WHITE BOOK

Proposals for improvement of the business environment in Serbia

2016

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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Proposals for improvement
of the business environment in Serbia

Editors:
Prof PhD Mihailo Crnobrnja
and Foreign Investors Council

2016

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FOREWORD

The annual White Book publication was established to provide an overview of the business climate in all relevant fields, review the progress of reforms accomplished during the year, and align the expectations and priorities of all important stakeholders working to accomplish the same goals – make the Serbian economy strong, resilient, more competitive, and well-integrated in the global and regional value chains, and make the business environment well-developed to support business growth and attract new investors.

Serbia is experiencing a positive momentum of economic stability and consolidation. In the last two years, visible macroeconomic progress has been achieved, including GDP growth supported by direct foreign investments and rising exports, fiscal consolidation, an increase in revenues through improved tax collection, and certain progress in the recent efforts of the Government to fight illicit trade.

Fiscal and macro monetary results achieved by the Government have been positively assessed by the relevant international stakeholders – the International Monetary Fund (IMF), the World Bank, the European Bank for Reconstruction and Development (EBRD), and the EU – with the latest reports on Serbia showing positive indications of economic growth and a rise in employment.

FIC members are the driving engine of the Serbian market and have contributed strongly to the positive development of the economy. Sustainable growth of FIC member companies increased the GDP share of FIC members to 21.7% last year (compared to 18% in 2013). FIC members account for 22% of Serbia's exports and employ more than 94,000 people. Investments by FIC members increased by EUR 5.2 billion to EUR28.7 billion this year (compared to EUR23.5 billion in 2015), based on increased growth and an influx of new members. FIC member companies bring new investments and jobs, introduce modern technologies, facilitate innovations, and engage local small and medium-sized enterprises in their value-chains, integrating them into the global market.

The FIC unites leading companies in different industries which are committed to making the Serbian economy more competitive and attractive for new investments. FIC members (75% come from the EU) consolidate strong expertise in the regulatory area, which is then used to provide a structured feedback to the Authorities, the EU, and other stakeholders concerning the business environment and changes in legislation essential for fostering the country's economic growth.

A free market economy and EU integration have been defined by the Government as the way forward. The FIC is one of the strongest promoters of Serbia's economic integration into the EU and is assisting on this path, being actively involved in the related consultation process and providing input on the harmonization of national legislation with the EU acquis. Harmonization with the EU acquis is an important tool in this process, as it makes the business environment in the country more predictable and competitive and supports a growth of exports of Serbian products to Europe.

The FIC recognizes and respects the new Government's determination to improve the business climate and continue reforms.

The FIC acknowledges successful reforms that have been conducted so far, in particular: restoring macroeconomic stability (fiscal consolidation) and regulatory improvements conducted in 2014/5 through changes to the Labour Law, the Law on Bankruptcy, the Law on Privatization, reforms in the field of real estate (e-permitting), and inspections. The changes in legislation together with on-going EU accession negotiations contribute to making the business environment clear and suitable for growth acceleration.

However, the expectations of the business community are much higher. To make growth momentum in the country sustainable, the acceleration of the reform process is expected and strongly needed, and should cover the areas of:

- structural changes and privatization of state owned enterprises – this will substantially increase efficiency, productivity, and competitiveness of the economy;
- reindustrialization, tapping into the potential for attracting investors considering re-location;
- decrease of bureaucracy and reform of the public administration. This should not be only about cutting numbers and laying off state employees, but primarily about raising the quality of services provided by the state to its citizens and businesses. In an era when everything is computerized, the Government should maximize the use of the e-platform and ensure more transparency, consistency, and quality in its work;
- Improvement of the tax framework – including the application of tax regulations, safe-guarding against new para-fiscals, and sudden law changes.

Macroeconomic and political stability, a predictable business environment, including a transparent public decision-making process, and consistent development of the economy, all make Serbia well positioned to accelerate its economic development, attract new investors, and grow the competitiveness of the country, supported by an accelerated progress of reforms and strong law enforcement, the full and proper implementation of laws.

The FIC will continue to serve as an important contributor to making the Serbian economy more competitive and attractive for foreign and domestic investors.

Yana Mikhailova
FIC President

EXECUTIVE SUMMARY

Dear Reader,

This Executive Summary is not an attempt to present an overarching overview of the over 40 topics that the White Book 2016 covers. Rather, it will provide information about the concept and structure of the White Book and share information about progress made in selected areas – those that the FIC considers as priorities, as well as those in which the most or least progress was made in the period between October 2015 and October 2016.

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

WHAT IS THE WHITE BOOK AND HOW IS IT WRITTEN?

The concept of the White Book is to give a comprehensive overview of the business environment in Serbia and provide concrete recommendations on how to improve it. It can be viewed as an additional contribution that foreign investors operating in Serbia provide – kind of a common CSR product – by sharing, free of charge, their knowledge and experience for the benefit of all, with aspirations of improving the competitiveness of the Serbian economy overall.

Moreover, the intent of this annual publication is to track the record of reforms, recognize accomplishments achieved between the two editions, and identify which issues were left unresolved.

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

HOW IS THE WHITE BOOK WRITTEN AND WHAT ARE THE REGULATORY TOPICS THAT IT COVERS?

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

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

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

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

KEY FINDINGS OF THE WHITE BOOK 2016

Between October 2015 and October 2016, the most progress was attained in the highly relevant field of real estate and four areas of general legal framework - competition and consumer protection, state aid and notaries, as well as the sectors of telecommunications, oil & gas, and private security.

In the same period, the least progress was marked in the equally relevant fields of taxes and labour regulations, three areas of general legal framework - foreign exchange regulations, bankruptcy, and whistle-blowers, as well as the sectors of food and agriculture, insurance, and home care products and the cosmetics industry.

AREAS WITH THE MOST PROGRESS

Real Estate

The implementation of conversion proceedings, the new Law on Legalization and Law on Cadastre and State Survey, as well as the electronic issuing of construction permits, made for progress in the real estate sector. Out of 16 recom-

mendations presented in the White Book 2015, 3 marked significant progress, 6 marked certain progress, while 7 marked no progress.

Key positive developments include the start of the implementation of conversion proceedings; solid implementation of the unified procedure and electronic permitting; the start of enforcement of the new Cadastre Law, which moved the second instance competence to the Cadastre Office; and accelerated processing of new registration requests.

In the future, the focus needs to be on the following: changing current law interpretation so that restitution can suspend conversion only in the case of a socially or state owned company and extend the deadline for building with the right of use for two more years; swift adoption of the remaining by-laws linked to the Construction Law; change of the Financial Leasing Law to enable registering real estate leases in the cadastre; change of the Mortgage Law to introduce more explicit norms and, thus, protect competition between banks, provide more security of inscribed data, and enable mortgage debtors to draw loans easier; and ensuring more consistency and clearing the backlog in cadastral processing.

Competition Protection

Progress in this field was propelled by continuous regulatory improvements, the strengthening of administrative capacity, and strong advocacy activity by the Competition Protection Commission (hereinafter: the Commission). Out of 8 recommendations presented in the White Book 2015, 6 marked certain progress and 2 marked no progress.

Key positive developments include the following activities performed by the Commission: a successful implementation of the binding procedure; adoption of the new Merger Control Regulation (in line with EU rules); readiness to organize pre-notification meetings in order to eliminate any ambiguities; more unannounced inspections; and stronger advocacy activity by providing more information on its work, opinions, and decisions via its website and other promotional activities.

Going forward, we suggest the Commission strictly apply EU rules in order to avoid inconsistencies in application, as well as adopt clear guidelines and relevant by-laws to help increase legal certainty; institutional capacity of the Commission should also be improved, as it is still lacking the requisite economic knowledge; and the Fee Schedule must decrease fees to a reasonable level in line with comparable jurisdictions in Central and South East Europe. Also, advanced training for judges of the Serbian Administrative Court should be organized; and non-confidential versions of all of the Commission's decisions and opinions, as well as the Administrative Court rulings, should be made public.

Consumer Protection

The current Law on Consumer Protection has been in effect for two years now and gradual but constant improvement in this field being evident. Nonetheless, there are still a number of problems concerning the implementation of the law and effective exercising of consumers' rights, as well as room for building consumers' awareness of their entitlements under the Law. Out of 7 recommendations presented in the White Book 2015, 1 marked significant progress and 6 marked certain progress.

The main positive developments are: the adoption of remaining by-laws prescribed by the Law, which presents a significant improvement - especially important is the by-law on alternative dispute resolution - and active engagement of consumer protection associations, which conducted numerous consumer education projects, organized roundtables, and tested a large number of consumer products in order to inform consumers about detected irregularities.

Recommended goals for the future are: investing further efforts towards harmonization with international and EU principles; enlarging membership in the National Council for Consumer Protection; building the capacity, expertise, and role of consumer NGOs; and continuing work on consumer education, including topics related to consumer protection in schools' curricula.

State Aid

In the previous period, the main improvements in this sector related to increased efforts of educating state authorities and beneficiaries, as well as raising public awareness in the area of state aid. Out of 8 recommendations presented in the White Book 2015, 1 marked significant progress and 7 marked certain progress.

Key positive developments include the election of new members of the State Aid Commission, who, according to the EU, are not affiliated to state-aid-granting ministries; the State Aid Commission has organized a number of work-

shops and presentations for raising awareness amongst the relevant stakeholders; and the State Aid Commission launched a new website to regularly inform the public of its activities and publish its decisions.

Future activities should be focused on achieving the following: consistent and effective application of regulations with respect to state aid, in particular with regards to companies in restructuring and privatization; strengthening the independency of the State Aid Commission and regular publishing of the Commission's statistics and reports. Public authorities should also file notifications in a timely fashion, so that the State Aid Commission can promptly commence the reviewing process; and there should be a further reduction of sector and regional aid in comparison to horizontal aid.

Public Notaries

Changes of the Law on Notaries introduced in December 2015 had a positive effect on further strengthening of the role of public notaries and bringing more efficiency and legal security. Out of 4 recommendations presented in the White Book 2015, 1 marked significant progress and 3 marked certain progress.

Main improvements that the new law brought are: an expansion of public notaries' authorities to include probate proceedings; the fact that a public notary must now reject performing an activity related to the action aimed at avoiding legal obligations or to illegally make damage to a third person; introduction of the cancellation of an obligatory form – notarial minutes – for some of the acts of shareholding companies; and harmonization with the regulation on foreign exchange.

In the future, the focus should be on implementation issues, namely, an increase of the number of nominated public notaries and a further reduction of the fee for public notaries' services to adjust them to the financial strength of companies and citizens.

Telecommunications

In 2016, the telecommunications sector faced new challenges and obligations for telecommunications operators, i.e. the regulation and further reduction of roaming prices, the establishment of e-government, and the growing demands and needs of customers in relation to the new trends and opportunities brought by modern technologies. Out of 16 recommendations presented in the White Book 2015, 3 marked significant progress, 4 marked certain progress, while 9 marked no progress.

Key positive developments include: the selling of the digital dividend to mobile telephony operators, which contributed to broadband development and better mobile coverage; good practice of informal consultations on the Law on Electronic Commerce; and the successful putting off of new para-fiscal charges.

In the following period, reforms should include: the adoption of the Law on Electronic Communications and the Law on Electronic Business in accordance with FIC recommendations; further development of e-government and the possibility of placing these services on a mobile platform; change of the Law on Foreign Exchange Operations, Value Added Tax Law, and Corporate Income Tax Law (the issue of withholding tax) in order to introduce new innovative services (Google Play, Windows Store); the abolition of monopoly on cable ducts; and ensuring a full independence of the regulatory body, including financial independence.

Oil & Gas Sector

The introduction of new regulations and stronger market surveillance has had great importance for various areas of this sector. Out of 8 recommendations presented in the White Book 2015, 1 marked significant progress, 4 marked certain progress, while 3 marked no progress.

Main improvements include: intensive implementation of the obligation of marking and controlling oil products, thus limiting illegal trade and increasing the quality of oil products; entry into force of the new Law on Fire Protection; and the adoption of relevant by-laws on a regular basis.

Key goals for the future are: regulating the introduction of para-fiscal charges; improving the coordination of inspections and minimizing illicit trade; changing the Energy Law to establish a system of mandatory and regular controls of licenses for warehousing and wholesale trading and ensure compliance with the minimum technical requirements; continue intensive control of the presence and concentrations of marking fluid in oil products; and increase predictability by consulting the industry in the regulatory drafting process.

Private Security Industry

At the end of 2013, the Law on Private Security was adopted as a key, but by no means only, step towards the regulat-

ing and proper functioning of the private security industry in the Republic of Serbia. Out of 5 recommendations presented in the White Book 2015, 1 made significant progress, 2 certain progress, while 2 showed no progress.

Key positive developments over the past year include: opening channels of communication between the Ministry of Internal Affairs and the industry; formation of an Expert Council; organizing consultations with the industry in drafting by-laws, which harmonize local regulation with that of the EU to the extent possible, but also recognize specific local features; and the licensing of the companies, which has been handled by the Government in order to avoid monopolization and potential conflict of interests.

Key remaining issues are: ensuring a full implementation of the new Law within set deadlines so that all players on the market are licensed under the same conditions; public procurement of security services being conducted in such a way so as not to favour companies operating in the grey area (currently the lowest bid is often the only criterion used); and mandatory training programs should be less rigid and in line with the modern practices of dual education and distance learning.

AREAS WITH THE LEAST PROGRESS

Tax

There were no notable improvements in the tax area. Problems in the application of tax regulations, no safe-guard against new para-fiscal charges, and cases of sudden law changes (i.e. at the end of December 2015, three tax laws were adopted without any public discussion – the Corporate Income Tax Law, the Personal Income Tax Law and the Law on Tax Procedure and Tax Administration) are still present. On a positive note, throughout last year, the FIC had regular and open dialogue with the Tax Administration aimed at identifying key issues in law application and discussing the way forward in institutional reform to develop a modern and strong Tax Administration, which would on one side provide an efficient service to compliant companies and on the other side introduce sanctions against those operating in the grey area. Also, in recent months, the Ministry of Finance showed more openness in dialogue, although we have not yet witnessed a restored practice of public discussion on changes of specific regulations. Out of 51 recommendations presented in the White Book 2015, 1 marked significant progress, 1 certain progress, while 49 marked no progress.

Positive developments include: amendments to the VAT Law (October 2015), which endorsed an FIC recommendation first given in 2007, and allowed VAT registration of foreign entities bringing more revenue to the Serbian budget, as well as introducing taxation of electricity and natural gas, which corresponds to EU rules and practices; adoption by the Government of the Proposal of the new Law on Financing of Local Governments (August 2016), which is expected to decrease the number of non-tax and para-fiscal levies; and establishing regular and open dialogue between the Tax Administration and the FIC.

Key topics for the future are: organizing consultations when changing regulations; tackling inconsistent application of the same tax rules by different organizational parts of the Tax Administration and improving coordination between the Tax Administration and the Ministry of Finance; acceleration of the Tax Administration reform, in particular taking out non-core activities, increasing the capacity and moving the second instance decision-making to the Ministry of Finance; and introducing precise guidelines which are publicly available. Also, the following changes to the laws are highly recommended: in the Law on Tax Procedure and Tax Administration, change the threshold of RSD 150,000 for criminal offences to take into account the company size and volume of taxable activities; in the Corporate Income Tax Law, adopt a definition of royalties for withholding tax purposes in line with international best practices and signed treaties, introduce monthly or quarterly tax filings, and allow a full deductibility of marketing expenses; in the VAT Law, harmonize the norm on taxation of foreign entities and rule of the place of supply of services with EU regulation, as well as adopt a single comprehensive rulebook instead of a large number that currently exists; in the Personal Income Tax Law, introduce a synthetic system instead of the schedular system which was abandoned in many developed countries; and adopt a Law on Fees which would review all existing para-fiscal levies and create a safeguard against the new ones.

Labour Regulations

After a significant breakthrough made by adoption of the Labour Law in July 2014, the last two years saw a reform standstill. While we fully understand the sensitivity of this regulatory area, we believe that Serbia needs to continue labour market reform in order to foster new employment and increase its competitiveness on the global market. Out of 26 recommendations presented in the White Book 2015, 1 marked significant progress, 1 marked certain progress, while 24 marked no progress.

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

Remaining issues are: staff leasing is still not being regulated; a decrease of administrative burden for the employment of foreigners (i.e. foreigners with a residence permit still need to register with police every time they leave the exact city they are registered in); changing the Labour Law to prescribe salary compensation during leave equal to the amount of the base salary increased by seniority; extending the limit for a fixed-term employment contract to 36 months; and simplifying the currently very complex model of salary calculation.

Foreign Exchange Regulations

The need for further liberalization of the Law on Foreign Exchange Operations is still in focus and is identified as one of the main priorities of foreign investors. Out of 12 recommendations presented in the White Book 2015, 2 marked certain progress, while 10 marked no progress.

Positive developments are related to changes of several by-laws regulating the opening and maintaining of resident and non-resident accounts, but without material changes to the Law.

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

Bankruptcy

Due to the absence of automatic bankruptcy, problems with the application of the law, as well as the insufficient motivation of creditors, a huge number of practically long-term insolvent companies are still operating. This situation seriously hinders market development. All of the 7 recommendations presented in the White Book 2015 marked no progress.

Nonetheless, we note two positive developments over the previous year: the position of pledge creditors (which are not simultaneously a bankruptcy debtor's creditors) is now more clarified; and courts now obey more the rule of limited duration of prohibited enforcement of the bankruptcy debtor's property and reject initiation of reorganization plans that do not contain all required elements.

Key recommendations are: incorporating automatic bankruptcy in the case of a debtor's permanent insolvency, which would be in accordance with the Constitution; restricting the additional possibility of prohibiting enforcement over a bankruptcy debtor's property and disable debtors from preventing enforcement settlement for an indefinite period of time; enable the possibility and procedure for amending the adopted reorganization plan; and regulating the procedure of personal insolvency by changing the current Law on Bankruptcy or adopting a separate law.

