenced before the private bailiff, the creditor may decide to change the manner of enforcement conduction and propose that the enforcement be conducted by the court. In such cases, the enforcement proceedings before private bailiffs shall cease. The Law on Enforcement and Security does not regulate the opposite situation, i.e. enforcement commenced before court to be continued before the private bailiff, and the practise of courts in this matter differs. With the introduction of private bailiffs, the number of cases decided before the court decreased, which should contribute to a better efficiency of the courts. The bailiffs have to fulfil special requirements, such as passing the bailiff's exam, possessing the qualifications required by the Law (i.e., a degree in law), and having the required working experience (a minimum of 2 years). They have exclusive jurisdiction over cases arising from debts incurred as a result of unpaid bills for utility and similar services, whereas the enforcement of court decisions in family matters, as well as the reinstatement of employees, is in the exclusive jurisdiction of the courts. With respect to all other areas, the competitive jurisdiction of the courts and private bailiffs is foreseen.

Dispute Resolution

The new Law on Civil Procedure introduced some promising improvements in terms of the summoning and notification of parties and other participants in the proceedings to prevent present abuses by the parties. One of the fundamental remarks of the new Law on Litigation Proceedings which referred to the threshold for filing a revision and the existing limitations for the application of this extraordinary legal remedy is, by the latest amendment to the Law on Civil Procedure, eliminated. The possibility of filing a revision as an extraordinary legal remedy is now extended by prescribing new situations when the revision is always allowed, as well as by reducing the threshold from EUR 100,000.00 to 40,000.00, i.e. from EUR 300,000.00 to 100,000.00 for commercial disputes (the stated amounts are calculated according to the middle exchange rate of the National Bank of Serbia on the date of filing of the lawsuit). The newest amendments of the Law on Litigation Procedure stipulate that in the first instance litigation proceedings are conducted by a (non-professional) chamber, consisting of one judge and two lay judges. However, the law further explicitly lists and places the greatest number of court disputes within the jurisdiction of a single judge, leaving relatively little room for trial by a trial chamber. The integration of the main hearing and evidence-presentation procedure are also notable improvements to a certain extent. In this regard, the court has an obligation to render a 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 predictable. This law establishes the liability of judges for breach of discipline, and they can be faulted over delays in the procedure. The law also imposes higher fines for parties that abuse the proceedings. The appellate courts are also provided with a deadline to render an appellate decision – within nine months from the moment they receive the case files (but only in case that the appellate court does not hold the hearing) - and it is noteworthy that there the presiding judges may be held accountable for breach of deadline. Finally, parties are provided with equal rights in remedial procedures, so that the deadlines to submit legal remedies are equal to the deadlines providing the response to such legal remedies (15 days for appeal and response on appeal). As the provision of the new Law on Litigation Proceedings, which limited the parties in the proceedings to take actions in person or by representative who is an attorney was declared unconstitutional, the circle of the authorised representatives of the party is extended, and according to the latest solutions, the representative of a natural person may be a lawyer, blood relative in the direct line, brother, sister or spouse, as well as a representative from the legal aid unit of the local government that has a law degree and which has passed the Bar exam.

The new Legal Practitioners Act established a Bar Academy, attached to the Bar Chamber. The Bar Academy commenced its operations on 17 May 2012 with the purpose of improving the education of attorneys. The same effect is expected from the attorney's exam, where candidates must prove their knowledge of the Code of Professional Ethics, Attorneys' Fees, the Legal Practitioners Act, and the Statute of the Bar Association of Serbia.

The re-introduction of the public notary into the Serbian

legal system is an especially notable positive development in the Serbian legal system. Public notaries will contribute to a significant reduction of the workload of courts, which are overwhelmed by requests of parties for notarization of various documents. Public notaries will draft, certify and issue public documents on legal transactions, statements and facts providing the grounds for rights. They will also certify private documents; take said documents, money, securities and other movable property into deposit and conduct other activities in accordance with the law. The latest amendments of the Law on Extrajudicial Procedure (the application of which was postponed until the commencement of work of public notaries), foresee the possibility for courts to delegate extrajudicial matters with no prominent public interest to public notaries. On the other hand, the delegation of the implementation of extrajudicial procedures in status and family matters is explicitly prohibited, as well as conducting the procedure for determination of compensation for expropriated property, management of public records and registers for which the law prescribes that the court is responsible for their keeping, preparation of documents for which the law prescribes the exclusive jurisdiction of the court, i.e. conducting of hereditary estate proceedings when the inheritance law of the foreign country is applicable to the inheritance. It can be concluded that the legislator here primarily had in mind the delegation of extrajudicial matters in which the public interest is not particularly prominent, and the implementation of the newly adopted solutions can be expected to lead to relieving the overburdened and certainly not sufficiently updated courts, to cost savings, while simultaneously retaining the level of legal certainty and quality in the performance of delegated judicial activities.

REMAINING ISSUES

1. Serbian authorities have undertaken to implement the Constitutional Court's rulings of 2012 which overturned the non-reappointment of judges and prosecutors, leading to the reintegration of some 800 magistrates, representing one third of the total number. The High Judicial and State Prosecutorial Councils (HJC and SPC) reappointed all the previously non-reappointed magistrates to their courts or prosecution offices, or to the jurisdictions that replaced them, within the 60-day deadline set by the Constitutional Court. In addition, some 900 magistrates recruited in 2009 on a probationary basis were granted permanent tenure. 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. There is a general impression that the whole judicial reform was quite politicized and lacking any vision or long-term plan.

2. The new Law on Civil Procedure is a significant improvement to its predecessor, but still contains many flaws. It is still applied sporadically, since judges are mostly overwhelmed by old cases. The electronic communication between the parties and the court is still not possible due to the lack of clear regulations and by-laws in this field and the lack of funds necessary for the technological equipment of the courts. The 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. Some of the deadlines are unrealistically short, and the deadline for providing evidence is too strict, which may lead to abuse by the parties. This is especially evident in cases with a foreign element. The law will most likely come into collision with international treaties dealing with the service of court documents – i.e., the 1954 Convention on Civil Procedure and 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters – in terms of the provisions on serving court documents to parties. The deadline to submit evidence by the end of the preliminary hearing should also be more flexible. Therefore, the court must be allowed to postpone a preliminary hearing in order to provide the parties sufficient time to address/respond to all the evidence submitted by the other party. The impression is that the new law 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. The Law on Enforcement and Security should provide third parties having rights over the object of enforcement or security with efficient legal remedies. Also, in case of enforcement on the basis of a directly enforceable instrument (e.g., invoice), the creditor is not provided with a legal remedy in the case when the court issues an enforcement order, but subsequently cancels it upon objection of the debtor. Although the conditions for exercising legal remedies in the enforcement procedure are now stricter, in practice courts behave as

if the old law were still in force. In such an event, the case is simply transferred to litigation.

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

FIC RECOMMENDATIONS

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

INSOLVENCY LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
A Working Group which should consider the amendments of the Law on Bankruptcy should be formed with the aim to eliminate the issues in implementation of the Law on Bankruptcy that were noted in practice.	2013	√		
Encouragement of the bankruptcy debtor to initiate bankruptcy proceedings together with the submission of the reorganisation plan, giving the opportunity for more companies "to survive" instead of being definitely closed.	2010		√	
Judges should be educated and encouraged to use available legal means in order to prevent the debtors to misuse reorganisation plans which damage the creditors.	2013			√
Encouraging creditors to take a more active part in conducting the bankruptcy procedure, through the submission of a proposal for the initiation of bankruptcy proceedings, and in particular, through participation in creditors' bodies.	2011		√	
Enactment of the amendments to the Insolvency Law or a special law regulating "automatic" bankruptcy in case of prolonged insolvency of companies which will be in accordance with the Serbian Constitution.	2012			√
Encouraging mediation in bankruptcy proceedings whenever possible, with the aim of ensuring cost-efficiency and overall efficiency of bankruptcy proceedings.	2011			√
Decreasing the fee currently regulated under Article 3 Tariff No. 6 of the Tariff of the Bankruptcy Agency, or at least adjusting it so as to take into account the claim settlement ratio of unsecured creditors.	2012		√	

CURRENT SITUATION

The Law on Amendments to the Law on Bankruptcy was adopted and came into force in August of the current year, introducing significant changes for the first time since this piece of legislation came into force.

The goal of the latest amendments to the Law on Bankruptcy is to eliminate issues noted in practice as a result of an imprecise and incomplete regulatory framework on bankruptcy, and to accelerate the bankruptcy procedure and enable a more transparent way of settling creditors' claims. Whether these amendments will achieve these goals remains to be seen.

We note that before the adoption of the aforesaid amendments, previous changes to the Law occurred in 2012, by decision of the Constitutional Court, which repealed the provisions of the so-called "automatic bankruptcy" (in Serbian: automatski stečaj).

Furthermore, the last modifications of other regulations related to bankruptcy proceedings concerned the Rates of Fees for Activities within the Jurisdiction of the Bankruptcy Supervision Agency adopted by the Bankruptcy Supervision Agency that entered into force on 25 May 2013, replacing the previously applicable and criticized rates.

According to data released by the Bankruptcy Supervision Agency, as of 1 June 2014 there is a total of 1,970 bankruptcy proceedings under way in the Republic of Serbia, with the exception of bankruptcy proceedings conducted under the Law on Enforced Collection, Bankruptcy and Liquidation, and bankruptcy proceedings against banks, which are within jurisdiction of the Deposit Insurance Agency.

Approximately 10 bankruptcy proceedings per month were initiated in 2014, which is equal to the 2013 average.

As mentioned in the previous edition of the White Book, the decrease of the total number of proceedings in the last two years can partly be attributed to a minor recovery of the economy. However, this situation is primarily a result of the decision passed by the Constitutional Court

on 12 July 2012 declaring unconstitutional the provisions of the Law governing "automatic bankruptcy" (specific procedure in cases when a legal entity suspends all payments over a certain period of time) . The provisions on automatic bankruptcy were not reintroduced in the bankruptcy regulatory framework by the latest amendments to the Law on Bankruptcy.

POSITIVE DEVELOPMENTS

The latest amendments to the Law on Bankruptcy adopted in August of the current year introduced numerous positive changes. As mentioned above, essentially, one of the main reasons for adopting the amendments was to resolve the numerous issues observed in practice.

The proposed amendments seem to contribute to the transparency and efficiency of the bankruptcy proceedings, thus fulfilling a significant number of recommendations of the Foreign Investors Council.

Below we describe some of the most noteworthy novelties from the perspective of the Foreign Investors Council.

Firstly, the legal status of affiliated persons has been revised to prevent abuse of rights related to claims of affiliated persons noted in practice. Therefore, a new, fourth creditors rank has been introduced for the majority of claims of the affiliated persons. The affiliated persons may no longer be elected to the Creditors' Committee, and in case of reorganization, their claims have to be classified in a separate class with no voting rights. Affiliated persons engaged in lending activity within their ordinary course of business are exempted from the application of these provisions in respect to their claims arising from the granted loans.

Another important novelty is the introduction of a new category of creditors – collateral creditors. These are creditors who hold a security over the assets of the bankruptcy debtor, but have no simultaneous claim against the bankruptcy debtor (the security was established to secure the creditor's claim towards a third party). According to the amendments to the Law, and the adopted position of the Appellate Commercial Court, such creditors are not considered secured creditors in bankruptcy proceedings. Instead they are treated as pledgees or mortgagees of the bankruptcy debtor, and are not obliged to file their claims, but are obliged to inform the court about the presence of collateral on the assets of the bankruptcy debtor and the amount of outstanding claim from the relevant third party. This situation is very common in the practice of commercial banks and caused various issues, so the amendments regulate the position of collateral creditors precisely and uniformly, thus harmonizing their legal and factual status.

In practice bankruptcy debtors often utilized pre-drafted reorganization plans as a means for postponing bankruptcy, thus avoiding appropriate settlement of the creditors' claims. The amendments to the Law potentially prevent some of the common abuses of the reorganization procedure by, inter alia, limiting the length of the ban on enforcement against a bankruptcy debtor's assets and determining the term within which the bankruptcy debtor has to file a new extraordinary report of the auditor. Furthermore, the provisions which expand the group of persons who cannot be appointed as bankruptcy administrators or independent experts monitoring the implementation of the reorganization plan are also expected to yield a positive effect on the prevention of the abuse of the reorganization procedure.

The amendments contain a number of refinements of existing provisions that were needed in practice: the contesting of creditors' claims is allowed until the conclusion of the examination hearing at which their applications for recognition of claims are considered, specifying the starting date of the reorganization plan implementation and the date of enactment of the legal consequences of the opening of bankruptcy proceedings, etc.

An interesting novelty is the introduction of the exclusive international jurisdiction of the Serbian court for conducting bankruptcy proceedings against foreign entities that have a centre of main interests in the Republic of Serbia.

REMAINING ISSUES

As mentioned above, a significant number of problems observed in practice should hopefully be resolved by the latest amendments to the Law on Bankruptcy. The actual effects of the amendments can be evaluated only after they have been implemented in practice over a certain period.

However, even at this point, it seems that the scope of the amendments related to the reorganization procedure, and especially the reorganization procedure on the basis of a pre-packed plan, where the abuse of loopholes by bankruptcy debtors is very common, will not be sufficient to avoid such abuse entirely.

Despite the fact that some earlier drafts of the amendments contained provisions on automatic bankruptcy, the adopted amendments do not regulate the automatic opening of the bankruptcy procedure in case of the debtor's permanent insolvency.

In addition, we have noted several technical inconsistencies which may cause further problems in practice when it comes to interpretation.

As an example, it is unclear whether the new, fourth creditors' rank will receive payment before or after subordinate creditors (creditors who have agreed, before the opening of the bankruptcy proceedings, to settlement after full settlement of claims of one or more bankruptcy creditors).

Also, in our opinion, the legislator was too strict by treating the failure of the creditor to inform the court about the collection of its claim from the guarantor or main debtor within 8 days as a criminal offence. Specifically, the nature of such failure to act corresponds more to a misdemeanour or a commercial offence.

In any case, the hope remains that the remaining issues will be resolved by the planned comprehensive amendments to the Law, the preparation of which, according to the information provided to FIC, is expected to start in the fall of this year, and which might even include bankruptcy of entrepreneurs.

FIC RECOMMENDATIONS

- 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.
- The procedures initiated on the basis of the pre-packed reorganization plans should be followed carefully in order to determine whether the amendments to the Law on Bankruptcy will succeed to reduce the length of the procedure and diminish noted abuses by bankruptcy debtors.
- Encourage bankruptcy debtors to initiate bankruptcy proceedings and contemporaneously file a reorganization plan, providing the opportunity to more companies to stay active instead of being definitely wound up.
- Judges should be further educated and encouraged to use available legal means in order to prevent the debtors to abuse reorganization plans for the purpose of damaging creditors.
- Encourage creditors to take a more active part in the bankruptcy proceedings, by filing a proposal for opening bankruptcy proceedings, and in particular, by participating in creditors' bodies.
- Encouraging mediation in bankruptcy proceedings, whenever possible, with the aim of ensuring cost-efficiency and overall efficiency of bankruptcy proceedings.

INTELLECTUAL PROPERTY

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

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

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

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

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

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

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

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

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

The enforcement of the above mentioned substantive laws is dependent on several important laws setting forth the procedural and organisational provisions for the protection of intellectual property rights and the prosecution of infringers, the most important being the following:

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

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

POSITIVE DEVELOPMENTS

The most notable positive development since the last edition of the White Book is the enactment of a new Law on the Protection of Topographies of Semiconductor Products, which replaced the previously applicable Law on the Protection of Topographies of Integrated Circuits. This new law came into force on 3 July 2013, and was adopted to harmonize this area with the relevant standards of European Union and World Trade Organization (primarily with the Council Directive 87/54/EEC of 16 December 1986 on the Legal Protection of Topographies of Semiconductor Products), as well as to encourage the development of domestic and transfer of foreign semiconductor products and their application in Serbia. The subject matter of protection envisaged by the provisions of this law is wider than before, due to the fact that the term "semiconductor product" pertains to all electrical circuits (including the ones made from discrete components).

In addition, new Law on the Protection of Topographies of Semiconductor Products introduced the right of appeal against the decisions of the IP Office (the same way as this right is prescribed for other industrial property rights), which is a significant improvement in comparison with the previous law under which the applicants had no other way to challenge the decisions of the IP Office but to initiate an administrative dispute before the Administrative Court.

REMAINING ISSUES

Despite the fact that the relevant intellectual property legislation, generally in line with European Union and international standards, has been in place in Serbia for several years already, the efficiency of its enforcement is still not satisfactory. The latter is also a matter of effective co-operation between the competent state authorities and the owners of intellectual property rights (a positive example being the successful co-operation between the Tax Administration within the Ministry of Finance and Market Inspection within the Ministry of Trade, Tourism and Telecommunication with the Business Software Alliance). However, internal organisational and possibly personnel change within the state authorities in charge of intellectual property infringement matters seem necessary in order to further lower the infringement rate.

FIC RECOMMENDATIONS

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

PROTECTION OF COMPETITION

COMPETITION LAW

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The enactment of amendments to the Competition Law in November 2013 reaffirms the importance of competition law in the overall legal framework in Serbia and puts it in the focus of foreign investors, especially those coming from jurisdictions with a long tradition of modern competition rules. Also, the recent practice of the Serbian competition authority ("the Commission") and relevant courts confirms this approach.

The FIC welcomes the positive developments in the law and practice.

Most notably, the highly contested issue of retroactive application of the law seems to have been resolved in favour of

market participants who argued against it. The successful resolution of this issue has reinforced the principle of legal certainty in the business community, but it has also sent a signal to the business community that the Commission may not guarantee their immunity when making leniency filings. As a result, the number of leniency filings has dropped significantly following the highly visible cases in which the Commission had attempted to apply the law retroactively.

In many decisions, the Commission makes a reference to the EU practice, without specifying the relevant cases, whilst in one case, the Commission generally referred to the practice of the national competition authorities without even mentioning the EU practice.

Additionally, in certain cases, the Commission repealed, amended or modified its guidelines, applying the new provisions retroactively. While guidelines on fines have been adopted, their application is still rocky at best – the Commission seldom accepts arguments made by parties, and the fines are more or less uniform in their amount (usually around 1–2.5% of the total turnover generated in the preceding year). A positive development in this regard is that the potential penalty of up to 10% of the annual revenue of a market participant is now explicitly tied (i.e. limited) to such market participant's revenue generated on the territory of the Republic of Serbia under the latest amendments to the Competition Law.

The Commission still has a formalistic approach when deciding on merger notifications; i.e. communication with the Commission is limited to written submissions and very often a voluminous set of documents, regardless of their importance, must be provided in support of the notifications even in concentrations that are only related to Serbia, because the individual participants have to meet a certain financial threshold. Moreover, although the Competition Law provides for a sound legal basis for arguing that the transactions without any effects on the Serbian market do not need to be notified in Serbia, it seems that the Commission is not willing to provide any official guidelines or legal opinions on the notifiability of the transaction, although this is the Commission's main duty.

While the Commission started making some of its decisions entirely publicly available, which is a positive development, the fact that not all relevant court rulings on the Commission's decisions are publicly available remains a major impediment in ensuring transparency and wide access to the information related to and reasoning behind certain key decisions.

Despite the fact that the Commission's fees were already quite high, and that in May 2011 the Commission adopted a new fee schedule whereby the fees were increased by 25%, the latest amendments to the Competition Law failed to address this issue.

On 8 November 2013 the amendments to the Competition Law entered into force. The amendments mostly deal with making the Commission's life easier by extending certain time limits (e.g. the statute of limitation for initiating proceedings for breach of competition has been extended from 3 to 5 years) and abolishing the Commission's obligation to pay interest in case of revoked decisions on fines. The amendments also contain a novelty with regard to determining the existence of a dominant position on the market (the burden of proof is now always on the Commission) but the text of the amendments does not set this rule out with precision. The adoption of these amendments certainly leaves much to be desired as most of the novelties introduced by the amendments are burdened with imprecision and general lack of guidance/interpretative instruments.

POSITIVE DEVELOPMENTS

The exercise of its broader competencies by the Commission, provided by the Competition Law, as well as the Commission's activity in proposing a revision of the Competition Law, resulted in higher awareness in the area of competition protection in general.

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

REMAINING ISSUES

The proceedings before the Commission still do not provide for a sufficient guarantee of all procedural rights of the parties. The Commission's serious lack of requisite economic knowledge and respective methods is still apparent, but this situation should improve as the Commission has hired several economists in the past year. This will, hope-

fully, also motivate the Commission to use economic tests confirmed in competition practice, and to put more effort in conducting a proper analysis of market conditions.

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

A dialogue among all relevant stakeholders, including a proper dialogue between the private sector and the Commission, has not been established in a sufficiently institutionalized manner. The Commission's website, as a potentially valuable source and tool of information and a means of communicating with all stakeholders, is still not well organized and often does not provide updated information. In addition, in most of the cases, non-confidential versions of the Commission's decisions, as well as the Administrative Court rulings related to competition issues are not publicly available. It is indisputable that better transparency in the Commission's work will ensure consistent practice of both bodies and also provide valuable predictability for all undertakings. This applies to the general legal opinions given by the Commission as well. Furthermore, while the Commission is particularly active against the private sector, it would appear that it gives a much more benign treatment to state-owned or public enterprises, opting for an "educational", instead of a "fine first" approach.

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, exact cases are to be mentioned in the Commission's decision.
- In order to enhance transparency and legal certainty, clear guidelines and notices interpreting the Commission's understanding of certain terms should be drafted by the Commission. This applies to the necessity of guidelines and notices relating to restrictive agreements, notifying obligations and the concept of "implementation of a concentration", etc. The FIC and other interested stakeholders should have the opportunity to participate in the drafting process.
- For legal certainty, aside from the Guidelines, the Commission needs to adopt by-laws defining certain categories core to the anti-trust framework, e.g. dominant position, the leniency procedure in more detail, and excluding certain types of agreements with respect to specific industries, i.e., insurance and the auto industry.
- Judges of the Serbian Administrative Court should complete advanced training in both competition law and economics. All rulings of the said court should be publically available.
- The Commission should make its practice consistent towards all undertakings. Competition advocacy certainly represents one of the strongest means for achieving such a goal.
- The Fee Schedule must decrease fees to a reasonable level in line with comparable jurisdictions in Central and South East Europe.
- All the Commission's instructions, notices and guidelines should be published in the Official Gazette of the Republic of Serbia and/or the Commission's website. In addition, non-confidential versions of all decisions of the Commis-

sion, as well as the Administrative Court rulings related to competition issues should be publically available.

- The right balance between the Commission's role to sanction illegal behaviour and to promote competition rules is to be determined, i.e. competition advocacy should not be overlooked and the Commission should promote competition law principles more effectively.

STATE AID

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Consistent and effective enforcement of the Law, particularly in relation to public enterprises.	2011		√	
Increased training and pressure on public authorities to respect the rules in granting aid and a more proactive role of the Commission in tracking and ex post control should they fail to do so.	2011		√	
Professed operational independence is not sufficient – a change in the Law is needed to ensure the status of an independent body for the State Aid Control Commission.	2009			√
Continued harmonisation with EU standards and established state aid control practice of the European Commission.	2009		√	
Increased public presence of the Commission (e.g. press releases and conferences, seminars and training, as well as its own website).	2011		√	
Increased capacity, statistics and analysis, appropriate response and a "voice" of the Commission could have an important impact on state aid structure and general policy.	2011		√	
Addressing controversial decisions of the Government in a timely manner and with authority so as to present an independent check on unlawful aid.	2012			√

CURRENT SITUATION

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

According to the last publically available edition of the Commission for State Aid Control's Annual Report, the value of state aid granted in 2012 amounted to EUR 777.96 million, which is an increase of 7% in comparison to the total state aid granted in 2011, i.e. an increase of 13% in comparison to the same parameter from 2010. State aid as a ratio of the GDP in 2012 amounted to 2.60%, same as in 2011, but lower than 2010, when this figure amounted to 2.64%

POSITIVE DEVELOPMENTS

The new amendments to the Regulation on the Rules for Granting State Aid from November 2013 stipulate that the

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

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

REMAINING ISSUES

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

In its report on Serbia's progress in 2013, the European Commission estimated that there was no progress in the field of state aid control and that the Republic of Serbia still uses substantial funds to bail out individual business entities, which further distorts competition on the market. The European Commission stated that a greater degree of autonomy is required for the operation of the Commission for State Aid Control. The European Commission noted that a particular deficiency is the granting of state aid to companies undergoing the privatization process.

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

The European Commission recommended that EU member states enhance their efforts in reducing total state aid granted, and to additionally focus on discontinuing support to individual companies and sectors, and instead encourage horizontal goals, such as employment, regional development, environmental protection, training, research and development. However, in Serbia, as already noted, the biggest disbursements are intended for individual companies and sectors, while for example, only 0.1% of total state aid is allocated for research and development (as subsidies).

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

The Commission for State Aid Control is facing the problem of a large number of state aid notifications decided in ex post control proceedings. This additionally complicates a prompt response of the Commission for State Aid prior to such aid being granted, which causes additional pressure on the Commission. While the importance of the timely filing of state aid notifications is undeniable, state institutions violate the regulations and further hamper an adequate response by the Commission. It is noticeable that the Com-

mission for State Aid Control never imposed any measure for returning the granted state aid, which brings the independence and integrity of the Commission itself into question. From the institutional side, the status of the Commission for State Aid Control as a governmental body primarily composed by representatives of different ministries rather than an independent authority can still bring its decision-making independence into question. Although certain steps have been taken, the Commission's current capacity is still not sufficient for its important role.

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

FIC RECOMMENDATIONS

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

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Professional training (and licencing) of competent bodies and court staff, consumers' associations, sector organisations and other market participants; development of their mutual co-operation; enhance capacity building.	2011		√	
Forming of a body in charge of efficient protection of consumers' economic interests.	2013	√		
Extension of the jurisdiction and powers of the inspection and creation of a system for effective monitoring of consumer markets.	2013	√		
Strengthening the role of local initiatives and local consumer associations in protection and promotion of consumer rights.	2013		√	
Adoption of the Strategy for Consumer Protection (2013–2018).	2013	√		
Adoption of the National Programme for Vulnerable Consumers Protection, and the adoption of missing by-laws, in order to provide consistent implementation of the Law.	2011			√
Further efforts toward harmonisation, regular check-up and updates of Serbian legislation with international and EU principles in this matter.	2011	√		

CURRENT SITUATION

In June 2014 the Serbian Parliament adopted a new Law on Consumer Protection (the "Law") effective from September 2014. This is the third consumer protection piece of legislation aimed at further improving the protection/position of consumers and strengthening the so-called positive discrimination in favour of consumers related to the purchase of goods and services, and reducing difficulties in terms of its implementation (by way of further establishing and implementing mechanisms, and reducing disparity in the consumer/trader relation).

In this respect, the findings i.e., recommendations in this edition of the White Book cannot be seen as final, because the period ahead of us will show to which extent policy makers have succeeded in their intention.

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

Since the Law is effective from September 2014, a swift adoption of by-laws is necessary to regulate in more detail, inter alia, the conditions for an out-of-court settlement of consumer disputes, the rules and operational criteria for bodies resolving such disputes. It is essential that all market participants promote an alternative consumer dispute resolution, in order to raise the awareness of consumers about this possibility and its practical use.

POSITIVE DEVELOPMENTS

We have seen a significant legal novelty, and that is the introduction of the concept of protection of the collective interests of consumers, which aims to sanction unfair business practices and unfair contract terms. Under the Law, if the consumer protection associations duly registered with the Ministry of Trade, Tourism and Telecommunications (the "Ministry"), establish that a certain trader breaches the collective interests of consumers by unfair business practices or by contracting unfair terms, they are entitled to approach the Ministry with a request to initiate proceedings in order to protect such interest. On the basis

of such a request, or by virtue of its office, (if it determines in the supervision process that an act or omission of market participants endangers or threatens to endanger the collective interest of consumers), the Ministry may initiate administrative proceedings, or require the trader to cease violation of collective interest of consumers. This seems to be a significant improvement in comparison to the previous law.

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

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

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

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

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

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

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

REMAINING ISSUES

The notion of services of general economic interest is better defined in comparison with the 2010 Consumer Protection Law. However, the part that refers to electronic communications remained unclear and currently applies to all operators, instead of those with a significant market share. Providers of services of general economic interest are required to form committees for complaints, consisting of representatives of consumer organizations registered with the Ministry (but it remains unclear who will fund the operation of these committees). According to the current position, these obligations would be unjustifiably imposed on "small" operators, who would be put in the same situation as major operators. That could burden their operations, which we believe is not the intention of the legislator. Accordingly, our view is that this formulation should be adjusted and interpreted in the same way as in regulations governing electronic communications, protection of competition, etc.

Although the Law formally established greater balance in the relationship between traders and consumers, the question is how and how well the Ministry will be able to reconcile their interests in practice, without discriminating the position of one in favour of the other. Since the Law has yet to be implemented, practical problems in its implementation will occur and be more visible in 2015 and will therefore be analysed in the next edition of the White Book.

FIC RECOMMENDATIONS

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

PROTECTION OF USERS OF FINANCIAL SERVICES

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

The evident intention of the legislature in enacting this Law was to protect individuals as consumers of financial services, i.e. individuals who use or have used financial services (or have addressed the financial services provider in that respect) for purposes other than their business or other commercial activity. To that end, the Law does not apply to legal entities or sole proprietors. Accordingly, the general principles of user protection are as follows:

- the right to an equal relationship with the provider of financial services;
- the right to protection from discrimination;
- the right to information;
- the right to a determined or determinable contractual obligation; and
- the right to protection of rights and interests.

The Law prescribes strict provisions regulating the obligations of providers of financial services with respect to advertising financial services; proper information of users; determination of a variable nominal interest rate, the effective interest rate, fees and commissions; the entitlement of the user to cancel the agreement within 14 days without the obligation to specify reasons for cancellation, etc. In addition, special provisions of the Law regulate the procedure for the protection of user rights, involving in particular the powers of the National Bank of Serbia (the "NBS").

The Law particularly stipulates requirements related to the nominal interest rate, i.e. its variability. Namely, a variable nominal interest rate may consist of variable, or both variable and fixed elements, whereas the variable elements have to be those that are officially published (such as the benchmark interest rate, the consumer price index, etc.), and of such a nature that neither of the contractual parties can unilaterally influence them. Hence, it can no longer contain non-determinable elements, such as internal business policies and practices, change of operating terms, etc., as these are unilaterally influenced by the bank and therefore not objective. The intention of the legislature was to eliminate the practice of banks, common in the past, to vaguely define the criteria for changing the nominal interest rate and then unilaterally raise its level. To that end, the courts have already passed several decisions in favour of the financial services users.

As far as the calculation of the effective interest rate is concerned, the Law prescribes that it includes the current values of all incomes and expenditures with respect to a financial service. The fees and commissions, if contracted as variable, must also depend on contractual elements that are officially published and are of such a nature that neither of the contractual parties can unilaterally influence them.

In addition to the above, one of the main points of the Law is that the bank cannot assigns its claims, stemming from loan contracts, leasing contracts, overdraft contracts, credit card issue and use contracts, and account opening and maintenance contracts, to anyone other than a bank.

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 2013 to 31 December 2013), this body received a total of 2,201 complaints and early complaints in connection with the business activities of financial institutions (87.36% of which concerned banks). Even though these figures are lower compared to the same period in 2012, they are still an indication of the awareness of the public about the matter.

However, of all complaints against financial institutions received in 2013 (1,510), according the aforementioned Report, 1,263 (or 83.6%) were processed by the NBS's Centre for Financial Consumer Protection and Education of which 903 (or 71.5%) were assessed as unfounded and 360 (or 28.05%) as founded. By comparison, in 2012, out of all processed complaints, 36% of them were assessed as founded.

Further on, the NBS's Centre for Financial Consumer Protection and Education received 597 user queries (i.e. 36.1% less than in 2012) concerning financial products, services and related rights. In addition, the NBS's call centre received 17,931 phone calls and 1,188 queries sent by e-mail. Additionally, the NBS held 5 educational workshops for approximately 200 citizens pertaining to various financial matters, and 927 citizens visited the NBS's regional offices to acquire information on various financial services.

On 31 May 2013, the NBS issued a recommendation for banks on how to resolve the problem of users of Swiss Franc-denominated housing loans, as well as a recommendation for banks to appropriately regulate the relationship with loan users in relation to the excess amounts already collected on the basis of the increase of variable indeterminable interest rate elements for loans approved before the date of application of the Law (i.e. to calculate that amount as an early loan settlement). In this respect, dozens of judgements have already been passed by the courts in favour of the users and several hundred are currently pending[1]. In addition, a class suit against banks in Serbia, filed in 2013 by approximately 10,000 users of financial services, is currently pending. Yet, it should be noted that its outcome cannot be foreseen for, amongst other, procedural reasons. Specifically, the Constitutional Court meanwhile annulled the provisions of the Civil Procedure Law introducing the class suit (thus preventing any new filings thereof).

Finally, it is worth mentioning that there is an on-going procedure for amending the Law. Some of the proposed amendments are related to the clarification of the ambiguous currently applicable provisions, while others aim to provide new solutions in the areas of advertising of financial services and informing users, and to force banks to be more efficient in responding to user complaints (by shortening the deadline for feedback and introducing pecuniary fines), etc.

REMAINING ISSUES

Contrary to the practice in EU countries, the Law does not allow banks to assign claims stemming from loan contracts, leasing contracts, overdraft contracts, credit card issue and use contracts and account opening and maintenance contracts, to anyone other than a bank, this being a solution non-intrinsic to comparative law and regulations governing contractual relations.

As far as the application of the Law is concerned, key issues that still seem to require further improvement are those pertaining to the professional training of employees of consumer protection institutions and the strengthening of the administrative capacity to protect consumers, as well as the improvement of technical support and procurement of IT equipment for market inspectors.

1 source: www.efektiva.rs/aktuelnosti-krediti/padaju-nove-presude

FIC RECOMMENDATIONS

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

PUBLIC PROCUREMENT

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Synchronised action of the Public Procurement Office and Anti-Corruption Agency for the purpose of developing an applicable plan for combating corruption .	2013			√
Expansion of the administrative and expert capacities of the Public Procurement Office and State Audit Institution in order to effectively control the contracting authorities in terms of planning and execution of public procurements.	2013			√
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 the new Law on Public Procurement.	2013			√

The general impression is that the adoption of the new Public Procurement Law (Official Gazette of RS No 124/2012), in application since 1 April 2013, created a favourable legal framework for reforms in this area. Yet, it is still early to talk about positive results of the implementation of the new Public Procurement Law. On the other hand, the systematic application of the new Law's favourable solutions could lead to a higher level of control of planning and implementation of public procurements, the implementation of anti-corruption measures and the protection of the rights of interested persons.

CURRENT SITUATION

The ten-year trend of non-application of the anti-corruption rules under Articles 21-30 contained in the Law Public Procurement Law continued in 2014. The administrative capacities of the Public Procurement Office, as the institution with a key role in law enforcement, were not increased. There are no public reports issued on application of Public Procurement Law for the year 2014.

POSITIVE DEVELOPMENTS

The key changes introduced by the new Law are the following:

- compliance with the European Union directives;
- more complete and simple definition of the contracting authority;
- clearer specification of the subject of public procurement of works;
- reduction of the number of exceptions to the application of the Law;
- tightening of the conditions for the application of exceptions;
- mechanisms of ex ante control with respect to the implementation of the most commonly used negotiated procedures;
- mechanisms for the prevention of conflicts of interest and corruption in public procurement;
- partial centralization of procurements;
- encouragement and, under certain circumstances, obligation to carry out electronic procurements;
- introduction of a new procedure – competitive dialogue and stipulation of two new forms of existing procedures – system of dynamic procurements and framework agreement;
- de minimis public procurement is regulated in a way that allows transparency of procedure and competition;
- the obligation to publish the tender documentation is prescribed, publication is regulated more effectively and mandatory content of notifications on public procurements is defined;
- environmental and energy efficiency standards are included as possible parts of technical specifications;
- the method of calculation of estimated value is specified;

- the manner in which the decision on the award of contracts is enacted is clearly prescribed, as well as procedures and time limits for the conclusion of the contracts;

- possibilities of amendments to contracts are prescribed clearly and restrictively;

- procurements in the field of defence and security are regulated for the first time;

- competencies and powers of the Public Procurement Office are increased;

- the composition and manner of work of the National Commission for the Protection of Rights have been changed and new powers assigned to it, such as meting out fines for non-compliance with the procedure for the protections of rights and failure to implement decisions; control of implementation of the Commission's decisions; annulment of contracts; conduct of misdemeanour proceedings in the first instance, and submission of proposals for dismissal;

- the efficiency of the system for the protection of rights has been improved, on the one hand through simplification of the procedure and on the other through the introduction of new possibilities, such as proposing and imposing temporary injunctions;

- misdemeanours are prescribed for all serious violations of the Law and penalties are, on the one hand, tightened, and on the other, ranked by the seriousness of the misdemeanour;

- the duration of the prescription period in case of misdemeanours is extended to three years;

- the publication of final decisions made in misdemeanour proceedings is prescribed.

For the first time, the contracting authority's obligation to develop a public procurement plan and to submit it to the Public Procurement Office is established, as well as the obligation of the contracting authority to make a plan for the execution of public procurements. The recommendation from the previous editions of the White Book has been implemented, through the adoption of a set of preventive measures to prevent corruption and conflicts of interest. Furthermore, contracting authorities which spend more than RSD 1 billion per year on public procurements are required to enact internal plans for corruption prevention and provide special services. The purpose of the said plans and services is to review the rationality of planning specific procurements in terms of the needs and activities of the contracting authority, as well as technical specifications criteria, market research methods, the validity of contract award criteria, contract execution, and especially the quality of delivered goods and services or performed works, the supplies status and the use of goods and services. The special service will submit a report on the review, along with recommendations to the head of the contracting authority and to the authority supervising the operations of the contracting authority. The new institute of civil supervisor, responsible for reviewing procurements exceeding RSD 1 billion, was introduced. 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 stipulates the duty of the contracting authority to request an opinion from the Public Procurement Office on the justifiability of applying negotiated procedure, before launching the negotiated procedure.

REMAINING ISSUES

How the new Law will be implemented in the field of prevention of corruption remains to be seen. It is also expected that the Public Procurement Office, in cooperation with the Anti-Corruption Agency, will develop a plan to combat corruption, whereby the part of the Law on the prevention of corruption and conflicts of interest will be completed.

A remaining issue is the application of the "unusually low price" institute. The contracting authority has a 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 in the ability 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 offered price brings uncertainty in the public procurement procedures. In most cases, the contracting authorities accept low prices justifying their decisions by the need to save budget funds and by the bidder's right to offer a lower price for the purpose of gaining a competitive position on the market. In case the other bidders participating in a public procurement procedure have doubts as to whether the contract was awarded to a bidder that has offered an unusually low price, they may submit a request for protection of rights to the Commission for the Protection of Rights in Public Procurement Procedures. The

position of the Commission is that the contracting authority has a discretionary right to assess whether the price is unusually low and consequently it rejects requests for protection of rights on these grounds. The Commission is not authorized to question the merits of such requests since the parties to the procedure for the protection of rights are the Commission, the contracting authority and the applicant, and not the bidder to whom the contract was awarded. The rendering of a decision to annul the contract award decision on grounds of an unusually low price would be contrary to the principle "hear the other side too", since the bidder that was awarded the contract would not have the possibility to plead to the allegations of the applicant. The question is whether the Commission has the human resources and technical capacities needed to execute complex analyses to determine the facts. The Public Procurement Office and the Commission are not authorized to initiate the procedures for the annulment of the decision on awarding the contract, thus, bidders have no legal remedies for the protection of their interests, except for filing criminal charges. Based on the content of the reports submitted to the Public Procurement Office by the contracting authorities it is not possible to determine whether the contracting authority is truly implementing the contract stipulated with the bidder suspected of offering an unusually low price. The other bidders may request the contracting authority to provide documentation on the implementation of the executed contract, pursuant to the Law on Free Access to Information of Public Importance, but the question is what kind of documentation they will get from the contracting authority.

The mechanisms for the enforcement of the Law in cases when the public procurement eligibility criteria in a particular procedure are changed with respect to the previous year's criteria are also an 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 the public procurement is subject to "bid rigging" or not. For the aforementioned reasons it is advisable to amend the Law in the part regulating the issue of unusually low price as soon as possible and to determine the criteria when the contracting authority is obliged to determine whether the price is unusually low.

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

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

FIC RECOMMENDATIONS

- Synchronized action of the Public Procurement Office and Anti-Corruption Agency for the purpose of developing an applicable plan for combating corruption.
- Expansion of the administrative and expert capacities of the Public Procurement Office and State Audit Institution to effectively control the contracting authorities in terms of planning and execution of public procurements.
- Amending the provisions of Law regulating the unusually low price.
- 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).
- 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 new Law on Public Procurement.

PUBLIC - PRIVATE PARTNERSHIP

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

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

However, these important changes did not take hold in practice. Until today, according to the publicly available information, eleven projects were approved by the PPP Commission.

POSITIVE DEVELOPMENTS

The Law on Public-Private Partnership and Concessions prescribes that two by-laws have to be adopted within 90 days from the law entering into force (December 2011), regulating the supervision of realization of public contracts, as well as their registration in the Register of Public Contracts. In addition, the Commission for PPP has to adopt the value-for-money methodology (hereinafter: the "Methodology").

In that respect, the Decree on the Supervision of the Realization of Public Contracts on Public-Private Partnership (Official Gazette of RS No 47/2013), the Rulebook on the Manner of Keeping and Content of the Register of Public Contracts (Official Gazette of RS No 57/2013 and 110/2013) and the Methodology have been adopted.

The Decree on the Supervision of the Realization of Public Contracts on Public-Private Partnership provides for exceptionally wide powers of the ministry competent for finance matters (currently the Ministry of Finance), or the equivalent authority of the autonomous province, in respect of the supervised entity. In addition, both the public and private partner are obliged to compile a report on the realization of a public contract (on the form which has been prescribed by the decree), and the public partner has been obliged to submit that report to the competent authority semi-annually. In case the competent authority identifies irregularities in the realization of the public contract, it has to prepare a notice with recommendations for remedying these irregularities that the contracting parties (the public and private partner) have to comply with within 15 days of receipt. It is very important to note that any deviation from contracted rights and obligations of the public and private partner during the realization of the public contract is deemed an irregularity. It remains to be seen how the competent authorities will exercise such wide discretionary powers when supervizing the realization of public contracts.

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

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

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

REMAINING ISSUES

The Register of Public Contracts, which would have to be established as a sub-portal of the public procurement portal, is not yet existent or operational, although the new public procurement portal has become operational in accordance with the Law on Public Procurement.

Additional activity of the PPP Commission is required with regard to the adoption of templates of a public contract and direct agreement (which could be concluded between the financier of a PPP project and the private partner), so as to simplify the realization of PPP projects for potential partners.

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

a. Article 15 of the Law on Public-Private Partnership and Concessions prescribes the mandatory establishment of a special purpose vehicle (hereinafter: the "SPV") by the private and public partners for the realization of a PPP project, although it is common in comparative practice that a PPP project could be realized even without the establishment of the special company (so-called contractual PPP, which, without further normative elaboration, is recognized in Article 8 of the Law on Public-Private Partnership and Concessions). The mandatory establishment of the SPV for the realization of PPP projects creates additional costs for potential private partners and further complicates an already complex procedure;

b. Inconsistency within Article 46 of the Law on Public-Private Partnership and Concessions does not allow for

definitely concluding whether the foreign law could govern a public contract, which is particularly important for foreign investors;

c. Limitations from Article 16 and 17 of the Law on Public Property, which prescribe that immovables entirely or partially used by the authorities of the Republic of Serbia, autonomous province and local government for the fulfilment of their rights and obligations cannot be subject to enforcement, be mortgaged, or encumbered in any other way. Such a broad definition defeats the purpose of the provisions of the Law on Public-Private Partnership and Concessions on financing, which are otherwise very favourable for potential financiers, and which direct to the application of the law regulating public property, as practically no immovable in public ownership can be encumbered or be subject to enforcement.

FIC RECOMMENDATIONS

- Amendments of the Law on Public-Private Partnership and Concessions so as to fully enable contractual PPPs: i.e. realization of PPP projects without the establishment of SPV, in accordance with comparative examples (e.g. Green Paper on public-private partnerships and Community law on public contracts and concessions [COM (2004) 327 final]).
- Issuance of adequate guidelines of the PPP Commission or amendments to the Law on Public-Private Partnership and Concessions, in respect of the governing law of the public contract.
- Amendments to the Law on Public Property to enable the encumbering of publicly-owned real estate, as well as enforcement proceedings thereon, for the purpose of realizing direct financing agreements related to PPP projects.
- Activities of the PPP Commission on the adoption of proper templates of public contracts and direct financing agreements.
- Activity of the PPP Commission on the building of capacities of potential public partners for the realization of PPP projects, and exchange of good comparative practices, which might improve the realization of PPP projects in the Republic of Serbia.

TRADE

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

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

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

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

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

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

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

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

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

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

At the beginning of October 2013, a new Rulebook on Labelling and Advertising of Food (Official Gazette of RS No 85/2013) was adopted and came into force in January 2014. The new Rulebook regulates in a more detailed and

more adequate manner not only labelling, but also advertising of packaged food and food in general. However, interpretations are divided on the issue of the transition period for compliance, for products whose original packaging was manufactured before this Rulebook entered into force, as the relevant transitional provision is insufficiently precise.

POSITIVE DEVELOPMENTS

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

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

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

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

A special instrument is available to commercial entities – lawsuit for unfair competition – which arguably provides for an additional layer of legal certainty.

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

REMAINING ISSUES

The elimination of defects regarding the import of products as described in the "Current Situation" section would enable the efficiency and speed needed, saving time and money both to businesspeople and the government. It would be enough to enable products to cross the border without a label containing the veterinary control number and manufacturer info, provided that the label, containing all relevant information (including the ones previously mentioned), be put on the products after their import but prior to their placement in stores. Also, when importing goods, the question of the justification of the number of collected samples arises, where it would be useful to define the sampling frequency, in relation to a specific product over a defined period of time. Although it is up to the customs authorities to define/suggest the possible terms for this procedure, its definition has a big influence on trade and goods flow. Then again, if the pallet is opened/unstrapped for sampling, the goods recipient will have it declared as "damaged upon receipt", causing further negative impact.

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

The freedom of entrepreneurship should be fully respected. Any exception should only be introduced through the law, for justified reasons, and not left to the local authority to decide.

Last but not the least, we must point out that not enough has been done in the field of secondary legislation. The obligation to make the Law applicable through its implementing by-laws still has to be fulfilled, to provide clear guidelines to the state authorities and business community and ensure legal safety in this area.

FIC RECOMMENDATIONS

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

INSPECTION CONTROL

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Establishment of uniform rules on sanitary and phyto-sanitary border inspection procedures for food and the beverage, cosmetics, and tobacco industries (leaf tobacco, non-tobacco material, and cigarettes), notably with regard to the number of samples taken per each shipment of goods, costs of laboratory analysis, and a detailed timeframe for the completion of border inspection procedures.	2012			√
Consistent implementation of uniform rules on sanitary and phyto-sanitary border inspection procedures for the food and beverage industry, excluding the possibility of arbitrary interpretation.	2012			√
Adequate and timely education of inspectors with the purpose of applying all parts of the law properly and equally.	2013		√	
More co-ordinated activities and higher interactivity between different inspections with the purpose of fast reaction and a more efficient tackling of problems which the economy is dealing with (the grey economy, the overlapping of accountability of different inspections, lack of accountability, transferring accountability to other inspections and similar).	2013		√	

CURRENT SITUATION

Different inspections in different ministries have different tasks with overlapping jurisdictions, and not enough qualified people, so companies are not able to get clear instructions as to whom to address.

One of the issues that escalated in 2013 was the illicit trade in different products (grey economy) in green markets, where it is evident that none of the inspections have full accountability (cut tobacco, chocolate, coffee, etc.) to inspect, control, and further process the cases of illicit activities. The inspections failed to co-ordinate activities to tackle the issue appropriately, instead, each inspection performed separate checks (limited by their resources). This sometimes results in multiple visits to the same companies and inspections of the same operations/issues, which creates additional costs for registered companies, while at the same time enabling individuals in the grey area to continue their illegal activities, as no inspection is responsible for their supervision and control.

All this leads to unfair competition, creating an additional burden on those who abide by the law and fulfil their obligations towards the state, affecting all stakeholders in society, the economy in general as well as the state budget, resulting in the deterioration of the investment climate for existing and potential investors.

According to the Food Safety Law, adopted in 2009, and the Law on Health Safety of Products for General Use, adopted in 2011, competencies in the area of sanitary and phyto-sanitary inspections are split between the two relevant ministries. The Phyto-sanitary Inspection, including Veterinary and Agricultural Inspection, of the Ministry of Agriculture and Environmental Protection, is responsible for official controls of food and feed of animal and plant origin in primary production, processing, trade, import, transit, and export. The Sanitary Inspection of the Ministry of Health is responsible for control of foods, dietary products, additives, aromas, enzymes of non-animal origin and all types of potable water. The Sanitary Inspection of the Ministry of Health is also responsible for control of products for general use, including cosmetic products.

POSITIVE DEVELOPMENTS

The problem of overlapping jurisdictions among inspections has been recognized, and a Draft Law on Inspection Control has been drafted, as a priority for 2014. Grey economy is the focus of interest of all relevant ministries. However, Draft Law should be additionaly improved in order to solve main problem of the low level of coordination between the authorities, the Law should introduce the functional and unique system of coordination and solve the problem of lack of plan for inspections' engagement

based on appropriate risk assessment analysis, as well as overlapping of responsibilities of the inspections.

REMAINING ISSUES

The FIC still recognizes that the enforcement of border inspection procedures is unpredictable due to the arbitrary application of the relevant legislation:

1. The number of samples taken, sampling procedures, costs of laboratory analysis, and the time needed vary significantly;

2. Even though the costs of laboratory analysis are covered by the importer, sanitary or phyto-sanitary border inspection officials have the discretion to choose the laboratory to process the samples. The analysis costs vary significantly across different laboratories;

3. The timeframe needed for border inspection and the validation process is not stipulated and varies based on factors unknown to the importer. Sanitary and phyto-sanitary border inspection and validation processes are often time-consuming and therefore importers cannot predictably plan business operations in Serbia;

4. Even though samples taken from the original packages often damage the import goods and packaging, it is the importer who bears the financial burden of this possible loss or destruction;

5. Improper enforcement of new legislation coming from different inspectors (mainly at the starting point of implementation, but also present in later stages), where they apply their individual understanding of legislation so that for the same situation you receive different answers and in different timeframes;

6. Improper education of inspectors and lack of continued professional development;

7. The FIC believes that the enforcement of sanitary and/or phyto-sanitary border measures applying to the food and beverage industry, and to cosmetic products is inconsistent and unpredictable, representing a barrier to trade and therefore breaching the principle of free movement of goods;

8. Different studies on the grey economy and inspections' work have shown that, aside from the two inspections mentioned above, which have diagonally different ways of working, adequate co-ordination and joint activities of different inspections are not being implemented in practice. These issues need to be addressed in order to reduce the grey economy and improve the economic environment as a whole.

FIC RECOMMENDATIONS

Sanitary and phyto-sanitary inspection procedures must not constitute a means of arbitrary discrimination or a disguised barrier to trade. Therefore, the FIC recommends the following:

- The Law on Inspection Control and relevant bylaws should be adopted no later than the end of 2014
- Establishing of permanent Secretariat for inspection bodies within GoV RS with clear responsibilities: adoption of binding rules for the inspections, establishment of the working group composed of relevant inspections which would coordinate specific activities of common jurisdiction, resolving of conflicts of jurisdiction of inspections, approval of the work plans and training of inspections and proposing to the GoV allocation of funds for inspections according to the priorities based on risk analysis.
- Establishment of uniform rules on sanitary and phyto-sanitary border inspection procedures for the food and beverage, cosmetic, and tobacco industries (leaf tobacco, non-tobacco materials, and cigarettes), notably with regard to the number of samples taken for each shipment of goods, costs of laboratory analysis, and a detailed timeframe for the completion of border inspection procedures.

- Consistent implementation of uniform rules on sanitary and phyto-sanitary border inspection procedures for the food and beverage industry, excluding the possibility of arbitrary interpretation.
- Adequate and timely education of inspectors to ensure that they apply the law properly and uniformly.
- More co-ordinated activities and higher interactivity between different inspections to ensure fast response and more efficiency in tackling the problems afflicting the economy (the grey economy, the overlapping of jurisdictions of different inspections, lack of accountability, the transfer of accountability to other inspections and similar).

ILLICIT TRADE

CURRENT SITUATION

With the grey economy accounting for over 30% of Serbia's GDP, there is hardly a company whose business hasn't been affected by illicit trade, especially in the fast-moving consumer goods sector. Illicit trade is, in economic terms, the most devastating aspect of the grey economy and one of the key factors in preventing the improvement of the investment climate in Serbia. Furthermore, the grey economy deprives the Serbian budget of approximately EUR 3 billion annually (of which EUR 250-350 million is lost just due to illicit trade in oil and tobacco). This limits the potentials of the State to further invest in infrastructure and the business environment in general. Due to lack of consolidated enforcement and deteriorating purchasing power, the pressures for further expansion of illicit trade are not expected to weaken in the near future.

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

POSITIVE DEVELOPMENTS

The agenda outlined in the Prime Minister's address that combat against grey economy will definitely be one of the priorities of the new Government and Ministry of Finance reflects the importance devoted to the issue of tackling grey economy and illegal trade by the Government of Serbia. The increased trend of on-site inspections and recorded seizures is noticeable, but still insufficient to result in a suitable business environment and to cover the budget gap created by illicit trade. The fact that the Government established special inter-ministerial working groups dedicated to fight particular aspects of illicit trade (e.g. illicit tobacco trade) certainly contributed to the positive trend. Also, Draft Law on Inspection Control has been prepared and its adoption is expected by the end of 2014.

The transfer of surplus administrative staff into enforcement structures, as was done within the Tax Administration, is also expected to foster enforcement and curb illicit trade. Finally, recent amendments to the Law on Tax Procedure and Tax Administration provide additional opportunities for suppressing illicit trade but need to prove their effect in practice through strict and continuous implementation.

REMAINING ISSUES

Due to the lack of consolidated enforcement, and the deteriorating purchasing power, the pressures for further expansion of illicit trade need to be taken into consideration, especially since the level of risk of conducting illicit trade is still perceived as significantly lower than the level of potential earnings for perpetrators. A stricter penalty policy is necessary to close the gap between the fines and the opportunity for profit in illegal channels. However, such a policy will have no effect unless it is applied by prosecutors and courts. Currently, the cases of illicit trade processed before competent courts are disproportionally few, with minimum fines meted out in the majority of cases, and often characterized as offenses, although there is basis for criminal charges. Consequently, this sends the wrong message to potential perpetrators and additionally incentivizes illicit trade.

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

The current legal framework does need considerable improvement but that should be no excuse for not using its full enforcement potential in practice before the required adjustments take place. Lack of coordination among the competent bodies remains the main issue, which implies the need for a comprehensive law that would regulate the engagement of various inspection bodies under one regime of coordination. Such a law should also resolve the absence of engagement planning based on risk assessment and conflict of jurisdictions among inspections.

The Law on Tax Procedure and Tax Administration still envisages a 45-day deadline for the settlement of tax liabilities for entities performing illegal activities, while the aforementioned deadline for entities that have miscalculated their tax payments, but are otherwise doing business in accordance with the law, is 15 days. By implementing such a solution the law is actually 'rewarding' illegal entities with a longer payment deadline. Also, if the entity performing illegal activities

settles its tax liabilities within 45 days, it is entitled to reimbursement of the seized goods, which is yet another 'incentive' for the continuation of the illegal modus operandi.

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

Although the Ministry of Interior proved to be crucial in fighting illicit trade, it still has no anti-smuggling department , which limits its possibilities for a more focused approach to fighting illicit trade.

FIC RECOMMENDATIONS

- Recognition of high-level illicit trade as organized crime and/or the introduction of specialized prosecutors and police officers (e.g. re-establishing the Anti-Smuggling Department) for illicit trade cases.
- Allocation of adequate resources and funds to legal enforcement bodies.
- Enhancing the cooperation between the public and private sector in fighting illicit trade by establishing a regular system of monitoring results and appointing a person responsible for monitoring anti-illicit trade activities at Government level.
- Establishing a risk assessment system and preparing an overall plan for the control of industries associated with a higher estimated risk of illicit trade.
- Empowering a wider number of inspections to confiscate illegally traded goods and penalize the offenders on the spot.
- Accelerated adoption of the Law on Inspection Surveillance that would regulate centralized coordination of inspections following a comprehensive and effectively driven public debate.
- Regulating the system of performance assessment and incentives for officials engaged in fighting illicit trade.
- Prescribing regulatory impact analyses that would require any legislation change to include assessment of potential effects on illicit trade.
- Establishing an Excise Inspection, specialized for analysing and monitoring the implementation of regulations on import, production, and trade of excise goods.
- Amend the legal framework with the aim of extending the authorization, competencies, and available measures of competent state bodies in fighting illicit trade, as well as strengthening the penalty policy, including the increase of pecuniary fines.
- Within the Law on Tax Procedure and Tax Administration, amend the treatment of entities conducting illegal activities in terms of revising the terms on payment deadlines, reimbursement of seized goods etc., and introduce the possibility for seizure of goods manufactured from illegally procured goods and equipment including parts that are used for performing such production.