Whistleblowers

The adoption of the Law on the Protection of Whistleblowers (in force as of June 2015) marks a big improvement and places Serbia amongst the very few European countries having specific legislation of this sort. That being said, over the previous year, out of 5 recommendations presented in the White Book 2015, none marked progress.

In terms of positive developments, the adoption of the law itself was a big improvement, but over the previous year there was no progress in tackling identified deficiencies.

Key remaining issues are: appropriately prescribing criminal offenses in connection with whistleblowing, as well as any penal responsibility for grave violations of the rights of whistleblowers; and to actively promote awareness, educating both citizens and employers.

Food and Agriculture

Over the past year there were no notable improvements in addressing these key issues: implementation of food-safety regulations; a lack of quality assurance (National Reference Laboratories); and uneven treatment in registering PPP (plant protections products). Out of 38 recommendations presented in the White Book 2015, 7 marked certain progress, while 31 marked no progress.

Positive developments include certain progress in the work of the Phytosanitary Inspectorate in terms of the number of products sampled and the sampling frequency; as well as adopted amendments to the Livestock Breeding Law (February 2016), which are expected to help solve systemic problems of breeders in livestock production, primarily through harmonization with EU rules.

Key remaining issues are: full harmonization of regulation on food safety, a rulebook on labelling and plant protection products with relevant EU regulations, followed by clear guidelines and a sufficient transitional period for implementation; consistent application of rules by inspectors, especially in the phytosanitary and sanitary area; and building institutional capacity by establishing the Expert Council for Risk Assessment and making the established National Reference Laboratory fully functional.

Insurance

The insurance sector in Serbia is facing numerous regulatory challenges which were not adequately addressed over the course of last year. Out of 19 recommendations presented in the White Book 2015, none marked progress.

The only positive development was that brought on by the Draft Civil Code, which introduced the obligation to inform the insured if collective insurance is transferred to the policyholder for collective insurance, otherwise the insurer is entitled to compensation for damages from the policyholder, as well as the possibility of issuing the insurance policy in electronic form with a mechanical signature.

Key goals for the future should be: eliminating discrimination between composite and non-composite companies; create a strategy for natural disasters which would ensure significantly better insurance coverage in case of extremely damaging events; modernize corporate governance rules and introduce more flexibility into them; modernize MPTL regulation in order to introduce EU standards and liberalize pricing; remove obstacles for new employment; and finally, adopt a new set of laws: an Insurance Supervision Law, an Insurance Contract Law, and a Law on Insurance Brokers and Agents.

Home Care Products and the Cosmetics Industry

The further harmonization with EU regulations on chemicals, biocides, and cosmetics is still a priority, as well as improvement in cooperation between the respective governmental bodies, representatives of the industry, and scientific institutions. Out of 9 recommendations presented in the White Book 2015, none marked progress.

The only noted improvement is the preparation of the control lists for the implementation of the Inspections Law by the Ministry of Agriculture and Environmental Protection.

Key recommendations for the future are further harmonization with EU regulations, both sectorial laws and the Law of Safety of General Use Products; harmonization of by-laws with EU regulations (i.e. treatment of cleaning and hygiene products labelled as “irritants”, and defining price per wash load as the official unit); and adapting border control to EU requirements and practices, meaning that control of imported products should focus on documentation and not regularly involve laboratory analyses.

ADDITIONAL AREAS OF INTEREST

Inspections and the fight against illicit trade

The implementation of the Law on Inspection Oversight (April 2015) has given the first results in the areas of control of unregistered entities and suppression of undeclared work. However, due to the implementation of most provisions being delayed by up to two years, the capacities of institutes put to inspectorates’ disposal have not yet been fully used. Out of 12 recommendations presented in the White Book 2015, 3 marked certain progress, while 9 marked no progress.

Positive developments include adoption of the National Programme for Countering Shadow Economy (December 2015); the first results in control of unregistered entities and combat against undeclared work through the implementation of the Law on Inspection Oversight; and the formation of the Coordination Commission and the Working Group for Combating the Grey Economy.

Key goals for the future should be: introduction of specialized prosecutors and increasing efficiency in processing cases related to illicit trade; timely changes of sectorial laws in order to harmonize them with the Law on Inspection Oversight; allocation of adequate resources and funds to inspectorates; establishment of a risk assessment system in order to effectively utilize limited resources; and introduction of integrated control of border crossings by all involved departments, in order to prevent the illegal transit of goods across the border into Serbian territory.

Transport

Moderate progress in upgrading the transport network, as well as harmonization of transport policy with that of the EU marked developments in this sector over the last year. Out of 20 recommendations presented in the White Book 2015, 9 marked certain progress, while 11 marked no progress.

We note the following progress that has been achieved:

- Railway: ongoing restructuring of Serbian Railways; the opening of Prokop station; and the reconstruction of railroads through Serbia (i.e. via Budapest and Bar).
- Road sector: progress in works on corridors 10 and 11; noticeable progress in the project to reconstruct 1,100 kilometres of roads (EUR 400 million investment over three years), with several dozen kilometres of the most severely damaged roads during the floods in 2014 rehabilitated.
- Road sector: start of reconstruction, expansion, and modernization of the Batrovci border crossing (the entire project being worth RSD 684 million).
- Air transport: restructuring through the establishment of the Serbian Airports company (which as of February 2016 manages all airports in Serbia); and the launch of a new direct service to the USA (June 2016).
- Inland water: growth in revenue of harbour-masters, even during the worst sailing conditions on the Danube in Europe (Serbia was the only country that had clear sailing route for 365 days).

Key remaining issues to be tackled in the future are: improving the capacity and quality of the transport infrastructure and services; restructuring of public enterprises operating in the transport sector and increasing the quality of the national road administration; further alignment of the transport policy with EU regulations; stimulation of public-private partnerships and private investments in order to gather the necessary funds for the modernization of the transport network; and setting up an efficient road user toll system to bring back passenger and cargo transit traffic.

Public-Private Partnership (PPP)

Although recent changes to the PPP Law brought some improvements, there are still a lot of impediments to PPP projects in Serbia. Bearing in mind financial limitations in the state budget, all regulatory barriers should be promptly removed in order to utilize the potential deriving from private investments. Out of 5 recommendations presented in the White Book 2015, 1 marked certain progress, while 4 marked no progress.

Two improvements were noted over the last year: changes to the PPP Law, which re-enforced the role of the Ministry of Finance in order to control fiscal risks; and enabling full functionality of the Register of Public Contracts.

Key recommendations for the future are as follows: eliminating contradictions between the PPP Law and other laws (public procurement, foreign exchange, public property, communal services); and the issuing of clear guidelines.

Public Procurement

In August 2015, amendments to the Public Procurement Law were adopted introducing innovations with respect to reducing formalities, publishing a large number of documents on the Public Procurement Portal, and reducing deadlines for the submission of bids in order to raise the efficiency and effectiveness of public procurement procedures. Out of 6 FIC recommendations presented in the White Book 2015, 2 marked certain progress, while 4 marked no progress.

Key improvements include: adoption of a set of measures for the prevention of corruption and conflicts of interest; improved cooperation between different state institutions in combating corruption; contracting authorities now being obliged to work on preventing corruption by enacting internal plans and regulating their public procurement procedure, as well as publishing internal acts on their website; and the latest law amendments, which expand types of public procurement notices, something which should contribute to the greater transparency of the procedure.

Key goals for the future are: successful implementation of the recent cooperation agreement between the Public Procurement Office and the Anti-Corruption Agency, which should strengthen sanctions against responsible persons in cases of corruption; expansion of the administrative and expert capacities of the Public Procurement Office and the State Audit Institution; and amending the provisions of the Law regulating unusually low bids.

Environmental Regulations

New developments and progress have been noted, with changes to several important laws and their approximation to EU regulation. However, Serbia still faces challenges in the monitoring and implementation of the environmental regulation. Out of 7 recommendations presented in the White Book 2015, 6 marked certain progress, while 1 marked no progress.

Positive developments include: founding of the Green Fund; local municipalities now having an obligation to enable sorting of household communal waste within three years; companies with an integrated license can now import non-hazardous waste for re-use for their own purposes; and the state started launching procedures for establishing PPPs in communal waste management.

Key remaining issues are: a legal framework for waste trade currently not in place; the monitoring and reporting system is not sufficiently developed to enable finalization of the register of pollution sources; inadequate framework for PPP; and permanent education of the population in the field of waste selection and environmental protection.

FIC OVERVIEW

Over 130 companies, more than EUR 28.7 billion in investments[1], 21.7% of GDP[2], 22.2% of Serbian exports[3], 18% of Serbian corporate income tax state revenue[4], and more than 94,000 directly employed[5] – that is the Foreign Investors Council (FIC) today. These figures are impressive, but more important is the fact that the organization is continuously growing – in the past year investments grew by €5.2 billion, while direct GDP share increased by 3.7% in the period of last two years, based on further growth and inflow of new members. It also corroborates the FIC message that foreign investors, FIC members, are developing operations in Serbia having long-term interests and the desire to help the Serbian economy flourish and increase its competitiveness, not only for taking the profit out of the country, which is, of course, their prerogative.

The main purpose of the association is to facilitate the dialogue between the members which will yield the recipe for 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 a guarantee of the comprehensiveness and inclusiveness of our views. Dialogue between members evolves within nine working committees and additional 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 other member companies. 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 vote of every member will have the same importance and weight, regardless of the company's strength or industry in which it operates. Therefore, high ethical standards and clear management rules are of great significance for the FIC. Over the years, the FIC has adopted a series of statutory acts determining the rights and obligations of FIC members and officials in more detail, promoting competition rules, and defining guidelines for engagement in the FIC. And so the FIC has developed guidelines for the 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 the FIC an organization with strong ethical rules and corporate governance, setting 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 – that of European integration. Seventy-five percent of FIC members come from the European Union, whilst other members which come from other parts of the world – the United States of America, Russia, China, and Japan – also do business on the European market. Thus, the FIC has a unique ability to combine knowledge and experience about the European and Serbian markets and give advice and concrete suggestions as to how to go through the process of economic integration of Serbia into the EU as efficiently and productively as possible.

A key characteristic of relations between the FIC and the Government and other partners is also – trust. The FIC has been building this trust over the past 14 years mainly through the consistency and constructiveness of views and suggestions we give, but also through receptiveness, openness, and consistency in dialogue. Therefore, we can proudly note that the FIC is a regular participant in the process of changing regulations, and that at the request of the Government and other stakeholders, the 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 policies, and exchanges of opinions and experiences related to conditions under which business is done.

Although the White Book is the best known FIC project and product, whose preparation and presentation requires almost six months of active work, this is in no way our only project. Throughout the year we execute a number of activities focus-

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

2 Data for 2015, sources: FIC records, Business Registry Agency

3 Data for 2015, source: FIC records

4 Data for 2015, sources: FIC records, Business Registry Agency

5 Data for 2016, source: FIC records

ing on the improvement of the business climate in Serbia. On the one hand, we analyse regulations, new drafts of laws and by-laws, and we question their application. On the other, we organize the dialogue with the state and other stakeholders, expressing our standpoints and suggestions and exchanging views on how to overcome concrete problems and increase the competitiveness of the Serbian market.

What were the key FIC activities in the last year?

Between two White Book editions, the FIC analysed in detail 24 regulations and submitted 27 written initiatives regarding existing and new draft laws. We also closely monitored the implementation of these laws, paying extra attention to the level and consistency in the enforcement of laws and regulations adopted in the recent period. Topics that we tackled mostly related to five areas we defined as priorities:

1. Introduction of a coherent overall legal framework, in particular participation in the public discussion of the new Civil Code.

2. Improvement and a more consistent implementation of tax laws, including prevention of new para-fiscal charges.

3. Improvement of the Land Conversion Law to enable its implementation.

4. Ensuring efficient market surveillance and supporting full implementation of the new Law on Inspection Oversight by participation in the Government Working Group on Countering Illicit Trade.

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

Here, we would especially like to highlight FIC engagement in:

- Analysis of the Draft Civil Code, wherein FIC members submitted 320 proposals, while 192 were sent to the Government after internal discussion and decision-making. A new version of the draft is still not available and, therefore, results of this advocacy are still not known;

- Active and regular dialogue with the Tax Administration on how to improve application of tax regulations and increase administration capacities of this institution, which we hope will lead to tangible results in the future;

- Advocacy against mandatory membership and a new para-fiscal charge introduced by the new Law on Chambers, adopted at the end of December 2015 without prior public insight and public discussion. Whilst we understand that a similar model functions well in countries like Austria and Germany, we believe that Serbia is not ready to embrace it yet, and that instead all available resources should be allocated to addressing systemic barriers and insufficiencies preventing economic growth.

Besides these, the FIC also engaged in improvement of regulations and their implementation related to personal data protection, restitution, introduction of a registry of disqualified persons, chambers, competition protection, e-commerce, the entry of foreigners in the Registry of Bidders, import duties, occupational health and safety, employees' secondment abroad, validation of university diplomas, as well as to the fields of agriculture (food safety and product labelling), insurance, pharmaceutical, and telecommunications (electronic communications and M-Government).

Over the past twelve months, the FIC engaged in a very active dialogue with the Government on all levels – from meetings with the highest Government officials to deep discussions with the representatives of the state administration. However, this spring we decided to pass the organization of the well-known Reality Check Conference as it coincided with the national elections.

Over the last year, the FIC continued its active engagement in the process of European integration. In early October, the FIC delegation met the Serbian negotiating team and after that travelled to Brussels, where it had a series of meetings with five directorate-generals of the European Commission and European External Action Service (EEAS), including the meeting with the new Director for Western Balkans in the Directorate General in charge of enlargement. We deemed it important to consistently convey that Serbia should remain in EU focus and that we are ready to provide active support to both negotiating parties in order to better understand the particularities of the Serbian market and modalities of its adjustment to European principles and standards.

Throughout the year, the FIC also held an active dialogue with all other relevant stakeholders, international financial institutions, development agencies, embassies and, of course, other business associations. We also launched several joint initiatives with the American Chamber of Commerce, NALED, the Serbian Association of Managers, and

the Serbian Chamber of Commerce. We believe in dialogue and the positive impact that synergy with partners can bring and we will remain open to cooperation in the future.

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

To reiterate, 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 nine committees, both cross-sectorial, like Anti-Illicit Trade, Digital and E-Commerce, Human Resources, Legal and Taxation; as well as sectorial, such as Food and Agriculture, Leasing and Insurance, Real Estate, and Telecommunications and IT. The youngest amongst them is the Digital and E-Commerce Committee, formed in September of this year, even as we plan to form one more by year's end and thus address the rising demand of our members to address regulatory constraints through the FIC.

In order to attain its goal, the Foreign Investors Council will continue paying close attention to members' interests, stimulate active debate, and diligently work on formulating recommendations for better business conditions in Serbia. Going forward, we will try to continue 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 support of the OECD, with the common idea to contribute to the improvement of the investment environment in Serbia.
- The FIC mission today states: "To actively promote a sustainable business environment through an open dialogue with the Authorities and other relevant stakeholders".

CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

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

Renewed commitments to sustainable development and the rising importance of multi-sector partnerships

Contributing to partnerships established across the "golden triangle" of businesses, governments and civil society is the true value that corporate responsibility brings to a more sustainable world. The year behind us was marked by the awakening of CSR movements across the world and the renewal of commitments towards sustainable development and good governance.

The adoption of the 2030 Agenda for Sustainable Development in September 2015 by global leaders, rallied the world around a common 15-year agenda to tackle the indignity of poverty. Recognizing the importance of the role of businesses in tackling topics such as unemployment and economic inequity, human and labour rights, sustainable industrialization, innovation, responsible production, etc., governments actively involved the private sector in the consultation process for the first time. The ambitious 17 Sustainable Development Goals (SDGs) supported by 169 targets, will only ever be achieved through close cooperation and with strong commitment of governments, businesses and communities. In the local context, Serbia has joined the Agenda identifying the three goals to focus on through the activities of local UN Global Compact network: Goal 4 – Quality education, Goal 8 – Decent work and economic growth and Goal 13 – Climate action.

The mechanism of multi-sector cooperation has proven to be important not only in development strategies, but also in emergency situations, as proven during the refugee crisis that shook the EU starting last year. While finding political solutions to the refugee crisis remains an ongoing challenge, companies in the EU and Serbia provided support in the short-term, and addressed the crisis by providing emergency supplies, as well as support to organizations engaged on the ground.

An important role in empowering youth and their social inclusion

In the context of the high youth unemployment rates across Europe, the largest European business network for corporate social responsibility, CSR Europe, launched the European Pact for Youth, as a mutual engagement of businesses and European Union leaders, aiming to facilitate the transition from education to employment and from unemployment into work, and ensure that young graduates are equipped with the relevant set of skills that can help increase both their employability and companies' competitiveness, . The initiative invites all businesses, educational institutions and youth organizations to develop and consolidate partnerships in support of youth employability and inclusion. The main objectives of the initiative are: to boost the number and quality of business-education partnerships, reduce the skills gaps and contribute to the development of EU and national policies on skills for employability. This initiative, which is also supported by its partners in Serbia, invites businesses to support the creation of quality business-education partnerships, with the shared target to jointly establish new, good quality apprenticeships, traineeships or entry-level jobs. Though leading companies in Serbia are already actively engaged in this field, a lot remains to be done to improve structural cooperation mechanisms related to developing high school and university curricula that will provide youth with the competences necessary for increasing their employability.

Emphasis on transparency in the period to come

While the new EU Strategy on Corporate Social Responsibility (CSR) is being prepared, recognizing the UN Guiding Principles on Business and Human Rights as a framework conducive to responsible business, a huge step towards reinforcing transparency was made with the adoption of the EU Directive on Non-Financial Information Disclosure. The Directive made non-financial reporting on environmental matters, social and employee aspects, respect for human rights and anticorruption issues mandatory for all large public interest entities with more than 500 employees. The disclosure obligation must be transposed into Member States' national law by December 2016, and the first mandatory reports are expected in 2018. Although the Directive is not obligatory

for companies operating in Serbia, it stands as a guidance document for improving corporate governance while providing stakeholders with a meaningful, comprehensive view of the company's performance. Following outstanding global practices, a number of companies in Serbia already issues annual sustainability reports in line with the Global Reporting Initiative (GRI) guidelines.