CUSTOMS

WHITE BOOK BALANCE SCORE CARD

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

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

CURRENT SITUATION

The Customs Law

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

The Customs Law is based on the EU Community Customs Code (Council Regulation (EEC) No 2913/92, as amended). It is basically the text of the previous Customs Law (which was also based on earlier EU legislation), but with novelties such as the institute of Authorized Economic Operator, simplified customs procedures (a part is further elaborated later), summary declarations and previous declarations, the customs broker as the indirect representative will now be the declarant and the customs debtor etc.

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

The Customs Tariff

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

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

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

Free Trade Agreements

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

- EU (Agreement on Trade and Trade Related Matters);
- CEFTA (regional Free Trade Agreement between Albania, Bosnia and Herzegovina, FYR Macedonia, Moldova, Montenegro, Serbia and UNMIK Kosovo);
- Russia/Belarus/Kazakhstan (October 2010);
- Turkey;
- EFTA, a trade union consisting of Iceland, Liechtenstein, Norway and Switzerland.

In accordance with the provisions of the Interim Agreement on Trade and Trade Related Matters between the European Community and the Republic of Serbia that came into force on 1 February 2010, customs duties on industrial products originating in Serbia and imported into the Community were abolished.

POSITIVE DEVELOPMENTS

The Customs Law

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

Also, one of the steps towards the harmonization with the European Union regulation is the simplified procedure of clearance. In this way, the process of movement of goods is speeded up and the procedure of completion of customs formalities is maximally simplified.

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

- The equipment has to be new;

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

- It has to be used in production, to expand and/or modernize existing production facilities.

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

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

The Customs Tariff

The harmonization of the Customs Tariff with EU legislation allows the monitoring of all currently applicable customs duty rates in a comprehensive and transparent way.

Occasionally, there are difficulties in interpreting the tariff classification. However, progress is evident and can be seen from the volume of requests submitted to the Serbian Customs Administration, as well as from the Customs Administration's approach in dealing with these issues in strict compliance with the principles of the European Commission and WCO practice.

Free Trade Agreements

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

REMAINING ISSUES

The Customs Law

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

The IT applications of the Customs Administration have exhausted their potential and now present a major limitation for increasing import and export. Transition to the new IT platform is crucial and needs to be executed as soon as possible.

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

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

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

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

The Customs Tariff

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

Free Trade Agreements

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

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

FIC RECOMMENDATIONS

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

SIMPLIFIED PROCESS FOR EXPRESS SHIPMENTS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Efficient Customs information system development to enable and ensure the implementation of simplified procedures, secure interconnection with companies and automated clearance.	2011			√
Enable full implementation of the simplified procedures provided by the legal framework.	2011			√
Introduction and definition of de minimis shipments for which customs duties and VAT will not be collected, up to the defined value.	2013			√
Further develop simplified export clearance procedure for shipments up to EUR 1,000 and consider increasing the value threshold to EUR 5,000.	2012			√
Provide more efficient and standardised education to customs personnel to ensure focus on the full new legal framework implementation in practice, thus creating a predictable environment for trade and investments facilitation.	2011			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Switch customs officers' focus from practices developed in the past to full implementation of the current legal framework, reduction of their discretionary rights and introduction of accountability if a consignment is held and/or inspected without any real reason derived from risk analysis.	2011			√

CURRENT SITUATION

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

POSITIVE DEVELOPMENTS

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

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

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

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

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

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

REMAINING ISSUES

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

Introducing de minimis shipments for which no payments of either customs or VAT duties are required, up to a defined value, is also important. The current definition of low-value non-commercial shipments is such that they are exempt from customs duties up to a value of EUR 50, but not from payment of VAT. De minimis has been introduced in Europe because the cost of collecting these duties is higher than their value. This is very important for further e-commerce development.

A simplified customs export clearance procedure is provided to all postal operators in a way that the solution designed for public postal operators is applied to private postal operators, too. As a next step, this solution has to be simplified, aligned with private postal operators' operational procedures, and the value threshold increase must be considered (proposal: EUR 5,000). This issue is very important for further export support.

FIC RECOMMENDATIONS

- Efficient Customs Information System development to enable and ensure the implementation of simplified procedures, secure interconnection with companies and automated clearance.
- Enable full implementation of the simplified procedures provided by the legal framework.
- Introduction and definition of de minimis shipments for which customs duties and VAT will not be collected, up to a determined value.
- Further develop simplified export clearance procedure for shipments of up to EUR 1,000 and consider increasing the value threshold to EUR 5,000.
- Provide more efficient and standardized education to customs personnel to ensure focus on the full implementation of the new legal framework in practice, thus creating a predictable environment for trade and investment facilitation.
- Switch customs officers' focus from practices developed in the past to full implementation of the current legal framework, reduction of their discretionary rights and introduction of accountability if a consignment is held and/or inspected without any real reason derived from risk analysis.

GENERAL PRODUCT SAFETY

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

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

POSITIVE DEVELOPMENTS

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

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

REMAINING ISSUES

The NEPRO online public information system has been established with the aim of promptly alerting consumers about hazardous products. This is a web portal managed by the Ministry of Trade, Tourism and Telecommunications, as the domestic equivalent of the EU Rapid Alert Point of Exchange (RAPEX), which is a rapid alert system about the non-food and pharmaceutical products that pose a significant threat to health and safety. However, there is insufficient awareness of NEPRO's activities. It is not widely known, or present in the media and it does not transmit RAPEX's announcements. NEPRO made only 9 announcements in 2012 and 13 in 2013. Therefore, it can be considered that the impact of this portal on the market is relatively low. No improvement of the system regarding approachability, statistics, or analysis has been implemented. This failure is even more pronounced when compared with other successful government portals, as well as the launch of a new, centralized consumer protection site. The NEPRO public information system should be harmonized with the RAPEX system, which is far better known to the general public. Harmonization would help achieve the purpose of this system of information and improve its use.

There is a general lack of visibility and transparency of the work conducted by authorities in charge of product safety control. This leads to additional concern about awareness, and a negative perception of the authorities, the latter often seen as corruptible and arbitrary. The different relevant players in this field, (NGOs, economic operators, Market Inspection, certified laboratories), do not seem to co-ordinate their activities despite several semi-formal venues, (like the aforementioned Council); nor do they work in a cohesive system as opposed to an ad-hoc basis. Especially worrying is the lack of information exchange between the administrative body and the judiciary, which hinders the formation of a database on misdemeanours and proper follow-up activities. The most worrisome is the apparent clog in the market inspection, as well as not clearly defined responsibilities of this state authority at least concerning this segment of their activities.

FIC RECOMMENDATIONS

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

E-COMMERCE REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Updating the legal framework in line with recent developments in the European Union in the field of e-commerce and consumer protection.	2013		√	
Amending the second-tier, related legal framework, in areas such as e-archiving, auditing, foreign exchange etc.	2013	√		
A coordinated approach by the authorities, including a clear and coherent top-down policy is required in order to ensure smooth enforcement and a favourable environment for e-commerce. Sharing know-how among public officials, including inspectors, is paramount.	2013			√
A coherent e-payment environment is necessary, liberalising both electronic payment and collection.	2013		√	
Continuous public campaigns and activities, with a focus on education and security are necessary.	2011			√
Allow a shipment delivery with a consignee's digital signature on the delivery scanner's screen.	2013			√

CURRENT SITUATION

E-commerce is regulated primarily by the Law on E-Commerce, the Law on Electronic Documents and the Law on Electronic Signatures. The National Bank of Serbia opened public consultations on a set of financial regulations governing specific aspects of e-business in May 2014, specifically the Draft Law on Payment Services and the amendments to the Law on Foreign Exchange Operations, which significantly impact the performance of payment transactions in e-business. The new Consumer Protection Law, adopted in 2014, includes important aspects of the legal framework, and inter alia, regulates the protection of consumers in distance contracts.

The popularity of Internet shopping in Serbia demonstrates a stable growth trend during the previous period. According to statements made by public officials, Serbian citizens spent approximately EUR 180 million making Internet purchases in 2013. Data from the Statistical Office of the Republic of Serbia shows that approximately 900,000 people undertook online shopping last year, which accounts for 35.5% of Internet users. According to this indicator, Serbia is still well below the EU average, where nearly 60% of Internet users purchase goods online. Internet access is available to 55.8% of households in Serbia; the number of subscribers has increased by 6.9% compared to 2012. According to data of the Statistical Office of the Republic of Serbia, 43.4% of households use broadband internet, which is an increase of 5.4% compared to 2012. Increase in the use of broadband Internet resulted in the growth of the share of Information and Communication Technologies (ICT) in the gross domestic product (currently at approximately 5.5%).

In 2012, the number of Internet users making online purchases in Serbia amounted to 600,000. Accordingly, the percentage of Internet users engaging in e-commerce has grown from 28.5% to 35.5% in the previous year. Such a significant growth in e-commerce is both the result of the development of local e-commerce services, and of the increased availability of foreign payment services (PayPal).

POSITIVE DEVELOPMENTS

The amendments to the Law on E-Commerce in 2013 introduced a few basic novelties. The introduction of measures for restricting information services (services provided at a distance through electronic equipment, such as e-commerce, e- advertising, electronic search services, etc.) is a positive development. These measures were modelled on interim measures of the law governing enforcement and sureties. Such measures may be imposed on any information service provider transmitting, storing or providing access to illegal content, at the request of a person (any natural or legal entity), whose rights the information service provider violated, e.g. in the case of infringement of intellectual property rights. The court can order the removal of illegal content, or the cessation of the infringing act. Since this is a temporary injunction, the petitioner must file a lawsuit in due time to resolve the disputed issue, otherwise the

temporary injunction will be suspended. The importance of this measure is reflected in the efficient protection of third party rights and in the opportunity to remove content that violates the rights of third parties from the Internet.

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

Concerning the proposed financial regulations relevant for regulating e-commerce, the Draft Law on Payment Services introduces the definition of electronic money, electronic money institutions and services provided by such institutions. These clarifications are an important step forward from the perspective of financial regulations. The Draft Law on Payment Services provides a useful solution in allowing foreign electronic money institutions to provide services on the Serbian market after a mere notification to the National Bank of Serbia. The proposed amendments to the Law on Foreign Exchange Operations do not significantly alter the requirements concerning the use of services for online billing and payments, meaning that such services can continue to function in Serbia without obstacles. At the same time, the number of local banks offering electronic payment services has increased in the previous period.

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

REMAINING ISSUES

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

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

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

In order to harmonize with Directive 2000/31/EC prior to Serbia's EU accession, the legislator must address the issues of coordinated field and principles of the internal market. The coordinated field is the sum of regulations governing the behaviour of information service providers in countries where they are registered for the provision of information services (with respect to liability, quality of content and services, registration and commencement of activities etc.). The principle of the internal market allows for information service providers who are in compliance with the provisions of the regulation, including the coordinated field in their country of registration, to perform business in other EU countries without the competent authorities of that EU Member State requiring the information service provider to align with the coordinated field of that country. The transposition of the aforementioned provisions into Serbian legislation is man-

datory prior to EU accession; regardless, these provisions are very important, since one of the most important characteristics of e-commerce is its cross-border nature.

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

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

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

FIC RECOMMENDATIONS

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

LAW ON PAYMENT TRANSACTIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amendments to the Law with respect to Article 46 in a manner making the official interpretation of this article in line with the formulation of this article.	2012			√
The Law should be further amended in order to become harmonised with the legal framework of the European Union.	2013		√	

CURRENT SITUATION

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

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

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

There are 19 related by-laws currently in force.

POSITIVE DEVELOPMENTS

The Law was not amended in previous period.

At the end of 2013, amendments to the following by-laws were adopted:

- Decision on the Form, Content and Manner of Use of the Unique Payment Instruments (Official Gazette of the Republic of Serbia No 57/2004, 82/2004 and 98/2013); Amendments to the Decision have changed specified payment codes 40 (salaries and other allowances of employees), 41 (non-taxable earnings of employees, social and other allowances exempt from tax and wage garnishment), 42 (earnings payable by the employer), 47 (earnings payable by other payers), 48 (earnings of individuals from capital or other ownership rights), 49 (other earnings of individuals), 53 (in-payments of public revenues except withholding taxes and contributions). Also, new payment code 54 (in-payments of withholding taxes and contributions), has been introduced. Specifically, according to Art. 30a of the Law on Tax Procedure and Tax Administration (Official Gazette of the Republic of Serbia No 80/2002 ..., 108/2013) a bank will allow transfer of payment qualified as personal income, subject to withholding tax, only if the respective payment order contains the reference number assigned by the Tax Authority. The new payment code allows the identification of the individuals' income, as well as withholding tax for which the reference number must be inscribed in the payment order;
- Decision on Conditions and Manner of Opening, Maintaining and Closing Bank Accounts (Official Gazette of the Republic of Serbia No 33/2005, 25/2009, 106/2013 and 113/2013); Amendments to the Decision have repealed the previously adopted provisions according to which a bank had to close an account within three days from the receipt of the client's request, or to refuse such a request if the client had no other account and was registered with the Business Registers Agency;

At the end of 2013 and in early 2014, the following by-laws were adopted:

- Decision on Cash-Related Operations Performed by Agent and Requirements for Their Performance (Official Gazette of the Republic of Serbia No 115/2013). The Decision prescribes that storage and keeping of cash can also be performed by an agent on behalf of the bank. An agent can either be a bank or a company that meets the requirements prescribed by the Decision and with whom the other bank has concluded an authorized agent agreement;

– Decision on the Manner of Carrying out the Enforced Collection from the Client's Account (Official Gazette of the Republic of Serbia No. 14/2014). The Decision regulates the manner of enforced collection from the client's bank accounts in accordance with Arts.47 to 49 of the Law. Among other, the Decision defines that the execution titles can be submitted/delivered either directly to the Enforced Collection Division in Kragujevac (an organizational unit of the National Bank of Serbia responsible for the receipt, control and entry of execution titles and claims), or by post. The aforementioned provisions lead to harmonization with existing practice regarding the performance of enforced collection operations.

As a candidate for membership in the European Union, Serbia will be required to harmonize regulations on payment transactions with the European Union acquis. In that respect, the adoption of the draft Law on Payment Services prepared by the National Bank of Serbia has been announced, that will replace the existing Law in its prevailing part.

The Law on Payment Services is planned to regulate the conditions and manner of the payment services supply, e-money, payment system and monitoring of the implementation of its provisions. The new regulation provides that payment services may be rendered by a bank, an e-money institution, a payment institution, the National Bank of Serbia, the Treasury or other public authorities in the Republic of Serbia, in accordance with their competence determined by the law, as well as the public postal operator situated in the Republic of Serbia and established in accordance with the law on postal services. In this way, a wider range of business entities/institutions may be engaged in payment services' operations, which are the exclusive competence of the banks under currently applicable regulations.

REMAINING ISSUES

When adopting laws and by-laws, the practical application of certain rules needs to be taken into consideration, so as not to infringe the quality, efficiency and uniform practices in the realization of activities prescribed by the Law (e.g. Decision on Conditions and Manner of Opening, Maintaining and Closing Bank Accounts defines a new "OP" form, although the old "OP" form, certified by courts, can still be found on the market).

FIC RECOMMENDATIONS

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

With respect to the announced adoption of the Law on Payment Services, the following is needed:

- Specify the Law on Payment Services' provisions further to avoid difficulties in its interpretation.
- Extend the time in which the banks are required to align their operations and internal acts with the Law on Payment Services to 1 January 2016. Specifically, according to Art. 221 of the Law on Payment Services, banks must align their operations and internal acts with the provision of this law by the date of its application. Further, according to the same law, banks and their clients have to enter into framework agreements no later than two months before the date of the law's application, which is 1 April 2015. In addition, Art. 230 of the Law on Payment Services prescribes that the National Bank of Serbia adopt related by-laws within six months from its entry into force, which has not happened so far.

LAW ON PAYMENT DEADLINES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Facilitation of rules regarding private entities by stipulating either (i) longer payment deadlines; or (ii) additional exemptions from the envisaged 60-day term for payment.	2013			√
Amendments related to the pecuniary fine in case of non-payment in prescribed deadline. Such amendments should relate to both (i) stipulating the fine as a certain percentage of the unpaid invoice; and (ii) stipulating that the creditor who has multiple minor invoices maturing on the same date against the same debtor, is entitled to only one compensation for all such invoices.	2013			√
Continuation of training of all subjects involved in the application of this Law in order to have the same practice of both the Ministry of Finance and courts in respect of the application of the Law.	2013			√
Adopting amendments to the Law in order to provide special rules for long-lasting complex projects.	2013			√
Amendments to the Law regarding the pharmaceutical industry in order to achieve fair competition and conditions for all participants.	2013			√

CURRENT SITUATION

The Law on Payment Deadlines (the "Law") has entered into its second year of implementation.

Notwithstanding the fact that, in the meantime, numerous key legislations were amended, adopted (or are in the final phase of adoption and in public debate), the Law remained in the focus of both the public and private sectors.

Both the government and the private sector have clearly expressed the willingness and invested great efforts to regulate payment terms in Serbia (especially in terms of regular cash flow). Consequently, the communication between the government and the private sector (including the FIC) in respect of the Law remains open and is likely to result in additional improvements and clarifications of the Law in the future, to the benefit of all market participants.

The full effects of the Law cannot yet be assessed globally, but vary depending on the specific industry concerned. Accordingly, the payment deadlines vary in different industries, and while in some industries they have been reduced entirely, in others there was no significant breakthrough.

As a general comment, it should be noted that some progress has been made, but that additional improvements to the Law, taking into account the specifics of certain industries and projects, certainly should be considered in future discussions between the government and the private sector.

POSITIVE DEVELOPMENTS

Generally speaking, the following positive effects of the Law can be highlighted at present:

- More precise regulation of terms of payment, especially to the benefit of small companies in the payment chain;
- Based on the current practice it may be concluded that the majority of the biggest and most reputable companies have fully complied with the terms of the Law. To that end, the small companies in the payment chain (especially the ones in the distribution process) have already experienced positive impacts from the Law;
- Easier anticipation of cash flow;
- Although not equally in all industries, the Law definitely brought some stability and predictability in monetary transactions;
- Registration of all budget users into the central registry conducted by Treasury of the Ministry of Finance;
- Improvement of discipline in the payments made by the public sector.

REMAINING ISSUES

As stated above, notwithstanding the positive effects of the Law and its applicability, there are still numerous open

issues, both in respect of general terms of the Law as well as with regard to some specific industries/projects that should be additionally clarified and/or possibly amended in order to enable the full effect and applicability of the Law to all market participants.

We highlight the following key remaining issues:

- Strictness with regard to the 60-day payment deadline in transactions between private sector businesses. In most industries, a deadline of 60 days is too rigid and should be considered for extension. As an example, we emphasize that the Law has excluded agricultural producers from the said deadline, whereas other participants in the distribution chain are not excluded. Furthermore, we are of the view that the fixed payment term of 60 days reduces competitiveness of domestic suppliers in comparison to foreign suppliers (not encompassed by the Law), which may have a negative impact on the Serbian economy, this being an additional reason for considering the amendment/extension of the said deadline. The same negative impact is evidenced by resident production companies. Exporters are experiencing competitive disadvantages on international markets compared to foreign companies, because international producers benefit from more favourable banking costs.

- Applicability of the Law to long-term complex projects – The solutions of the Law are rather simple and tend to apply to all relations between business entities. However, the Law does not provide any exemptions applicable to long-term complex projects performed in multiple phases.

- The pecuniary fine of RSD 20,000 for failing to settle a payment within the statutory term (60 days) – This fine is rather insignificant, especially for large amounts of receivables.

- There is no adequate control and supervision of law enforcement for consistent application of the Law.

- Corporate guarantees (provided by the customer's parent company – multinational) are not recognized by the Law as a valid securitization instrument. The consequence is that the payment term covered by a corporate guarantee is maximum 60 days.

- The law envisages a 45-day extension of the payment deadline in cases where the debtor is the Republic Health Insurance Fund or users of the assets of the Republic Health Insurance Fund. In these cases, the maximum allowed payment period is 90 to 150 days. This approach causes problems in the pharmaceuticals distribution chain, since suppliers must now pay their bills within a 60-day period and then wait 90 to 150 days for the Fund's payment. In this manner the suppliers are put in an unfavourable position, possibly exposed to illiquidity, while they are "financing" the Fund;

- The law does not provide a solution for assignment of receivables (factoring). The open issues are the following: a) may the factor as a new creditor grant the debtor a longer payment deadline; b) may the factor be a user of the guarantee; c) in cases when the bank is a factor and at the same time the issuer of a bank guarantee, should the originally agreed longer terms in force or should the terms be shortened, considering that the bank guarantee ceased to be valid.

FIC RECOMMENDATIONS

- The payment deadline should be extended to 90 days. For all participants in the distribution chain, for agriculture-related products and for producers – exporters, the payment deadline should be extended to 270 days, with gradual cancellation of applicability of the Law for this local category of companies, with the aim of giving them equal economic opportunities to compete on international markets.
- The pecuniary compensation/fine should be set up as a percentage of the unpaid invoice.
- Control mechanisms should be improved and the collection process should be sped up, especially for state bodies and public companies. Higher transparency in application of the Law, especially to state bodies and public companies, regular publishing of information about the Law's application and strict compliance with statutory sanctions in case of breach of the Law.

- Envisage the possibility of issuing a Corporate Guarantee as a valid securitization instrument.
- Amend the provisions of the Law related to the pharmaceutical industry to ensure fair competition and conditions for all participants, by adjusting the payment period envisaged for the Republic Health Insurance Fund to that of other market participants.
- The Law should regulate assignment of receivables (factoring) as follows: a) a factor may allow longer terms of payment to the debtor; b) the bank guarantee that ensures the collection of receivables will be transferred with the transfer of claims, regardless of who the creditor is, except in the case when the bank issuing guarantees is a factor at the same time.

FOREIGN EXCHANGE OPERATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Modernise codes of payment and adjust them to today's transactions.	2012			√
Adopt the remaining by-laws in the statutory term.	2013		√	
Allow cash-pooling between affiliated companies.	2012			√
Enable cross-border inter-company invoicing in order to simplify cross-border payments and further regulate netting operations in Serbia, which are not sufficiently regulated at present.	2011			√
Enable the issuance of guarantees and other forms of warranties based on the order and in favour of a non-resident, in all non-credit transactions between two non-residents.	2011			√
Enable residents-individuals to give warranties and other security instruments by order and in favour of non-resident creditors.	2013			√
Simplify as much as possible the by-laws regulating set-off when participants in the transaction are affiliated parties, in order to enable global netting between affiliated companies.	2013			√
Ease reporting obligations (from the opening of a simple bank account to facilitated communication with the NBS regarding reporting, through less formal procedures).	2012		√	
Regulate the provisions on the transfer of debts from realised foreign trade of goods and services of residents from Article 7 of the Law, by prescribing the requirement of the creditor's consent in the debt transfer, in order to protect the interests of creditors in the underlying transaction.	2013			√
Adjust and harmonise applicable legislation in this area, and resolve issues that are still unclear.	2012		√	

CURRENT SITUATION

Compared to the year 2012, in which the Law on Foreign Exchange Operations (the "Law") was thoroughly amended aiming for the liberalization of foreign exchange regulations, the previous year (2013) may be considered as rather quiet one. Yet, practice calls for continuous improvement in this area, thus the procedure of amending the Law is under way once again.

In addition, in order to implement the 2012 amendments to the Law, the Government and the National Bank of Serbia ("NBS") adopted several by-laws in the last year.

POSITIVE DEVELOPMENTS

The 2012 amendments to the Law resulted in a positive change of the Serbian legal system, and the development of the legal framework continued in the previous year through the adoption of the various by-laws implementing the Law.

To that end, a new by-law regulating the set-off of debts and claims arising from foreign trade in goods and services was adopted in July 2013, abolishing the requirements to facilitate set-off, reflecting the fact that the setting-off of debts and claims can now also be performed by a foreign legal entity's branch.

Moreover, the by-law on performance of financial derivative transactions was amended in July 2013, further liberalizing and providing for more flexibility in this field. The most significant amendment is that, contrary to previous regulations, financial derivative transactions, which are performed for the purpose of hedging against commodity price risk, may also be transactions that entail the payment of the difference in the price of the underlying commodity (non-deliverable derivatives).

In addition, in July 2013, the new Decision on Reporting on Foreign Credit Transactions simplified the previous procedure of registration of cross-border credit transactions with the NBS. Such registration has been replaced by

the obligation to report on said transactions to the same authority. We note that payments performed in such cross-border transactions are still subject to NBS reporting requirements. On the other hand, in August 2013, the Decision on the Manner and Terms of Use of Financial Loans was amended with the purpose of clarifying the previous provisions.

It is worth noting that -following the 2012 amendments to the applicable regulations - PayPal, one of the best known online payment service providers, entered the Serbian market, thus securing easier and safer access to e-commerce, which should, in the mid and long term, lead to strengthening effective competition in the country.

When it comes to the on-going procedure of amending the Law, the proposed amendments should provide clarification of certain ambiguous provisions of the current version of the Law, stipulate in more detail the terms under which residents may borrow from foreign entities and provide cross-border guarantees, the terms under which the Serbian banks may participate in foreign syndicated loans, etc.

REMAINING ISSUES

Despite the evident liberalization in the field of foreign exchange (forex) operations during the past few years, applicable regulations in Serbia are still significantly restrictive aiming to protect and maintain macroeconomic stability. However, we consider it necessary to expand the list of liberalized transactions, whenever justified and possible, especially when it comes to groups of affiliates, when it tends to simplify financial relations within the group. Therefore, liberalization of foreign credit and deposit operations remains crucial for enabling the delivery of more sophisticated banking services, such as full "cash management" packages. Also, the Law still does not envisage the issuance of guarantees and other forms of warranties upon order and in favour of a non-resident, under non-credit transactions between two non-residents. 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 remind that the NBS has not yet adopted/amended the supporting regulation for enabling the banks in Serbia to trade with foreign short-term securities denominated in RSD, thus practically blocking the full application of Article 15 of the Law.

Therefore, future policies in this area should focus on further liberalizing current and capital transactions, when sustainable and in line with the Stabilisation and Association Agreement, in order to harmonize the applicable Serbian regulations with the EU legislation and international standards in this area.

FIC RECOMMENDATIONS

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

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

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of the Republic of Serbia No 20/2009, 72/2009 and 91/2010, hereafter referred to as the "Law") provides definitions of money laundering, financing of terrorism and other key terms; establishes the responsibility of state authorities, lawyers and other legal entities to take actions; and stipulates measures to be taken in order to detect and prevent money laundering and financing of terrorism.

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

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

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

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

1. Customer risk (e.g., a transaction with no economic basis: politically exposed persons and businesses that undertake large cash transactions);
2. Service risk in connection with a business activity (possibility of money laundering in performing some business activity);
3. 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.

Bearing in mind that all authorized persons have an obligation to obtain a license, the Administration for the Prevention of Money Laundering organized professional licensing exams for entities subject to the Law.

The Administration for the Prevention of Money Laundering compiled a list of indicators for identifying suspicious transactions related to financing terrorism, as well as indicators for recognizing justified suspicions of money laun-

dering or financing terrorism that serve as guidelines for the following entities subject to the Law: lawyers and law partnerships; accountants; entities providing money transfer services; entities providing forfeiting services; postal services; tax advisors; issuers of guarantees; organizers of games of chance; auditing companies; certified auditors; insurance companies and banks.

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

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 restrictsreceipt 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 EUR 15,000 or more to the Administration, immediately or no later than three days from the date on which the reason for suspicion was first discovered.

In September 2013, the Administration for the Prevention of Money Laundering signed an agreement on cooperation in the field of prevention of money laundering, financing of terrorism and corruptive criminal offenses with the Anti-corruption Agency. This agreement has enhanced cooperation between these institutions and the continuous exchange of information is expected to contribute to further development of the system in this area.

At the beginning of 2014, the Administration for the Prevention of Money Laundering signed an agreement on cooperation in the field of prevention and detection of money laundering and financing of terrorism with the Republic Public Prosecutors Office. This agreement has established a permanent working group that, among other, may propose to the competent public prosecutor to form working teams to be engaged in specific cases. The agreement has formalized cooperation in educational and professional-technical matters as well.

REMAINING ISSUES

The application of the Law is primarily dependent on the actions of the Administration and other bodies responsible for its implementation. Standards and rules established in European Union member states have mostly been accepted and incorporated into the text of the Law and the next step should be to find mechanisms for their implementation. In 2013 and 2014, activities and demands of the Administration for the Prevention of Money Laundering toward entities subject to the Law increased, but there is still a lack of co-operation and adequate seminars or workshops to train employees in entities subject to the Law and increase their knowledge on implementation. In addition, in the past months the Administration didn't organize regular licensing exams for liable parties, and therefore these should be organized as soon as possible to enable adequate professional training of employees for every liable party.

FIC RECOMMENDATIONS

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

LAW ON PERSONAL DATA PROTECTION

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The Law on Personal Data Protection (hereinafter: "the Law") came into force on 1 January 2009 and was supposed 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 the protection of the processing and free movement of personal data within the EU provided under the Data Protection Directive (Directive 95/46/EC).

The 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" data such as one's race, creed, ethnic origin, political affiliation, union membership, sexual identity, etc. Even though the Government was supposed to enact a separate by-law detailing how personal data should be protected and stored within six months from the date of entry into force of the Law, no such by-law has been enacted yet.

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 Law also prohibits taking decisions with potential legal consequences on such characteristics as a person's work ability, creditworthiness, etc., solely based on automated processing of personal data pertaining to such a 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 has the obligation 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"), 10 requests for the protection of rights submitted to the Commissioner were resolved in June 2014, while 42 inspectional supervisions were performed, 20 of which resulted with a warning to controllers regarding irregularities in the processing of personal data.

As for cross-border transfers of personal data, the 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 Law actually

means that personal data may be freely transferred from Serbia to other European states. The Law further prescribes that personal data may be transferred to non-European countries (i.e., to countries, not parties, to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data), provided that they have in place the same level of personal data protection as that established by the aforementioned convention and subject to prior approval issued by the Commissioner. According to the Law, this level of protection is established either by a regulation or on the basis of a contract. If the intention is to transfer personal data outside of Serbia, the local entity must first be registered as a personal data controller; and must, therefore, obtain a data export permit from the Commissioner. In practice, only one such permit has been published on the Commissioner's website thus far. Issues related to exporting 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 certain criteria in accordance with Article 44, paragraph 1, item 6. The procedures for rendering a decision allowing transfer of data to countries that are not Parties of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data can last several years. This procedure is not governed by the Law, and this generates great legal uncertainty. As there are no rules for the Commissioner to follow, the applicants for the transfer of data do not know how to prepare their request and which evidence to submit. The lack of the Commissioner's practice in that regard discourages companies from submitting a request to the Commissioner. This particularly applies to cases of transfer of data to companies within a multinational company or group of companies whose headquarters are located on different continents.

POSITIVE DEVELOPMENTS

The staff of the Commissioner has grown over the past year and consists of capable individuals eager to assist members of the public in understanding and applying the Law. According to the latest monthly statistical report for June 2014, published by the Commissioner, 95 out of 584 cases pertaining to personal data were resolved by the Commissioner, including the preparation of 30 opinions pertaining to the application of the Law. According to the same source, the total number of registered data controllers has increased to 1,272, in comparison to the same period in previous year when 1,006 data controllers were registered.

In mid-May this year, the Commissioner has drafted the Model Law. The Model Law is an improvement in comparison to the current law. The Model Law provides solutions for the substantial harmonization of Serbia's legislation in this area with the Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) and with the EU Data Protection Directive (Directive 95/46/EC).

On the other hand, although the Model Law stipulates the mutatis mutandis application of the Law on administrative procedure in relation to enforcement of the Commissioner's acts, it remains to be seen how the Commissioner's acts will be enforced in the future. This issue is topical in the case of enforcement of the decision on deletion of data, bearing in mind that it is difficult to delete digital files, particularly if these were made available on the internet at some point.

The public debate on the Model Law was completed on 30 July 2014, after which the Commissioner will consider suggestions for improving the drafted text of the Model Law and deliver the Model Law to the competent ministry for further action.

REMAINING ISSUES

The number of data collections registered in the Central Registry, despite the significant increase in percentile points compared to last year, is still noticeably below the number of collections that should be registered in accordance with the Law.

In practice, even though the Commissioner's staff has shown eagerness, substantial knowledge, and professionalism in assisting data controllers with fulfilling their obligations under the Law, there is also a growing sense that the Law is sometimes applied rigidly and conservatively, which on occasion results in, for example, the application for export of personal data becoming a months-long, even years-long process of negotiation within the office of the Commissioner. Such rigidity in applying a Law which, as stated above, contains certain ambiguities and is far from perfect, may result in significant administrative and legal

costs on the part of data controllers attempting to fulfil their obligations under the Law whilst conducting their business in the same manner as their counterparts in the EU.

Likewise, bearing in mind the implementation of the Law in practice, the need for more precise and comprehensive legislative regulation in this area has become increasingly more evident. Specifically, provisions of the Law do not govern or regulate certain areas and issues, such as video surveillance, biometric data, direct marketing, use of citizen's unique identification number, online data processing, photocopying and scanning of documents, organizational technical measures for the protection of data, the relationship between the controller and the processor of data etc. In the absence of adequate normative solutions, difficulties arise in the implementation of the Law regarding personal data processing in these areas. Besides regulating the above-mentioned areas and issues, there is also a need to further harmonize the Law with international standards. Thus, it is necessary to fully harmonize the Law with the Directive 95/46/EC of the European Parliament and of the Council and with Convention No 108 of the European Council for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Regardless of the preparation of the Model Law, the question is whether and when the relevant ministry will draft a new law, and when the draft of the new law will be introduced in the Parliament. This assertion is based on the fact that the competent ministry has not done anything to improve legislation in this area for five years, despite the many problems in the application of the current Law.

FIC RECOMMENDATIONS

- Provide the Commissioner with better working conditions, equipment and staff.
- Determine the supervisory bodies that would monitor the implementation of the Law in co-operation with the Commissioner.
- To adopt a new law as soon as possible, i.e. support the Model Law drafted by the Commissioner.
- Adopt by-laws or issue precise instructions and standardized forms necessary to improve the implementation of the Law (particularly in relation to the coordination of existing databases and applying for data export permits).
- 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.
- Amend the provisions of the Law in relation to areas that are not regulated and fully harmonize the provisions of the Law with long-established and accepted European standards.

TAX

A. CORPORATE INCOME TAX (CIT)

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Primarily, by-laws should provide guidelines with respect to taxation of permanent establishments.	2010			√
Aligning domestic practice with respect to the definition of royalties for withholding tax purposes in line with the best international practice and definitions applied in the relevant tax treaties (especially related to the treatment of acquiring the right to use software for one's own purposes).	2012			√
Some of the problems require amendments of the CIT Law:				
Provisions of the CIT Law regulating deductibility of marketing expenses should be amended in a way to allow a full deductibility of marketing expenses.	2010			√
Revisit the currently applicable rule that only paid taxes are recognised as an expense in the tax balance sheet and to align the above provision with the expense recognition rules in IFRS which does not impose such condition.	2010			√
Taxation of corporate reorganisations, as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganisations. Provisions regulating this area should be introduced in the CIT Law.	2011			√

CURRENT SITUATION

Taxation of companies in Serbia is governed by the Law on Corporate Income Tax (CIT Law). The CIT Law is supplemented by several by-laws governing the implementation of its provisions.

The CIT Law underwent two sets of changes, one in December 2013 (amendments published in the Official Gazette of the RS, No 108/2013, entered into force on 7 December 2013) and another one concerning tax offenses in June 2014, on the basis of the provisions of the Law amending the Law on Tax Procedure and Tax Administration (amendments published in the Official Gazette of the RS, No 68/2014, entered into force on 4 July 2014). There are only a few changes, but they are far-reaching. Specifically, the general tax credit for investments into fixed assets and development as non-material assets was abolished on 1 January 2014. Still, companies that have acquired the right to such a tax credit by the end of 2013 will be able to use it in the period and manner previously prescribed.

Additionally, two new international double tax treaties have been ratified – with the Kingdom of Morocco (Official Gazette of the RS - International Treaties, No 13/2013, entered into force on 5 December 2013) and Republic of Armenia (Official Gazette of the RS - International treaties, No 7/2014, entered into force on 11 July 2014).

POSITIVE DEVELOPMENTS

Amendments to the CIT Law from December 2013 and June 2014 did not introduce significant improvements. Principally, the two amendments that can be highlighted are:

- The penalty of prohibiting the conduct of business from three months to one year for failure to file a tax return and tax balance sheet, or file them with incorrect data resulting in tax base erosion or unfounded right to use a tax incentive, has been abolished;
- Amendments to the Rulebook on Transfer Pricing and Methods Applied for Determining Prices in Related Party Transactions in Accordance with the Arm's Length Principle have introduced the possibility to file a short-form report for transactions, except loans and credits, if one of the

two following requirements have been met: 1) the transaction with a related party is a one-off transaction in the year for which the tax balance sheet is submitted and its value does not exceed RSD 8,000,000 (approx. EUR 70,000); and 2) the total value of all transactions with a related party in the year for which the tax balance sheet is submitted is not greater than RSD 8,000,000. This amendment reduces the administrative burden for taxpayers with non-substantial transactions, as well as the Tax Administration.

REMAINING ISSUES

- The provisions governing taxation of permanent establishments continue to be scarce and vague, and do not provide sufficient guidance as to what constitutes a permanent establishment; a methodology for establishing taxable income; and the filing and payment of CIT in situations when a foreign business is not registered in Serbia, etc.;
- Deductibility of marketing expenses is limited to 10% of a taxpayer's total revenues. The nature of certain industries is such that it requires significant investments in marketing. This often results in non-deductible marketing expenses. Such treatment is unjust toward taxpayers as such expenditures are necessary for their business activities;
- Occasionally, the interpretations of the Ministry of Finance pertaining to withholding tax differ from provisions of the relevant double tax treaties and the best international practice. This is especially true in the case of proprietary software licensing. Such interpretations result in a higher tax burden for taxpayers, which is not in line with the rights provided in the relevant double tax treaties;
- The CIT Law does not contain a single provision governing the taxation of investment funds. The result is a distortion of the tax neutrality of investment funds and different forms of investment funds, in particular closed-ended and open-ended funds;
- Taxation of corporate reorganizations remains unclear as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganizations;
- The recognition of expenses for long-term provisions in the tax balance sheet still remains at issue. Long-term provisions are not recognized as an expense in the tax balance sheet in the year in which the expense was entered in the business records, except for the provisions for which the Law prescribes differently. Income resulting from the reversal of long-term provisions is not taxed. However, in the case where a provision is used in a subsequent tax period it is not clear whether the provision is recognized as an expense in the tax balance sheet for the tax period when the provision was used;
- The provisions of the law pertaining to the method for calculating tax depreciation create continuing discrepancies and permanently unrecognized expenses in the tax balance sheet in cases where, at the moment of disposal of an asset, the current accounting value is lower than the current tax value of the asset, as well as in cases when a fixed asset is being disposed of, where that asset was not previously depreciated for tax purposes, as its cost value at the moment of purchase was lower than the average salary in Republic of Serbia.

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 to introduce greater flexibility in this area.

- Primarily, by-laws should provide guidelines with respect to taxation of permanent establishments.
- Aligning domestic practices with respect to the definition of royalties for withholding tax purposes with the best international practices and definitions applied in the relevant tax treaties (especially related to the treatment of proprietary software licensing).

However, some of the problems require amendments to the CIT Law:

- Provisions of the CIT Law regulating deductibility of advertising and marketing expenses should be amended in a way to allow a full deductibility of such expenses.

- Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose the payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account.
- Taxation of corporate reorganizations, as the currently applicable legislation completely lacks provisions on the taxation of such reorganizations. Provisions regulating this area should be introduced in the CIT Law.
- Introducing a system of new tax incentives for investments into fixed assets amounting to less than RSD 1 billion, in the form of a tax credit or a reduced corporate income tax rate for a certain period, and in proportion to the investment made.
- Regulate in more detail recognition of long-term provisions expenses for cases when they are being reversed or used, to ensure that these expenses are not permanently unrecognized.
- Regulate tax depreciation calculation in a manner that does not lead to expenses of tax depreciation being permanently unrecognized.

B. PERSONAL INCOME TAX

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The application of the cedular system of taxation of personal income remains a problem of the Serbian system, to which there is no adequate solution. This system was abandoned as unclear and unjust by criteria of many advanced tax jurisdictions, and the Serbian government should consider the introduction of a synthetic system which would enable Serbian tax legislation to keep up with advanced tax systems.	2008		√	
The provision that stipulates subsidiary guarantee of adult members of a household with their own property in the case of a sole proprietor failing to fulfil their tax obligation should be deleted from the PIT Law.	2013			√

CURRENT SITUATION

Taxation of individuals is governed by the Personal Income Tax Law (the "PIT Law"), last amended in June 2013, as a continuation of the tax reform that started at the end of 2012. The newly adopted amendments introduced new incentives for hiring new employees through a right to a refund in the amount of 65-75 percent of paid taxes and contributions, depending on the number of newly employed workers.

Sole proprietors paying tax on actual income are given the opportunity to opt to pay themselves a salary. Sole proprietors who choose to pay themselves a salary are required to do so for the entire tax period and to pay the corresponding payroll tax and social security contributions. The paid personal salary is recognized as expenditure in the income tax return. Also, since January 2014, paid contributions are recognized as expenses for sole proprietors who do not opt for the payment of a personal salary.

The new provisions of the PIT Law define the tax base for individuals resident in Serbia posted abroad by a legal entity resident in Serbia. The tax base is the amount of wages paid for the performed work, in dinars and in foreign currency, if any.

Refund of mandatory social security contributions, made in accordance with the law governing mandatory social security contributions, are recognized as revenue and as such are included in the tax base for the annual income tax.

POSITIVE DEVELOPMENTS

Age limit for eligibility for incentives when hiring new employees has been abolished.

Contributions paid on behalf of the employee exceeding the highest annual basis are recognized to the full amount for the purposes of determining the annual personal income tax base.

Entrepreneurs who pay tax on actual income are given the opportunity to plan their tax obligations by opting to pay themselves a salary.

REMAINING ISSUES

Amendments to the law treating employees' profit participation as other income for taxation purposes is not in line with the economic nature of such income. This income should be treated as salary since this income is made in connection with the work that employees perform for their employers.

A specific problem is the compensation of expenses to individuals for business travel abroad, which is not regulated either in terms of the procedure, stipulating that these expenses need to be documented by Serbian companies, or in terms of the thresholds that are "exempt" from tax. In the absence of relevant by-laws regulating this matter, the Serbian tax authorities have continued to apply the Decree on the Compensation of Expenses and Severance Pay to Employees in State Bodies. The Ministry of Finance and the Ministry of Labour and Social Policy issued several opinions in the past confirming that the Decree should be applied by all companies and not only by state bodies. However, we are of the opinion that, like the Decree itself, the instructions are not in line with Serbian legislation.

The introduction of subsidiary guarantees for adult members of the household of a sole proprietor for the tax liability of the sole proprietor; i.e., stipulating that they are liable with their own property for the tax liabilities of a sole proprietor is not in line with provisions of the Company Law and the Law on Enforcement and Security.

FIC RECOMMENDATIONS

- The application of the schedular system of taxation of personal income remains a problem of the Serbian system, to which there is no adequate solution. This system was abandoned as unclear and unjust by criteria of many advanced tax jurisdictions, and the Serbian government should consider the introduction of a synthetic system which would enable Serbian tax legislation to keep up with advanced tax systems.
- The provision that stipulates subsidiary guarantee of adult members of a household with their own property in the case of a sole proprietor failing to fulfil their tax obligation should be deleted from the PIT Law.
- Article 85, paragraph 7 of the PIT Law should be amended in order to equalize the position of other legal entities with the position of the banks in tax treatment of write-off of receivables.

C. VALUE ADDED TAX

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Provisions of the VAT Law dealing with the position of foreign entities within the Serbian VAT system should be revisited and amended so as to allow foreign businesses without a registered office in Serbia to register for VAT purposes.	2007			√
The Ministry of Finance should adopt a comprehensive rulebook on VAT Law which will replace the large number of rulebooks. There should be comprehensive guidelines for acting in tax supervisions. Changes of regulation should not impose an additional administrative burden on taxpayers, etc..	2007			√
The VAT Law should be revised to ensure that any changes of data of the tax payer registered at the Serbian Business Registers Agency, this Agency should inform about it directly the Tax Authorities (so this obligation should not be upon the tax payer).	2011			√
The rule for the place of supply of services should be revised in accordance with the EU VAT Directive.	2011			√
For so-called "reverse charge" services where the recipient is obliged to declare the VAT, the time of declaration resp. payment of VAT should be changed. It would be more efficient if the VAT would have to be declared and paid at the moment of recipient of the invoice resp. when an advance payment is made.	2013			√
The Serbian Ministry of Finance and Tax Authority need to initiate appropriate procedure before the proper authorities for establishing reciprocity with all European countries in repsect of VAT refunds to foreign entities.	2013		√	
Amendments to the VAT Law should specify that interest in the case of financial leasing should not be included in the taxable amount (i.e., should be VAT exempt), in the same manner as has been done in European Union countries.	2013			√

CURRENT SITUATION

Value Added Tax is governed by the Law on Value Added Tax (Official Gazette of RS, 84/2004, 86/04 – correction, 61/05, 61/07, 93/12 and 108/13; hereinafter the "VAT Law").

Since its adoption, the VAT Law was amended several times, while the most significant changes were adopted in 2012.

The Law on Amendments to the Law on Value Added Tax from December 2013 prescribes an increase in the reduced VAT rate from 8% to 10%, effective as of 1 January 2014. These amendments to the VAT Law provide that, as of 1 January 2014, the supply, i.e. import of personal computers and their components, is subject to the general 20% VAT rate instead of the reduced VAT rate. In addition, for the purpose of harmonizing the VAT Law with the amendments to the Personal Income Tax Law, the definition of farmers who are entitled to VAT compensation was changed.

POSITIVE DEVELOPMENTS

- VAT refund to foreign taxpayers was introduced by the amendments to the 2012 VAT Law, effective as of 1 January 2013, under the reciprocity rule. The list of countries with which reciprocity exists has been expanded.
- As of 4 July 2014, VAT returns may only be submitted electronically. The transition to the electronic system

is a positive step forward and a significant administrative simplification, in line with the tendency of EU VAT regulations.

REMAINING ISSUES

- The major obstacle in the current VAT system is the absence of the possibility for foreign companies without legal presence in Serbia to register for VAT purposes. As a result, these foreign companies do not have any means to recover the 20% or 10% VAT paid to their suppliers in Serbia, and this is an additional cost for them. Not only does this distort the neutrality of VAT, but it also discriminates against foreign companies. In addition, it also discriminates against local suppliers, since foreign companies prefer to engage non-Serbian suppliers in order to avoid the burden of Serbian VAT. It would be in the best interest of the state budget to increase the number of registered VAT payers as this would result, at the very least, in a cash flow impact on the budget, (i.e., foreign companies registered for VAT purposes would account for the output VAT instead of the current situation where the Serbian VAT applicable to services rendered by foreign companies is accounted for by the recipients of the services through the "reverse charge mechanism", which is cash-neutral);
- Relevant rules for applying the VAT Law are still scattered throughout various by-laws, (currently 21 rulebooks and 3 decrees), instead of being integrated into a single piece of legislation;
- The VAT Law prescribes the obligation for the VAT payer to notify the Tax Authorities of any changes in information kept by the Serbian Business Registers Agency and reported in the VAT registration form, and to do so within five days of the occurrence of the change, whereas in fact it is the Serbian Business Registers Agency that should officially notify the Tax Authorities of such changes;
- To reflect the changes in the European Union VAT Directive, the provision related to the place of supply of services should be amended. As a general rule, it is stipulated that the place of supply of services to another taxpayer is the place where the service recipient performs the commercial activity. There are also exceptions to this general rule. These amendments were adopted by all EU countries and went into effect on 1 January 2010. Harmonization with the European Union VAT Directive is of crucial importance, as existing provisions result in double taxation or double non-taxation of services traded between Serbian and European Union taxpayers;
- In the case of financial leasing, 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.
- Amendments to the 2012 VAT Law specify that 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. In practice this is often unfeasible, especially in the case of services for which the price was not contracted in a fixed amount, but depends on a contracted calculation. At the moment of supply, or up to the deadline for filing a tax return, the VAT payer frequently does not have the supplier's invoice or information on the amount of the compensation, and cannot know what the taxable amount is.
- VAT legislation provides that in cases when the taxable amount has changed after the supply of goods and services has taken place (e.g. subsequently approved discounts), the supplier should issue a document (credit note) that contains certain obligatory items. VAT legislation does not provide the possibility for the recipient of goods/services to issue this document, as is the business practice in other countries. Because of this, additional costs are imposed on companies since they have to change their business practice due to Serbian VAT rules.
- The VAT law specifies the possibility for correction of output VAT only in the event of an enforceable court decision on completion of bankruptcy proceedings and based on a certified copy of the court settlement record. In the present economic situation, in view of the duration of bankruptcy proceedings, such a provision appears overly restrictive.
- VAT regulations specify that VAT is not calculated on small value gifts and advertising materials. Small value gifts and advertising materials, after all other conditions are met, are considered to be goods whose individual market value is below RSD 2,000, exclusive of VAT. The total value of advertising materials and other small value gifts in a tax period cannot exceed 0.25% of the taxpayer's sales in that tax period. The RSD 2,000 limit was specified back in 2004. In view of the depreciation of the value of the dinar, the appropriateness of this limit is questionable. Also, the threshold amount, in terms of the total value of advertising materials and small value gifts is also questionable.
- VAT is not applicable to supply of samples for analysis,

based on instructions issued by the competent authority. Certain analyses that are obligatory pursuant to regulations are carried out in private laboratories. The aforesaid provision does not clarify whether samples provided in such cases are subject to VAT, which engenders legal insecurity and different interpretations in practice.

FIC RECOMMENDATIONS

- Provisions of the VAT Law dealing with the position of foreign entities within the Serbian VAT system should be reviewed and amended to allow foreign businesses without a registered office in Serbia to register for VAT purposes.
- The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks that treat only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.
- The VAT Law should be revised to ensure that any change of data maintained by the Serbian Business Registers Agency including data specified in the VAT registration form, identified upon VAT payer registration, is reported by the Serbian Business Registers Agency to the tax authorities within five days from the day of issue of the decision on data amendments. In other words, a VAT payer should not be required to inform the tax authorities about changes of data maintained by the Serbian Business Registers Agency.
- The rule for the place of supply of services should be revised in accordance with the EU VAT Directive.
- With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.
- Amendments to the VAT Law should specify that interest in the case of financial leasing should not be included in the taxable amount (i.e., that it should be VAT exempt).
- VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies to decrease their administrative costs.
- The provision of the VAT Law that deals with correction of output VAT needs to be amended and adapted to suit present economic conditions. The recommendation is for a correction to be allowed when there is proof of initiation of liquidation or bankruptcy proceedings, or in the event of an out-of-court settlement.
- The rulebook that regulates provision of small value gifts, advertising materials and samples needs to be reviewed. The limits specified for small value gifts and advertising materials are unrealistically low, especially in view of the fact that the limit in terms of the market value of individual goods provided as advertising material or a small value gift was set at 2,000 dinars in 2004. The application of the rule with respect to the provision of samples for analysis purposes, as required by regulations, needs to be further clarified.

D. PROPERTY TAX

CURRENT SITUATION

Property tax is governed by the 2001 Law on Property Taxes (the "Property Tax Law").

Since its adoption, the Property Tax Law was amended several times, last in 2013.

The most important novelties introduced by the 2013 amendments are changes of the method for determining the real estate property tax base. Further to this, real estate property and the rights over real estate that are taxable with property taxes are now elaborated in more details and widened.

The majority of amendments are effective as of 1 January 2014, while the provision prescribing tax exemption for riverine land and water structures will become applicable as of 1 January 2016.

POSITIVE DEVELOPMENTS

- Transfer of property on the basis of liquidation surplus taxable with personal income tax/corporate income tax is expressly exempted from property transfer tax;
- Transfer of property to a legal successor within status changes in accordance with the company law is expressly exempted from property transfer tax;
- The exemptions from gift tax are elaborated in more detail, clarifying the situations in which the exemptions apply;
- The deadline for the filing of a tax return for gift tax, inheritance tax and property transfer tax is extended from 10 to 30 days.

REMAINING ISSUES

The amendments to the method for the calculation of property tax base cause problems in practice for those business entities that do not express the value of real estate in their bookkeeping records on basis of fair market value according to International Accounting Standards – IAS / International Financial Reporting Standards - IFRS. Specifically:

- 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 competent municipality. The municipalities are granted discretionary authorisation in determination of zones in the process of ascertaining the market value of real estate, but they are not adequately trained and qualified for that;
- the zoning is not mutually coordinated between municipalities. Specifically, each local municipality enacts a decision on zoning for their territory and there are already cases in which property tax for neighbouring real estate that border zones of different municipality differ drastically even though there is practically no difference in the level of communal equipping; and
- no value adjustments are envisaged depending on the quality/age of a particular property. In practice this means that the tax base of newly built real estate and one that may be 50 years old will not differ at all (depending on their respective surface areas).

This method is causing further difficulties in the calculation of real estate transfer tax. In case the Tax Authority determines that the agreed purchase price is lower than the market value, they will determine the tax using the method prescribed for calculation of property tax explained above. This, again, results in taxpayers paying the same amount of tax irrespective of the qualitative features of the transferred real estate.

FIC RECOMMENDATIONS

- Provisions of the Property Tax Law dealing with the method of calculation of property tax base using the zoning method should be revisited before the end of this year to avoid the negative consequences of the current regulations in the next fiscal year in a timely fashion.
- In particular, it is recommended that the implementation of corrective factors in the determination of the market value of real estate be considered.
- Further to this, it is advisable to institute a greater level of monitoring in the zoning of each municipality and organize training of personnel in order to avoid situations in which neighbouring properties that are territorially spread out in different municipalities are taxed differently.

- Forming a working group consisting of members of the FIC and competent Ministry to devise an effective set of amendments is recommended.

D. TAX PROCEDURE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The introduction of a presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the statutory deadlines.	2011			√
Special tax departments should be established within the Administrative Court with judges exposed to more training with regard to the understanding of tax issues.	2011			√

CURRENT SITUATION

The regulatory framework for tax procedure in Serbia is governed by three principal laws:

- The Law on Tax Procedure and Tax Administration, Official Gazette of the Republic of Serbia, No. 80/2002, last amended in October 2014, (PTA Law);
- The Law on General Administrative Procedure, Official Gazette of the Republic of Serbia, No. 33/97, last amended in May 2010, (GAP Law);
- The Law on Administrative Disputes, Official Gazette of the Republic of Serbia, No. 111/2009, (AD Law).

The tax procedure is a special type of administrative procedure governed primarily by the PTA Law which regulates in detail the organization and functioning of the Tax Administration, as well as the procedures for the assessment, control and collection of tax. Starting from July 2014, the PTA Law comprehensively regulates all tax misdemeanours. The general rules of the GAP Law apply to the tax procedure where a certain issue is not regulated by the PTA Law. The AD Law regulates the judicial review of administrative decisions issued by the Tax Administration as an additional taxpayer protection system (e.g. deciding on actions filed against second-instance decisions of the Tax Administration).

The PTA Law has been amended three times – in December 2013 (Official Gazette of the RS, No 108/2013, entered into force on 7 December 2013), June 2014 (Official Gazette of the RS, No 68/2014, entered into force on 4 July 2014) and October 2014 (Official Gazette of the RS, No 105/2014, entered into force on 4 October 2014).

The amendments to the PTA Law in October 2014 have pushed the deadlines for transition to the electronic filing of tax returns for one year, and even longer for certain types of taxes. Currently, it is only possible to file electronically the VAT Return and the Withholding Tax Return for personal income tax, while it is not possible to do so for other types of taxes. The electronic filing of tax returns has been awaited for many years as it reduces taxpayers' costs, contributes to harmonized interpretation of the tax laws, and by that to greater legal certainty, accuracy of the Tax Administration's data, facilitates obtaining of various certificates issued by the Tax Administration. Pushing the deadlines calls into question the achievement of all these goals.

POSITIVE DEVELOPMENTS

Amendments to the PTA Law have introduced a few novelties, inter alia:

- A bank may make interest payments, including interest

accrual, to its clients' savings accounts without the authorization number issued by the Tax Administration.
- Competencies and operation of the Tax Administration, including coordination of the Tax Administration with the other competent authorities, has been regulated in more detail.
- The period set by the Tax Administration for providing certified translations of documents in a language that is not in official use in Serbia can no longer be less than 5 days.
- A tax liability may be settled by a person other than the tax debtor. This resolves the issue that has arisen in practice in relation to certain payments made through agencies or other intermediaries.
- Additional protection of taxpayers was introduced in relation to the rule that a tax decision is deemed served after 15 days of handover to the post office in cases when the decision could not be served personally to a taxpayer. Specifically, a list of taxpayers who could not be served will be published on the Tax Administration's website by the 5th of every month.
- Tax decisions may be served via e-mail if the taxpayer approves such method of delivery. This possibility will improve the communication efficiency between taxpayers and the Tax Administration.
- The Tax Administration is required to send a warning notice about unpaid tax within 30 days of the due date.
- The statute of limitations is interrupted by actions of a taxpayer undertaken in connection with a right to a tax refund, tax credit, tax rebate and reimbursements, as well as the settlement of tax liabilities by transfer.
- The deadline for filing objections to the minutes of onsite tax audit has been increased from 5 to 8 days to allow adequate time for taxpayers in case they want to file any objections.