A step towards a new level of CSR understanding in Serbia

While the number of annual sustainability reports in Serbia remains stable, and hopefully with improved quality every year, a huge step forward was made with the introduction of the first national online tool for comprehensive assessment of corporate social responsibility – the CSR index. In line with all known sustainability guiding principles and assessment methodologies, the CSR Index consists of over 100 indicators for the evaluation of companies' performance in 5 areas – corporate governance, local community, market, labour practices and environment. This useful tool allows companies to evaluate their performance in CSR-related areas, benchmark across sector and industries, and furthermore, also ensure listing on the first national list of responsible performers, based on objective criteria. The first cycle of indexing started in March 2016, providing companies with a four-month period to gather information and use the self-evaluation online platform. The first listed companies are expected to be announced in November, after additional external evaluation.

CSR development and responsibility of business leaders

Over the last decades, the concept of corporate responsibility has rapidly evolved. What started out as a commitment to protect the shareholder value in the era of strong activist movements soon evolved into business philanthropy, and then a PR tool. In the next stage of its evolution, CSR is directly linked to the company's core business, adhering to the principles of integrated CSR management. This stage is characterized by a strategic CSR approach. Finally, as perceived today, CSR focuses its activities on identifying and tackling the root causes of present unsustainability and irresponsibility, typically by innovating business models, revolutionizing processes, products and services and lobbying for progressive national and international policies. Companies in Serbia are in different stages of CSR development and only a few of the leading companies in Serbia are into strategic and transformative CSR, and they are a genuine driving force for innovation and a sustainable society. Therefore, a few business leaders have taken on the additional responsibility to lead the dissemination of good practices across supply chains and among partners, especially focusing on empowering SMEs towards a healthy and sustainable growth.

OUR COMMITMENTS

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

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

INVESTMENT AND BUSINESS CLIMATE

WHITE BOOK BALANCE SCORE CARD

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

The general assessment, in macroeconomic terms, is that 2016 was a better year than 2015. This has been stated by the IMF, the World Bank, the EBRD, and the European Commission.

Economic growth is expected to reach 2.5% of GDP, at least, and possibly even 3%. This growth rate is significantly higher than last year's 1%, and above the earlier projected 2016 expansion of 2%.

Fiscal consolidation has continued this year. The budget balance at the moment shows a surplus, and for the first time in a number of years, Serbia has recorded a decline of the external public debt. This is a result of improved tax collection and limits on pensions and public sector salaries, but also public investments being below planned levels. At the moment, external debt is under EUR 26 billion.

Employment and unemployment: The unemployment rate is falling. At the moment, it stands at 15.9%. Particularly worrisome is the very high rate of unemployment amongst the young (under 35). However, the employment rate is showing a much smaller improvement. The difference can be explained by the expansion of the grey market, retirement, and the export of skilled labour, also known as the "brain drain".

Inflation is very low, at only 1.2% annually, and also very stable. So is the exchange rate relative to the euro. Over the past year it was hovering between RSD 121 and 124 for a euro. The National Bank of Serbia is also holding reserves at a stable level, of just under EUR 10 billion currently.

Foreign trade showed improvement as well. The value of exports in the first eight months of 2016 was EUR 8.7 billion, which is 9.3% higher than in the same period last year. Imports were at EUR 9.3 billion, an increase of 5.8% year-on-year. Consequently, the export coverage of imports now stands at 77.2 %, higher than in any of the last six years.

The share of investment in GDP is still lower than it ought to be for higher economic growth, under 20%. Foreign direct investments registered a slight upturn and are expected to be just under EUR 2 billion by the end of the year.

The EU integration process is proceeding slowly. Over the past year, negotiations were opened for four chapters but none, so far, have actually started. The main reason for this is the slow pace of implementation of the so-called Brussels agreement between Belgrade and Pristina.

The production sector ended 2015 with a net profit of EUR 1.2 billion, whilst the same indicator last year was minus EUR 1.2 billion. Also, the net profit rate was above the average interest rate for the first time in a number of years.

In the Global Competitiveness Report, Serbia still holds a rather low ranking – 94th out of 144 countries. The main reasons for this are to be found in: goods market efficiency (127), .labour market efficiency (118), financial market development (120), and institutions (120).

FIC RECOMMENDATIONS

- Complete the restructuring or closure of failed enterprises.
- Increase public expenditure on infrastructure, a necessary requirement for a better business environment.
- Continue membership negotiations with the EU, as a means of improving the legal and policy conditions for business and investment.

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PILLARS OF DEVELOPMENT

TRANSPORT

This pillar registered moderate progress almost across the board, meaning improvements concerning the construction of highways, railways and air traffic, the notable exception being inland waterways. In June this year, for the first time in 20 years, a direct air link was established between Serbia and the USA. Some progress was also marked in the approximation of the Serbian law to that of the European Union.

The previous volume offered 20 recommendations, some of them dating back to 2009. Of the 20, none registered significant progress, 9 registered some progress, and 11 no progress at all. The current issue again offers 20 recommendations, some of which are repeats of recommendations already made.

ENERGY

The most important positive development was the establishment of a licensed market operator for an organized electricity market/power exchange. This is the first step towards integration into the European power market and a crucial one for future power supply security. In June 2016, the Government of Serbia finally adopted a package of decrees setting out a new incentives scheme for renewable energy in the country. Some progress was also made in the improvement of energy efficiency.

The previous White Book offered 6 recommendations. None registered significant progress, 4 had some progress, and 2 no progress at all, though they were offered as far back as 2011. This White Book offers 4 recommendations.

TELECOMMUNICATIONS AND THE IT SECTOR

Over the past year a number of improvements were made, adding to the transparency and predictability of doing business in Serbia. But three key components, which are crucial to the development of the sector, have been pushed back to late 2016, i.e. the Law on Electronic Operations, the Law on Electronic Communications, and the Law on E-Government.

The previous White Book had 24 recommendations: 9 for the IT sector and 15 for telecommunications. The success score is as follows: in IT there were no significant successes, 4 registered some success, and 5 no success at all. In telecommunications the success rate was somewhat better. Three registered significant success, 3 some success, and 9 had no positive movement at all. In the new White Book, there are 28 recommendations, 18 regarding telecommunications and 10 regarding IT.

REAL ESTATE AND CONSTRUCTION

Our focus over the past year was on the implementation of the Planning and Construction Law, in particular the application of the integrated procedure for obtaining construction documents and legalization of existing buildings in accordance with the new legislation. New investments and follow-up to the adopted legislation remain the main area of interest. Some progress has been registered, but a lot still remains to be done.

The previous edition had 16 recommendations, of which 3 had significant success, 6 had some success and 6 had no success at all. This volume offers 20 recommendations grouped into chapters on real estate, construction, restitution, and the cadastre.

LABOUR FORCE AND HUMAN CAPITAL

Work on by-laws and the implementation of the Labour Law are continuing at a moderate pace. The aim of the reform is to create conditions for the establishment of a business environment that will enable the growth of foreign and domestic investments and increase the competitiveness and productivity of the economy; as well as create new jobs, while preserving the necessary balance between the interests of employers and employees.

The Government endorsed the National Employment Action Plan for 2016, which is a tool for the implementation of an 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.

This pillar last year had 26 recommendations. Unfortunately, the success rate here was the worst with only one significant success, one partial success, and 24 recommendations having no success at all. This year the number of recommendations has increased, with 31 regarding the labour force and 8 on human capital.

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INFRASTRUCTURE

TRANSPORT

WHITE BOOK BALANCE SCORE CARD

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

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

CURRENT SITUATION

In view of Serbia's geographical position as a crossroads and transit zone linking southern parts of the EU, the Middle East, and 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 a transit to alternative detour route.

The main transport infrastructure in Serbia consists of about 44,000 km of roads; 3,800 km of railways; 1,700 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.

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

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 is needed for the reconstruction and modernization of the port system, plus EUR 3 million a year for maintenance.

POSITIVE DEVELOPMENTS

Last year, 90 kilometres of highway were built, 190 kilometres of roads repaired, 206 new bridges built, nine tunnels drilled, 28 laws and 26 regulations adopted, and 40 rulebooks published.

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

The progression of Serbia on the World Bank's Doing Business list by 32 positions compared to last year, is not only a major success for the country, but is also likely to draw the attention of more investors to Serbia.

Insufficient investment in the basic maintenance of railways, meanwhile, is the result of a general lag in the economy, poor organization, a lack of funds, and the social and personnel policy. While a lot has been done over the past

year to modernize the railways, a lot remains to be done to bring Serbia's railway transport closer to the standards of European railway transport.

At the beginning of 2016, work on Prokop, the Belgrade Centre Station, began and completion of its construction is planned by 2018. Upon its completion, Belgrade will return to the railway map of Europe.

Furthermore, we remind that on 4 March 2013, Serbian Railways signed an agreement with the Swiss company Stadler for the delivery of 21 electric trains to Serbian Railways. The Agreement, worth around EUR 99 million, was funded from credit given by the European Bank for Reconstruction and Development. Serbian Railways were supplied with all sets according to the schedule stipulated in the Agreement, and by 31 August 2015, Serbia received 21 sets of new trains. The introduction of the new Stadler electromotor sets is a major milestone in the area of passenger traffic for Serbian rail. It is part of a modern concept of trains, with technical solutions in terms of comfort and security in accordance with the latest European standards, intended for passenger transportation between the major cities in Serbia.

Reconstruction of the Bar railroad through Serbia, which is being financed by a Russian loan in the total amount of USD 200 million, has also begun.

The five-year Agreement on the Russian loan approval was ratified by the National Assembly on 15 March 2013 and its total value is USD 940 million, including 15% participation by Serbia. It is expected that the Russian loan, intended for the modernization of Serbia's railways, along with the World Bank's support, should contribute to the restructuring of Serbian Railways, increasing its market orientation and further rationalization of its networks and services.

This year 167 kilometres of railways in Serbia will be reconstructed and modernized, also thanks to the Russian loan. So far, the second track on the Pančevo railroad, in the section from Belgrade to Pančevo, has been built. Also, the railway on sections Golubinci – Ruma, Sopot Kosmajski – Kovačevac, and Mala Krsna - Velika Plana was reconstructed with a total length of 65.7 km.

On the reconstructed sections of Corridor 10, the speed of trains has been increased from 40-50 km/h to 120 km/h.

In continuation of the cooperation with Russian Railways, the modernization of Serbian Railways Dispatch Centre is also to be expected.

Furthermore, the reconstruction and modernization of the Belgrade-Budapest railway is a symbol of the continuation of the successful cooperation between the Serbian and Chinese Governments on infrastructure projects. Discussions on the commercial agreement for the modernization of this railway began in order for the agreement to be signed as soon as possible. However, although the initiation of construction was planned for the end of 2015, the Agreement has not been signed yet. Negotiations with both the Chinese and Hungarian sides are still in progress for the signing of the commercial agreement regarding the construction of the Belgrade-Budapest railway.

In the field of air transport, the greatest advance is the opening of a direct line for the U.S., i.e. a direct flight from Belgrade to New York, launched in June this year.

In fact, the renewal of direct overseas flights by the national airline was made possible after the Government of Serbia adopted on 26 March 2015 the text of the Air Transport Agreement between the Serbian and the U.S. Governments regarding direct flights between the two countries. This Agreement, initiated by the Ministry of Construction, Transport, and Infrastructure, made Serbia the first country in the former Yugoslavia region to have direct flights overseas.

This Agreement brings connection between the two economies, additional employment, and development of airport infrastructure because it will stimulate construction of another runway and new passenger terminal, as well as growth of the Air Serbia brand. Nikola Tesla Airport will become attractive for potential investors, as well as the regional centre which will contribute to the significant increase of the transport of goods to America.

By the opening and commissioning of the official passage "D" at Nikola Tesla, one of the most important conditions for direct flights to the USA has been fulfilled. The beginning of direct flights to New York this year represents not only an increase of the number of passengers on an annual basis, but also the development of cargo transport.

Besides this significant development, it should be noted that smaller airports are to be developed as well, which will help the development of tourism and connection of

people, as well as the development of sport tourism and air traffic.

During the first half of February 2016, the Serbian Airports company began operations, whose main tasks are management, and the development and maintenance of airport infrastructure in the Republic of Serbia, as well as connecting over 30 airports in Serbia into one network and increasing the service quality of these airports to the required level. This implies training for the use of already existing major military and mixed airports in Serbia, which will be used for the transport of passengers and goods, as well as the construction of new airports and an increase in security at small airports. The first task of Serbian airports is to launch the Morava military airport in Lađevci near Kraljevo. After additional work, one section of this military airport will be converted to civilian use and the first regular flights are expected to start by autumn.

The Nikola Tesla Airport in Belgrade donated RSD 50 million to the Ponikve Airport near Užice, which is to be used for the construction of a passenger terminal. Large airplanes like Boeing 737-300 will be able to operate at this airport. As announced by the Ministry of Construction, Transport, and Infrastructure, the first flight in civil air transport on a completed Ponikve was planned for the end of August. However, this did not happen and according to local authorities, the opening of the airport has been delayed since the finances required to complete the reconstruction work were miscalculated and additional funding is needed.

In addition, it should be mentioned that the record in the number of passengers at Konstantin Veliki Airport in Niš has been broken. The low-cost air company Wizz Air, which already operates from Nikola Tesla, has started operating between Niš and Malmö.

Aside from two previously announced lines for Berlin and Bratislava from Nikola Tesla, Ryanair, another European low-cost air company, will introduce two other new lines from Niš to Düsseldorf and Milan with two flights a week, starting from autumn.

Additionally, by September this year, EUR 21 million will be invested in Nikola Tesla from airport funds for reconstruction and improvement of facilities.

Finally, the establishment of a regional body for search and rescue in aviation was considered last year, though this still remains only in theory for now.

As regards inland water transport, there has been a growth in revenue in harbourmasters. Despite extremely low water levels on the Danube, there have been no restrictions on sailing and no customer complaints. Even during the worst sailing conditions in Europe, Serbia was the only country that had a clear sailing route on the Danube for 365 days, unlike the downstream countries that did not enable this by cleaning the riverbed.

The most important thing that was resolved in 2014 and 2015 is the procurement of two official boats to provide better control on rivers.

The General Master Plan for Transport 2009-2027 provides an overview of the transport infrastructure needs in Serbia. 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.

Over the past year, several dozen kilometres of the most severely damaged roads during the floods of 2014 were rehabilitated, mostly in western and central Serbia; but though a lot has been done and repaired, more work remains to be done in order to repair fully the damage caused by the floods of May 2014.

In March this year, there were new floods. Although on smaller scale than in 2014, the Serbian government declared a state of emergency throughout the entire territory of the Republic of Serbia. Hence, the means for damage repair caused by the floods will inevitably increase.

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 its utmost efforts into remediating the consequences of floods.

In spite of the fact that a large amount of rain slowed down works, the Ministry of Construction, Transport, and Infrastructure announced that nearly 100 kilometres of highways were built last year, and that by the end of next year most of the travel to Čačak will be conducted by highway.

There is noticeable progress in the Reconstruction Project of 1,100 kilometres of roads in Serbia, in which EUR 400 million will be invested. The realization of this project is planned for the next three years. Reconstruction of the road network will be financed by credits given by the World Bank, the European Investment Bank, and the European Bank for Reconstruction and Development, as well as from part of the state budget. Within this project, tenders are planned for the rehabilitation of 600 kilometres, out of which 180 kilometres are to be financed by the European Bank for Reconstruction and Development, to be finished in 2016.

In 2015, the end of the work on Corridor 10 by the end of 2016 was talked about; however it seems that this deadline will be postponed till the first quarter of 2017. Specifically, the entirety of Corridor 10 will be completed in 2016, except for the part through the Grdelička Gorge that will be finished in the first quarter of 2017, allowing the citizens of Serbia, and all others passing through, to travel from south to north by highway.

Corridor 11 is also important, with the Ljig - Preljina section and the Dići Loop, by which this highway will be connected with the Ibar Highway, is scheduled to be in place by the end of the construction season this year, whilst the Lajkovac - Ljig and Obrenovac – Ub sections, with a total length of approximately 50 kilometres, built by a Chinese company with local subcontractors, is to be completed by June 2017.

Currently, approximately 250 kilometres of highways on Corridor 10 and Corridor 11 are being worked on, and with their completion Serbia will become the transport hub in the region.

The relocation of tollbooths at Bubanj Potok, i.e. the "Vrčin tollbooths, is being planned. This will enable the faster passing of vehicles in this section of Corridor 10.

The new Vrčin ramp will have a total of 23 lanes, eight more than Bubanj Potok. The works on this project should be completed by mid-October.

Progress has also been made regarding the works on the bypass around Belgrade. Another 10 kilometres of highway were opened to traffic, stretching from Dobanovci to Ostružnica Bridge, whilst the whole bypass, with a total length of 46 kilometres, will be completed by the beginning of 2018, according to forecasts from the Ministry of Construction, Transport and Infrastructure.

The reconstruction, expansion, and modernization of the Batrovci border crossing has begun. The entire project is worth RSD 684 million. An expansion of Batrovci is being conducted for cargo transport first. New scales for measuring loads, as well as new parking lots for the parking of the trucks, will be installed. Afterwards, a new strip on the highway for trucks will be built and then the border crossing itself is to be extended.

REMAINING ISSUES

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

The restructuring of the transport sector's public enterprises has so far mainly involved railway transportation enterprises. The railway subsector is defined by directives and regulations commonly referred to as Railway Packages.

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

It should also be noted that more than 350 kilometres of railways are not being used and that a detailed analysis will be completed on what will happen to railways that are not profitable yet remain important to the country. The analysis will show which railways are profitable and of national and strategic interest, and which will be transferred for use to private parties, if local governments are interested in launching public bids.

The Law on Railway was adopted last year and enabled the State to be the one working on the railways, but gave the

possibility to local governments too, which could then pass on the possibility of work on the railways via public tender to private transporters.