REMAINING ISSUES

- The existing regulatory framework governing tax procedure still does not provide sufficient protection to taxpayers against voluntary decisions of tax authorities (e.g. decision issued contrary to the principle of legality, by exceeding discretionary powers, on the basis of improper application of the facticity principle, etc.). Although some improvements were made by giving binding power to the opinions issued by the Ministry of Finance, the fact that the fines for failure to submit a tax return, calculate and pay taxes were raised as of July 2014, makes this issue even more significant;
- Rules on tax-related criminal acts 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 biggest companies in the Republic of Serbia;
- The tax authorities routinely fail to respect the deadlines for the issuance of decisions on appeals filed by taxpayers;
- The statutory 30-day deadline for issuing binding opinions upon request of taxpayers is usually not observed, so in practice taxpayers wait on the opinions for more than a year. Moreover, the number of issued opinions has decreased compared to previous periods. Due to frequent changes in tax laws and insufficiently clear legal framework, this issue contributes to legal uncertainty and uncertainty of doing business in Serbia;
- Limiting the filing of amended tax returns to two times is not justified. In fact, in most cases the mistakes are made unintentionally, especially in case of large taxpayers who have large-scale and complex internal organization systems. Given that a taxpayer cannot amend a tax return in the event of a tax audit for a specific period, the abolition of the aforementioned limitation would not create an additional burden for Tax Administration, while it would contribute to a more efficient tax collection;
- The Business Registers Agency cannot erase a taxpayer from the register, register status changes or amend information referring to a founder or a shareholder, name, seat, share capital or form of organization 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 there is no prescribed limitation of 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;
- 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 re-

solve. Considering that the procedure before the court does not postpone tax liability, i.e. that the taxpayer still has to settle the tax in dispute previously, even if he eventually wins the case, the litigation and legal costs, inflation and fluctuations of the foreign exchange rate usually result in taxpayers receiving refund of the disputed tax of a realistically lower value. In addition, courts almost never decide on the merits of the case. They usually remand the case back to the Tax Authority or simply confirm the decision without giving sufficient reasoning for such a ruling. Under these circumstances, the judicial control of the Tax Administration's decisions is completely meaningless, as it fails to properly protect taxpayers;

- The negative trend of transferring operations of the Tax Administration to banks has continued. Specifically, in addition to previously introduced obligation for banks to control payments of tax liabilities in connection with payment of salary and other payments subject to withholding tax, amendments to the PTA Law have also introduced the obligation for banks to notify the Tax Administration of payments and monetary assets inflow.
- The tax returns cannot be filed electronically, except for VAT Returns and Withholding Tax Returns for personal income tax, which reduces effectiveness of the tax system and increases the burden for both taxpayers and the Tax Administration

FIC RECOMMENDATIONS

- Amending Article 80 of the Law on State Administration to remove the legal uncertainty of whether the opinions of the ministries are legally binding if so prescribed by a separate law. In addition, introducing an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance.
- Introducing provisions to the PTA Law which would govern liability of competent persons and adequate penalties for failure to issue binding opinions within the 30-day deadline prescribed by Article 80 of the Law on State Administration.
- Amending the PTA Law to allow taxpayers to file the amended tax returns an unlimited number of times, in connection with tax returns that are filed electronically.
- Abolishing the provision of the PTA Law by which the Business Registers Agency is prohibited to erase a taxpayer from the register, register status changes or amend information for the duration of a tax audit.
- Regulating the provisions of the Criminal Code concerning tax crimes in more detail to allow taking into account the size of the legal entity and the volume of taxable activities.
- The introduction of a presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the statutory deadlines.
- Special tax departments should be established within the Administrative Court with judges exposed to more training with regard to the understanding of tax issues.
- Abolishing provisions that require banks to control settlement of tax liabilities. Amending provisions requiring banks to notify the Tax Administration of incoming and outgoing payments in a way that would limit such a requirement only to cases of a tax audit, upon request of the Tax Administration.
- Until the time of complete transition to the electronic filing of tax returns, enable taxpayers who wish to file tax returns electronically to do so.

F. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The FIC believes that any new tax burden to businesses and individuals in Serbia should be introduced through tax laws that should be shaped by the Ministry of Finance, not by funds, agencies or other ministries.	2013		√	
The FIC believes that it is necessary to review all of the remaining para-fiscal levies and financial burden on businesses for which business doesn't receive adequate benefit in the form of certain rights, services or goods.	2013		√	
The FIC believes that it is reasonable to consider the needs of a more comprehensive review of the entire legal and sub-legal tax framework, including the procedures for the adoption of by-laws governing the financial obligations of the economy, to ensure transparency and predictability of the regulatory framework in Serbia.	2013			√

CURRENT SITUATION

According to globally comparable data on ranking economies, based on ease of doing business, which are collected and processed by the World Bank for their Doing Business project, in 2014 Serbia's ranking significantly declined from its previous already low ranking. Within the evaluated subcategories, the area of taxes is certainly one of the lowest ranked (161 of 189), just behind the almost traditionally weak spot of business regulations in Serbia - obtaining a construction permit. It is interesting to note that the Serbian tax system is ranked low despite the fact that it is generally oriented towards attracting investments through relatively low tax rates and a number of reliefs that have long been part of Serbia's tax policy.

The FIC is of the view that the tax system is suffering negative reviews due to, among other things, the existence of a number of parafiscal levies in parallel with the existing tax forms in Serbia, which increases the effective burden on the economy under conditions that are often non-transparent and unfair. As a kind of public levy, parafiscal levies actually impose an obligation which in turn does not provide (at all or in adequate proportion) a specific service, right, or good.

This fact is recognized by the authorities, who therefore began a parafiscal reform in late 2012, abolishing 138 parafiscal levies. However, that reform has entered a period of stagnation, wherein the expected further steps to eliminate or revise certain parafiscal levies and find solutions for the regularization of the uncontrolled practice of introducing parafiscal levies were left out.

POSITIVE DEVELOPMENTS

The Ministry of Finance has prepared a draft Law on Fees for the Use of Public Goods, presented for public discussion, which lasted until March 2013. FIC actively participated in the public debate and certainly expresses its support for this project that is expected to have a positive influence on the predictability of the business environment.

The draft Law on Fees for the Use of Public Goods is grounded in Article 18 of the Law on Budget System, and its aim is primarily preventing the unjustified and arbitrary introduction of fees, charged by the holders of public authority to the economy. According to this draft, the law would include all the basic elements for payment of fees (taxpayer, the basis for payment, the manner of determining and paying the fee, etc.), and a provision allowing the introduction of new types of fees only under this law.

As a positive development, we must emphasize the abolition of the fee for the use of construction land, which was the para-fiscal levy with the highest yield. Although the effects of the abolition are somewhat offset by the property tax reform, which "integrated" the fee as of 1 January 2014, we believe that the abolition of the fee for the use of construction land is a positive step since it eliminates a parafiscal levy that was conceptually outdated and economically irrational.

REMAINING ISSUES

According to a research conducted by NALED and USAID, the latest figures show that 247 parafiscal levies still remain in Serbia, which is more than half of public non-tax revenues (several new forms have even been introduced in the meantime). Therefore, stopping the stagnation trend of the parafiscal reform and ensuring its continuance is crucial.

The FIC considers that the reform should be continued by ensuring consistent application of the Law on Budget System, which regulates the basic principles for the introduction and collection of non-tax public revenues. Also, it is necessary that analyses and elimination of parafiscals be continued.

Although a public debate was conducted, the competent Ministry has not finalized the draft Law on the Fees for Use of Public Goods yet. The FIC considers that the work on this draft 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.

A particular problem that we deem should be emphasized concerns the local utility tax for business signs display (business signage). Business signage tax costs for the remaining taxpayers significantly increased since the regime for payment of the business signage tax changed. The burden is substantial particularly for companies that, due to the nature of their business activities, carry out their operations in a number of different facilities, selling points and the like, spread across different municipalities (e.g. retail, telecommunications, etc.). Due to the legal obligation to display the business sign at all sales locations, these entities are faced with a disproportionately large amount of local utility tax. The overall liability of a business entity for the business signage reaches significant amounts due to, inter alia, diverse practices among municipalities as to whether the prescribed business signage tax ceiling applies to the total amount of signage taxes payable by one taxpayer within one municipality or only to each individual business sign. The FIC considers that the business signage tax ceiling ought to be interpreted as the maximum amount of liability of one company/taxpayer in the territory of one municipality, regardless of the number of business signs displayed in a given municipality.

The FIC reiterates that the introduction of new taxes and duties during the fiscal year, without prior notice to taxpayers that would enable them to adapt their business to the new fiscal burden, adversely affects the predictability of the business environment and the operating results of companies.

FIC RECOMMENDATIONS

- Continue the reform of parafiscal levies and consistently implement the Law on Budget System. In this regard, the FIC believes that it is necessary to review all of the remaining parafiscal levies and financial burden on businesses for which businesses receive no adequate benefit in the form of certain rights, services or goods.
- Thorough preparation and adoption of the Law on fees for use of public goods.
- Apply the business signage tax ceiling to the obligation of one taxpayer, who has one or more facilities with displayed business signs in the territory of one municipality.
- The FIC believes that any new tax burden to businesses and individuals in Serbia should be pre-announced to taxpayers, and should be introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies or other ministries.

ENVIRONMENTAL REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Support to the new and acceleration of existing procedures for obtaining IPPC permit for waste management, as well as the training of employees in local authorities regarding the issuance of such licenses.	2011		√	
Support the establishment of new and development of existing companies engaged in the production and/or services in the field of environmental protection, and the establishment of new and development of existing companies engaged in the production of energy from alternative sources.	2009		√	
The introduction of economic incentives for investment in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, eco-innovation, etc.).	2010			√
Support public-private partnerships that will work with local authorities in order to help the implementation of the Government's waste management policy as a necessary condition for the implementation of any program that is related to investments and growth of the private sector.	2010		√	
Encourage the establishment of partnerships between public and private participants, together with local authorities to help the implementation of the Government's waste management policy, which is a necessary precondition for the establishment of an appropriate program that will provide a framework for further investments and growth in the private sector.	2010		√	
Continue creating local and regional waste management plans.	2009		√	

CURRENT SITUATION

Few new developments and little progress was made in the field of environmental protection relative to 2013. The commenced procedure for amendments to the Law on Environmental Protection and the Law on Waste Management ground to a halt when extraordinary parliamentary elections were called in March. Now that a new Government and Ministry have been elected, this process is expected to continue, along with the further harmonization of environmental regulations with EU legislation. Also, incentives for the re-use of waste as alternative raw material for the production of energy and plastic bags were decreased and a budget revision is expected in this context.

Packaging waste is collected pursuant to the Waste Management Law and the Law on Packaging and Packaging Waste. In 2014, any company placing its products on the market was obliged to collect 23%, and 19% of the total packaging waste generated for re-use and recycling, respectively. Operators Sekopak and Eko 21 collect pesticide packaging waste and export it for incineration. However, there is no systemic solution for the disposal of pesticide packaging waste in Serbia.

POSITIVE DEVELOPMENTS

The adoption of the Law on the Efficient Use of Energy is seen as an important development. It regulates the terms and conditions for the efficient use of energy and energy products, the energy management system, the minimum energy efficiency requirements, funding, incentives and other measures in this area, etc. Its adoption was one of the recommendations in the White Book 2012. The basic principles of the law are: increasing the safety of the supply of energy and its efficient use, increasing economic competitiveness, reducing negative impacts on the environment, and encouraging responsible behaviour towards energy. On 1 January 2014, a budget fund was established for increasing power efficiency in the Republic of Serbia, a by-law was passed that defines types of products that affect power consumption, and energy efficiency labelling was introduced. The establishment of this budget fund entails that the Law on the Budget of the Republic of Serbia for the

year 2014 should envisage a budget fund item in the Ministry of Mining and Energy and that the Government of the Republic of Serbia should adopt an annual programme for financing activities and measures to improve energy efficiency, in accordance with the Law.

Also, the first energy performance certification agencies were licensed pursuant to the provisions of the Law on Planning and Construction and the by-law on the conditions, content and procedure of energy performance certification of buildings.

Cement plants in Serbia have continued to dispose of waste tires, municipal waste and waste oil. Cooperation with the Ministry responsible for environmental protection was excellent in this field, and integrated permits (Integrated Pollution Prevention and Control - IPPC) were issued to all three cement plants.

Representatives of manufacturers and distributors of pesticides began training clients in terms of triple rinse empty containers, by organizing lectures for producers during the winter, and distributing brochures and posters with detailed instructions. Also, instructions on how to rinse containers were added to all manuals for Plant Protection Products (PPP).

The process of amending the Environmental Law and the Law on Waste Management must be continued, as this is necessary for the further harmonization with the EU legislation, among other with the Directive on Waste (Directive 2008/98/EC)regulating the re-use of waste.(.According to the Guidelines for interpretation of key provisions of the Directive, this includes co-processing, as an operation of re-use of waste, thus allowing import of non-hazardous waste for this purpose. This would contribute to reducing the use of non-renewable energy sources, and would allow facilities with an IPPC permit, that fulfil conditions for thermic treatment of waste, to manage production costs in a much more efficient way, and become more competitive in the relevant markets and equal players in the European market where trading with such waste is permitted and fully liberalized.

The Rulebook on ways and procedures for waste tires management stipulates the recycling of at least 80% and the use for energetic purpose of not more than 20% of the total quantity of collected waste tires in the previous year. This puts users of this type of waste in an unequal position. Operators do not have any information, nor are they allowed to have any information according to the competition rules, about the quantity of waste tires used for energy purpose by another operator. This also means that none of them know if and when the target stipulated by the Rulebook was reached during the year.

Additionally, the incentive rates presently applied for the re-use of waste as alternative raw materials (EUR 160/t), or for generating energy (EUR 30/t), are not based on the actual costs of processing these products once they become waste, which is the primary purpose of these incentives. The unjustifiably big difference between the incentive rates applied for the different types of waste treatment leads to:

- disruption in the market of waste oils and waste tires, leaving the operators who own permits for thermic treatment of waste oil and waste tires for energy purposes without permanent and stable sources of alternative fuels, contributing to the development of the "black market" of energy sources
- immense, unnecessary outflow of budget funds, of a minimum of EUR 10 million in the case of tires, considering that the entire quantity can be treated in cement plants without additional expenses or with significantly lower expenses. All of the aforementioned would not contribute to the reduction of the number of employed who collect tires, as they would continue to perform their job.

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 complete the national and local register of pollution sources.
- There is no system of incentives for investing in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, environmental investments, recycling, etc.)
- A limited number of IPPC permits was issued and waste management licensing is complicated and time-consuming.
- There is no thermal treatment of hazardous waste, especially packaging and printed paper (PPP), and PPP waste is not collected for several reasons, such as: lack of permits and lack of appropriate preparation lines for this type of waste.

FIC RECOMMENDATIONS

- Support new and accelerate existing procedures for IPPC waste management licensing, and the training of employees in local authorities regarding the licensing process.
- Support the establishment of new and development of existing companies engaged in the 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.).
- Support public-private partnerships that will work with local authorities to help the implementation of the Government's waste management policy as a necessary condition for the implementation of any private sector investment and growth programme.
- Encourage the establishment of partnerships between public and private participants, together with local authorities, to help the implementation of the Government's waste management policy, which is a necessary precondition for the establishment of an appropriate programme that will provide a framework for further investments and growth in the private sector.
- Reinforce cooperation with operators licensed for thermal treatment of waste to solve the issue of permanent waste disposal and significantly reduce quantities deposited in landfills.
- Continue developing local and regional waste management plans.

SECTOR SPECIFIC

FOOD AND AGRICULTURE

A. FOOD SAFETY

1. FOOD SAFETY LAW

CURRENT SITUATION

The Food Safety Law was adopted in 2009 and as a result, the competencies of inspections were split between two line ministries. Under the law, the Phytosanitary, Veterinary, and Agricultural Inspections of the Ministry of Agriculture and Environmental Protection are responsible for the control of, among other, food and feed of animal and plant origin in primary production, manufacturing, processing, trade, import, transit, and export. The Sanitary Inspection of the Ministry of Health is responsible for the control of dietary products, food supplements, novel food, some types of baby food, salt for human consumption and the production of additives, flavourings, enzymes and auxiliary substances of non-animal origin, and of all types of potable water. A revision of the Food Safety Law was planned for May 2013, with the idea to put food control under the authority of the Sanitary Inspection, but this was never implemented. A National Reference Laboratory was formally established, as explicitly prescribed by the law, but never actually started up. Furthermore, a Food Safety Agency, as an independent authority with overall competences in the area of food safety, has still not been introduced by the relevant Serbian legislation. Another very important issue is the food and feed safety monitoring programme, as a mechanism of systematic control of contaminants in food and feed in all phases of production, processing and marketing. Although the provisions of the Law governing this programme are in force as of 1 January 2009, their implementation has not started yet.

POSITIVE DEVELOPMENTS

There were no positive developments.

REMAINING ISSUES

Article 70 stipulates that 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 established in the final procedure that the sample does not conform to the prescribed requirements. If a sample conforms to the prescribed requirements, the costs of laboratory analysis and super-analysis must be covered from the funds allocated from the Budget of the Republic of Serbia. However, in practice only importers pay for analyses. It is further prescribed that the 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 application of emergency measures in case of sudden hazard.

Article 71 stipulates that food and feed business operators must pay the fee for the laboratory analysis of samples taken in the process of an official control, as well as for the official control in case the result of the analysis is unfavourable, except where otherwise prescribed by this Law. Funds from the payment of the fee are the revenue of the Republic of Serbia, allocated to a separate account in the Budget of the Republic. The amount of the fee is specified by the Government.

In addition to "official control" which is defined by the law (Article 4, item 11), "specific controls" are mentioned as well (Article 70), however, there is no definition of "specific controls". Also, the law only defines "official samples" and not "samples", which is the term predominantly used throughout the law, so it is not fully clear whether or not these two terms always have the same meaning. In addition, there is no definition of the "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 the samples' lab analysis, mentioned in Article 71, paragraph 1, and the costs of analysis and super analysis mentioned in Article 70 are one and the same or two different things. Consequently, the exact total costs of the analyses to food and feed business operators, remains unclear.

Article 12 determines the responsibilities related to food safety of the various state administration authorities, with a list of these authorities. Unfortunately, there is an overlapping of responsibilities, and no clear picture of who is responsible for what.

Article 31 states that food and feed business operators must comply with the food and feed requirements prescribed by this Law and other special regulations in all stages of production, processing and circulation, and prove compliance with such requirements. There is no clear definition of what exactly is meant by "proof" of compliance with food safety requirements, nor is the frequency of analyses specified.

In addition, there are several issues with regard to relevant by-laws.

A general Rulebook on food safety criteria at food retailer level is still missing. The Rulebook currently used treats food retailers as food producers, which results in additional costs for food retailers (hygienic and sanitation pre-requisites, preparation of facilities, a sampling unit, and other).

The Rulebook on the quality of minced meat, semi-finished products and meat products (Official Gazette RS No. 31/2012) is not in accordance with the Rulebook on the quality of livestock, poultry and game meat (Official Gazette of SFRY No. 34/74, 26/75, 13/78 - as amended, 1/81 - as amended, 2/85 - as amended) and Rulebook on the quality of slaughtered pigs and pork categorization (Official Gazette of SFRY No. 2/85, 12/85, 24/86) – Articles 10, 11, 12 and 23.

The amendments to the Rulebook on the quality of minced meat, semi-finished products and meat products banned the use of third-category meat for the preparation of semi-finished products. This Rulebook is not in accordance with rulebooks regulating the categorization of raw meat, in the part related to the definition of third-category meat.

FIC RECOMMENDATIONS

- The provisions under Articles 70 and 71 should be clarified, by making a clearer distinction between the analysis costs under Article 70 and analysis fee under Article 71, or, if there is no relevant difference, then the respective provisions must be amended by deleting the parts which create the confusion.
- A more accurate definition of "super-analysis" should be included in the law and of the body that should perform it (if it is different certified laboratory how comes that results might be different).
- Specific controls, as mentioned in Article 70, should be clearly defined or if they are not substantially different from already defined official control, this should be clearly stated.
- The responsibilities in Article 12 should be clearly defined.
- Article 30 should clearly define what is meant by proof of compliance with food safety requirements (analyses in licensed laboratories) and frequency of analyses.
- In order to secure proper implementation of regulations, the adoption of a general Rulebook on food safety criteria at food retailer level is needed.
- It is necessary that the Rulebook on the quality of minced meat, semi-finished products and meat products be amended to harmonize it with the Rulebook on the quality of livestock, poultry and game meat and the Rulebook on the quality of slaughtered pigs and pork categorization.

2. SANITARY AND PHYTOSANITARY INSPECTIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The establishment of uniform rules on sanitary and phytosanitary border inspection procedures for the food, beverage and tobacco industry (leaf tobacco, non-tobacco material and cigarettes), notably with regard to the number of samples taken per each shipment of goods, as well as the costs of laboratory analyses and a detailed timeframe for the completion of border inspection procedures.	2011		√	
The consistent implementation of the uniform rules on sanitary and phytosanitary border inspection procedures for the food and beverage industry, excluding the possibility for arbitrary decision-making by specific inspectors.	2012		√	
Align the new Food Law, the Law on inspections and other legal acts with EU regulations, in what would significantly simplify import processes and procedures on the one hand, and ensure, on the other, that the control of goods/products would be performed in a co-ordinated manner, on the market, with different inspections (phyto, sanitary, communal, market, tax inspection, etc.) joining forces to create the needed results, with the sole purpose of protecting consumers.	2013			√

CURRENT SITUATION

The Food Safety Law was adopted in 2009, and as a result the competencies of inspections were split between two relevant ministries. Phytosanitary, Veterinary, and Agricultural Inspections of the Ministry of Agriculture and Environmental Protection are responsible for the official control of food and feed of animal and plant origin in primary production, processing, trade, import, transit, and export. The Sanitary Inspection of the Ministry of Health is responsible for the control of foods, dietary products, additives, flavourings, enzymes of non-animal origin, and all types of potable water. In addition, the Sanitary Inspection is also responsible for the control of products for general use, including cosmetics.

POSITIVE DEVELOPMENTS

There is no significant development compared to the previous year in terms of sampled quantities, frequency of sampling and obtaining the decisions of the inspections.

Some progress is noticeable in terms of monitoring, as inspectors usually try to avoid sampling the same stock keeping unit (SKUs) within a 6-month period, however, this is still not fully applied.

At the end of 2013 and in 2014 there were significant changes in terms of the quality control of wine and other alcoholic beverages. The validity period of a Laboratory Certificate has been set at 6 months for each lot, along with the specification of the types of analyses required for getting an export license and control number. A database of wine producers was created, along with a list of inspectors and certified laboratories.

REMAINING ISSUES

The key problem identified is the unpredictability of the business environment, as the situation with the length of the quarantine time for shipments remains unclear.

The number of sampled shipments remains high, with an average 35% of imports held up for quality inspection. It is still impossible to predict which import shipment will be held up, so no certain plans can be made with regard to the time of availability of the goods. According to phytosanitary inspection data, however, only 10% of imports are sampled, analysed and processed.

A special challenge is beer import and sampling, since only the analysis conducted by domestic laboratories of each lot/batch number, provided by the importer, was regarded as sufficient evidence of product safety in 2013.

This is not in accordance with the Guidelines on official sampling of food and animal feed of plant and mixed origin of the Ministry of Agriculture and Environmental Protection, Directorate of Plant Protection.

FIC RECOMMENDATIONS

In order to create a stable business environment, certain changes must be implemented to increase predictability:

- The consistent application of standard operating procedures by the inspection services in terms of costs, time frames, and mechanisms implemented on the ground.
- Discretionary rights of inspections to make arbitrary decisions on the number of samples taken, sampling procedures and costs of laboratory analyses should not be allowed. As a consequence of this situation, the number of samples ranges from 10 to 30 among the different inspections, and differs even within the same inspection , depending on the inspector on duty, because decisions on these issues are often left to the discretion of the individual inspectors .
- Inspectors should not have the discretionary right to determine the types of laboratory tests to be performed. Prices are standardized among laboratories, but the number and type of tests affect the price.
- Improving border inspection control, since importers are unable to predict and plan their business operations in Serbia, as there is no fixed time frame for completing 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.
- 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.
- 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.

3. QUALITY CONTROL AND LABELLING OF FOODSTUFFS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adopt changes to the Food Safety Law, in line with relevant EU regulations, enabling a coordinated food market control, as well as quality control by an independent institution.	2013			√
A consistent enforcement of the Rulebook on the Labelling and Marking of Packaged Foodstuffs by the relevant authorities.	2011	√		
Timely alignment of the Rulebook with relevant EU regulation (esp. Directive 1160/2011)	2013	√		

CURRENT SITUATION

Following the adoption of the new Rulebook on Labelling and Marking of Packaged Foodstuffs (Official Gazette of Serbia 85/2013), Serbian legislation on food labelling has been substantially aligned with the European one. This has improved the ease of doing business for food producers in Serbia, as the labels now contain less specific parameters, diminishing the logistical and operative burden on producers doing business in several countries, given that Serbia was among the last countries in the region to align their legislation in this area.

POSITIVE DEVELOPMENTS

The adoption of the Rulebook on Labelling, which is largely in line with relevant European legislation, has diminished the logistical, operational and financial burden on producers. An especially important development was the lifting of the ban on showing images of fruit on products containing less than 50 percent fruit content. This ban was an exception to any of the regional markets and the EU market as well, which led to increased complexities of doing business, by production of multiple labels.

REMAINING ISSUES

The unclear definition of the final and transitional remarks of the Rulebook on Labelling and Marking of Packaged Foodstuffs can lend itself to different interpretations of the 18 month transition deadline granted to producers to align their packaging with the new Rulebook.

The current formulation could be understood to mean that as of the effective date of the Rulebook (8 days after publishing), any new packaging can only be produced in line with the newly adopted regulation, which is impossible, in operational terms.

FIC RECOMMENDATIONS

- Adopt changes or issue an official opinion for the Rulebook, eliminating the differences in understanding of 18 months transition period, to allow producers time to comply with the new labelling requirements, use up the old ones and timely approve and produce new ones.
- Adopt changes to the Food Safety Law, in line with relevant EU regulations, enabling coordinated food market and quality control by an independent institution.

4. QUALITY STANDARDS IN MILK PRODUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Urgently establish the National Reference Laboratory (NRL) as prescribed by the Food Safety Law and provide for its complete independence. Additionally, it is important to provide the NRL with professionals and experts as soon as possible, so that it can ensure the fulfilment of all tasks foreseen by the Law, and more closely define the place, role and obligations of the National reference laboratory for the safety of foodstuffs.	2010			√
Initially, for such purpose, it would be appropriate to use the possibility of financing from the EU's pre-accession funds as well as an EU Twinning project on food safety and animal welfare in Serbia. The NRL should be oriented in such a way that it can be supported by fees from its own clients and stakeholders, which would be defined by the law.	2010			√
For the purpose of the implementation of a single system of raw milk quality assessment, the establishment of the National Reference Laboratory or a laboratory for raw milk quality testing should be supported.	2012			√
In order to establish a long-term security monitoring of the entire milk production chain and thus bring order to the complete monitoring and control of agricultural inputs which enter the production chain of raw milk, and to ensure security for consumers and dairy farmers, the activation of the NRL is crucial.	2013			√
The FIC believes that lessons learned from the process of improvement within the areas of milk and juice production can be used throughout the food production sector.	2013			√

CURRENT SITUATION

The food industry still faces numerous challenges both in the production and sale of its finished products. The stagnating purchasing power in the local market and the huge competitiveness of the foreign market are the major obstacles to a more significant growth in the production of milk and milk products.

Some of the key factors and priorities that may greatly contribute to improve the sale of milk and milk products, especially in foreign markets, is the establishment of a raw milk quality system on sound foundations.

Despite the negative impact of the global crisis in the past years, the ever changing economic environment in the world and in our country offers prospects and opportunities for opening new markets for milk products, as is the case now, following the shift in the relations between Russia and EU. This, once again, points to the necessity of establishing a sustainable, consistent, clear and simple system of raw milk production in conformity with global and/or European standards in the sphere of quality, especially the microbiological one.

POSITIVE DEVELOPMENTS

Unfortunately, we cannot say that there have been improvements relative to the same period last year. What we can say is that precious time has been lost again.

An improvement, to a certain extent, is the increase in the

number of raw milk quality tests conducted in local accredited laboratories. It ought to be stressed, however, that these raw are conducted in according to local rules of procedure which have lower criteria than the ones in EU.

REMAINING ISSUES

Raw milk quality in Serbia should be improved and brought in line with EU norms by 2020, and in this period we need to consider what still remains to be done. It may seem that there is not much left to do, but it certainly appears very complex.

A cause of concern is the inability of the industry, the state, and in particular experts and milk producers to make any changes to improve raw milk production in order to approximate EU quality parameters. This actually means that the deadline for compliance of raw milk quality with EU requirements has been prolonged until 2020. The question is whether time will be lost again, or gainfully used.

Serbia has had a Law on Food Safety for years, but it does not reflect the actual situation in the field and vice versa, and because of that, the quality of raw milk is highly questionable. The reason for such assessment lies in the fact that Serbia still has no national laboratory, as envisaged by the Law on Food Safety.

Although testing of raw milk by accredited laboratories has intensified, this only covers one portion of the raw milk market, primarily the largest dairy company in the country. The reason why these tests are not conducted in the entire market are the high costs of testing.

FIC RECOMMENDATIONS

- Once again, we emphasize the need for urgently establishing a National Reference Laboratory (NRL), as provided by the Law on Food Safety and ensuring its complete autonomy, professionalization and adequate technical equipment.
- Simplification of the operation of the NRL, at least in the part of raw milk control, based on solely economic parameters. This primarily implies territorial division for the purpose of increasing the efficiency of raw milk sample processing. In this sense, the proposed centres for sample collection and processing are Belgrade, Novi Sad and Kraljevo, since they already have accredited laboratories there, and the NRL would be the "umbrella" institution.
- Seek a model which would reduce the current cost of testing raw milk samples and increase its accessibility for most milk producers. One alternative is to divide the cost of raw milk sample testing among the state, farmers and dairies. It is similar in EU, for instance in France, where the costs of testing are equally shared by dairies and farmers.
- Activation of experts in educating farmers, by creating a training system and financing - through access to EU funds and other financial institutions - projects that are essential for increasing the competitiveness of milk production and raising the quality of raw milk.

5. REGISTRATION PROCESS FOR PLANT PROTECTION PRODUCTS (PPPS)

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The aim is to implement European standards into the domestic Serbian legislation, in terms of the efforts of the Republic of Serbia to fully harmonise its regulations with the EU and the World Trade Organization (WTO).	2010			√
The FIC advocates full harmonisation with EU standards and proper implementation of the PPPs registration process in the Republic of Serbia in order to ensure food safety for consumers and fair competition between international and domestic companies, whilst simultaneously creating favourable market conditions for foreign investments by bringing into force all the articles of the new Law on PPPs immediately and starting a revision of the existing registrations.	2010			√
New by-laws in line with the new Law on PPPs that would enable efficient registration, inspection, sales, import, and use of pesticides in agriculture and forestry.	2012			√

CURRENT SITUATION

The current Law on Plant Protection Products was adopted on 2 June 2009 (Official Gazette of the Republic of Serbia No 41/09) under the responsibility of the Ministry of Agriculture, Trade, Forestry, and Water Management (hereinafter: the "Ministry"). It does not ensure food safety and poses an unknown risk to consumers, due to the fact that certain amendments (Articles 86–90) in the new law refer back to the previous Law on Plant Protection (Official Journal of the FRY No 26/98), passed in 1998. In November 2013, the Plant Protection Directorate issued two official letters stating that: "On 31 December 2013, Articles 11-25 of the Law will come into effect, and only applications submitted until 30 December 2013 inclusive shall be settled in accordance with Article 86, paragraph 3 of the Law on Plant Protection Products". Nevertheless, in March 2014, the Plant Protection Directorate issued a guide titled "Registration of Plant Protection Products from 31 December, 2013", published on the web site of the Ministry of Agriculture, stating that: "At the initiative of the Serbian Chamber of Commerce, and having in mind the so-called "purposeful" interpretation of the Law, i.e. what is to be achieved by certain provisions of the Law, the Plant Protection Directorate will accept the applications for registration of new plant protection products submitted pursuant to the Articles 11 through 25 of the Law on Plant Protection Products, and also pursuant to the Article 86, paragraph 3 of the Law, depending on the applicant's request."

The level of unknown impurities in an active substance that can be found in a plant protection product may vary. Unfortunately, these unknown impurities are never controlled during the PPP registration process in Serbia. From a total of 800 registered plant protection products in the country (according to data of the Directorate of Plant Protection of 31 December 2013) more than 45 percent of plant protection products were registered on the basis of the minimum documentation. The hope was the new Law on Plant Protection Products adopted in 2009 would ensure compliance with EU standards. Instead, this (once again) leads to parallel implementation of the old and new law, registration of potentially risky PPPs, non-compliance of laws with EU standards and a possible risk to human and animal health and the environment

POSITIVE DEVELOPMENTS

Despite the fact that the Ministry proved to be open for communication, unfortunately there was no positive development.

REMAINING ISSUES

The FIC Food and Agriculture Committee remains of the opinion that the role of local authorities is essential and cannot be replaced by any company agreement. Local authorities are leading the charge in creating a fair business environment. Accordingly, such principles as food and consumer safety should not, in our opinion, be based on a consensus of all market players but follow international standards with an active role played by state authorities.

FIC RECOMMENDATIONS

- Transposition of EU standards into the national legislation, in terms of the efforts of the Republic of Serbia to fully harmonize its regulations with the EU and the World Trade Organization (WTO).
- The FIC advocates full harmonization with EU standards and proper implementation of the PPPs registration process in the Republic of Serbia to ensure food safety for consumers and fair competition between international and domestic companies, whilst simultaneously creating favourable market conditions for foreign investments by putting all of the articles of the new Law on PPPs into force immediately and starting a revision of the existing registrations.
- New by-laws in line with the new Law on PPPs to enable efficient registration, inspection, sales, import, and use of pesticides in agriculture and forestry.

B. SUBSIDIES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adopt four-year strategies for all major sectors of agricultural production, by setting mid-to-long-term subsidy policies.	2010			√
Adopt regulations promoting quality standards in agricultural production (for example Global GAP and HACCP for milk) and change the structure of subsidies by quality classes in order to promote efficient production.	2010			√
Where they remain as an economic assistance tool, subsidies should be available to all legal and natural persons under equal conditions, regardless of the past or present growing areas, in order to secure the transparency of the process, the rewarding of efficient producers, and the recognition of specialisation and professionalization of farming.	2010			√

CURRENT SITUATION

The subsidy policy has been and is likely to remain a significant economic assistance tool of the Serbian as well as many EU member states' policies. Subsidies as an economic instrument should be aimed at achieving the efficiency and sustainability of farm production, in order to generate preconditions for the extended competitiveness of the export sector and achieve high quality in production. We must keep in mind the fact that export subsidies will be abolished when Serbia accedes to the World Trade Organization (WTO). This implies that export competitiveness should be supported through subsidies for direct farm production.

The Serbian Government should identify the agricultural sector as one of the key drivers of growth and provide the sector with predictability, in terms of a long-term strategy as the main precondition for stable operations, and a further enhancement of Serbia's agriculture trade balance. We believe that the agricultural sector in Serbia has a lot of potential. However, without stronger Government support with respect to a clear long-term strategy for subsidies, the productivity of the sector will not improve. Productivity is low, both in the sense of low yield per land unit or head of cattle (milk, for example), and low productivity of land and capital. The reason for low productivity is a poor breed composition, a low level of land irrigation, and low utilization of inputs and seed on one hand, and obsolete equipment, technology and infrastructure on the other.

After refocusing the subsidy system from payments per surface (ha) to payments per unit of produce (kilogram), through the adoption of the Act on conditions and method of using the subsidies for crop farming and potato production by the Government in September 2012, the subsidy system was brought back to the payment of funds per hectare of registered land. These steps gave rise to confusion among subsidy users and a lack of predictability, which is the key factor in planning and implementing activities in the agricultural sector.

According to current provisions of the Rulebook on conditions for exercising the right of reimbursement for fertilizers, the reimbursement is feasible only for procurements proved with fiscal receipts, although the majority of companies involved in agricultural production pay for fertilizers through invoices. Invoice-based payment is in full compliance with relevant laws; hence, these provisions create discrimination among producers and farmers in terms of reimbursement for fertilizers. This way the Rulebook also denies the possibility of barter between the farmers and their buyers, since it excludes the possibility for farmers to be provided with fertilizers from their buyers for which they could pay later through crops.

By adopting the Law on Budget for 2014, the Government has decided to decrease the amount of funds envisaged for agricultural subsidies to RSD 34.9 billion, from RSD 41 billion allocated 2013.

POSITIVE DEVELOPMENTS

The Government adopted the regulatory framework for subsidies in January 2013, with the adoption of Law on agricultural incentives and rural development and the timely issuance of Act on the allocation of agricultural incentives and rural development in 2014, defining the scope of the incentives.

REMAINING ISSUES

The Ministry of Agriculture and the Government adopted the National Agricultural Programme (NAP) in October 2010. The document is the first national programme for agriculture referring to the period 2010–2013 and represents a summary of legislative, institutional and financial activities of the Ministry of Agriculture, but there are no clear references to the exact amounts planned for the implementation of the programme for agriculture, or percentages indicating changes compared to some other years.

By introducing the fiscal receipt as a mandatory requirement, the Rulebook on conditions for utilizing the right to reimbursement for fertilizers practically disqualifies all the entities that can prove their transactions only with invoices, thus discriminating against producers and farmers. Furthermore, the Rulebook limits the right of reimbursement provided by the Law on incentives in agriculture and rural development, which is unlawful. Indirectly, by the same provisions the Rulebook also denies the farmers the right to exchange crops for fertilizers by concluding barter agreements with their buyers.

FIC RECOMMENDATIONS

- Adopt four-year strategies for all major sectors of agricultural production, by setting mid-to-long-term subsidy policies.
- Adopt regulations promoting quality standards in agricultural production (for example Global GAP and HACCP for milk) and change the structure of incentives, in terms of subsidizing by quality classes and per kilogram and for herbal production, in order to promote efficient production, and discourage the outflow of certain herbal cultures into illegal channels (e.g. tobacco).
- Where they remain as an economic assistance tool, subsidies (and other incentives for rural development, e.g. procurement of irrigation equipment) should be available to all legal and natural persons under equal conditions, regardless of the past or present growing areas, in order to secure the transparency of the process, the rewarding of efficient producers, and the recognition of specialization and professionalization of farming.
- The Rulebook on conditions for exercising the right to reimbursement for fertilizers needs to be amended to introduce legitimate invoices as sufficient proof of the amounts paid for fertilizers to enable reimbursement in accordance with the Law on incentives in agriculture and rural development.
- The same Rulebook should allow farmers to exchange crops for fertilizers by concluding barter agreement with their buyers.

6. LIVESTOCK PRODUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Laws and by-laws must be applied in a uniform manner across the board and without exceptions.	2012			√
State bodies have to introduce protective measures for livestock producers (milk producers in particular) to protect them from excessive fluctuations of prices of crop products used as food for livestock.	2012			√
It is necessary to establish a group of experts who would establish a sustainable development strategy in the long term through close contact with farmers.	2012			√
Increase of exports to the EU has to be supported by the application of quality standards including traceability practices and good farming practice.	2012			√

CURRENT SITUATION

Livestock production is an important branch of agriculture in the Republic of Serbia and has always had a leading role in contributing to the livelihood of the local population. Livestock production provides necessary food for the local

population (meat, milk, eggs) and the basics for the development of certain industries (the food industry, machinery industry, pharmaceutical industry, etc.). Also, livestock production is expected to provide products that satisfy quality and food safety standards.

The level of development of livestock production is a direct reflection of the country's overall agricultural development level. Crop production in Serbia accounts for 58% and livestock production for only 42% of gross created value. In the EU, this ratio is 70% vs. 30% in favour of livestock production.

In spite of extremely favourable natural conditions in Serbia, in comparison to countries with highly developed agriculture, Serbia is significantly underdeveloped by all standards of measurement of livestock production (number of conditional heads, overall volume of livestock products, etc.) Reasons for such a negative trend in livestock production are: disparity of prices; loss of market; lack of export (inability to provide sufficient quantities of products to meet export quotas); a reduction of living standards of the domestic population as a whole; poor relations between primary production and processing industry; monopoly of processors (and buyers of live animals); inefficient agricultural policies of the state; etc.

Existing livestock funds are a significant development resource for the improvement of the genetic quality of animals, along with technology and organization of production.

POSITIVE DEVELOPMENTS

Serbia was granted candidate status for membership in the EU. This means that livestock production has to adjust and prepare for a unified and well developed market without trading barriers.

Farmers can count on subsidies for milk, which were increased to RSD 7/l and for heads registered in the public register in the amount of RSD 20,000/head.).

Serbia, as a country, is entitled to participate in all European conferences dealing with relevant topics as an observer. For a few years now there is a Department for International Trading and Certification within the Ministry of Agriculture and Environmental Protection - Veterinary Administration, whose scope of work is also directed towards the harmonization of domestic legislation with EU legislation.

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:

1. Production of food that satisfies the safety needs of consumers;

2. 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;

3. Development of a general, co-ordinated, and integrated national system for disease control and monitoring;

4. Introduction of modern technologies in the selection, reproduction and improvement of the animal genetic pool;

5. Increasing the technological level of production to achieve competitiveness in the world market.

FIC RECOMMENDATIONS

- Laws and by-laws must be applied in a uniform manner across the board and without exceptions.
- State bodies have to introduce protective measures for livestock producers (milk producers in particular) to pro-

tect them from excessive fluctuations of prices of crop products used as food for livestock.

- It is necessary to establish a group of experts who would establish a long-term sustainable development strategy in close contact with farmers.
- Increase of exports to the EU has to be supported by the application of quality standards including traceability practices and good farming practices.

TOBACCO INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further focus and efficient law enforcement of all relevant government institutions on the issue of illicit trade of cut tobacco is needed in order to combat this phenomenon with numerous negative implications for the entire society. Experiences of numerous EU member states show that this phenomenon is not a one-time issue and that it can only be tackled over a longer period with anticipated, continuous and resolute engagement of all relevant government institutions.	2013			√
Full implementation of the Law on Excise Tax – any changes of the current excise tax calendar for cigarettes and other tobacco products stipulated by the Excise Tax Law would seriously jeopardise the predictability of the tobacco related regulatory environment. Namely, as the experience of numerous EU member states shows, any sharp increase of excise tax on cigarettes may lead to a further growth of the black market and the distortion of domestic tobacco industry with consequent strong negative implications for the state budget and real economy.	2012		√	
Urgent adoption of the new Advertising Law based on the 2010 draft. The FIC believes that the regulator has to set forth clear rules in tobacco advertising which would be effectively enforced and which would create a level playing field for all market participants. This draft contains reasonable further restrictions of tobacco advertising in line with the relevant EU directive and brings more clarity on tobacco products advertising, in particular in reference to Article 64 of the current Law (articles 87-90 of the draft new Law). Hence, the FIC urges the Government to adopt the draft and send it further for the Parliament procedure as soon as possible.	2013			√
Having in mind comprehensive further restrictions envisaged by the draft Action plan of the Health Ministry, we strongly believe that, prior to its adoption by the Serbian Government, transparent dialogue and consultations between Government, the tobacco industry and all third parties which would be affected by these measures (leaf farmers, retailers, hospitality sectors, suppliers etc.) would be necessary.	2013			√
The FIC strongly supports open and transparent dialogue between regulators and the tobacco industry in general, following the principles of participation, openness, accountability, effectiveness and coherence adopted by the EU. The FIC firmly stands behind its belief that it is of utmost importance that the local regulators understand the national implications of regulatory measures they consider by employing a complete assessment of the science base as well as an accurate assessment of wide socio-economic consequences thereof. Given the complexities in certain areas of regulation, the expertise of the tobacco companies is especially important to develop regulation that is technically viable, practically workable and enforceable.	2013		√	

CURRENT SITUATION

Despite the economic crisis, the tobacco industry is one of the strongest and most vibrant sectors of the Serbian economy, contributing to 13% of total budget revenues and 2.9% of GDP in Serbia in 2013. 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 commitment in Serbia. Taking into account the aspirations of Serbia towards the EU membership and economic importance of the tobacco industry, the importance of having a predictable fiscal and regulatory environment that is gradually undergoing harmonization with applicable EU directives is crucial in ensuring the sustainability and further development of the industry. The key problem which remains is the developed illegal market of tobacco products, with a nearly constant level of illegal cut tobacco, but also with a rampant level of growth of the share of illegal cigarettes. Also, despite the strong recommendations of the FIC in the previous White Book edition, regarding possible changes of customs/trade regime of tobacco and tobacco products, the Serbian Government adopted a Protocol which allows a quota for imports of cigarettes from the EU under significantly more favourable customs duties, which greatly contributed to the additional pressure being put on domestic cigarette production and is yet another aggravating factor for its sustainability.

POSITIVE DEVELOPMENTS

The existence of a multi-annual plan for excise taxes on cigarettes (2016) and other tobacco products through the adoption of the Excise Law is one of the most significant legislative achievements in the field of tobacco and is a further step in the direction of gradual harmonization with relevant EU directives (2011/64/EU). Adopting amendments and additions to the Tobacco Law in late 2013 was aimed at combating illicit trade in tobacco and tobacco products. However, these measures have not led to the desired results due to poor practical implementation. The application of fiscal regulations, which entered into force on 1 January 2013 in the field of accumulation of stock/inventory management, has brought more clarity and predictability for both the tobacco industry and for state excise tax revenues.

REMAINING ISSUES

a. Illegal trade in tobacco products - The wave of price increases caused by excessive increase in the tax burden during 2012, with the simultaneous drop of purchasing power, have led to the emergence of a growing illegal market for tobacco products. The illegal market is rapidly expanding, both in urban and rural locations throughout The Republic of Serbia (green markets, street vendors, registered retail stores, Internet...). Consequently, this phenomenon has also led to a significant and a sudden drop in the legal market of tobacco products, which has directly led to a substantial reduction in expected state revenues in 2013. In addition, due to the increasing negative impact of the illegal market of cut tobacco, the viability of the entire supply chain within the tobacco industry (growers, processors, manufacturers, distributors and retailers), as well as employment and GDP, which have a direct effect on tobacco industry chain of production and trade, has been compromised. Moreover, illegal tobacco products have a negative impact on the consumer because of unknown origin, uncontrolled manufacturing; uncontrolled storage and transportation conditions; the fact that illegal tobacco products are available to minors; that they do not contain statutory health warnings; that they are illegally advertised, etc.

b. Excise Law - The Excise Law is a step in the right direction because it contributes to further harmonization with the European Union in the field of tobacco taxation. Given the importance of the tax policy in the field of tobacco and its predictability for both state revenues and the tobacco industry, ensuring the consistent application of an existing excise tax calendar is of great importance. There is room for improvement in this area within elements of unfair competition in the lowest price segment which threatens, if not addressed effectively and in the proper manner, to further distort the tobacco product market.

c. The Advertising Law - The Advertising Law adopted in 2005 already has very strict regulations regarding the advertising of tobacco products. However, some of its provisions are not sufficiently precise allowing arbitrary interpretation and causing both competent inspections and the tobacco industry difficulties in the implementation of the Law. The Foreign Investors Council encourages the adoption of a new Advertising Law based on the current draft of 2010, which reasonably restricts tobacco advertising in accordance with the EU Directive and relevant regulatory practices in EU member states, while also providing clarification of critical provisions and thus allowing the tobacco industry to operate under uniform rules.

d. Action Plan of the Ministry of Health - The Draft Plan contains some extreme provisions (Pictorial Health Warning, Point of Sale Display ban, etc.) that could have serious consequences on the entire tobacco supply chain ranging from growers, manufacturers and retailers, as well as on boosting the expansion of the illicit

market, state revenue, level of employment as well as the hospitality sector.

e. Initiative for the adoption of a new Law on Tobacco - the tobacco product market is much destabilized, and the massive phenomenon of illegal tobacco products threatens the entire tobacco industry chain of production and trade. In 2013, the legal industry lost between 3,000-4,000 tons of cigarettes, that is, 15-20% of the market has moved into the gray zone. Consequently, the budget of The Republic of Serbia has lost more than EUR 200 million in tax revenues from tobacco products only in 2013. Bearing in mind this state of the industry, the FIC considers that the adoption of a new Law on Tobacco would be an inadequate measure in combatting illegal trade of tobacco products as one of the priorities of the Serbian Government. Also, the introduction of any measure which might put additional pressure on the business operations will most certainly lead to further destabilization of the legal market and jeopardize business operations of the whole tobacco industry chain of production and trade in Serbia.

FIC RECOMMENDATIONS

- All relevant state institutions need to shift their focus on the effective implementation of the Law in order to combat the illegal tobacco products market, which has a significant negative consequence for the whole society. The FIC also supports the adoption of an umbrella Law on Inspections which would ensure greater efficiency of inspection services.

- The consistent implementation of the Excise Law - Any change in the applicable excise tax calendar which is provided for under the Excise Law would seriously jeopardize the predictability of the regulatory environment relating to the field of tobacco and tobacco products. On the other hand, we believe that there is room for further regulation of taxation which should address the problem of a growing trend of unfair competition in the lowest price segment.

- Immediate adoption of the new Advertising Law based on a draft from 2010 -The Council believes that the regulator must set clear rules on the advertising of tobacco products that could be effectively enforced and that would create a level playing field for all market participants. The Council calls on the Government to adopt the draft from 2010 and forward it to the Parliament for approval as soon as possible.

- The FIC believes that prior to its approval by the Government, taking into account the overall additional restrictions that are included in the Action Plan of the Ministry of Health, a transparent dialogue and consultations are needed between the government, the tobacco industry and all third parties that would be affected by the measures under this Plan (tobacco growers, retailers, the hospitality sector, suppliers, etc.).

- In general, the Foreign Investors Council strongly supports an open and transparent dialogue between the legislature and the tobacco industry according to the principles of participation, transparency, accountability, effectiveness and coherence.

- Although satisfactory, the existing Law on Tobacco requires some adjustments which can be achieved more efficiently through amendments to the existing Law and not through the preparation of a new Law on Tobacco. The mass use of ancillary products for smoking (filter tips, rolling paper...) should certainly be regulated by relevant regulations. Additionally, the amendments and additions to the Law should regulate the field of tobacco based products such as tobacco foil and tobacco stem. Given that these changes are not essential, they do not require a change of the entire legal framework, the FIC supports limited amendments to the Law on Tobacco.

INSURANCE SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend the Articles referring to the adoption of the by-laws and loosely defined discretionary right of the regulatory authority and resolve the matters of dispute within the Law itself, or define the terms for the adoption of new by-laws.	2013		√	
Under the new Insurance Law, it is necessary to provide for the integration of insurance companies that practice life and non-life business separately, if those companies have the same shareholders and/or if the same shareholders own the controlling block of shares in both companies. Pursuant to the integration of the companies, it is necessary to include the provisions regulating that the National Bank of Serbia will issue an integral licence for practising all types of insurance that were practised separately by the companies.	2013			√
Adopt a new set of the Insurance Laws: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on the Insurance Brokers and Agents.	2013			√
"In relation to MTPL create a level playing field in line with European standards by working in two directions: a). Strengthen the action of the regulatory body to enforce the legal provisions to the entire market with penalties that should be provided promptly and indiscriminately; b). Change the regulatory framework leveraging best practises already present in other markets and in line with European Union standards. Possible initiatives being: (i) MTPL price liberalisation which would immediately favour both the traditional distribution channels (independent outlets) as well as the development of prospective alternatives such as internet and bank outlets; (ii) Allow insurance companies to perform car registrations on their own business premises; (iii) Revise the number and timelines of mandatory technical checks for newer vehicles."	2013			√
Focus on the monitoring of technical reserves that will give all authority to insurance companies to regulate the general conditions of insurance and the transition from the model of tariffs to "underwriting" models in order to stimulate new processes and practices both within insurance companies and the regulator itself.	2009			√

CURRENT SITUATION

Life and non-life insurance

Insurance companies and their activities are mainly regulated and governed by the Insurance Law, adopted in 2004, as amended, and related by-laws adopted by the National Bank of Serbia (NBS). Other relevant legal sources are the Law on Compulsory Car Insurance and the By-law on Voluntary Health Insurance adopted by the Government of the Republic of Serbia. The lateral relevant legal source is the Traffic Safety Law. The NBS is the competent authority for the issuance and withdrawal of insurance companies' licenses and for insurance sector supervision. It also extends its opinions on the laws regulating this area. The Ministry of Finance is the competent authority for drafting amendments to major laws. The Ministry of Interior is competent for drafting and implementing the Traffic Safety Law.

The following are regulated by the Insurance Law:

- Licensing of insurance companies – mandatory requirements related to assets, organization, internal documents, policy, and business plans;
- Common organization requirements for insurance companies - requirements related to the foundation document and Statute, the mandatory bodies (Shareholders' General Meeting, Management and Supervisory Boards, and General Manager), and "relevant and appropriate" requirements for their appointment;
- Issues related to actuaries and internal audit;
- Reinsurance;
- Activities of insurance agents and brokers and related licenses;
- Supervision of insurance activities by the NBS.

The following is regulated by the Law on Mandatory Motor Vehicle Insurance (hereafter referred to as the "MVI Law"):

- Basic contractual elements in the MVI Law;
- Association of insurers and its authorities;
- Procedures for price limitation (including the Association of Insurers and the NBS);
- Legal framework of the MVI policies.

The following is regulated by the By-law on Voluntary Health Insurance:

- The authority of the Ministry of Health for the issuance and withdrawal of licenses for voluntary health insurance;
- Mandatory priority of the social components of health insurance (no client can be denied insurance);
- Conditions for participation in voluntary health insurance, even though one set of conditions has already been met when licenses were issued to companies for dealing with that type of insurance – the duality will continue to create confusion.

Pursuant to the provisions of the current Insurance Law, an insurance company is not allowed to engage concurrently in life and non-life insurance activities. Likewise, insurance companies may engage either in insurance or in reinsurance activities only. A transition period– until 31 December 2013 – was provided to existing composite insurance companies for the separation of activities. New companies are to state their field of activity at the time of their founding. The Government of the Republic of Serbia proposed amendments to the Insurance Law seeking to limit the existing inequality between companies that separated their insurance activities and those that remained composite. There is major legal insecurity related to the final legal framework pertaining to this issue.

Overview of the insurance market

There are 24 active insurance companies in Serbia and 4 reinsurance companies.

Based on data for the first quarter of 2014, the insurance market reported an overall growth of 3.18% relative to the same period in 2013, equivalent to RSD 15.73 billion.

The market structure also shows some signs of change. The share of life insurance gross premiums written is at 21.96%. This rate is encouraging but still low compared to the majority of European countries.

In connection with non-life insurance, in 2013, car insurance was a leading insurance product. Car insurance is an important market segment, related to both Casco insurance with a market share of 16.83%, and compulsory car insurance with a 31.40% share. The long-awaited Compulsory Insurance Law was also adopted. In the course of almost a year of its implementation and practice, the Law has shown some improvements as well as some weaknesses related to the regulation of CI sale, which is one of the most delicate issues on the market.

The market is still very concentrated because the three biggest insurers in Serbia still have a combined market share of a little over 62%.

Contributing to a great extent to the total premiums written in Serbia are insurance companies with majority foreign ownership. They account for the majority market share of life insurance premiums written.

Relating to legislation, in the year 2010 and the first half of 2012 the NBS invested additional efforts regulating CI markets. The NBS is still developing a system for consumer (insured client) rights protection.

The Insurance Law

Applicable Insurance Law has undergone numerous changes, so far of a formal rather than substantial nature, which should enable the development of the insurance business, correlation with other industries and a balanced

market competition without discriminating certain participants in the insurance market.

In spite of the comprehensive text of the Law, a great majority of crucial issues has been resolved by the vast delegated legislation the adoption of which mostly falls within the jurisdiction of the NBS, as the regulatory supervisory body with the discretionary authority to resolve issues and make strategic decisions.

Article 14 of the Law prohibits insurers from carrying both life and non-life insurance business under the same roof, (with an exception set forth in Article 25 of the Law). Thus, by extending the deadline under Article 234 of the Law to 31 December 2013, (as last amended, Official Gazette of RS No 119/12), already separate insurance companies are discriminated against, leading to an unnecessary and tremendous increase in tax costs for both companies, to doubling general tasks and costs of engaging employees, and to decreasing business and financial capacities of insurance companies when it comes to participation in public procurement procedures.

Tariff system and the underwriting model

The NBS regulates the market with severe measures, supervising the general insurance requirements and tariffs, which is not the case in the majority of the EU countries where technical reserves are the focus of supervision and the general requirements and tariffs are the exclusive authority of the company. The existing insurance models on the market are mainly based on the aforementioned risk insurances and tariffs, which is not the case in the majority of EU countries. The increased demand for new insurance products, and those customized for specific clients (frequently initiated by foreign investors) puts pressure on insurers in Serbia to extend their offer; this will lead to the so-called "underwriting model" and, finally, to the development of the insurance market.