Regarding inland water transport, Serbia's goal is to modernize the port and fleet, and to increase water transport in total. In order to achieve this, it is necessary to invest a significant amount of funds in the modernization of ports, harbours, and fleet. Unfortunately, in Serbia, the share of water transport in total transport is about 4.5%, several times less than the European average. Today's ports in Serbia have infrastructure over 30-40 years old. Cranes in ports are even older. These ports cannot be quick in terms of reloading. It is not uncommon for ships to go to other countries for loading and unloading because it is a waste of time and money with Serbian ports. Modernization, new technologies, and new infrastructure, as well as the new fleet are the most important things. Chinese companies have expressed interest in building ports in Serbia, but further steps in this direction are yet to be taken.

In addition to improving navigation on the Danube River, navigation conditions should also be improved on the Sava River, in accordance with the Sava River Basin Master Plan defined in consultation with the Sava Commission.

Serbia has five airports that can be used for commercial flights: Belgrade, Niš, and Vršac, whilst the Kraljevo and Užice airports are currently undergoing reconstruction, after which they, too, should be in use for commercial purposes. Nikola Tesla in Belgrade and Konstantin Veliki in Niš, both of which are part of the Core Regional Transport Network, are used for international flights. According to the Smatsa Air Traffic Services, there are 32 certified airports in the country. Several military airports operated by the Serbian Armed Forces also have the potential for further network development as civil or civil-military category airports.

Although it was announced in 2014 that by the end of 2015 or beginning of 2016, Air Serbia would have direct flights from Belgrade to three destinations in North America, specifically New York, Chicago, and Toronto, only direct flights to New York have so far come into fruition.

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

In addition, there was a significant lack of private investment in the transport sector, due to underdeveloped legislation. Although the Law on Public-Private Partnership was enacted in 2011 to regulate and provide clear guidelines for private investments in this area, there have been no significant private investments thus far. It is important to mention that the European Investment Bank is interested in the development of Public-Private Partnership in Serbia, but also for the development of regional projects and roads within the European Transportation Network, where the most important one for Serbia is the Niš-Merdare-Priština route.

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

The quality of roads has deteriorated due to a lack of investment and maintenance. Among other significant factors, it is important to note that the lack of funds for modernization and maintenance of the road network with an out-dated vehicle fleet has affected a significant reduction in road safety. Due to the large number of victims in road accidents, road safety in the Republic of Serbia cannot be considered satisfactory. In connection with this, it is significant to mention statistics according to which, in the first ten months of 2015, 501 people were killed in traffic accidents in Serbia, 55 more compared to the same period the year before. The number of children killed in traffic accidents was higher in 2015 (12 children) compared to 2014 (9 children). Despite mentioned statistics, the decrease was noted in the number of injured children, killed and injured young people, injured pedestrians, cyclists, and motorcyclists, but these results still fall short of expectation.

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 EU transport acquis, and the harmonization of technical standards of interoperability, safety, and security with respect to 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. Increasing the effectiveness of the transport system by strengthening the policy and institutional framework, management capacities, and implementation mechanisms.
- Improving the capacity and quality of transport infrastructure and services within the Pan-European Transport Corridors and the South East Europe Core Regional Transport Network.
- Promoting sustainable urban and suburban transport.
- Repair existing damages, which are a consequence of floods, with high-quality materials, in order to diminish the frequency of subsequent repairs.
- Increase funding of maintenance and rehabilitation of major roads in order to stop the long-term deterioration of the road network.
- Increase quality control and inspection of materials when performing the works.
- Further strengthening of capacities, particularly in the field of enforcement of regulations and inspections.
- Increase efforts to boost institutional reform and capacity building in the area of infrastructure, with an emphasis on transport.
- Improve the quality of the national road administration to enable it to provide an adequate institutional framework in this area.
- Increase efforts in private sector development and private sector participation in the construction of major roads and railways in Serbia.
- Establish public-private partnerships in those 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 cost of reforms by charging users wherever reasonable, and through increased private sector participation wherever there is sufficient scope for competition.
- Set up an efficient road user toll system in Serbia and decrease road tolls in order to bring back transit traffic (passenger and cargo) to Serbian roads.
- Create conditions for the sustainable development of the transport system through stable financing sources.
- Increase efforts to improve expropriation proceedings.

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

ENERGY SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Allowing for the continuation of the efficient and transparent public discussion on the draft new Energy Law, taking into consideration the questions, comments and suggestions that have already been submitted by the relevant market players and other stakeholders, as well as new queries and suggestions resulting from the discussion to date, and the adoption of this law within a reasonable time period, and by the end of 2015 at the latest.	2014		√	
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 active promotion investment opportunities in the renewable energy sector.	2013		√	
Increasing public awareness of the efficient usage of electricity and the prospects for development of the ESCO market.	2009			√
Even with the increases initially planned, the prices of electricity still need to be re-evaluated to ensure investments in new capacities and rehabilitation of existing capacities.	2012			√

CURRENT SITUATION

The current Energy Law was adopted in late 2014. Most of the by-laws required for its full implementation, which should have been adopted by the end of 2015, were not passed until recently. As a result, their real effects are yet to be seen. Disregarding deadlines for the adoption of implementing by-laws seems to have become a trend among the authorities over the last several years.

As an exception to this trend, the Ministry of Mining and Energy (hereinafter: the Ministry) adopted the new rulebook on licensing energy companies. Under this rulebook, foreign electricity trading companies are entitled to directly operate in the Serbian wholesale electricity market without incorporating a local subsidiary.

Granting foreign companies access to the Serbian electricity market also prompted changes to VAT rules for network energy transactions and services. The VAT Law was amended to introduce the so-called "reverse charge", a mechanism for settling VAT on these supplies, applicable to both Serbian and foreign traders. This means fewer burdens for electricity traders, especially in terms of VAT cash flow.

In February 2016 the first organized market/power exchange – SEEPEX a.d. became operational. SEEPEX is a joint venture of the Serbian TSO – Public Enterprise EMS and French EPEX SPOT. For the time being, it operates only day-ahead transactions, but in the near future it should offer other standardized electricity products, including the intra-day auctions. As of June 2016, SEEPEX has nine members, of which seven are foreign companies.

Households and small consumers may choose between public and market supply of electricity. As expected, non-market based price of electricity prevents other players from entering the household supply market.

The natural gas market has also been formally liberalized, and all buyers, including households, are entitled to purchase gas on the open market. Again, households opted for public supply under regulated tariffs instead of supply from the market.

In the area of renewables, the 2014 Energy Law introduced noteworthy improvements compared to the incentives system applicable under the 2011 Energy Law. However, due to a failure of the Government to adopt implementing by-laws – primarily the new feed-in tariff and model PPA, these improvements remained only on paper. Delay in adoption of necessary by-laws strongly affects the further development of renewable energy projects, especially large-scale wind power plants, and jeopardizes Serbia's commitment to achieve 2020 RES targets on time.

The most important players in the entire energy sector remain state-owned companies – EPS and EMS in the electricity and Srbijagas in the gas sector.

EPS underwent financial and corporate restructuring, which resulted in the merging of production and supply activities in one company. EPS is the sole shareholder of the only distribution company in Serbia, which was established by a merger of five distribution system operators. Its production capacities are, to a large extent, based on dated coal-fired thermal power plants. Implementation of the Industrial Emission Directive and the Large Combustion Plant Directive in Serbia will require EPS to make significant investments in refurbishing some of those production facilities while shutting down others.

EMS is the only electricity transmission system operator in Serbia, and one of the rare state-owned companies operating with significant profits. In accordance with the Energy Law and the requirements of the Third Energy Package, EMS will have to go through a certification procedure by the end of 2016.

As regards electricity prices, business consumers (save for small consumers) are not entitled to supplies under regulated tariffs. However, prices of electricity for households remain well below market value. The Government introduced the excise tax on electricity in mid-2015, without giving suppliers and consumers enough time to adequately plan for this additional burden. This contributed to increasing the general unreliability of the regulatory framework, especially in the area of taxes and para-fiscal charges. The excise tax revenue stream goes directly to the state budget instead of to new investments and revitalization of electricity infrastructure.

Srbijagas, the largest gas transmission system operator, has long-term sustainability issues, primarily due to inefficient management, poor collection and low prices. It is currently undergoing financial and corporate restructuring to improve its overall poor financial situation to be able to comply with the requirements of the Third Energy Package.

The market for energy efficiency remains underdeveloped.

POSITIVE DEVELOPMENTS

The most important positive development in Serbia is the establishment of a licensed market operator for an organized electricity market/power exchange – SEEPEX. This is the first step towards integration into the European power market and a crucial one for future power supply security.

In June 2016, the Government of Serbia finally adopted a package of decrees setting out a new incentives scheme for renewable energy in the country.

The decrees comprising the new package are: (i) the Decree on the Power Purchase Agreement, (hereinafter: the PPA Decree); (ii) the Decree on incentives for the production of electric energy from renewable energy sources and from high-efficiency co-generation of electric energy and thermal energy (hereinafter: the FIT Decree); and (iii) the Decree on the requirements and procedures for acquiring the status of privileged power producer, preliminary privileged power producer and producer from renewable energy sources (hereinafter: the Status Decree).

By adopting these decrees, Serbia hopes to increase investments in renewable energy in the years to come. The decrees are a step forward compared to the previous incentives scheme, as they addressed some of the concerns raised by stakeholders in the past. Still, their real reach has yet to be tested in practice.

Also, the Ministry showed a much greater understanding of the interests of stakeholders in the legislative process. Now, all-important draft legislation is subjected to public consultation before adoption, where all stakeholders may raise their concerns and suggestions.

REMAINING ISSUES

The incentives scheme introduced in June 2016 is still a new piece of legislation. Its real reach has yet to be tested in practice, but it is already clear that it has not resolved all issues in the renewables framework. These issues, coupled with the fact that there is no room for amending the most important piece of legislation – the PPA, might hinder the development of renewables projects, despite the notable improvements introduced by the new scheme.

FIC RECOMMENDATIONS

- Following the stakeholders' feedback on the new incentives scheme, PPA to be adjusted to address stakeholders' concerns.
- Abolishment of excise taxes on electricity.
- Regulated tariffs for households and small consumers to be increased to approximate market-based prices, provided that the increased proceeds are exclusively used for investments in new and revitalization of existing power infrastructure.
- State-owned electricity companies to be led by qualified management.

TELECOMMUNICATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Predictability of frequency distribution should stay very high on the Government's and RATEL's agenda, since this is of critical importance to market development.	2015	√		
Full independence of regulatory bodies, including financial independence is the EU standard and should be fully implemented in Serbia as a top priority for further sector development.	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Transparent allocation of frequencies in the 800 MHz band, based on regional price benchmarks.	2015	√		
Enable timely and active participation of all electronic communication operators in Serbia in the preparatory process for spectrum auctions in 2015.	2015		√	
Free up 900 MHz bands from military presence.	2015			√
Further development of e-Government.	2015		√	
Decrease VAT for IT Equipment to previous level.	2015			√
In the area of cable TV and fixed telephony, the recommendation is to discontinue administrative retail price control as it is not in line with EU practices.	2015			√
Amend Law on Foreign Exchange Operations, operator billing service to enable operator billing of digital content through monthly mobile service bills.	2014			√
Refrain from the introduction of any parafiscal duties on the telecom sector.	2015	√		
Additional round of market regulation in a transparent and predictable manner. Market regulation should follow the market maturity and should include implementation of EU best practices, and not simple transposition of regulations from the matured EU markets. Further harmonization with the EU acquis should contribute to a level playing field within the digital environment.	2015		√	
In the roaming area harmonize implementation of regulations at regional level, in order to maintain reciprocity/enable the application of regulated prices as an additional tariff, and not the only tariff.	2015			√
It is necessary that the regulatory body re-examine the business conditions in the fixed telephony wholesale markets and internet access. The relationship between wholesale and retail markets has to be based on a clear economic rationale.	2013			√
Strengthening capacities of the Government and of the independent regulatory authority to enable growth of the electronic communications market.	2011			√
Achieve better coordination between state institutions, with the Ministry of Trade, Telecommunications and Tourism taking a leading role in all sector specific issues requiring the intervention of other state institutions and authorities.	2015			√

CURRENT SITUATION

In 2016 the telecommunications sector in the Republic of Serbia is facing new challenges and telecommunication operators new obligations, i.e. regulation and a further reduction of roaming prices, the establishment of e-government, and the growing demands and needs of customers in relation to new trends and opportunities brought on by modern technologies.

There is a recognized need for shifting the business focus from basic telecommunications services (voice, text) to digital services, and accordingly to creating conditions for finding new sources of revenue necessary for further progress and development of the telecommunications industry, which is globally and locally in stagnation and decline.

The total revenue generated in the electronic communications market of the Republic of Serbia in 2015, according to the average annual exchange rate, amounts to around EUR 1.55 billion. Calculated in euros, the market grew by 5.2% compared to 2014. Revenues from electronic communications in

2015 had a GDP share of 4.72%. Mobile telephony services accounted for the largest share of total revenues in the electronic communications market, EUR 902 million, or 58%.

Total investment in the electronic communications sector in 2015 amounted to around EUR 276 million, an increase of 48% compared to the previous year. The investments realized in 2015 amounted to around EUR 279 million, with over 60% going to mobile and fixed telephony, EUR 106.8 million and EUR 68.7 million, respectively. This investment growth resulted mainly from the purchase of additional spectrum by operators, which spent EUR 126 million for the purpose. However, spectrum purchase represents a long-term, large investment; therefore, this data on growth cannot be taken as an indicator of a long-term trend.

Regarding the digital dividend 2 (700 MHz), it is the position of mobile operators that in the following three years there is no need for allotment of the spectrum in this band.

In anticipation of the new Electronic Communications Law, whose adoption is expected by the end of 2016, we believe that it is essential that it confirm existing licenses with all the rights and obligations arising thereof. Regarding the spectrum, this is an opportunity to introduce service neutrality, spectrum sharing, and secondary trading.

In June 2015, a suggestion was made by operators that the draft Law on Amendments to the Criminal Code should be supplemented by an article more effectively regulating the prosecution of persons involved in the illegal termination of international telephone traffic, which causes damage both to operators and the local economy. Since this process is long and uncertain, the introduction of a new offense in the future Electronic Communications Law is an opportunity to reduce the scale of this problem.

POSITIVE DEVELOPMENTS

In the previous year there was no introduction of new para-fiscal charges and operators welcomed the fact that the state has recognized the importance of creating a predictable and stimulating business environment by not imposing the financing and implementation of number 112 on telecommunications operators.

During 2015, two public bidding procedures were conducted, with all three operators buying an additional spectrum within two frequency bands, 800 and 1800 MHz; in this way expectations from the previous edition of the White Book have been achieved. By the release of the digital dividend (800 MHz band), expectations of the White Book in the field of spectrum allotment have been fulfilled. After the public bidding procedures, all three operators set aside over EUR 126 million and the use of spectrum is allowed for a period of 10 + 5 years for the digital dividend and the period of 10 + 2 years for the 1800 MHz spectrum.

The sale of the digital dividend to mobile telephony operators has contributed to the development of the broadband mobile Internet, as well as better mobile coverage of the territory of the Republic of Serbia.

In the second half of May 2016, the state unveiled the draft Law on Electronic Business for viewing, which is a positive step enabling interested companies to prepare their proposals in a timely manner.

Electronic government (e-government) has at the same time been recognized as a relevant topic by the economy and by state institutions.

Also, informal consultations on the issue of electronic commerce represent a good practice of openness of state institutions involving the private sector at the earliest stage of the drafting of legislative proposals.

REMAINING ISSUES

The stability and predictability of the business environment, as well as transparency in the decision-making process on the part of the relevant state and regulatory bodies, are the key expectations of the telecommunications industry in 2016.

Very important decisions, which are essential for the further development of the sector, will be made by the end of 2016: the Law on Electronic Business, the Electronic Communications Law, and improvement of e-government.

All three initiatives have a common denominator, and that is the fact that electronic communications operators should join the process of drafting legislative proposals and that public consultations should be held in a timely manner, well before the making of important decisions. Industry recommendations on these issues have already been highlighted in the text above - electronic communications and e-government as independent topics, and electronic busi-

ness through the improvement of the digital signature and electronic payments.

Despite the efforts of market players to introduce new innovative services, the development of new services continues to be a problem. Because of the current legal framework in Serbia, operators are still unable to provide customers with a service of direct costing and billing for content downloaded from Google Play and Windows Store. The main obstacle to this is a discrepancy between the Law on Foreign Exchange Operations, the Value Added Tax Law, and the Corporate Income Tax Law (the issue of withholding tax).

Also, the elimination of the monopoly on ownership of cable infrastructure and harmonization of standard offer prices with the prices in the region will remain a challenge in the coming period.

The current amount of fees paid by mobile operators on an annual basis with respect to services within the competence of RATEL and the use of spectrum go beyond the scope of cost justification, i.e. efficient use of radio frequency resources. Amendments to by-laws regulating these fees are expected in 2016. It is expected that on this occasion RATEL will implement the European guidelines recognized by the current Electronic Communications Law, which enable further reduction of the above fees.

During 2015, the Ministry of Finance started working on the new Law on Local Government Financing, and so it was provided with an overview of negative economic effects of charging the local utility fee – the so-called company name display fee. In December, the draft Law was published, providing for the abolition of the company name display fee starting at the beginning of 2017, which would certainly contribute to a more favourable investment climate and unburdening of the economy. However, due to the expressed dissatisfaction of cities and municipalities primarily due to a reduction in local revenues from taxes on earnings, this Law has not entered the parliamentary procedure. Meanwhile, a number of municipalities have increased the amounts of these local fees.

The issue of enforcement of regulations in the field of non-ionizing radiation is a serious problem for mobile telephony operators. Many local governments use these regulations to prevent the construction of new base stations or require unnecessary preparation of environmental impact assessment studies, which represents a significant cost for operators or prevents construction. In this respect, it is necessary to amend by-laws in order to stabilize the practice and prevent discretionary powers in decision making by local governments.

In the reference period there was no change in the implementation of the Law on Consumer Protection in the field of telecommunications. The law is a lex specialis for electronic communications services as well, which are defined by that law as services of general economic interest. There are two questionable provisions of the Consumer Protection Law from the telecommunications industry's point of view:

1. **Suspension of electronic communications services is possible only after two months following the maturity date of the bill, in the event that the bill is not paid** (Article 86), which prevents temporary disconnection of a number. This provision is completely unfounded when it comes to electronic communications, due to the fact that a free emergency number 112 has been introduced, i.e. customers can dial the majority of public services and receive calls in the event of temporary disconnection, whereby customers are sufficiently protected from a permanent termination of service and are provided with the minimum service. On the other hand, in the period of two months, which under the new law, operators have to wait before the temporary / permanent disconnection of customers who did not pay the bill, there is a high risk that customers will accumulate large debt, which the operator will not be able to collect. Our proposal is to amend Article 86 of the Law by specifying that the suspension of services means permanent, not temporary, disconnection of services.

2. **Without the explicit consent of customers, it is not possible to hire third parties (Agencies) for the collection of debts**. We propose the deletion of paragraphs 6 and 7 of Article 86, bearing in mind that this definition prevents operators to attempt out-of-court debt collection by engaging qualified personnel, whereby both customers and operators are exposed to additional and frequently very high costs of enforcement and judicial proceedings.

The regional roaming agreement signed by the ministers responsible for electronic communications in Serbia, Bosnia and Herzegovina, Montenegro, and Macedonia introduced a further reduction in roaming prices as of 1 July 2016. The agreement and the decision of RATEL have been introduced on the basis of EU guidelines, which are not a

part of the domestic regulatory framework, putting the legality of this agreement into question. Meanwhile, the above agreement has been challenged by the Administrative Court of Montenegro, but despite the court decision indicating the illegality of the procedure itself, the regulator in Montenegro made a new decision to reduce prices. This has obliged the other signatories as well to continue implementation of the above Agreement.

Over the last year, at the European level, the debate about the need for regulation of the position of OTT players in the market has intensified. Operators in Serbia welcome any kind of healthy competition that takes place under the same market conditions, but they emphasize that OTT regulation is necessary. In this context, it should be borne in mind that OTT operators do not have a local presence, do not pay any taxes, and do not have employees in Serbia. On the other hand, they participate equally in the telecommunications market and maximize their profits, whereby mobile operators investing in the infrastructure, labour force, and which have significant tax burdens are damaged and placed at a disadvantage.

Although Chapter 10 of Serbia's EU accession talks has not yet been opened, continuous strengthening of efforts and activities of relevant institutions to align the regulatory framework of the Republic of Serbia with EU regulations can be expected in the forthcoming period. In this sense, it is of great importance for operators of fixed and mobile telephony that the new law on electronic communications is in line with the 2009 European framework and new standards set by the European Digital Single Market Initiative.

FIC RECOMMENDATIONS

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

- In order to improve and increase availability of electronic signatures to citizens and businesses, it is necessary to: 1) simplify the identification procedure; 2) make electronic signature available for everybody; 3) relieve customers of high costs associated with the electronic certificate. The prerequisite is that the Law on Electronic Business should be the general law in the field of electronic signature and laws, whilst such as the Law on General Administrative Procedure would have to be amended allowing the use of electronic documents and e-signatures in administrative and judicial proceedings.

- Given that the use of qualified electronic signatures requires special hardware, software and high costs, there should be three types of ordinary electronic signature, where it will be prescribed for which particular contract/transaction which type of signature may be used. The key to improving this area is prescribing the mechanism of electronic identification instead of technical resources for the implementation of electronic signatures. With registered SIM cards and a PIN code known only to the user, mobile phones would become an ideal means of identification because the user already owns the entire hardware and software.

- In addition to the improvement of electronic signatures already been discussed, it is essential to improve the system of electronic payment and recording these payments in such a way that citizens are not obliged to provide paper evidence of electronic payment.

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

- Making a decision on relocation of the army from the 900 MHz band.

- Further development of e-government and the possibility of placing these services on a mobile platform is possible through establishing a single management system for the electronic government, where a body would be constituted which will have a political and legal capacity to implement all the necessary steps to coordinate the exchange of information. Our recommendation is that, in addition to representatives of the Government and its agencies, units of local self-government and representatives of economy should also be members of that body. E-government should integrate existing data in electronic form; and when it comes to the system, it is important to establish a simple interface adapted to the widest range of users and unique form of data convenient for exchange. Thus, one of the priorities is the establishment of a unified database of the e-government system.

- Regarding regulating and facilitating the cross-border transfer of data, we believe that the Law should not make a difference in legal treatment between EU Member States and countries that have not yet become members, and so our recommendation is to follow the EU model, i.e. the data on generated traffic should not be excluded from the definition of personal data.

- Also, with more efficient management of investments through joint systems within a group which operates in several countries, streamlining of costs is achieved, and funds can be reallocated into investments providing growth.

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

- In the field of market analysis, it is necessary to further improve the mobile termination market analysis for the purpose of aligning it with EU practice, whereas access to telecommunications ducting requires additional regulation and ensuring competitive conditions for all alternative operators.

- Restoration of VAT on computer equipment to the previous level.

- In the field of cable television and fixed telephony, there is the recommendation to suspend the control of retail prices because this is not in line with the EU practice.

- Amendments to the Law on Foreign Exchange Operations, in order for the Ministry of Tourism, Trade, and Telecommunications to support the service of costing and billing by operators with the relevant authorities, for the purpose of selling digital content and charging it through monthly bills for mobile telephony services ("operator billing"). This is currently not possible due to the restrictive interpretation of the Law on Foreign Exchange Operations.

- Refraining from the introduction of para-fiscal charges in the telecommunications sector.

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

- Changing regulations regarding the cross-border transfer of data and the location of the equipment. This should lead to a more efficient allocation of resources and increased investment in the network and services.
- Changing regulations in the field of protection from non-ionizing radiation, which will not provide for the option of preparation of the environmental impact assessment studies for setting up base stations.
- Better coordination between state institutions – the Ministry of Tourism, Trade, and Telecommunications should take a leading role when it comes to issues inherent in this sector requiring the intervention of other state institutions and bodies.
- Coordinated activity of state institutions and operators of electronic communications aimed at suppressing illegal termination of international traffic and clear definition of this phenomenon as illegal, through amendments to the Criminal Code and Law on Electronic Communications.

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 preserved and, whenever applicable, further developed, especially in the following areas: administrative fees, applications for various documents, and tax applications.	2012		√	
The government should refrain from introducing any measures approaching online censorship and remain committed to an open Internet, as that which is most conducive to innovation, social development and commercial interest. The government should keep an open ear and regular contact with the e-community and initiatives coming from this sector.	2012			√
In order for the sector to continue growing in crisis times, the government should refrain from imposing any burdensome taxes and encourage the development of start-ups and high technology companies. Accordingly, VAT for IT equipment should be decreased from 20% to 8%.	2012			√
The 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		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 devoted to further development of e-school programmes through active dialogue between all relevant stakeholders, principally the Ministry of Education and the ministry (or agency) responsible for the ICT and IT community.	2012			√
With regard to Serbia's membership in the Open Government Partnership, special emphasis should be placed on the transparency of the functioning of administrative bodies and the use of new technologies by these bodies.	2012			√
There is a need for better coordination of software and hardware acquisition procedures among the different government bodies (ministries, agencies, directorates) both within the public tender procedure and prior to it in the context of investment planning. This would help with reduction of needless duplication of IT capacities; it would help with optimization of the spending of tax payers' money, and would as a result help state bodies perform their duties in a more efficient way. Hopefully, the new Law on Public Tenders, which has introduced a centralized model of the tender procedure, should have a positive impact in this sense and its application should be followed closely.	2013			√
The application of the withholding tax (WHT) in the IT industry must be clarified, because the current legislation leaves room for arbitrary interpretations by tax and other authorities. Due to the unclear legal framework, domestic IT companies find themselves in a less favourable position than foreign suppliers especially in the context of public tenders. In practical terms, this means that domestic companies' software prices are generally 10-20% higher than the prices offered by foreign companies for the same software. Since government bodies are the ones that are involved in public tenders, levelling the playing field and helping IT companies with a registered seat in Serbia be competitive should be in everybody's interest. To that end, it is desirable that the international tax treaties with other countries better define software as such, as in the case of the tax treaty between Serbia and the Czech Republic.	2013			√

CURRENT SITUATION

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

POSITIVE DEVELOPMENTS

There have been quite a few positive developments in the IT sector in Serbia in recent years. The most notable examples include the adoption of the Strategy for the Devel-

opment of Information Society in Serbia until 2020; the introduction of an e-Government program in various state bodies, such as courts, municipalities, and police administrations; the introduction of the possibility to file and pay VAT online, followed by the gradual transition to mandatory online filing of other taxes; and Serbia's membership in the Open Government Partnership (which implies the fulfilment of multiple requirements, such as improving the transparency of public finance, adequately regulating data protection issues, and free access to information).

The e-Government programme in Serbia has significantly progressed over the past years, though further improvements are necessary. Whilst significant tools were developed, in practice the availability of online forms and information is still limited, and paper correspondence is often still required (even for trivial matters, such as information-gathering). However, the e-Government portal now hosts a variety of services and the Tax Administration seems to have made decisive steps in streamlining and expanding its IT infrastructure, so there are numerous positive developments. E-Government is a key element of Serbia's state administration reform. It will make administration more efficient, which will in turn attract more foreign investment. The e-Government initiative should be strengthened by setting up a government council to coordinate activities of the various government bodies. This is necessary so that all new e-Government services can be implemented in a more efficient way. Better coordination of various activities across the ministries, in the context of e-Government, should 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 government's 2015-2018 e-Government Development Strategy, adopted in December 2015, addresses this aim of achieving better coordination. The Strategy stipulates the establishment of a working group for e-Government in the Public Administration Reform Council. The task of this working group would be to monitor the implementation of the Strategy, collect and analyse reports, examine comments and evaluations, give recommendations to the Public Administration Reform Council, etc., thus serving as the Council's hub for e-Government-related activities. Furthermore, the objective of the Strategy is to achieve interoperability between the information systems and web services of the state, provincial, and local administration, establish basic electronic registers connected with other information systems of the state, provincial and local authorities, establish open administration to enable free public access to a part of the data collected by the public administration, etc. The Action Plan for the Implementation of the Strategy for the period 2015-2016 stipulates that the first steps of the Strategy's implementation should include the adoption of a law on e-Government, and the implementation of analyses by the various state authorities and holders of public powers pertaining to other necessary changes of the legal framework, (such as the changes that have already been made with respect to electronic communications in administrative procedures, incorporated into the new Law on General Administrative Procedure, which applies as of June 2017).

The Law on Payment Services, adopted in December 2014, applies since October 2015. This law (along with amendments to the Law on Foreign Exchange Operations) introduces the concept of electronic money for the first time in Serbia's legal history, and provides incentives for the prompt introduction of e-money, which is of great significance. The legal framework for e-money is based on the Second Electronic Money Directive (2EMD), and allows for the establishment of e-money institutions and issuers. This creates potential for 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 (RS Official Gazette No 41/2009 and 95/2013), pursuant to the definition of trader under the Law on Trade, now apply not only to legal entities and sole proprietors, but also to natural persons acting in the capacity of traders. This step was taken in order to harmonize this law with the EU Directive on Electronic Commerce. However, the Directive gives an even wider definition, since it stipulates that an information society service provider is any person providing such services, regardless of his or her status as a "trader". Bearing this in mind, it is recommended that this definition be extended to natural persons, i.e. that the formulation from the said Directive be literally transcribed.

A positive development in legislative efforts is the intro-

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

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

The Law on Information Security, adopted in January 2016, provided for the establishment of a national centre for prevention of security risks in information and communications systems (Regulatory Agency for Electronic Communications and Postal Services - RATEL). The Law also mandated the establishment of a coordination body for information security-related matters. While governing crypto-security and protection against compromising electro-magnetic radiation in detail, for other issues the new Law mostly sets forth the basic rules, to be further developed by government decrees. The same goes for, e.g., the exact range of information and communications systems which will be considered as systems of particular interest, the measures that operators of systems of particular interest will be obliged to apply, compliance monitoring and reporting procedures, procedures for reporting on security incidents, etc. The adoption of implementing decrees is still pending in September 2016.

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, these programmes will only have a limited impact on raising IT skills of the younger Serbian generations to a higher level.

The line Ministry (currently the Ministry of Trade, Tourism and Telecommunications) apparently recognized the e-business and e-trade as an opportunity for the citizens of Serbia which will enable them to perform transactions in a much easier, faster, safer and less expensive manner. The Ministry also recognized e-trade's potential to contribute to the economy by providing better opportunities for residents, especially small entrepreneurs and businesses, to sell their goods and services in foreign markets online, 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, and has been expanded thereafter, this is a significant and long-awaited step in Serbia's harmonization with European standards. Domestically, this development is certainly a notable first step towards the meaningful liberalization and improvement of electronic business.

REMAINING ISSUES

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

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

The adoption of the law regulating electronic business which would bring Serbian legislation in this area in line with the current EU legal framework is still pending. In September 2016, the draft Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business, modelled after the EU Regulation 910/2014, was put on public hearing.

Data protection remains a sore issue in IT matters, as evidenced by several high-profile and publicized cases concerning the improper use of data. Although the office of the Commissioner for Information of Public Interest and Personal Data Protection is respected and active in the field, it appears that most of the other state authorities are not entirely supportive of its efforts. The Model Law on Personal Data Protection, published by the Commissioner in

June 2014, provided for the liberalization of cross-border data transfer in states that are not members of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, by removing the obligation to request an approval of the transfer from the Commissioner in several types of situations. Furthermore, the Model Law explicitly stipulated that the consent for data processing could be provided either in writing, orally on the record, or by a clear affirmative action. The above would be a positive development since it would facilitate business operations within the IT industry, and bring the national law closer to the EU acquis. However, the Draft Law on Personal Data Protection, published by the Ministry of Justice in October 2015, marked a step back in comparison to the Commissioner's Model Law. For instance, when it comes to the cross-border transfer of personal data and the manner of giving consent to the data processing, the Draft Law is less precise (cross-border transfer) and far more restrictive (data subject, i.e. a natural person, cannot give consent to data processing by clear affirmative action but only in written form, or orally on the record, or in electronic form with use of a qualified electronic certificate).

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

The VAT rate for IT equipment was increased from 8% to 20%.

The procedures for the assessment of conformity of radio and telecommunications terminal equipment bearing a CE mark are still in place. The conditions for placing this equipment on the market, or its use, could be further simplified if the national assessment bodies gained access to the relevant EU databases.

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

FIC RECOMMENDATIONS

- The government should be committed to the further development of the IT regulatory framework, which would in turn enhance the country's appeal to foreign investors over the long term. Furthermore, the effects of legislative changes introduced so far should be closely monitored and effectively implemented.
- Quick wins and tangible results already achieved in the area of e-Government should be preserved and, whenever applicable, further developed, especially in the following areas: administrative fees, applications for various documents, and tax applications.
- The government should refrain from introducing any measures approaching online censorship and remain committed to an open Internet, as that which is most conducive to innovation, social development and commercial interest. The government should keep an open ear and regular contact with the e-community and initiatives coming from this sector.
- In order for the sector to continue growing in crisis times, the government should refrain from imposing any burdensome taxes and encourage the development of start-ups and high-technology companies. Accordingly, VAT for IT equipment should be decreased from 20% to the current special VAT rate (10%).
- The government should pay special attention to the area of e-health as a major area for improvement, especially in terms of electronic records. Educating the citizens and health workers on the implementation and usage of these systems would be equally important.

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

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

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

- There is a need for better coordination of software and hardware acquisition procedures among the different government bodies, (ministries, agencies, directorates), both within and prior to the public tender procedure in the context of investment planning. This would help with the 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 increase their efficiency. Hopefully, the Law on Public Tenders, which has introduced a centralized tender procedure model, should have a positive impact in the future period and its application should be closely monitored.

- The application of the withholding tax (WHT) in the IT industry must be clarified, because the current legislation leaves room for arbitrary interpretations by tax and other authorities. Due to the unclear legal framework, domestic IT companies find themselves in a less favourable position than foreign suppliers especially in the context of public tenders. In practical terms, this means that domestic companies' software prices are generally 10-20% higher than the prices offered by foreign companies for the same software. Since government bodies are the ones that are involved in public tenders, levelling the playing field and helping IT companies with a registered seat in Serbia be competitive should be in everybody's interest. To that end, it is desirable that 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
Construction land and development				
The authorities must introduce transparency and consistency in their own work at all levels and ensure a high level of control of all relevant institutions. The authorities should publish all opinions and interpretations of regulations provided by them on their websites.	2009		√	
The missing pieces of secondary legislation regarding construction to be adopted as soon as possible.	2015	√		
Implementation of the latest version of the Planning and Construction Law to be monitored by all relevant stakeholders.	2015	√		
In addition to the existing mechanisms for sanctioning a responsible person for the violation of the deadline for issuing a building permit, the Law should also envisage additional consequences, in the form of reduced fees for land development, as a form of accountability of the state or local government.	2014			√
New Law on Legalization with a simpler, but constitutionally acceptable, solution to be adopted as soon as possible.	2015	√		
The legal framework defining the relationship between the investor and the main contractor should be improved in accordance with internationally recognized best practices (including, especially, the International Federation of Consulting Engineers - FIDIC legacy), by amending the Law on Contracts and Torts.	2010			√
Dialogue, communication, and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other organizations dealing with real estate on the other, with respect to strategic issues, with the goal of improving the real estate market in the best interest of all.	2009		√	
Mortgages and Real Estate Financial Leasing				
The Law on Financial Leasing must be harmonized with current real estate regulations, in particular where it pertains to the possibility of registering an existing real estate lease in the public real estate cadastre, which must be clearly prescribed by the Law on Cadastre and State Survey. Also, by elaborating the tax legislation, the state should create a more favourable climate for implementing financial leasing in the real estate sector.	2009			√
The effects of the latest amendments to the Mortgage Law need to be monitored, however, even at this point of time we are of the impression that the law needs to be amended and supplemented further in order to finally create a clear and modern regulatory framework for mortgages that would not be open to interpretation in practice and that would allow for flexible mortgages.	2015			√
Cadastral Procedures				
Shorter time limits and efficient action for registration within the Real Estate Cadastre should be introduced and clearer guidelines for the implementation of the law by the Real Estate Cadastre should be provided in a transparent manner, to make cadastral procedures swift and predictable.	2012		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Online access to cadastral data should be unlimited and free, and the issuing of simple documents, such as title deeds and copies of cadastral plans, should be made possible on the spot.	2012		√	
The formation of the cadastre of utilities has to be finalized, along with the remaining procedures related to the formation of the real estate cadastre.	2015		√	
The Republic Geodetic Authority should ensure the harmonization of administrative practices among all local units of the Real Estate Cadastre.	2015		√	
Restitution				
State authorities should lead transparent restitution procedures grant the right to restitution, redress the injustice perpetrated seventy years ago, taking due care to protect basic human rights of the parties to the proceedings.	2015			√
State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.	2015			√
Enable foreigners to exercise the right to restitution, equating them with national citizens in these proceedings, irrespective of their citizenship and nationality.	2015			√

The focus of the Foreign Investors Council (FIC) in the past year was the implementation of the Planning and Construction Law, and in particular the application of the integrated procedure for obtaining construction documents and legalization of existing buildings in accordance with new legislation. New investments and follow-up of the adopted legislation remain the FIC's main area of interest.