The majority of insurers in Serbia already use, for some specific types of insurance, pricing rating tools and foreign reinsurers, so the quoted premium should be in line with the requested coverage in order to ensure that the reinsurance coverage is obtained for the undertaken risk.

Some types of insurance, such as the Air Force insurance, depend directly on the quotation of a foreign reinsurer, i.e., on the premium rate obtained by said foreign reinsurer due to very high insurance amounts where the overall risk is borne by foreign reinsurers. The situation is similar with the insurance of works on big infrastructural projects, and property insurance of large companies (international companies in Serbia, in particular) from "all risks", etc.

Motor Third Party Liability insurance market

Motor Third Party Liability (MTPL) is by far the most important segment of the insurance market (30.6% of the total in 2013) in Serbia and the technical check-points that carry out the obligatory annual inspection of all motor vehicles are by far the most important distribution channels for these insurance policies. Art. 44 and 45 of the Law on Compulsory Traffic Insurance prohibit making any commission payments to these technical check-points - directly and/or through related parties - which exceed 5% of the mediated premium. For many years this legal provision has been largely disregarded by the market, with notable differences in the conduct of individual companies, which paid commission rates of up to 50%, in spite of the statutory prohibition. This market practice largely contributed to make the overall profitability of this line of business and the overall insurance market questionable, forcing many players to recapitalize and/or to reduce the reserves levels thus endangering the medium-term stability of the company.

Another factor characterizing the Serbian MTPL market is insurance sums, which are USD 100,000 and 200,000 for bodily injury and property damage respectively. Current coverage levels are not only very much below the ones in the European Union countries, which are either unlimited or greatly exceed EUR 1 million, but also consistently below neighbouring countries such as Bosnia-Herzegovina, Croatia, Hungary, Romania and Bulgaria.

In this respect, the National Bank of Serbia, as the insurance supervisory authority, increased the minimum price by 45% as of 1 July 2014 and announced an increase of the insurance sums for next September. On the one side, both measures are in line with the required programme of harmonization with the European Union legislation while on the other side this would potentially leave more freedom to different players to increase the commission levels.

Several times, the National Bank of Serbia launched activities intended to ensure the strict interpretation of legal provisions but without radically solving the matter, and after a short period of only two to three months, in most cases market behaviour returned to the

Presently, any company acting in full compliance with the law, and the National Bank of Serbia's strict interpretation of it, sees its motor third party liability insurance portfolio collapse with frightening speed. Without a more or less aggressive infringement of the legal provisions, defending one's market share is simply impossible in today's market, , let alone increasing it

The alternative of either losing a very important business portfolio or operating in the grey area of illegality is an unacceptable choice for any foreign investor. An equitable interpretation of the applicable legal provisions as well as their immediate and equal enforcement are indispensable prerequisites for a functioning market, and compliance with the rule of law, the applicable Serbian law and European legal standards.

POSITIVE DEVELOPMENTS

The process of harmonization with the EU regulation in terms of insurance sums has started.

On 20 May 2014 the National Bank of Serbia published the Draft Insurance Law and invited interested parties to take part in the public discussion and submit their respective comments and suggestions within a very short time, i.e. by 3 June 2014.

The latest Draft Insurance Law more closely defines individual and joint business operations of life and non-life insurance companies that have the same shareholders.

REMAINING ISSUES

Insurance Law

In the new text of the Draft Insurance Law, the National Bank of Serbia provides an alternative solution for composite companies, in terms of life and non-life insurance separation, but at the same time it deprives the companies that meet the legal obligation by having separated insurance business to life and non-life insurance of such possibility. Companies that separately conduct life and non-life insurance business should be allowed to merge, if such companies have the same shareholders, i.e. if such shareholders have a controlling share in both companies. In line with the stated companies' merging, it is necessary to include also the provisions setting forth that the National Bank of Serbia will issue a unified license for conducting all lines of insurance business that are applicable to the companies separately.

It will not be possible to properly resolve the issue related to the regulation of insurance contracts by the law that regulates status issues (the Insurance Law). Taking the laws of European countries into consideration, in line with EU guidelines and directives, the insurance activity should be implemented through three different laws: Insurance Supervision Law – ISL, Insurance Contract Law – ICL, and the Law on Insurance Intermediaries and Representatives. While the ISL deals primarily with the relationship between the supervisory body and insurance companies, as well as with status issues, the ICL sets forth the relationship between the insured and insurer, i.e. their respective contractual obligations, and the Law on Insurance Intermediaries and Representatives regulates insurance sales through other licensed persons or tripartite law alternatively.

Distribution

The proposed draft is keeping the old practice with strong restrictions on intermediation and distribution in insurance. Still, in the Draft Insurance Law, for example, leasing companies are not allowed to act as an intermediary.

According to the law, absolute freedom of intermediation is to be limited by precise requirements, set as a standard rules:

1. Registration with and supervision by a competent authority is obligatory (without further limits for natural persons to be registered as sole traders or to be employed in insurance companies)

2. Strict professional requirements
   - Competence (appropriate knowledge and ability)
   - Good repute (clean police record, not declared as bankrupt etc.)
   - Indemnity cover (professional indemnity insurance cover against liability arising from professional negligence)

By setting these strict rules for establishment and operations, both insurance companies and customers are strongly protected on the one side, and on the other side opening "distribution" in accordance with EU standards will allow Serbian market to grow and develop.

Solving of these issues will contribute to financial market stability and will enhance customer protection and trust in insurance.

Motor Third Party Liability insurance market

The most important line of business for the Serbian insurance market is still burdened and characterized by market misbehaviour and illegal practices aimed at remunerating the major distribution channel (technical check-points) in line with the market requirement ranging up to 30/40% of the premium written. This phenomenon is currently limiting the market attractiveness to foreign investors and/or for those already present, limiting their willingness to further invest in Serbia.

FIC RECOMMENDATIONS:

Insurance Law

- It is necessary that the new Insurance Law enable the merging of the companies that separately perform life and non-life insurance business, if such companies have the same shareholders, i.e. if such shareholders have a controlling share in both companies. In line with the stated companies' merging, it is also necessary to include the provisions setting forth that the National Bank of Serbia will issue a unified license for conducting all lines of insurance business that are applicable to the companies separately.

- Adoption of a new set of insurance laws: Insurance Supervision Law – ISL, Insurance Contract Law – ICL and the Law on Insurance Intermediaries and Representatives

Distribution

- The proposed Draft Insurance Law needs to be improved and as a minimum should be aligned with Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation regarding freedom of intermediation in insurance.

- Considering that intermediaries play a central role in the distribution of insurance products, the Law should precisely define insurance mediation. Intermediation should be allowed both to natural and legal persons. Arrangements with insurance companies, both for natural and legal persons, should be commission based.

MTPL

- Create a level playing field in line with European standards by working in two directions:
  - Strengthen the action of the regulatory body to enforce the legal provisions to the entire market with penalties that should be meted out promptly and indiscriminately;
  - Change the regulatory framework leveraging best practises already present in other markets and in line with European Union standards. Possible initiatives being:
- MTPL price liberalization which would immediately favour both the traditional distribution channels (independent outlets) as well as the development of prospective alternatives such as internet and bank outlets.

- Allow insurance companies to perform car registrations on their own business premises.

- Revise the number and timelines of mandatory technical checks for newer vehicles.

Tariff System

- Focus on the monitoring technical reserves that will give all authority to insurance companies to regulate the general conditions of insurance and the transition from the model of tariffs to "underwriting" models in order to stimulate new processes and practices both within insurance companies and the regulator itself.

LEASING

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Iniciranje izmena odredbe Zakona o porezu na dobit preduzeća.	2009		√	
Pokretanje izmene Zakona o porezu na dodatu vrednost, u delu koji se odnosi na oporezivanje kamate.	2009			√
Inicijativa za izmenu člana 62. Zakona o porezu na dobit pravnih lica kao i izmenu člana 6. Pravilnika o poreskom bilansu.	2011		√	
Inicijativa za izmenu odluka o javnim parkiralištima lokalnih samouprava gde bi se u slučaju vozila koja su data u finansijski lizinga predvidelo da se korisnikom javnog parkirališta smatra primalac lizinga.	2011			√
Inicijativa za dopunu člana 10. Zakona o finansijskom lizingu gde bi bilo predviđeno da davalac lizinga može obavljati i poslove zastupanja u osiguranju	2012			√
Da operativni lizing bude regulisan zakonom kao lizing u kome se ne prenose svi rizici i sve koristi na klijenta	2012		√	
Zakon o osiguranju imovine i lica bi trebalo uskladiti sa Zakonom o finansijskom lizingu, u smislu odredbi o pravu regresa Garantnog fonda po isplati štete prouzrokovane prevoznim sredstvom za koje nije bio zaključen ugovor o obaveznom osiguranju, od vlasnika odnosno registrovanog korisnika prevoznog sredstva.	2012			√

CURRENT SITUATION

The development of leasing in Serbia dates back to the beginning of 2003, when the Law on Financial Leasing was adopted. The introduction of this Law enabled the registration of nine leasing companies at first, followed by a very intensive development of leasing activities in Serbia over the next few years, which resulted in the present number of 17 leasing companies. The leasing companies currently operating in Serbia are mainly affiliates of distinguished financial institutions, leaders in the banking and finance markets in Central and South-East Europe. These groups have applied their knowledge and high corporate business standards to the Serbian market as well.

During the last three years the leasing market was stable, and the value of leasing contracts showed an upward trend again. This fact indicates a recovery of the leasing market, with a positive effect on future tendencies. All system changes affecting the development of leasing as a form of financing (allowed funding of the real estate business, the abolition of the minimum term for the conclusion of leasing contracts, as well as an absence of a minimum deposit), made leasing a serious competitor to other available sources of funding on the market. Further improvements in the field of leasing development are still necessary, in spite of these positive changes, taking into account the fact that leasing is a very important source of mid-term and long-term funding, because it is an economically efficient solution for the procurement of funds required for business by corporate companies. International data at European level suggest that this is especially the case with funding small and medium enterprises. The initiation of and continued efforts to adopt changes within the framework of the leasing industry would contribute to the additional gain of current values with the national and international business entities.

POSITIVE DEVELOPMENTS

The following was done over the course of 2013:

- In line with Article 48 of the Law on Corporate Income Tax (CIT Law), effective until 31 December 2013, the right to claim tax credit on the leased asset was denied to both the leasing company (in total) and lessee (except for the portion of investment made in the last year of the finance lease contract, which qualifies for a tax credit). Consequently, acquisition of fixed assets under a financial lease contract was a less appealing alternative than, for example, financing asset acquisition through a loan contract.

For years, leasing companies advocated for the elimination of this discriminatory provision, proposing amendments to the CIT Law to allow the utilization of tax credit regardless of the type of financing. However, the tax credit provided by Article 48 of the CIT Law was abolished as of 1 January 2014, without any public consultations. After the abolishment of the tax credit, leasing companies can now offer their services on the same level playing field as other sources of financing, however, a tax credit for all investments, regardless of the type of financing would have been the preferred solution for the leasing industry.

- Amendments to CIT Law, (Official Gazette of the RS No 119/2012), introduced a methodology according to which, in case of a debt to a creditor having the status of a related entity, the amount of interest and pertinent fees are recognized as expenditures in the taxpayer's tax balance sheet, namely as credit received from the related entity in the amount equalling ten times the value of the taxpayer's own capital (debt/equity ratio 10:1). This is an improvement, as until 2012 the maximum tax-deductible interest between related parties was based on a debt/equity ratio of 4:1. This means that leasing companies get equal tax treatment as banks.

REMAINING ISSUES

The Law on Value-Added Tax should be amended where it concerns interest taxation. The tax treatment of interest in financial leasing should be equalized with the tax treatment of interest in the banking sector. For this reason, we propose abolishing VAT on the part of the leasing fee related to interest.

The decisions on public car parks of local government should be amended where the lessee would be considered as the user of the public car park in the case of leased vehicles. According to the decisions on public car parks in the cities and municipalities in Serbia, users of public car parks are mainly the drivers or owners of a vehicle, if drivers are not identified. Those decisions further envisage that user of public car parks who violate the provisions of these decisions by not paying the parking fee are obliged to pay a fine. In case of leased vehicles, decisions on public car parks do not take into account financial leasing transactions and thus fines are sent to leasing companies, even though these vehicles are used by the lessees. According to the Law on Financial Leasing, Article 2, financial leasing is defined as a financial transaction performed by the lessor, and entails that the lessor, by keeping the ownership rights over the leased asset, transfers the authority of keeping and using the leased asset to the lessee for a certain period of time, along with all the risks and benefits related to the ownership right. On the other hand, according to the Law on Road Traffic Safety, Article 316, paragraph 1, if a motor vehicle or a trailer vehicle is the subject of a finance lease, lease contract, or business and technical co-operation arrangement, and the respective information has been recorded in the registration card, the provisions of the owner's tort liability stipulated by this Law will be congruently applied to the person operating the vehicle under the conditions stated above. Hence, the aforementioned decisions are clearly not in line with the primary legislation of the Republic of Serbia, i.e. the laws regulating financial leasing, otherwise they would have envisaged a special rule for vehicles provided by way of financial leasing, designating the lessee as the user of the public car parks. Had this been envisaged, the decisions on public car parks throughout Serbia would have been in accordance with the substantive content of laws regulating financial leasing and in line with the legal system of the Republic of Serbia. Furthermore, leasing companies would not have been burdened by a large number of court proceedings conducted against them for the collection of fines based on decisions of local governments, which are not in accordance with the legal system of the Republic of Serbia;

Article 10 of the Law on Financial Leasing should be amended to enable a lessor to act as an intermediary in insurance operations. Leasing companies should be allowed to act as intermediaries in insurance operations, like commercial banks, since under amendments to the Law on Financial Leasing the operation of leasing companies is adjusted to commercial banks in terms of management bodies and risk monitoring and measurement, risk management, and internal control system. Moreover, leasing companies have business links with insurance companies, since most leasing companies envisage compulsory Casco insurance of the leased vehicle with an insurance company as a necessary condition for the conclusion of a Financial Lease Contract. By enabling leasing companies to act as intermediaries in insurance operations, their work with clients would be facilitated in a way that the entire documentation for the approval of financial leasing and issuance of an insurance policy could be completed in one place, on the leasing company's premises, at the time of signing a Financial Lease Contract. Moreover, leasing com-

panies could then expand their operations, in an environment that would provide them with stability at a time of global economic crisis, based on the potential profit from insurance mediation.

Operating leasing should be regulated by law, in other words, financial leasing companies should also be given the possibility to provide operating leasing services according to International Accounting Standards 17 (IAS) and Rulebook on criteria for determining when a delivery of goods under a lease contract or rental contract is considered as a sale of goods (Article 4, paragraph 3, item 2a of the Law on Value Added Tax, Official Gazette of RS No 84/04 – correction, 61/05, 61/07 and 93/12).

The reasons are the following:

- Operating leasing accounts for 11 % of total leasing services provided by leasing companies operating in Serbia. It is a financial product (off-balance sheet financing), present everywhere in the world as an alternative way to procure and use fixed assets. Due to its off-balance nature, it is highly sought by companies. Individuals often choose operating leasing due to the absence of legal limitations on the debt level, though there are internal rules of leasing companies pertaining to debt level;

- The regulation of operating leasing creates a safer and more transparent business environment. In operating leasing, there are significant obligations on the part of companies and individuals. The current situation leads to ambiguity and uncertainty of the treatment of this product both for clients and leasing companies. The application of International Accounting Standards 17 (IAS 17) and the presentation of financial statements on both sides is unclear, making the business environment uncertain because these ambiguities are used for early budget revenues, even though the time in question should be the time when VAT is due to be paid, since the total obligation is undisputed. The Rulebook on criteria for determining when a delivery of goods under a leasing -or rental contract is considered as a sale of goods is welcomed by the leasing industry in Serbia because it has cleared some taxation concerns regarding the differentiation of financial and operating leasing transactions, although it did not provide a comprehensive solution for conducting operating leasing business in Serbia;

- By extending the jurisdictions of the National Bank of Serbia (NBS) to this type of leasing as well, one part of the financial flow would be included in the NBS surveillance and control, which would lead to even greater safety of the financial system. The NBS has long considered that operating leasing is a consequence of stiff limitations that apply to financial leasing (primarily to individuals). The regulation of operating leasing could result in the equalization of the rules for both types of leasing;

- Operating leasing is currently offered through an inappropriate form of leasing. Operating leasing is much closer to financial leasing than to classic leasing. The separation of operating from financial leasing according to accounting standards is done based on eight criteria, which best shows how similar these products are;

- The importance of better regulation of operating leasing worldwide has been recognized and thus international accounting bodies have prepared the draft changes of IAS 17 directed at the presentation of total operating leasing in the financial statements of clients (abolition of off-balance). This is the best evidence that operating risk is a financial product. The competent institutions in Serbia will probably be interested in regulating and supervising it after this change of accounting standards takes effect;

- Operating leasing should be defined as a type leasing in which all risks and benefits are transferred to the client. This basic principle of differentiation between financial and operating leasing can be tested based on IAS 17 criteria. As the latter are descriptive, it is important to additionally specify and quantify them. Most importantly, the maximum allowed level (in percentages) of repayment of the initial value of the leased asset during the contract period should be defined, as well as the maximum length of the leasing contract in relation to the economic lifecycle of the leased asset.

The Insurance Law should be harmonized with the Law on Financial Leasing. The 1996 Insurance Law stipulated the obligation of insurance companies to establish a Guarantee Fund with their contributions. Its funds would be used, among other things, for the compensation of damages caused by a motor vehicle, aircraft, or other means of transportation for which the contract on compulsory insurance was not concluded. The same Law defined that the Guarantee Fund of the Association of Serbian Insurers has the right to recourse, upon payment of the compensation of

damage by the owner of the means of transportation for the paid amount of damage, interest, and costs.

Seven years after the Insurance Law was passed, the Law on Financial Leasing came into force and it defined the financial leasing and financial mediation activities conducted by the lessor. The Law on Financial Leasing implies that the lessor, retains ownership rights to the leased asset, while transferring the right to keep and use the leased asset to the lessee, along with all ownership-related risks and benefits over a certain period of time, and in return, the lessee pays a leasing fee. Also, according to the same Law, the lessee is responsible for damages caused by using the leased asset contrary to the agreement or intended use of the leased asset, regardless of whether the leased asset was used by him, or a person acting upon his order, or any other person whom he allowed to use the leased asset;

However, the Insurance Law was not aligned with the Law on Financial Leasing, which introduced a completely new legal transaction into the legal system of the Republic of Serbia, which, according to the definition of the rules of responsibility for the use of the leased asset, is in conflict with the existing rule on the Guarantee Fund's right to pursue recourse against the owner of the means of transportation. The fact that the lessor is not in a position to affect the behaviour of the lessee or other parties using the leased asset and to prevent the use of the means of transportation in traffic without stipulating an agreement on compulsory insurance, as long as the lessee is in possession of the leased asset , has been completely neglected;

In the current situation, leasing companies face recourse requests by the Guarantee Fund of the Association of Serbian Insurers, which they can reject by referring to the Law on Financial Leasing. On the other hand, despite understanding the essence of the dispute, the Guarantee Fund has no legal possibility to subrogate against any other person apart from the owner and possibly the driver of the means of transportation, on the grounds of personal liability of the person who caused the damage.

Initiate amendments to the Law on Incentives for Agriculture and Rural Development (Official Gazette of RS No 10/13), with the objective to include leasing financing within this agricultural incentives programme.

The Rulebook on the terms and conditions for providing support through loans, (Official Gazette of RS No 30/14),was adopted based on the aforesaid Law ,defining the types and usage of the incentives. Article 14 of the aforesaid Law defines support through loans as the disbursement of direct payments: "Support through loans is a type of incentive that provides facilitated access to loans for agricultural households." Considering that leasing is also a type of financing, it should be included in the Government's incentives programmes, in order to improve market competitiveness and provide favourable financing sources to agricultural households.

We are launching an initiative for amendments to the Law on Incentives for Agriculture and Rural Development, (Official Gazette of RS No 10/13). Specifically, in Article 14, para. 1, item 4, the wording "support through loans" should be amended to read "support through financing". Article 14, paragraph 5 should be amended to read: "Support through financing is a type of incentive that provides facilitated access to loans and finance leasing for agricultural households". Article 32 should be changed and should read: "Legal entities, sole traders or individuals – bearer of a registered commercial family agricultural household shall be entitled to support for financing. The Minister shall specify the conditions and rights during financing support."

FIC RECOMMENDATIONS

The following recommendations would facilitate the recovery of the leasing market in Serbia:

- Initiation of amendments to the Law on Value-Added Tax concerning interest taxation.
- Initiation of amendments to the decisions on public car parks of local governments, wherein the lessee would be considered as the user of a public car park in the case of leased vehicles.

- Initiation of amendments to Article 10 of the Law on Financial Leasing whereby the lessor could act as an intermediary in insurance operations.
- Financial leasing companies should also be given the possibility to conduct operating leasing according to IAS 17 and the Rulebook on criteria for determining when a delivery of goods based on a lease or rental contract is considered as a sale of goods.
- The Insurance Law should be harmonized with the Law on Financial Leasing in terms of provisions on the right of the Guarantee Fund to seek recourse upon payment of damages caused by a means of transport for which the contract on compulsory insurance was not concluded, from the owner i.e. registered user of the means of transport.
- Initiate amendments to the Law on Incentives for Agriculture and Rural Development with the objective to include leasing financing within this agricultural incentives programme.

OIL AND GAS INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The legislator should establish a clear legal framework to ensure further liberalisation of the crude oil and petroleum products market (fuel quality, required storage capacities, equal opportunities for importers and domestic producers), and to prevent any market participant from using a dominant position in retail and wholesale pricing and thus affecting the operations of other companies in the oil and gas sector ("margin squeeze").	2013		√	
The legislator should ensure consistency in respect of compliance with strategic documents and coordinate the national strategy related to the oil and petroleum products sector with tax policy and amendments to tax laws.	2013		√	
The legislator should establish a clear legal framework for the area of fire protection and construction of energy infrastructure and facilities.	2013		√	
Improve monitoring of petroleum products as well as the related legal framework, by adopting relevant regulations under the competence of the line ministries, and improve the efficiency of control institutions in view of preventing illegal market activities.	2013		√	
Prior to the adoption of regulations in the relevant field, a dialogue should be initiated with the companies in the oil and gas sector since the FIC supports open and transparent dialogue between the legislator and representatives of the sector.	2013		√	

CURRENT SITUATION

The oil and gas sector achieved substantial growth in 2013, despite poor macroeconomic indicators. Further growth is expected in the year 2014, owing to continuous investments and the resulting quality improvement and availability of products, as well as to the country's economic recovery.

Some progress was made in 2013 in overcoming previously identified difficulties in the area of fire protection and construction of energy infrastructure and facilities, and in regulating the petroleum products market control. However, problems related to the direct enforcement of petroleum products market control by competent institutions increased due to insufficient operative and financial capacities of the market inspection and other controlling bodies, and lenient penalties for illegal trade in petroleum products.

The continuous monitoring of compliance with the allocated energy licences, after the initial allocation of licences, has not been adequately regulated by the Energy Law. When they obtain their energy license, business entities are compliant with the required terms, but licenses are issued for a ten-year period. Therefore, it is necessary to continue proactively monitoring compliance with the allocated energy licenses thereafter and to enforce legal provisions stipulating the repossession of licenses in cases when the terms are no longer met.

It should be emphasized that the unintended consumption of fuel oil as motor fuel, and its blending with Euro diesel were reduced to a great extent with the introduction of excises on fuel oil in 2012, which directly increased the amount of collected public revenues and improved the overall quality of diesel fuel sold on the territory of Republic of Serbia in 2013. Nevertheless, the previous period saw a considerable increase in imports of base oils, for which excise tax had not

been stipulated. Estimated quantities of legitimate and justified base oil consumption in the country are around 20,000 tons per year, while in 2013 imported quantities reached 68,000 tons. This means that almost 50,000 tons of base oil was not used in production as intended, but rather in an inappropriate manner, i.e. it was illegally blended with Euro diesel and sold as motor fuel at the retail price of Euro diesel, without payment of excise tax.

Cases of petroleum products sale outside retail facilities as well as deliveries of petroleum products to buyers' addresses, or other agreed locations, were registered, which is in contradiction with the Rulebook on Minimum Technical Requirements for Trading in Oil and Biofuels.

POSITIVE DEVELOPMENTS

In 2013, the Regulation on the Marking of Petroleum Products was adopted. This by-law introduced the regulation and monitoring of petroleum product market trends through fuel marking upon its first dispatch to the market, be it from manufacturing plants or from retail facilities in case of import. Fuel marking enables the market inspection to determine whether petroleum products contain appropriate concentrations of markers or not, i.e., whether the products are being sold in compliance with regulations, or they have been blended with other fluids, or illegally imported and sold on the Serbian market. However, it should also be said that until now there have been no major inspections of marker concentration in petroleum products on the market and that results are still being expected.

Many by-laws were adopted in relation to fire prevention and construction of energy infrastructure and facilities, which resolved a number of problems faced by the oil and gas sector players. The most significant one was the Regulation on Technical Requirements for Safety from Fire and Explosions on Liquid Fuel Supply Stations for Ships and Technical Vessels, adopted at the end of 2013. This Regulation stipulates fire prevention measures in facilities and terminals within ports and docks selling fuel to vessels. It is significant because there were no previous regulations governing the construction, reconstruction and operation of facilities supplying floating vessels with fuel. With the adoption of this Regulation, risks to people, assets and the environment have been considerably reduced, and new investments in this field have been supported.

REMAINING ISSUES

The scale of public bodies' activities aimed to fight grey market activities is still inadequate.

Import of base oils has continued even in 2014. A new problem of fuel oil sale instead of gas oil 0.1 has been noted, as well as transport and delivery of petroleum products outside retail spots.

There has been no legislative activity in the area of explosive and other hazardous substances production and trading, or in the area of storing of hazardous substances, flammable fluids and gasses.

FIC RECOMMENDATIONS

- As an urgent measure, it is necessary to strengthen control of import of all petroleum products, especially base oils and fuel oil. In addition, with the aim of preventing illegal use of petroleum products, it is necessary to also strengthen control of committed consumption of those products by strict controls of marker concentrations, prohibition sale of fuel oil on petrol stations beyond heating season and introduce excise tax on base oils.
- Intensify struggle against the grey market:
  - Fulfil all plans in terms of the number of marker inspections of petroleum goods at annual level;
  - Increase work of inspection bodies, both qualitatively and quantitatively;
  - Expand competences and measures available to these bodies in cases of illegal trade;
  - Increase legal penalties for illegal business activity;
  - Improve coordination of bodies in charge of market control.
- As a long-term measure, it is necessary to amend the Energy Law in order to introduce the monitoring of fulfilment of terms for possessing a licence for trading with oil and petroleum products.

- In addition to the proposed amendments to the Energy Law, it is vital to pass the Law on Explosive Substances, with accompanying by-laws, which would define activities in the area of production of and trade in explosives and other hazardous substances, as well as the Law on Flammable Fluids and Gasses with the accompanying by-laws aimed at improving the definition of methods for storing hazardous substances, flammable fluids and gasses.
- Continue with enforcement of recommendations from the year 2013, with special attention towards activities that are aimed at fighting the grey economy.

PHARMACEUTICALS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Legal framework needs to be completed and aligned with EU regulations; transparency and predictability, as well as procedural fairness are fundamental prerequisites for sustainability of pharmaceutical industry in Serbia.	2013			√
Serbian Government should ensure predictable decision making process with clear timelines, including transparent consultative process with industry representatives.	2013			√
Serbia's health budget needs to be financially consolidated and more transparent, in order to bring business predictability and security of investment in the healthcare and pharmaceutical sector.	2013			√
Either through the amendments to the Law on taking over the obligation of healthcare institutions toward wholesalers for the delivered drugs and for turning these commitments into public debt, or by the Act of the ministry of finance, wholesalers' pledged claims need to be treated as the public debt and as such regularly paid.	2013			√
It is necessary to equalize the tariff rates for drugs and raw materials for the production of drugs.	2013			√
Speed up the administrative approval of customs quota for raw materials that are not produced in Serbia.	2013			√
Equalize the VAT rate for raw materials used for the production of drugs with the VAT rate for drugs.	2013			√
Synchronize payment terms in the whole chain of drug supply (manufacturer-wholesaler-pharmacy) with the payment terms specified by RFZO (150 days in 2013, 120 days in 2014. and 90 days from 01.01.2015) by amending the Law on the terms of settlement of financial obligations in commercial transactions.	2013			√
Abolish control labels on the drug's outer packaging, as it is unnecessary cost for the industry and does not adequately protects from forgery.	2013			√
Abolish the provision that the costs of managing and exporting of pharmaceutical waste collected from citizens is covered by the drug manufacturers based on its share in total sales of drugs in Republic of Serbia.	2013			√
Practice of determining upper limit for wholesale prices should be abandoned, since Government already determines prices of prescription medicines. Limiting wholesales price does not contribute to the development of a free market and competition but prevents market entrance for drugs that cannot meet proclaimed upper limit; it is also artificial barrier delaying market entrance for drugs that already have MA.	2013			√
The ordinance on price calculation of drugs for human use should be issued at least quarterly, or automatically whenever there is 3% difference between official exchange rate and the one from the current Ordinance.	2013			√
The pricing and reimbursement process needs to be transparent, with clear rules, obligatory explanation of the final decision and right to appeal; relevant patient organizations should be included in the reimbursement decision making process.	2013			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Added value of health innovations needs to be recognized, as a prerequisite for achieving highest quality of public health; better and faster access to innovative therapy is needed, especially for groups of patient in utmost need. The local drug producers and drug importers have the same goals - to obtain the best therapy for the patients in Serbia:	2013			√
Expand the group of drugs that can be dispensed without a doctor's prescription, and remove them from Reimbursement list.	2013			√

CURRENT SITUATION

The production of medicinal products is one of the most important industries globally, not only from the point of view of economic activity but also of its impact on the health of the population. The pharmaceutical sector is important for the Serbian economy (over 7,000 employees; medicines exports amounted to EUR 180 million in 2012; the state collected over EUR 50 million in revenues from different taxes, contributions, custom duties, and other applicable fees). The pharmaceutical sector is a trustworthy partner of the health system in Serbia considering that it ensures the regular supply of all necessary medicines.