CONSTRUCTION LAND AND DEVELOPMENT

CURRENT SITUATION

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

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

Conversion of the right of use to ownership of construction land

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

Conversion of land for a fee applies to holders of use right that are:

- companies and other legal entities which were privatized under the law governing privatization, bankruptcy and enforcement proceedings, as well as their legal successors;
- companies that acquired use right over undeveloped land owned by the state, and which was acquired for development before 13 May 2013 or based on the decision of the competent authority;
- sport and other associations;

- socially owned companies;
- entities incorporated in ex-Yugoslavia to which the Succession Treaty is applicable.

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

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

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

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

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

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

Construction

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

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

The exchange of all relevant documents between public authorities in the integrated procedure is performed without any further involvement of the investor. The investor's role in the procedure is to procure and submit only the documents and/or evidence that cannot be procured ex officio by the relevant authority. The time it takes to issue a permit has been reduced in several ways: (i) the competent authority examines only whether the formal conditions for construction are fulfilled, (ii) the Law prescribes shorter deadlines for the authorities to take action, and (iii) stricter penalties for breach of public duty. All these instruments should improve the efficiency of the procedure.

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

Location conditions are a public document containing all conditions necessary for the preparation of technical documentation for a construction project, and information on possibilities for and limitations on construction for a specific land parcel. In order to obtain location conditions, an

investor is obliged to submit a concept design, made in accordance with the location information. In a situation when the planning document does not provide all required conditions for the preparation of technical documentation, the authority will issue a separate document on technical conditions for construction, (Serbian: "separat o tehničkim uslovima izgradnje"), containing relevant conditions and other information required for the preparation of technical documents.

An important characteristic of location conditions is that they are not linked to a particular investor. Hence, if the land is transferred to a new investor prior to the issuance of a construction permit, the new owner can rely on location conditions obtained by the previous investor, within the deadline of validity prescribed in the document.

A significant improvement envisaged under the rules of integrated procedure is the clear methodology for setting the land development fee, paid by an investor to the municipal authorities for the purpose of developing land infrastructure. This means that the possibility of the municipal government changing the fee amount at their own discretion, which posed a significant impediment in the past, has now been decreased, if not completely eliminated. In addition, if an investor has directly financed infrastructural development, the land development fee can be reduced for the value of the investment. If the investor chooses to pay the fee in lump sum, a discount of 30% (or more in certain cases) applies. The maximum amount of the land development fee is now determined by the law. If paid in lump sum, the fee is payable before commencement of construction; otherwise, if paid in instalments, only the first instalment is to be paid before commencement of construction works (however, collateral for the payment must be provided). The land development fee is not charged for infrastructural and production facilities, warehouses, underground floors, etc. The amendments to the Law on Planning and Construction further introduce a new term – "financier", who may be a holder of the construction permit along with an investor, provided they entered into an agreement. On the basis of such an agreement, the financier acquires the rights and obligations which originally belong to an investor under the law, except for the right to acquire ownership over the building being constructed.

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

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

Legalization

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

POSITIVE DEVELOPMENTS

Conversion of the right of use to ownership of construction land

The conversion proceedings are finally being implemented, to some extent. However, the line ministry expects that the full effect of the Law on Conversion for a Fee is yet to be

seen. According to the Ministry of Construction, Transport and Infrastructure there were 489 applications for conversion in Serbia from the day the Law came into force, however, only one quarter of these have been granted.

Construction

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

The total number of building permits issued in the period January - April 2016 increased by 4.3% compared to the same period last year.

Serbia moved up 39 spots in the World Bank's global Doing Business 2016 ranking according to the last analysed data in June 2015 in the area of construction permitting, coming in 139th out of 189 ranked countries.

Legalization

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

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

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

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

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

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

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

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

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

REMAINING ISSUES

Conversion of the right of use to ownership of construction land

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

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

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

The 12-month period provided under the Law (i.e. no later than 28 July 2016), in which the right of use is considered as an appropriate title to the land for the purposes of obtaining a construction permit should be extended by two additional years, given the large number of pending conversion processes.

If the deadline is not extended in accordance with our proposal, construction will be blocked again, (as was the case from 2013 until the new regulations were enacted), which will negatively affect not only the construction industry, but also the country's overall economic development.

Construction

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

Legalization

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

FIC RECOMMENDATIONS

- The authorities must introduce transparency and consistency at all levels and ensure a high level of control of all relevant institutions. The authorities should publish all opinions and interpretations of regulations provided by them on their websites.
- The missing pieces of secondary legislation in the construction area should be adopted as soon as possible.
- Implementation of the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders.
- The implementation of the new Law on Legalization of Buildings should be monitored by all relevant stakeholders.
- The legal framework defining the relationship between the investor and the main contractor should be improved in accordance with internationally recognized best practices, (including, especially, the International Federation of Consulting Engineers - FIDIC legacy), by amending the Law on Contracts and Torts.
- It is essential that the application of Article 11, paragraph 6 of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with majority public or state-owned capital.

- The 12-month period provided under the Law (i.e. no later than 28 July 2016) in which the right of use is considered an appropriate title to the land for the purposes of obtaining a construction permit should be extended by two additional years, given the large number of pending conversion processes.
- Dialogue, communication, and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other stakeholders dealing with real estate on the other, with respect to strategic issues, with the goal of improving the real estate market in the best interest of all.

MORTGAGES AND REAL ESTATE FINANCE LEASES

CURRENT SITUATION

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

However, in ten years of application, the Law on Mortgage revealed clear shortcomings in practice, and the consequent dire need for a substantive revision of its provisions. The need for amending the Law on Mortgage was evident to the lawmakers, which resulted in the adoption of the Law on Amendments to the Law on Mortgage in July of 2015, with the primary goal to overcome the problems identified from the very beginning of the implementation of the law.

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

The above mentioned changes were adopted only about a year ago, so more time is needed to see their full effects. The Foreign Investors Council will, as usual, closely monitor the application of the amended law.

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

POSITIVE DEVELOPMENTS

The adoption of the Law Amending the Law on Mortgage in July 2015 introduced significant improvements to eliminate the biggest problems in practice.

This primarily refers to amendments to the provision which stipulate that the rights of the lower-ranking mortgage creditors remain reserved in case of out-of-court mortgage settlement. Because of this, many mortgage creditors opted for the slower but more secure in-court foreclosure proceedings rather than out-of-court settlement.

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

A positive development is that the form and content of documents on the basis of which a mortgage may be established and/or transferred are now clearly regulated, as certain aspects related to this issue have not been clarified ever since the introduction of the notary system in the Republic of Serbia.

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

The amendments introduced a number of other technical improvements that will hopefully resolve the numerous dilemmas that arose in the application of the Law on Mortgage in practice.

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

REMAINING ISSUES

As in the previous edition of the White Book, we have to point out that the amendments to the Law on Mortgage of 2015 were not sufficiently far-reaching. They lack additional clarifications, which would have been very useful, and they also failed to introduce some new useful institutes. Furthermore, we consider that some of the new solutions are not good enough.

Specifically, the proposed amendments failed to explicitly regulate the registration of one mortgage as collateral securing several debts contracted with several creditors on different grounds, a situation that is not uncommon in practice, and the terms of settlement of the claims of these creditors, practically treated as mortgage creditors of the same rank.

As already mentioned, the introduction of the institute of "third party" (specifically the "security agent") is positive, but lacks detailed rules on the role of the security agent in relation to the relevant authorities. We believe that in practice the security agent will probably need to obtain a special authorization for undertaking actions in favour of a mortgage creditor before the relevant authorities (primarily cadastral authorities).

The opportunity was missed to amend Article 15 of the Law on Mortgage which over-regulates the form and content of a mortgage document, in order for it to be recognized as an enforceable document. In fact, bearing in mind that the amendments already stipulate that an enforceable mortgage document must be drawn up in the form of a notary deed, in itself an enforceable document, the legislator's requirements with respect to the exact wording of the mortgage document are unnecessary. Furthermore, bearing in mind that the only requirement for a real estate sale contract is that it should be solemnized by the notary public, there is no reason why the same practice should not be applied to mortgage documents as well.

Furthermore, the position of tenants in the case of an out-of-court settlement is not entirely clear. Specifically, following amendments to the Law on Mortgage, it seems that, in the case of a foreclosure, the mortgagee/buyer of the real estate can in any case demand that the tenant vacate the property, but this is not always feasible in practice (e.g. in the case when the mortgagee was or could have been familiar with existence of the lease at the time when the mortgage was created). On the other side, the Law on Enforcement and Security protects the dutiful tenant stipulating that the latter will stay in possession of the real estate following the court foreclosure procedure. The legislator must stipulate clear rules for resolving the conflict between the rights of the creditor in a settlement procedure (either in-court or out-of-court) and the rights of the tenant.

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

As regards real estate finance leases, these are still not viable in practice as the legal framework has not been sufficiently developed.

FIC RECOMMENDATIONS

- The Law on Financial Leasing must be harmonized with current real estate regulations, in particular pertaining to the possibility of registering an existing real estate lease in the public real estate cadastre, which should be clearly regulated by the Law on Cadastre and State Survey. Also, the state should improve tax legislation to create a more favourable climate for implementing finance leases in the real estate sector.

- It is necessary to explicitly regulate the manner/procedure and consequences of a registered mortgage in order to protect competition between banks, safeguard the security of data registered in the real estate cadastre and facilitate access to loans for mortgagors.
- It is necessary to explicitly regulate some of the more flexible types of mortgage envisaged in comparative law, such as conditional, credit and continuous mortgage.
- It is necessary to explicitly allow the registration of one mortgage as security for the repayment of more than one debt, contracted with different creditors on different legal bases, and regulate the registration of such mortgages and the settlement of creditors in such cases.

CADASTRAL PROCEDURES

CURRENT SITUATION

The latest amendments to the Law on Cadastre and State Survey came into force in December 2015.

These amendments to the Law were significant, aiming, first and foremost, to accelerate the registration procedure in the real estate cadastre, create conditions for e-administration, eliminate gaps that had been detected in the previous implementation of the Law.

Considering that the amendments to and novelties in the Law are of a substantive nature, and that their enactment is very recent, it is still too early to evaluate of their present or potential impact.

The amendments to the Law can generally be assessed as positive, but there is still plenty of space for improving the regulatory frame for this complicated administrative procedure.

POSITIVE DEVELOPMENTS

The FIC positively assessed many of the amendments to and novelties in the Law on Cadastre and State Survey. Here we will mention some of them.

A very important amendment and, we expect, a positive one, is the change of the second instance jurisdiction. In fact, the amendments stipulate the jurisdiction of the Republic Geodetic Authority (Authority for the procedures related to the establishment, reconstruction and maintenance of the real estate cadastre instead of the line ministry. We expect that the Authority will have greater professional capacities, and that it will be able to influence the acceleration and harmonization of the practices of its internal departments.

Another notable change is the possibility envisaged by the Law of registering certain contractual rights in the real estate cadastre (e.g. contractual pre-emption rights, lease and other contractual rights in respect of real estate).

We consider the new provision specifying the content of mortgage registration useful, because it will harmonize the practices of different local cadastral units in respect to this issue.

Also, the list of notifications that can be registered in the cadastre has been extended, and we especially emphasize the priority annotation, which is also regulated in detail.

A positive development is the stipulation of "other documents" (besides public and private documents) that can be submitted in support of registration, as proof of a change in data on the title deed holder or other registered data in the real estate cadastre.

We welcome the explicit introduction of the possibility to submit the request for registration as an e-document, as well.

Another very important novelty is the stipulation that the request for registration of a foreclosure sale notification pursuant to the Law on Mortgage has priority when deciding on requests, regardless of the general rules on processing requests.

Finally, we welcome the formal shortening of the deadlines for deciding on requests for registration as well as the extension of deadlines for correction of mistakes, shortcomings and omissions in registrations. In practice, it is already evident that new requests are being processed significantly faster than before.

REMAINING ISSUES

As we have already mentioned, the real reach of the numerous novelties introduced by the latest amendments to the Law should be monitored and evaluated in the future.

For now, the inconsistent interpretation of applicable laws by the Real Estate Cadastre Office is the main problem, along with the fact that the provisions of the Law often conflict with other Laws.

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

Cadastral plans have not been fully digitalized yet, and in practice there are discrepancies between the data contained in the property deeds and the data in the cadastral plans. This has led to significant delays in investments involving large areas, i.e. a large number of land plots.

Data available through the Real Estate e-Cadastre are not always reliable, because data are not updated frequently enough.

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

FIC RECOMMENDATIONS

- More transparent and clearer instructions should be provided for the implementation of the Law within the framework of the cadastral activities, to further accelerate and increase predictability of cadastral procedures.
- Online access to cadastral data should be unlimited and free, and the issuing of simple documents, such as title deeds and copies of cadastral plans, should be made possible on the spot.
- A mechanism should be created for daily updates of online real estate cadastre data.
- The formation of the cadastre utilities has to be finalized, along with the remaining procedures related to the formation of the real estate cadastre.
- The Republic Geodetic Authority should ensure the harmonization of administrative practices among all local units of the Real Estate Cadastre.

RESTITUTION

CURRENT SITUATION

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

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

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

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

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

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

Agricultural Land

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

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

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

POSITIVE DEVELOPMENTS

Agricultural Land

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

REMAINING ISSUES

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

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

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

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

FIC RECOMMENDATIONS

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

LABOUR

LABOUR RELATED REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Labour Law:				
Most international companies have a system of salary calculation which is applied throughout the world. Forcing these companies to accept a completely different system just for the Republic of Serbia creates an additional barrier to foreign investment and increases investment costs. For example, we propose that work performance should not be a mandatory, but rather a discretionary portion of the salary. In this regard, the possibility of a free agreement between employees and employers on the structure of the salary and additional benefits, and the establishment of a salary system that will stimulate employees' work, is the basis for the functioning of the labour market.	2009			√
We also suggest that salary compensation during leave from work be equal to the amount of the base salary increased by seniority.	2008			√
Employees protected from termination by reason of redundancy should have the right to consent to such termination, in which case they would be entitled to unemployment benefits.	2009			√
We propose that the legal limit of 24 months for a fixed-term employment contract should be extended to 36 months. In addition, we propose that such an employment contract should not be conditional on the existence of a handful of predetermined reasons (such as work on a specific project, increase in the volume of work, seasonal jobs, etc.), which is currently the case. We propose that such limitations should be abolished and that the parties should be free to contract for whatever purpose they deem appropriate.	2010			√
In addition, we propose that the provisions of the Labour Law should specify that the employment contract for a specified time can be concluded up to a legally specified time for performing "the same job", without putting the emphasis on the "same person / same employee" due to the fact that we believe that such a provision is contrary to the Constitution and the Law on the Prohibition of Discrimination. For example, why can't a business secretary who has concluded an employment agreement for a specified time by the end of the period for which the contract was concluded, work as a law graduate on some other job (the secretary having graduated, meanwhile) concluding a fixed–term employment contract again?	2015			√
We propose to extend the limit for the duration of the suspension measure to one month.	2010			√
The possibilities for the introduction of overtime work should be extended, i.e. not be related to sudden and unexpected occurrences only. The employer and employees should be free to agree on the occasion and purpose of overtime work. Employers should have the right to introduce management compensation that would include compensation for overtime work performed by managers in the company.	2012			√

It is necessary to envisage the possibility that the notice period in case of termination of employment by the employee may exceed 30 days, if the employee and employer so agree, and especially in case of directors and management staff.	2014			√
The obligation of employers to keep employment contracts at an employee's place of work should be changed, so that it does not apply to employers who do not have business premises, or some other adequate place for keeping these documents.	2014			√
Employers must be able to envisage in the Rulebook on Internal Organization and Job Classification several different levels of professional qualification as a condition for employment for a specific position.	2014			√
Misdemeanour fines must be decreased.	2014			√
Regarding the provisions on the protection of pregnant employees or employees on maternity leave, childcare leave or special childcare leave, the following should be defined: (i) that the decision on employment termination will not be void if the pregnancy commences after the delivery of this decision to the employee, and (ii) that the 90-minute daily break/working hours reduction for breastfeeding, encompasses the regular daily break during working hours, and that there is no right to an additional daily break.	2013			√
A more precise definition is required as to what is considered a placement of trade union representatives into an "unfavourable position".	2013			√
It is necessary that the Labour Law determine the topic of redundancy in those cases where there is no legal obligation to adopt a redundancy program.	2015			√
It is necessary to more closely determine the nature of certain deadlines (as well as some other provisions), i.e. those that are optional or mandatory norms, in order to avoid uncertainty and to clearly determine if an employer and employee can mutually agree therein.	2015			√
Law on Vocational Rehabilitation and Employment of Persons with Disabilities:				
The working ability assessment and issuing of a decision on assessed working ability should be performed by the same body in order to accelerate the procedure. We suggest assigning the procedure to a competent body other than the FPDI, considering that the FPDI already has a significant workload. Also, the list of documents required by the authorities from the employee should be reasonably decreased.	2009			√
We believe that a more efficient manner for achieving a higher employment rate of PWD would be stimulating employers to employ such persons by way of incentives.	2009			√
The Law should enable the employer to initiate the procedure for the establishment of current employees' disability, rather than leave it to employees alone.	2011			√
Law on Foreigners:				
Obtaining temporary residence permits is an excessively complicated and time-consuming process. Enhance practical application of the Law, e.g. by shortening the period of time for issuing a residence permit; reduce the number of documents required during the procedure for acquiring a residence permit, etc.	2009			√