Serbia's social and health insurance system is based on the so called Bismarck model, i.e. it relies on mandatory contributions towards health insurance, according to the principle of solidarity and equality. Most hospitals and health institutions are state owned, while the National Health Insurance Fund (NHIF) functions as a state agency for the collection of contributions used for funding public health care rather than a modern health insurance institution. The NHIF is completely dependent on external authority – the Government of the Republic of Serbia. It derives its main income from employees' payroll contributions and transfers from the Pension and Disability Insurance Fund (PIO) for retirees' health insurance. According to data of the Medicines and Medical Devices Agency of Serbia (ALIMS), in 2012 the expenditures for medicines in Serbia amounted to EUR 742 million, i.e. EUR 95 per capita, which is considerably lower compared to the surrounding countries (for example Croatia, Bulgaria, Romania). For several years now, the NHIF budget for medicines has ranged from EUR 350 to EUR 370 million, which means that the state spends only EUR 50 per capita for pharmaceutical health care.

The manufacturing and distribution of medicines in Serbia are regulated by the Law on Medicines and Medical Devices, and also by a number of other laws governing different aspects of the manufacturing and distribution of medicines. These are the Law on Patents, the Law on Health Care (sanitary control, safety of dietary supplements, etc.), the Law on Health Insurance (solidarity in financing health care, defining insurance rights ...), the Law on Domestic and Foreign trade (with elaborate anti-monopoly measures), the Law on Environmental Protection, the Law on Waste Management and other environmental legislation. There is also a set of financial laws that applies to legal entities engaging in trade in goods and services.

Nevertheless, a cause of special concern is the legal framework, which is underdeveloped and non-compliant with EU legislation in many important aspects, causing great uncertainty in the health sector and allowing non-transparent procedures on different levels, including the Government and the NHIF decision-making level. There are no deadlines in place for several important decisions, while the existing deadlines are often too long and are usually not adhered to.

The pharmaceutical industry is seldom, and in most cases only declaratively, included in a small segment of the decision-making process, without being given the opportunity to fully contribute or enable the transfer of experience from other markets. As a result, regulations are often unsustainable and impossible to implement in practice. At the same time, patients' associations are marginalized and have no influence on decisions concerning the medicines to be included on the so-called reimbursement list.

POSITIVE DEVELOPMENTS

Since the publishing of WB2013, there were no improvements of the overall situation in the pharmaceutical sector. With the appointment of the new Minister of Health, a constructive dialogue with the representatives of the phar-

maceutical sector was resumed but it is still too early for a more valid assessment.

REMAINING ISSUES

Illiquidity of the pharmaceutical sector

All segments of the pharmaceutical sector are deficient in liquid assets. The key generator of illiquidity is the state that fails to pay real expenses for the uninsured persons (estimated at approximately EUR 60 million annually). Companies in the restructuring or privatization process were "absolved" by the state from the payment of their debt for years of unpaid health insurance contributions (estimated at over RSD 120 billion). Moreover, in May 2014 the state decreased compulsory health insurance contributions rate from 12.3% to 10.3% (Official Gazette of RS No 57/2014), thus reducing the revenues of the NHIF by EUR 350 million on an annual level. The NHIF additionally contributes to the illiquidity, as the funds that it allocates to pharmacies and hospitals are much lower than their real expenditures for medicines, forcing them to either not pay wholesalers or extend payment deadlines. Another generator of illiquidity is a number of wholesalers, some of whom are bankrupt, that owe local manufacturers for the medicines delivered. Pharmaceutical companies that have fully exhausted their internal reserves are at the end of this chain of debtors and creditors.

The inconsistent application of the Law on takeover of arrears owed by health institutions to wholesalers for the supply of medicines and conversion of these arrears into the public debt of the Republic of Serbia (Official Gazette of RS No 119/12) has caused legal insecurity. Relevant ministries have different interpretations of the Law, especially in its part related to the wholesalers' pledged claims. Additional confusion is caused by different interpretations of the time frame in which the claims arose and were converted into public debt. Although the Law foresees that the public debt includes claims that arose in 2012, in some interpretations of the Ministry of Finance there is a tendency to include claims from the previous years into the public debt.

Taxes and costs of doing business

In accordance with the general trend of liberalization of foreign trade in multilateral Serbia's relations with the EU (Stabilisation and Association Agreement), WTO, CEFTA, EFTA and bilateral relations through the Free Trade Agreement (FTA) with Russia, Belorussia, Kazakhstan and Turkey, Serbia's customs policy does not prescribe protective customs duties for imported finished products. The same principle should apply to raw materials (currently, custom duties range from 1% to 5% depending on the tariff number, on average 3.5%). Also, the approval of customs quotas even for products which are clearly not manufactured in the Republic of Serbia is burdened by bureaucracy and very slow.

The Law on Payment Deadlines in Commercial Transactions (Official Gazette of RS No 119/2012) contributed to the unequal treatment of local manufacturers and importers, as the local manufacturers are required to collect payment for medicines from the wholesaler within 60 days, while this provision does not apply to importers (who offer longer payment terms of up to 210 days or more to wholesalers).

Of particular concern is the regulatory standards applied at national level are not compliant with global and European standards and are only creating additional expenses for the industry. One example is the control label on the outer packaging of medicines, introduced in 2011 in an attempt to efficiently prevent forgeries. Another example is the draft Law on Waste Management, which foresees that the expenses of managing and exporting pharmaceutical waste collected from citizens by pharmacies are to be borne by the manufacturer, proportionally to its share in the total revenues from medicines sales in the Republic of Serbia.

"Duality" of medicines prices

Prices of medicines are under strict administrative control and the pricing process is long, non-transparent and includes double pricing policy:

- According to Article 58 of the Law on Medicines, after the marketing authorization is obtained from ALIMS, the Government, in agreement with the Ministry of Health and the Ministry of Trade, determines the maximum wholesale price of the medicines. The medicines cannot be placed on the market before this decision is taken. Since this is a decision of the Government, as the holder of executive power, and not an administrative act, there is no time frame for reaching this decision. Therefore, there is no deadline for acting upon submitted requests. As a result, in the past we had a case when more than 500 medicines with marketing authorization waited 18 months for the Government to approve the maximum wholesale price, and during that time they could not be placed on the market. Article 58 of the Law on Medicines foresees an exception to the rule stipulating that the decision can be made by the Minister of Health alone, at the request

of the marketing authorization holder, in case of urgent need for the medicines, i.e. for the protection of public interest and prevention of damaging consequences on the life and health of patients or groups of patients. Such widely set criteria leave ample space for different interpretations and therefore for potential abuse by the relevant authorities. Moreover, there are indications that this exception to the rule was used to approve prices of certain medicines in a non-transparent way in the previous period. An additional problem is that the maximum wholesale prices are determined based on the ratio of the national currency and the Euro which is from time to time published in the Regulation on criteria for pricing of medicines for human use. Nevertheless, no deadlines are foreseen for issuing the Regulation, even when the official EUR-national currency exchange rate is significantly fluctuating. Therefore, in 2012, pharmaceutical companies suffered losses ranging up to 20% of their total turnover because of the difference between the official exchange rate of the National Bank of Serbia and the exchange rate from the Regulation, until the new Regulation was published in November 2012. We have the same situation again in 2013/2014 because, at the moment, the parity from May 2013 of RSD 111.0098 for EUR 1 is used for calculating the prices of medicines, causing pharmaceutical companies to loose several million EUR merely due to exchange rate differences.

As of September 2014, once again, the Government of the Republic of Serbia has been trying to include Romania as a fourth reference country for determining the maximum price of medicines, not taking into account that the two health systems, supply systems, number of citizens and other important characteristics exclude Romania as a reference country for Serbia. The previous attempt was made in mid-2013 and was rejected at the explicit request and upon presenting adequate arguments of the whole pharmaceutical industry.

- Only once the Government has reached a decision on the maximum wholesale price of a medicine, can the marketing authorization holder submit the application to include the medicine on the List of Medicines prescribed and dispensed at the expense of compulsory health insurance funds (the so called reimbursement list). Nevertheless, the law prescribes that when including a medicine on the reimbursement list, the price of that medicine is determined once again, this time by the NHIF, based on the prices in reference countries (Italy, Slovenia and Croatia), and on prices of medicines already included in the List of Medicines. Thus, every medicine on the reimbursement list goes through the administrative procedure of determining the price twice, which not only increases the expenses for the marketing authorization holder, but also prolongs the waiting time before the medicine is made available to the insured in the Republic of Serbia. With the proposal of the Rulebook on the List of Medicines from April 2014, NHIF tried to retroactively reduce the prices of medicines by up to 50%. This decision was taken and published in the middle of the business year without any consultations with pharmaceutical companies. This type of decision-making influences the predictability of doing business in Serbia and can result in the termination of the production of certain medicines and a number of pharmaceutical companies leaving Serbia.

- List of Medicines
  Article 30 of the Rulebook on criteria for inclusion in the List of Medicines from April 2014 foresees that the difference in the price between original and generic A list medicines with the same or similar pharmaceutical properties and the same strength may not exceed 30%. The availability of medicines is thus limited, above all of original and branded generic medicines that often cannot fit into such limited prices and therefore cannot be on the list of medicines.

Lack of transparency in the process of including medicines on the reimbursement list

Even though the new Rulebook was published in April 2014, the criteria for including and excluding medicines from the reimbursement list are still not transparent. Nevertheless, there are certain improvements of the transparency in the work of the central medicinal products commission whose session agendas are published on the NHIF site. In August 2014, the NHIF introduced an online application process which allows the follow-up of the status of submitted requests and the new Rulebook introduced deadlines for the NHIF to resolve request. The NHIF is still not required to forward the decision of the competent bodies to the applicant for the inclusion of a medicine on the reimbursement list, while the right to appeal the decision is limited to the possibility of starting an administrative procedure before the Constitutional Court.

Administrative procedures and marketing authorization

The state administration is slow in issuing different per-

mits, decisions, import approvals, traffic, distribution of raw materials and finished products, often with lack of coordination and communication between the line ministries, the Medicines and Medical Devices Agency of Serbia (ALIMS), the NHIF and other state institutions.

According to the current legislation, the first condition for placing a medicinal product on the market is the issuing of a marketing authorization by ALIMS. The law foresees that this procedure must be completed in 30+30+210 days, with the possibility of an accelerated procedure and a deadline of 30+150 days for medicinal products registered in the EU through the so-called centralized procedure. In practice, not even the unnecessarily long deadlines are adhered to and the waiting time for licensing is longer than a year, on average.

According to the Law on Controlled Psychoactive Substances (Official Gazette of RS No 99/2010), the deadline for issuing export licenses for products that contain narcotic substances, (control samples, finished and semi-finished products), is 90 days. Considering that this concerns exports of finished products whose placement on the market is regulated by purchase contracts with strict, time-bound delivery, such long licensing deadlines often result in local pharmaceutical companies paying penalties for exceeding the delivery deadline. This is often the case with products acquired through tender procedures. Export licensing deadlines are considerably shorter in the region, (8 days in Bosnia and Herzegovina and Croatia, and 15 days in Macedonia and Montenegro).

List of OTC products

Medicines that can be dispensed without a prescription and are paid by patients (so-called Over-the-Counter, or OTC products), considerably reduce the burden on the health budget. This, combined with the decrease of the number of physician office visits, results in double savings for the state. The list of OTC products in Serbia is not harmonized with similar lists in the EU, which contain a much larger number of medicines.

FIC RECOMMENDATIONS

- The legal framework must be completed and harmonized with EU legislation; transparency and predictability of business and legal security are the basic prerequisites for the sustainable functioning of the pharmaceutical industry in Serbia.
- The competition on the health services and health insurance market must be improved by equalizing the state and private sector.
- 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.
- Serbia's health budget must be financially consolidated and made more transparent to increase business predictability and safety of investment in the health and pharmaceutical sector.
- Pledges that the manufacturers have logged into the Register of Pledges should be treated as a part of public debt and duly paid, and this should be regulated through amendments to the law and the opinions of the Ministry of Finance.
- Equalize the customs fees for finished medicinal products and raw materials for medicines production.
- The same tax treatment should be provided for the whole pharmaceutical sector in the field of import of finished products and raw materials.
- Accelerate administrative approval of customs quotas for raw materials not manufactured in the Republic of Serbia.

- Adjust the VAT rate for raw materials to the level applied to finished medicinal products.
- Abolish VAT on donations of medicines and medical devices to health institutions.
- Harmonize the payment dynamic and deadlines across the whole medicines supply chain (manufacturer-wholesaler-pharmacy), with payment deadlines prescribed for the NHIF (150 days in 2013, 120 days in 2014 and 90 days from 1 January 2015) through amendments to the Law on Payment Deadlines in Commercial Transactions.
- Abolish outer packaging control labeling of medicines as an unnecessary expense for the industry, as it is merely an illusion that it can effectively protect against forgeries.
- Annul the provisions stipulating that the expenses of waste management i.e. export of pharmaceutical waste collected from the population are borne by the pharmaceutical companies proportionally to the share of the company in the total turnover of medicines in the Republic of Serbia.
- Abolish the practice of determining medicines' maximum wholesale price considering that the Government already determines the price of medicines on the reimbursement list. Limiting medicines' wholesale prices does not contribute to the development of a free market and competition, but prevents the entry into the market of medicines that cannot fit into a determined price range. It is an administrative barrier which postpones the entry of medicines that already have a marketing authorization.
- The Rulebook on criteria for forming the prices of medicines for human use should be adopted every three months level automatically whenever the difference between the official exchange rate of the National Bank of Serbia and the exchange rate from the valid Rulebook exceeds 3%. Besides, for determining the price of medicines on the C list, the NHIF should use the same exchange rate and the same model of calculation as for medicines on the A, A1 and B lists.
- 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.
- Through the dialogue with all interested parties, find one or several adequate reference countries for determining the maximum price of medicines considering that Romania is an inadequate choice of reference country.
- It is necessary to continue improving the process of determining the price of medicines and including them in the reimbursement list. This process should be transparent, with clear rules, mandatory rationale of the final decision and right to appeal; relevant patients' associations should be involved in making decisions on the medicines to be included on the reimbursement list.
- The added value of innovations in the health sector should be recognized as it is the basis for accomplishing the highest quality of public health and reducing the expenses of treatment; access to innovative therapies needs to be better and faster, especially for groups of patients most in need of those medicines. Local and foreign pharmaceutical companies have the same goal – to provide the best possible therapy to all patients in Serbia.
- Expand groups of medicines that can be issued without prescription while at the same time excluding those medicines from the reimbursement list. Reduce deadlines for issuing licenses for manufacturing and traffic of psychoactive substances in the Republic of Serbia and harmonize them with the regulatory practices in the region. This will strengthen the competitiveness of local pharmaceutical companies and boost exports.

PRIVATE SECURITY INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continue with the monitoring of the preparation process for the introduction of the Law on Private Security, while continuously insisting that the Law should be harmonised with the European models of legislation as far as possible, but also adjusted to local specific features; licensing of the companies should be handled by the Government (Ministry of Interior) or a government agency in order to avoid monopolisation of this sector and a conflict of interests.	2009	√		
The goal of Law adoption is legislative regulation, but not a taxation of the security industry; therefore, the principle of economy must be taken into account, which means having reasonable costs that would certainly, at the end of the process, be borne by the recipient of security services.	2011			√
During the implementation of the Law, it is necessary to carry out a pragmatic legislation of the security industry, meaning that it is necessary to set a reasonable time schedule and deadline for the training and licensing of security officers and companies.	2011			√
The Law must ensure equality for all participants in the market; the Law must not include possible discriminatory elements or special privileges for entities attempting to obtain particular prerogatives through the Law, such as the Accreditation Body of Serbia, the Institute for Standardisation of Serbia, the Chamber of Commerce, associations, because such a solution – besides representing a conflict of interests – results in new dilemmas, such as internalisation vs. localisation.	2011		√	
National standards are not to be imposed on economic operators because it certainly leads to the localisation of the industry; the market and enterprises must not be misled into believing that those standards are mandatory, especially when it comes to tender procedures, where the emphasis should be on the bidders proving the legality of their business.	2010		√	
The Government should encourage close co-operation between security sector stakeholders (both public and private sectors), while consulting large private security investors that can present their experiences and best practices from other EU countries where they operate, in order to create a stimulating environment for further investment. Investors are willing to invest in Serbia in the development of security industry, which will be able to export security services and workforce in the forthcoming years.	2009		√	

CURRENT SITUATION

Serbia's private security sector employs over 30,000 people and has over 150 active security companies, and after a long period of being the only country in the region and in Europe without a Law to regulate this sector of the economy, at the end of 2013 Serbia finally passed a Law on Private Security. The adoption of the Law is the key but not the only step towards the regulation and proper functioning of the private security industry in Republic of Serbia.

The lack of by-laws, expected in forthcoming period, is causing serious problems in the functioning of this market, still making it an active source of corruption. The Government will be licensing security companies, and with security industry criteria in place, not everyone will be able to set up and run a security company, also, security officers will have to be licenced, and there will be pre-employment

screening and vetting as well. However, security companies will still not be required to have insurance coverage for professional liability. The Law prescribes mandatory training and education programmes of security officers.

The Government is one of the biggest users of private security services; yet, it holds a contradictory position with regard to public procurement of security services for the purposes of state authorities or public enterprises. Specifically, the Government is highly interested in having enterprises and citizens duly pay taxes and social contributions and its policy thereon is rigorous. However, when it comes to the above-mentioned public procurement of security services, the most common criterion is the lowest bid, and in most cases the procuring entity (the Government or a public enterprise) does not pay attention to whether the selected bidder has paid all due taxes and contributions, 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 effects are 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).

This issue deserves heightened attention by the state authorities themselves, but also by the Association of Private Security Companies, which should declaratively sanction its members if conducting illegal business (blacklisting).

Keeping in mind Serbia's European perspective and the fact that it has opened up for investments in the private security sector (two of the world's largest security companies are present in Serbia), certainly the legislation and standards will also have to gain international recognition and acceptance.

POSITIVE DEVELOPMENTS

Positive aspects are that global and European associations of private security companies and security professionals are present in Serbia through local representatives (Confederation of European Security Services - CoESS), an umbrella organization for all European national private security associations, as well as ASIS International, the pre-eminent organization for security professionals, leading the global security standards initiative).

Both associations with their international credibility and long-standing expertise have expressed a willingness and readiness to help and support both local associations and the competent national authorities in Serbia to work towards the adoption of a specific law governing private security and to harmonize such legislation with the complex European environment and practices in the field of private security.

REMAINING ISSUES

The statutory period for the adoption of secondary legislation - by-laws (6 months from the date of adoption) has expired, and the by-laws are not yet in place, which is delaying the implementation of the entire law and leaves the industry in a de facto unaltered position.

The average delay in the adoption of by-laws in the Republic of Serbia is 24 months, which suggests that this problem may take much longer than expected.

FIC RECOMMENDATIONS

- Continue with the monitoring of the preparation process for the introduction of the by-laws of the Law on Private Security, while continuously insisting that the by-laws should be harmonized with the European models of legislation as far as possible, but also adjusted to local specific features; licensing of the companies should be handled by the Government (Ministry of Interior) or a government agency in order to avoid monopolization of this sector and a conflict of interests.
- The goal of Law adoption is legislative regulation, not taxation of the security industry; therefore, the principle of economy must be taken into account, which means having reasonable costs that would certainly, at the end of the process, be borne by the recipient of security services.

- In the implementation of the Law, the security industry should be legalized pragmatically, meaning that it is necessary to set a reasonable time schedule and deadline for the training and licencing of security officers and companies.

- The Law must ensure equality for all participants in the market; the Law must not include possible discriminatory elements or special privileges for entities attempting to obtain particular prerogatives through the Law, such as the Accreditation Body of Serbia, the Institute for Standardization of Serbia, the Chamber of Commerce, associations, because such a solution – aside from being a conflict of interests – results in new dilemmas, such as internationalization vs. localization.

- The Government should encourage close co-operation between security sector stakeholders (both public and private), while consulting large private security investors who can present their experiences and best practices from other EU countries where they operate.

HOMECARE PRODUCTS AND COSMETIC INDUSTRY

BIOCIDES AND CHEMICALS IN 2014

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
HAZARDOUS PACKAGING WASTE MANAGEMENT				
The Government should encourage efforts by the Ministry of Environment to increase activities in handling chemicals in the Serbian market.	2013			√
Also, the framework for the next steps in the REACH registration process for local companies is needed for a period of five years, as stipulated in the EU.	2013			√
COSMETIC INDUSTRY				
In order to harmonize the regulations in the area of cosmetics with corresponding EU regulations it is necessary to bring the process that has been started to the end, and to speed-up administrative procedures of adopting of regulations within the Ministry of Health. Having in mind that EU regulations referring to cosmetic products are constantly updated, it is necessary that created sub-law come into force as soon as possible, so that harmonized text remains valid.	2013			√
By bringing into force of the sub-law on safety of cosmetic products, not only that harmonization of technical requirements with existing EU requirements will be achieved, but, also, the first step will be made toward the organization of control in the way that exists in EU. Our recommendation is that competent authorities should focus more on in-market control, which is a practice in European countries, while import control should be mainly focused on product information file (product dossier), and, only where necessary, laboratory checks of the product. The current border sanitary control should be moved to a part of the regular in-market control.	2013			√
Also, the existence of specific regulation referring to cosmetic products will avoid the differences which exist between the requirements of different ministries (especially in the scope of product labeling). This is the consequence of the application of general regulations that do not refer specifically to cosmetic products and neglect their specificities.	2013			√

CURRENT SITUATION

After the general elections in the Republic of Serbia in March 2014, the competence for chemicals and biocides was transferred from the Ministry of Energy, Development and Environmental Protection to the newly founded Ministry of Agriculture and Environmental Protection.

The legal frame for the registration and management of chemicals was harmonized with EU regulation, along with the respective changes in by-laws, (fees for registration, classification, labelling etc.), while biocides legislation is still not aligned with EU legislation in this field.

As the new by-laws arising from the Law on Biocides have already been prepared, we will be in the position to follow EU legislation in this area, which will bring big changes in this field. This will enable more accurate planning of the registration process of new biocides and reduce the presence of different products on the market and potentially limit serious consequences for human health and the environment.

POSITIVE DEVELOPMENTS

After the organizational changes and change of responsible Ministry, the process of registration of chemicals and biocides proceeded at the same pace as in 2013.

REMAINING ISSUES

The expected harmonization with changes of EU regulation in chemicals and biocides by adopting new by-laws, will require efficient work in this area, and especially operative and expert help for the preparation of Technical dossiers for biocides.. The forthcoming changes will require additional cooperation of industry, international experts, and the respective Ministry for the preparation of a common approach in this area (e.g. Classification, Labelling and Packaging of Mixtures starting from June2015.).

FIC RECOMMENDATIONS

- The government should encourage the Ministry to intensify activities in handling chemicals on the Serbian market.
- Also, support is needed for organized cooperation of industry representatives, the respective Ministry and consumers in various activities which could improve the handling of chemicals, as was the case in earlier years.

COSMETIC INDUSTRY

CURRENT SITUATION

Cosmetic products are regulated by the Law on General Consumer Product Safety (Official Gazette of the RS No 92/2011), and the Rulebook on Safety Requirements for General Consumer Products Being Placed on the Market, (Official Gazette SFRY No. 26/83, 61/84, 56/86, 50/89 i 18/91), as a by-law.

Several other laws, such as the Law on Trade, Law on General Safety of Products, Law on Market Surveillance, Law on Consumer Protection, also apply to cosmetic products.

It is important to note that, currently, cosmetic products are regulated together with other general consumer products and that there is no specific regulation regulating exclusively this area.

In accordance with the regulations stated above, the control of cosmetic products is the responsibility of the Ministry of Health, Sanitary Inspection Department, Inspection Affairs Sector. Imported cosmetic products are subject to control by the border sanitary inspection, while all cosmetic products on the market are subject to control by the market sanitary inspection.

The harmonization of regulations on cosmetic products with relevant EU legislation is also planned as part of Serbia's EU accession process. This entails amendments to the current Law and the adoption of a new rulebook to exclusively regulate cosmetic products.

Already in the first half of 2013, a working group formed by the Ministry of Health completed the work on the Rulebook on the safety of, and on the procedure, content and detailed requirements for labelling cosmetic products. However, due to the lack of legal basis in the Law on General Consumer Product Safety, which has insufficiently transposed relevant EU regulations, the Rulebook was not adopted, although more than one year has passed since the finalization of its text.

POSITIVE DEVELOPMENTS

The work on the Law on Amendments to the Law on General Consumer Product Safety has been finalized and the Law is currently in the legislative procedure. The adoption

of the Law on Amendments will provide the legal basis for the adoption of Rulebook on the safety of, and on the procedure, content and detailed requirements for labelling cosmetic products. According to the National Plan for the Adoption of the Acquis (NPAA) 2013-2016, the deadline for the adoption of the Rulebook is the fourth quarter of 2014.

REMAINING ISSUES

In comparison to the previous year, so far 2014 did not bring many changes in terms of further improvement of regulations on cosmetic products. Deadlines for the adoption of the Law on Amendments to the Law on General Consumer Product Safety and the Rulebook on the safety of, and on the procedure, content and detailed requirements for labelling cosmetic products have been changed and postponed several times until now. The first deadline for the preparation and adoption of the Rulebook was the second quarter of 2012. We hope that the current deadline (the fourth quarter of 2014) will not be extended this time and that the regulations in the Republic of Serbia in the area of cosmetic products will be finally harmonized with EU regulations.

FIC RECOMMENDATIONS

- Administrative procedures for adopting regulations have to be accelerated. Specifically, for the area of cosmetic products, the process of adoption of the Rulebook is longer than the time the working group needed for the preparation of the whole regulation. Since EU legislation on to cosmetic products is constantly being updated, the Rulebook must be enacted as soon as possible to ensure smooth and timely harmonization in the future.
- The system for the control of cosmetic products in Serbia should be based on internal market control, which is a practice in EU countries, while import control should mainly focus on documentation (product dossier). Harmonization with EU technical requirements, through the adoption of the rulebook on cosmetic products safety, is just the first step towards the harmonization of market control with the EU.
- The adoption of a specific regulation on cosmetic products would avert differences in interpretation, and consequently differences in the requirements by different inspections (especially in the area of product labelling), which are the consequence of the application of different general regulations that neglect the specificities of certain product groups (in this case cosmetic products).

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 the manner of marking that space, Official Gazette of RS No 31/11 and 16/12).

Although the by-law is clear in terms of which products are included, it does not provide precise information about how to separate these products and no clear directions for shelving.

The separation of the cleaning products classified as "irritants" is a unique solution in Serbia, and not in harmony with EU regulations and practices. The currently applicable Law on Chemicals (Official Journal of RS No 36/09) does not even require special packaging for these products, as their safety profile does not justify such provisions.

POSITIVE DEVELOPMENTS

As of 1 January 2012, the Sanitary Border Inspection for chemicals and biocides (including cleaning and hygiene products) has been removed, which is the main positive development in the field of import of chemicals and biocides. We expect this positive measure to be expanded to other categories of non-food, fast-moving consumer goods in the future.

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 trading and retail sale of cleaning and hygiene products. With the new EU Regulation on Classification, Labelling and Packaging of products coming into force on 1 January 2015 the negative impact will be even higher.

FIC RECOMMENDATIONS

- Cleaning and hygiene products labelled as "irritants" should be treated as they are in the EU countries, where such limitations are not in place.

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