A work permit's term of validity should reflect the need of the employer officially confirmed by the term of the employment contract (which may be concluded even for an indefinite term).	2013			√
The labor market test should be excluded in case of employment of directors or other high ranking management individuals.	2015			√
Central Registry's certificate regarding the fact whether the employer prior to filing the request for the work permit dismissed the employees due to the redundancy, should contain the exact job title of the redundant employee.	2015			√
Law on Conditions for Assignment of Employees to Temporary Work Abroad and Their Protection				
The new draft Law on the Posting of Workers and Their Protection has been proposed. The adoption of the proposed draft Law will reduce administrative obstacles and ensure harmonization with the provisions of the Labour Law, while the secondment procedure will be adapted to the global and intercompany needs for workers' mobility.	2015	√		
Staff leasing:				
The concept of staff leasing should be regulated by a separate regulation or possibly by amendments to the Labour Law, which would govern all important issues with respect thereto (such as relation of employer and individual, employer and service user, employee and service user, occupational health and safety, etc.).	2009		√	
The concept of staff leasing should be regulated in such a manner that the relationship between leased staff and the users of staff leasing services should not result in the creation of an employment relationship.	2010			√
The conditions for the issue of operating licences and general business conditions for staff leasing agencies (including the fee for issuing operating licences to staff leasing agencies) should also be regulated by the law. The law would thus create legal certainty, thereby removing the possibility of discretionary decisions being handed down (e.g. by ministries) with regard to these important issues.	2010			√

LABOUR LAW

CURRENT SITUATION

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

The Law on Amendments to the Labour Law (RS Official Gazette No 75/2014) incorporated practically 65% of the recommendations from the White Book 2013. The aim of the reform is to create conditions for the establishment of a business environment that will enable the growth of foreign and domestic investments and increase competitiveness and productivity of the economy; as well create new jobs, while preserving the necessary balance between the interests of employers and employees.

Courts have started implementing the principles introduced by the Labour Law. This primarily refers to the fact that employees can now exercise their rights on the basis of payslips, which are enforceable documents based on which courts pass enforceable decisions. On the other hand, in labour disputes, it is not possible to reinstate an employee to their job if the termination of employment was grounded, but the employer violated procedural norms. If, during such a proceeding, the court determines that employment was terminated without a legal basis, but the employer demonstrates that there are circumstances which reasonably indicate that the continuation of employ-

ment is not possible, taking into account all the circumstances and interests of both parties, the court will reject the employee's request to be reinstated and will award damages to the employee in the amount of 36 salaries.

After that, no new changes were made to the Labour Law, but practices were being developed in the application of new and changed institutes, which primarily includes practices in the employers' practical application of the Labour Law and the setting up of employment relations between employers and employees on different grounds.

POSITIVE DEVELOPMENTS

The reform of labour legislation is the result of harmonization with the legislation of the European Union, but economic reasons - the need to revive the economy and attract foreign investments - have also created an urgent necessity for amending the law. We would particularly point out that improvements in the work of courts, i.e. decision-making in labour disputes, are expected thanks to the change in the law according to which the court may in the course of the procedure adjudicate the employee an amount of six salaries if it determines that there were grounds for termination of employment, but that the employer acted contrary to the provisions of the Labour Law prescribing the procedure for employment termination. It can be said that this aforementioned change to the law is "revolutionary". Amendments of the Labour Law have certainly contributed to the creation of a favourable business environment.

For further development and implementation of the law, special attention shall be focused on courts' work, as with any law, and it will take the courts' official opinions and authentic interpretations to achieve full compliance with opinions, interpretations, and application of certain institutes.

REMAINING ISSUES

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

- The provision stipulating that the Rulebook on Internal Organization and Job Classification may envisage only two successive degrees of professional qualification as a requirement for work in certain positions is a problem when a number of employees with different educational levels can all adequately perform the work required for a certain 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 the adequate conditions for such (i.e. construction sites);
- The impossibility to contract a notice period exceeding 30 days in the case of termination of employment by an employee may also be problematic for employers, especially in the case of directors and other management staff when it is extremely difficult to find an adequate replacement in such a short period of time; and
- Introducing high misdemeanour fines for employers may represent an obstacle to opening new positions.

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

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

Fixed-term employment's limitations include duration of up to 24 months, with extensions possible only in special cases, as well as quite restrictive terms under which such employment can be contracted. Despite the expansion of cases in which it is possible to conclude an employment agreement for a certain time after the statutory maximum, the Labour Law is still talking about "the same employee," so that it remains unclear and controversial in practice: whether the employer may conclude an employment agreement for a definite period of time with the same person, but on some other job, different from the work previously performed beyond prescribed exceptions.

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

Work Practice under Labour Law

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

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

The second agreement is the agreement on vocational development (ugovor o stručnom usavršavanju), the use of which was limited in 2014 (by the Amendments to the Labour Law) to cases in which vocational development is prescribed by a piece of legislation. Since for most professions there is no legislation which prescribes vocational development, this type of agreement is practically inoperative, unnecessarily limiting the possibilities for students and other individuals to obtain practical work experience which could later help them find employment. Also, this limits employers in finding new talents to whom they could offer employment.

Digitalization in Labour Regulations

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

FIC RECOMMENDATIONS

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

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

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

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

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

graduated, meanwhile), concluding a fixed–term employment contract again?

- We propose to extend the limit for the duration of the suspension measure to one month.
- The possibilities for the introduction of overtime work should be extended, i.e. not be related to sudden and unexpected occurrences only. The employer and employees should be free to agree on the occasion and purpose of overtime work. Employers should have the right to introduce management compensation that would include compensation for overtime work performed by managers in the company.
- It is necessary to envisage the possibility that the notice period in case of termination of employment by the employee may exceed 30 days, if the employee and employer so agree, and especially in the 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 to keep these documents.
- Employers must be able to envisage in the Rulebook on Internal Organization and Job Classification several different levels of professional qualification as a condition for employment for a specific position.
- Misdemeanour fines must be decreased.
- Regarding the provisions on the protection of pregnant employees or employees on maternity leave, childcare leave or special childcare leave, the following should be defined:
  (i) That the decision on employment termination will not be void if the pregnancy commences after the delivery of said decision to the employee; and
  (ii) That the 90-minute daily break/working hours reduction for breastfeeding encompass the regular daily break during working hours, and that there is no right to an additional daily break.
- A more precise definition is required as to what is considered a placement of trade union representatives into an "unfavourable position".
- It is necessary that the Labour Law determine the topic of redundancy in those cases where there is no legal obligation to adopt a redundancy program.
- It is necessary to more closely determine the nature of certain deadlines (as well as some other provisions), i.e. those that are optional or mandatory norms, in order to avoid uncertainty and to clearly determine if an employer and employee can mutually agree therein.
- We propose that the Labour Law define a modality for engaging students and other individuals outside employment for the purpose of gaining practice in a real work environment that can enhance their careers ("work practice") without prescribing additional conditions limiting such engagement.
- To change labour-legal regulations in order to differently regulate, alternatively, first the conduct of formal communications between the Employer and Employee, then employment-based information/receipt/processing/delivery of requests and decisions, as well as keeping of documentation, etc.

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, bearing in mind that in this area there was no progress in the period since the previous edition of the White Book, we emphasize the following:

- The problem for employers is a lack of staff that would apply for employment on jobs that are appropriate for employees with disabilities.
- Existence of business activities for which it is practically impossible to employ a person with a disability because the performance of such activities requires specific health abilities (construction, private security, manufacturing, etc.).
- Failure to carry out classification of business activities of employers that, according to their nature cannot be subject to the application of the Law in the same way, as well as activities of Employers that do not require special health abilities or special psychophysical abilities of employees for performing jobs; and also companies that sell services rather than products and in which people with special psychophysical characteristics are the key factor for performing the basic business activities are unable to meet the requirements set by this Law.
- Conflict between the Law on Vocational Rehabilitation and Employment of Persons with Disabilities and the Law on Private Security, pursuant to which, starting from 1 January 2017, the activities of private security can be carried out by persons with the appropriate license, for whose acquisition and maintenance an appropriate psychological and physical ability is required, especially for employees who perform specific jobs with weapons and whose health status has to be checked every year, resulting in the fact that companies from the private security industry are additionally prevented from complying with provisions of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities in the manner prescribed by the Law.
- Although there is 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 state Fund for Pension and Disability Insurance [FPDI]).

FIC RECOMMENDATIONS

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

- Classification of business activities that, due to their specific features (e.g. private security, manufacturing, construction, etc.), are subject to a limited application of the Law in a way that in these sectors, the number of persons with disabilities that employers must hire shall be calculated with respect to the number of employees who work on jobs that can be performed by employees with disabilities, and for which it is not required to have a special health ability in accordance with the law and/or with the nature of business activities.
- Harmonize the Law on Vocational Rehabilitation and Employment of Persons with Disabilities with the Law on Private Security with respect to the obligations of companies from this industry.
- The working ability assessment and issuing of a decision on assessed working ability should be performed by the

same body in order to accelerate the procedure. We suggest assigning the procedure to a relevant 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 stimulate employers to employ such persons by way of incentives.
- The Law should enable employers to initiate the procedure to establish a current employee's disability, rather than leave it to the employee alone.

EMPLOYMENT OF FOREIGNERS

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

A foreigner who works in Serbia can have only one of these two types of work permits at any one time, and can only conduct the business activity for which they were issued the work permit.

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

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

Restrictions for employers that the Law on Employment of Foreigners introduced (and that the previous laws did not recognize) did not contribute to the improvement of the working environment. This particularly refers to provisions prescribing that a work permit will only be issued to the employer if that employer has not dismissed any employee working on the same position, for which the work permit was requested, as redundant prior to filing the request for the work permit, and provided that the employer was unable to find a suitably qualified employee among Serbian citizens, or persons who possess a personal work permit, or persons who have free access to the National Employment Service (so-called labour market test). The impossibility of avoiding the labour market test, even when a director or other high-ranking managers are hired, proved to be problematic in practice. Also, the issue of the maximum period of validity of residence and work permit (up to one year) is still relevant, and the need to keep extending these still remains an additional administrative burden for foreigners and employers.

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

FIC RECOMMENDATIONS

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

THE LAW ON CONDITIONS FOR ASSIGNMENT OF EMPLOYEES TO TEMPORARY WORK ABROAD AND THEIR PROTECTION

The long awaited Law on Conditions for the Assignment of Employees to Temporary Work Abroad and Their Protection came into force on 13 November 2015, with application commencing as of 13 January 2016. On the commencement date of the application of this law, the Law on the Protection of Citizens of the Federal Republic of Yugoslavia on the Work Abroad was abolished, whereas the new law foresaw that all procedures for the assignment of employees to temporary work abroad that commenced until 13 November 2015 will be completed based on the previously applicable law.

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

Under the Law on Conditions for Assignment of Employees to Temporary Work Abroad and Their Protection, assignment of employees to temporary work abroad includes both assignment of the employees to work, and assignment for professional education and development for the needs of the employer. Namely, this law binds the employers which assign their employees to temporary work abroad for the following purposes: (i) work within the performance of investment and other works and provision of services; (ii) work or professional education and development for the purposes of the employer in business units of the employer located abroad; and (iii) work or professional education and development for the purposes of the employer within the intercompany movement of employees.

The most important innovations in the field of assignment of employees to temporary work abroad that the new law introduces is the simplification of administrative and technical procedures of the assignment, i.e. the notification of the Ministry of Labour, Employment, Veteran, and Social Affairs; shortening of existing deadlines (from 30 days to 1 day prior to the date of the assignment), as well as reduction of additional documentation that the employer is obliged to submit to the Ministry along with the notification on assignment. Also, unlike the previously applicable law, the

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

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

With respect to persons who may be assigned temporary work abroad, the new law prescribes the same solutions as the previously applicable Law on the Protection of Citizens of Federal Republic of Yugoslavia on the Work Abroad, so that the employer may continue to assign only employees (for an indefinite period, under prescribed conditions, and for a limited period of time) to temporary work abroad, and not the persons doing non-standard work.

One of the significant innovations of the law, which is aimed at the increased protection of employees in the territory of the Republic of Serbia, is the requirement of the prior written consent of the employee for the assignment to temporary work abroad. By proposing the mandatory prior written consent of the employee for the assignment, i.e. by listing particular cases in which the employee may refuse the assignment (if the possibility for the assignment of the employees to temporary work abroad is foreseen under the employment agreement concluded with the respective employee), lawmakers, to a certain extent, strive towards the protection of the employees. Unlike the new statutory solution, the previously applicable law did not foresee special situations in which the employee could refuse the assignment to temporary work abroad, but it only prescribed the general obligation of the employer to determine the situations in which the employee is entitled to refuse the suggested assignment with its internal act, which in practice often was not the case.

Even though only six months have passed from the commencement of the application of the Law on Conditions for Assignment of Employees to Temporary Work Abroad and Their Protection, some of the provisions have already created problems in practice. One of the most problematic provisions is that which determines the delimitation between business trip and work abroad, as it foresees that the business trip abroad will not be considered as assignment only if it lasts less than 30 consecutive days, or 90 days in total (with interruptions) in a calendar year. Although this provision is prescribed in order to determine a more clear difference between an assignment of employees to temporary work abroad and a business trip, and in order to prevent certain employers (as was the case until now) avoiding application of the provisions on assignment of the employees on temporary work abroad by "using" the concept of a business trip, limiting the duration of business trips may cause the application of rules on assignment of the employees to work abroad, even in situations when such a thing is not justified (i.e. when the stay of the employee abroad, by its nature, represents a business trip), thereby unnecessarily increasing administration and hindering business. This limitation of the duration of business trips has proven to be inadequate, especially when it comes to managerial positions which require frequent business trips.

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

Also, even though the legislator, by limiting the possibility of assigning employees under the age of 18 to temporary work abroad, most probably wanted to protect minors (which is in line with general labour regulations), there is no doubt, however, especially by bearing in mind the fact that the law under the term "assignment of employees to temporary work abroad" includes assignment for professional educa-

tion and development, that such prohibition is unnecessary and that the possibility of assigning employees under the age of 18 years to a professional education and development abroad should have been enabled.

Of course, bearing in mind that this is a new law and that both employers and state authorities are still getting "acquainted" with its provisions, it remains to be seen how this law will actually be applied in practice.

FIC RECOMMENDATIONS

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

STAFF LEASING

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

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

POSITIVE DEVELOPMENTS

The working group for the preparation of the draft law regulating staff leasing was formed at the beginning of 2016, and the first meeting of the working group took place in March.

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

FIC RECOMMENDATIONS

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

- The concept of staff leasing should be regulated in such a manner that the relationship between leased staff and the users of staff leasing services should not result in the creation of an employment relationship.
- The conditions for the issue of operating licences and general business conditions for staff leasing agencies (including the fee for issuing operating licences to staff leasing agencies) should also be regulated by 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.

HUMAN CAPITAL

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The global economic crisis continued to influence the labour market significantly in 2015. Reduced economic activity and consumption worldwide brought about a reduction in exports and economic activity in Serbia and the reduction in income of the Serbian population resulted in a decline in demand for domestic and imported goods. Such trends in the real sector inevitably led to reduced demand for labour, as a dependent variable derived from economic activity. In a market economy, reduced demand leads to a decline in employment, or to a reduction of wages, or to a reduction in the number of working hours, or to some kind of a combination thereof.

According to the Statistical Office of the Republic of Serbia, the unemployment rate in Serbia in 2016 is 19%.

The labour market in Serbia shows the same trend as the rest of the economy – that of decline. To cut expenses, many companies have decided to reduce their headcount. This trend continued in 2016 – 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 more than ever in the focus of HR professionals. As such, 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 changing in order to position themselves better. Still, not many faculties are able to provide any practical knowledge, which behoves the need for companies to invest significant funds in the additional education and training of hired fresh graduates.

POSITIVE DEVELOPMENTS

The Government of Serbia and its ministries have undertaken some measures in the times of crisis. The Government endorsed the National Employment Action Plan for 2016, 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 up to 2025. This strategy is concerned with identifying goals, objectives, directions, instruments, and the mechanisms of development of the education system in the Republic of Serbia over the next ten years. In other words, it attempts to shape the development of this system in the best way known to us. The circumstances in which this strategy 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 types of development, with great technological changes, the real revolution, globalization, as well as the general mobility of everything that can move, from capital to cultural patterns. In this environment, the strategy itself was made to set the main education sector development priorities as well and as accurately as possible.

REMAINING ISSUES

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

The education system still has to be improved and better linked with the business community in order 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 amongst the countries of the world with the oldest population. Also, the population is increasingly concentrating in the northern parts of the country. The Government has recognized these trends, but the situation has not improved. This situation will further reduce the chances of certain parts of Serbia to attract new foreign investments.

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

FIC RECOMMENDATIONS

- Positive measures that stimulate job creation should be continued.
- The education system should be improved. Regular contact between the FIC and the Government, the ministries

of education and youth, as well as universities, is crucial. The business community and FIC members are ready to provide support and expertise.

- Continue joint proactive engagement of the FIC and the Government in order to coax the highly skilled and educated workforce currently abroad back home to Serbia.
- Improving the workforce is a key component of economic competitiveness; in that regard, we must continuously promote the development of human resources as the main driver of development of society and the state.

DUAL VOCATIONAL EDUCATION

CURRENT SITUATION

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

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

A significant number of European countries already have a developed dual education system, amongst which the leaders are Austria and Germany, as well as Switzerland. In countries in which this model of education is implemented, youth unemployment is reduced to a minimum, and education is in accordance with the needs of the economy.

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

One important aspect of this kind of education system functioning in practise is the consecutive examination of demand in the labour market; i. e. identification, in cooperation with the regional chambers of commerce and industry, of vocations for which there is a need in the economy in order to organise enrolment in vocational schools and carry out dual education programmes exactly for the very vocations for which the companies conducting business in Serbia have expressed a need.

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

POSITIVE DEVELOPMENTS

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

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

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

In January 2016, the Commission formed by the Ministry of Education, Science, and Technological Development enacted the Decision on the Election of Vocational Schools, which will enrol students in vocational-technical training programmes organized under the cooperative education model. The Commission elected eight schools for the locksmith-welder training programme, four schools for the industrial mechanic training programme, and two schools for the electrician training programme.

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

REMAINING ISSUES

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

The key obligation of the state in the dual education implementation process, which has not yet been fulfilled, is the legal regulation of the dual vocational education system; i.e. adopting amendments to the applicable Law on Secondary Education or passing a new law governing the mechanism of this system's functioning in practice. Namely, the rights and duties of all the participants of the dual education system have to be clearly defined and companies have to be fully introduced to their role and standards they have to meet in order to take part in this system.

It is essential to provide a legal framework for entry of students into the employment relationship with companies within the labour legislation or the Law on Secondary Education. Namely, according to the applicable Labour Law (RS Official Gazette No 24/2005, 61/2005, 54/2009, 32/2013, and 75/2014), persons under the age of 15 cannot be employed, and persons over 15 but under the age of 18 can be employed, but only with parental consent and the official opinion of an authorized health authority upon finding that the subject job does not harm the health of the youth at question. Hence, providing the legal framework for specific employment-educational relationships between students of vocational schools and companies is an issue of particular importance. Furthermore, it is essential that regulations stipulate employers' obligation to provide adequate compensation for work to employed students, as well as safety

and health at work, special protection for minors, insurance against injuries at work, etc.

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

Regulating all aspects of dual vocational education system by one systemic law or other general act would be an ideal solution.

FIC RECOMMENDATIONS

- Cooperation with countries that have a developed dual education system, like Austria, Germany, and Switzerland; and institutions from these countries ready to assist Serbia in implementation of this system in accordance with market circumstances and needs of economy should be continued and advanced.
- Amendments of currently applicable regulations by adding provisions on the dual education system and/or the passing of new systemic regulations/regulation governing this model of education should be conducted. For this purpose, as well as for all the other aspects of education system implementation, members of the Foreign Investors Council are ready to support state authorities and institutions and provide their expertise.
- A model of sustainable funding dual education and possible incentives that will attract companies in Serbia to join this system should be defined.
- The multiple benefits of this education model for both vocational schools students and the economy should be promoted in every possible way so that both students and companies may express their interest in taking part of its realization.

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LEGAL FRAMEWORK

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

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

- **Law on Legalization of Buildings** – The new law should enable cheaper and simpler legalization of illegally built facilities, of which there are around 1.5 million in Serbia.

- **Law on Amendments to the Law on Mortgage** - The law amended the rule of the position of the later mortgage creditors in the case of extrajudicial sale of mortgaged real estate which eliminates the most important defect in the procedure that deterred creditors of out of court realization of the mortgages. Also, the procedure of registration of mortgage sales has been accelerated, while a rule has been put in place to prohibit alienation and any kind of legal disposal of mortgaged real estate by the owner of immovable property after the registration of the sale of a mortgage is recorded. As a result, an act of alienation or other legal disposal that would have been undertaken in contravention of this prohibition would be null and void.

- **Law on Amendments to the Law on State Survey and Cadastre** – The law prescribes priority for resolving of an application for the entry of mortgage foreclosure sale and property rights of the buyer in line with the Mortgage Law; prescribes a deadline for deciding on a submitted request for entry – 15 working days from the day of receiving the request and 7 working days in the case of registration of a building and a separate part of a building for which an occupancy permit was issued in the unified procedure, mortgage perfection, entry of mortgage foreclosure sale, , as well as simple administrative matters. In the event that within the specified period a request is not yet resolved, the civil servant in charge of the department and the accountable civil servant in the internal service unit which is responsible for resolving these cases shall be punished with a fine, which guarantees efficiency.

- **Law on Amendments to the Law on the Capital Market** – Under the Law on Amendments to the Law on Capital Markets, the European Bank for Reconstruction and Development, as well as the International Bank for Reconstruction and Development, the IFC and other members of the World Bank Group can help improve the market in Serbia with dinar bonds, long-term and other instruments.

- **Law on Enforcement and Security** - Thanks to this law, it is again possible to appeal against the decision on enforcement. The law also regulates proceedings in which courts and public enforcement officers enforce claims of enforcement creditors, the procedure of securing claims, and the position of public enforcement officers. Courts and public enforcement officers are in charge of the implementation of execution, and the so-called parallel jurisdiction of a court and enforcement officers for the implementation of enforcement is repealed. Courts are solely authorized to carry out enforcement through a joint sale of real estate.

- **Advertising Law** – The law is now in compliance with numerous regulations of the European Union, but new legislation is also intertwined with several other laws regulating in detail advertising in Serbia.

- **Law on Information Security** – This law is the first umbrella law in this field that determines the extent of protection against security risks in information and communication systems, the liability of legal entities in the management of these systems and the relevant authorities for safety measures. The law applies to information and communication (ICT) systems of particular importance because they perform the tasks of general interest to the wider community and any breach of security of these systems can cause great damage.

- **Law on Public Enterprises** - It is envisaged that directors of public companies in Serbia should be elected in open competition and would not be able to be party officials.

- **The Law on General Administrative Procedure** - The reason for the adoption of the new law is the need to harmonize with the comparative solutions and international standards, in particular the principles and rules of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Administrative Space. The process of

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joining the European Union in which the public administration reform will be analysed from the standpoint of normative solutions envisaged by the Law on Administrative Procedure, as well as from the nature and scope of the proposed changes, is particularly important.

Also, amendments to several tax laws have been adopted:

- **Corporate Income Tax Law** - The most important amendment to the Corporate Income Tax Law is undoubtedly the introduction of withholding tax (at the rate of 20%) on revenues of non-resident legal entities from services provided or used in the territory of the Republic of Serbia, in case when the payer of income is a resident legal entity, and the obligation applies also to entrepreneurs. In many cases, withholding tax will not be paid. Specifically, in the case of income from services, under contracts on avoidance of double taxation (state whose resident who earns income has the right to the related tax revenues, except in cases where the income is realized through a permanent establishment).

- **Law on Personal Income Tax** - Capital gain of individuals is again to be determined under a decision of a relevant tax authority, not through self-taxation. New tax relief for hiring is introduced, and it can be used only by small and micro legal entities and entrepreneurs, whose essence is the right to a refund of 75% of taxes and contributions in case of employment of at least two new persons. In the area of tax on income, significant changes were made in terms of determining the tax base in the case of persons sent to work abroad. Taking of property and using services of a company by the company's owner for their personal use is again considered as capital income (not other income), which means it is taxed at a rate of 15%.

- **Law on Tax Procedure and Tax Administration** - The amendments provide, inter alia, for pushing back deadlines for submitting certain tax returns solely in electronic form.

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

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LAW ON BUSINESS COMPANIES

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The Law on Companies (RS Official Gazette Nos. 36/2011, 99/2011, 83/2014, and 5/2015) (hereinafter: the Company Law) came into force on 4 June 2011 and is applicable as of 1 February 2012, except for those provisions relating to electronic voting at the shareholder assembly of a public joint stock company, which are applicable as of 1 January of the current year. The last Law on Amendments to the Company Law was adopted on 19 January 2015.

The Company Law regulates companies and entrepreneurs, defining an entrepreneur as an individual that is not a legal entity and is not a company, but is engaged in an economic activity. In this sense, the title of the law is not clear enough.

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

Now, after more than three years of implementation of the Company Law, we can conclude that its main characteristics are: (i) application of standards harmonized with EU legislation; (ii) harmonization with the Law on the Capital Market; (iii) overcoming certain problems that were a characteristic of the previous Law on Companies; (iv) precise determination of certain legal concepts; (v) the 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 sectors, 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 Companies. It introduced a number of important developments in the legal system of the Republic of Serbia, among which a significantly different way of regulating the corporate governance system. Both limited liability companies (LLCs) and joint stock companies (JSCs) may choose to have either a one-tier (shareholders' assembly and directors) or two-tier (shareholders' assembly, supervisory board, and directors) corporate governance structure.

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

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

Furthermore, an LLC may now be registered with the Company Register even before the initial capital has been paid in, which simplifies the registration process. However, although generally perceived as a positive development, the provisions of the Company Law on denominating the company's share capital in Serbian dinars created some uncertainties, especially at the beginning of the application

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

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

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

There have been some positive developments in the practice of the SBRA. For example, the SBRA has done away with its previous practice of allowing the registration of restrictions on a corporate representative's authority to sign, other than the notation of a requirement of a co-signatory. The new practice is now fully in accordance with provisions of the Company Law providing that representation restrictions other than the requirement of a co-signatory's signature are not binding on third parties. Another positive development was that the SBRA has managed to establish a solid practice and has adopted guidelines in dealing with certain situations which were not well regulated under the Company Law.

REMAINING ISSUES

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

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

One of the concepts introduced by this Law is "lifting the corporate veil". When stating the reasons for the application of the related provisions, legislators made a clumsy formulation creating a dilemma on whether those reasons are the only applicable ones or are given exempli causa.

Other inconsistencies of the Law include the provision prohibiting a single-member LLC from acquiring own shares, which is contrary to the Company Law's provisions on status changes.

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

What should also be underlined is the issue of increasing a company's share capital through a debt-for-equity swap, provided by Article 146, paragraph 1, point 3. Namely, the Company Law does not give a precise explanation in terms of the procedures and conditions of such conversion, which

should certainly be regulated. Furthermore, practice of the SBRA on this matter is not unified.

Another practical problem can arise from the application of Article 221, paragraph 4 of the Law, which stipulates that if a company remains without a director, the company will be bound by all declarations of intent given to any member of the supervisory board or, if all seats on the supervisory board are vacant or the company does not have a supervisory board, to any member of the company. This is especially a problem for those companies that have a large number of members. The question is how to prove that a member of the company actually received the offer addressed, whether the member is objectively in the position to submit the offer to the relevant company bodies to decide on it, whereas an altogether different problem arises if the offer is tied to a deadline and if the deadline expiration could cause damage to the company. Also, it remains unclear how a company gives statements in this case, since members of the supervisory board and members of the company do not have the authority to represent the company.

As discussed earlier, although generally perceived as a positive development, the provisions of the Company Law denominating share capital in RSD have created a number of problems concerning implementation. The SBRA converts all the amounts of the paid-in capital from EUR into RSD at the exchange rate valid on the value date. Due to fluctuations of the exchange rate, this practice has led to a situation wherein the amounts of registered, paid-in capital contributions do not match the total amounts of the paid-in capital. It also happens that the amounts of capital contribution do not proportionally correspond to the size of the shares held by other shareholders. Another innovation introduced by the Law on Companies is a significantly lower amount of minimum share capital of a limited liability company, which now amounts to RSD 100 instead of the EUR 500 set by the previous Law. This provision can be interpreted as both an advantage and flaw of the new law. The advantage is that this is making it simpler to start a business and encourages economic development; but on the other hand, such low basic capital does not fulfil its purpose of financing business operations and guaranteeing the fulfilment of obligations.

The deficiency of the previous law was the absence of rules regulating forced liquidation. The Company Law has introduced new rules on forced liquidation, but these new rules also left some uncertainty and loopholes. For this reason, the former Ministry of Economy and Regional Development issued an opinion stating that the application of these provisions of the Company Law should be postponed. Although such ministry opinions are not binding, the SBRA has in this case abided by this opinion, thus refusing to apply the provisions of the Company Law on forced liquidation. The FIC has on many occasions also pointed out the inadequacy of the provisions dealing with forced liquidation. These shortcomings should be fixed by Amendments to the Company Law to avert arbitrary actions of the line ministry, which can pass decrees invalidating certain provisions.

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

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

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

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

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

FIC RECOMMENDATIONS

- Limited liability partnerships (LLPs) should be prescribed by the Company Law.
- The provisions in the Company Law that deal with limitations to the authority of a company's representatives should be harmonised with the provisions of the Law on Contracts and Torts.
- Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies and provide clear procedures and competencies.
- It is necessary to precisely regulate increasing share capital through debt-to-equity swap (conversion).

CAPITAL MARKET TRENDS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Foreign investors should be motivated to issue dinar-denominated bonds; i.e. all legal and political obstacles should be removed in order to encourage international financial institutions and other investors to issue dinar-denominated bonds.	2012		√	
Announced IPOs of large public (or formerly public) companies should finally be organised.	2015			√
The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects should be stimulated.	2015		√	
The Working Group which was formed in March 2013 with the aim of harmonizing all regulations related to securities has carried out material and comprehensive analysis of the respective regulations by autumn 2013. The work of this Working Group should be materialized as soon as possible by formulating proposals for changes of specific laws.	2014		√	
The Draft Law on Securitisation should be prepared and submitted to the National Assembly for immediate adoption.	2009			√
It is necessary to improve the general legal framework for performing operations with financial derivatives, first and foremost by enabling the full implementation of standardized ISDA master agreements.	2015		√	

CURRENT SITUATION

The last fundamental capital market regulatory framework reform in the Republic of Serbia was enacted five years ago with the adoption of the Law on the Capital Market, which replaced the criticized Law on the Market of Securities and Other Financial Instruments. Also amended at the same time were the Law on Investment Funds (amended once again in 2014), the Law on Voluntary Pension Funds and Pension Schemes, as well as the Law on the Takeover of Joint-Stock Companies.

Only minor changes have been made with respect to the capital market since then, including the amendments to the Law on the Capital Market from 2015, whose main aim was opening the domestic market for new high-quality financial instruments of reputable international institutions, such as the European Bank for Reconstruction and Development and the International Monetary Fund.

Generally, the existing regulatory framework is partly harmonized with European Union legislation and IOSCO principles. However, the Serbian capital market is still very undeveloped. Because of that, the regulatory framework has not yet been tested in practice; and therefore, all the potential insufficiencies of the regulatory framework reform since 2011 could not be talked about.

However, in practice, certain problems were identified in the implementation of legislation governing 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, which in 2013 started a thorough preparation of amendments to the regulations governing the capital market with the aim of completing their harmonization. However, at the time of this writing, that process has yet to be completed and it is uncertain when or even whether it will be finished.

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

adopting the Law on Securitization seems to have been completely abandoned, and compared to last year, there have been no improvements regarding the adoption of the Law on Securitization.

Additionally, the National Bank of Serbia has announced that the public debate regarding the draft of the Law on Financial Security will soon commence.

POSITIVE DEVELOPMENTS

The legislative reform from 2011, as well as later minor changes to the capital market regulatory framework, brought numerous positive developments which we have already written about in detail in previous editions of the White Book.

In December 2015, the Law on Capital Market suffered minor amendments in order to make it indisputable that the European Bank for Reconstruction and Development, the International Monetary Fund, and members of the World Bank Group should be considered as issuers of financial instruments; and in order to regulate the issuance of the international financial institution's debt securities in a way more appropriate to foreign financial institutions.

We expect that the aforementioned amendments will result finally in the issuance of the reputable financial institutions' debt securities at the (for now) narrow and low-liquidity domestic market, which we hope would, as was noticed in the law amendments' rationale, contribute to the growth of the total turnover of the financial instruments in order to draw the attention of foreign and domestic professional investors to the domestic market, as well as help in the formation of the securities' income curve here in the Republic of Serbia.

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

In March 2012, the Association of Serbian Banks formed a working group for the development of standardized bank agreements for performing financial transactions. The working group opted first to develop a Frame Agreement on the Repurchase of Securities. Work on the development of that agreement lasted for over two years, with banks recommended to start with the application of the Frame Repo Agreement on 1 December 2014. The result is already visible, as the first repo transaction was concluded by the end of 2015. It is expected that the working group will continue its work, directing its efforts towards drafting a standardized agreement for financial derivative activities.

As a final point, we have to commend the initiative for adopting the Law on Financial Securities, and we hope that public debate on the draft of this law will be sufficiently long to include the reputable international financial institutions.

REMAINING ISSUES

Identifying all remaining legislative issues in the field of the capital market is still very difficult as there were no significant developments since the beginning of implementation, and therefore its provisions could not be thoroughly assessed through practical application.

So it becomes clear now that more than just harmonizing regulations with international standards will be required to improve the Serbian capital market, which lacks high-quality securities. Despite the latest amendments to the Law on the Capital Market from 2015, there are no positive developments in a factual sense. This is evidenced by the fact that until now, financial instruments of expected quality have not appeared on the market. However, a sufficient time period is necessary to put the amendments into practice.

Therefore, one could say that the capital market in Serbia is still narrow and insufficiently liquid. Municipal bonds are

still rare (despite all the advantages of municipal bonds, only several municipalities/cities have issued municipal bonds so far), with not a single initial public offering having been conducted five years since the adoption of a law that brought a clearer legal framework for IPOs.

Unfortunately, it seems that the working group, formed in March 2013 with the aim of amending regulations on securities to ensure the harmonization of regulations in the field and eliminate identified problems occurring in practice, has stopped or delayed its work because of disagreements, since the Foreign Investors Council has not been informed of any activities of this working group since autumn 2013.

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

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

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

The announced public debate period regarding the draft of the Law on Financial Securities seems too short.

FIC RECOMMENDATIONS

- Announced IPOs of large public (or formerly public) companies should finally be organized.
- The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects should be stimulated.
- The working group formed in March 2013 with the aim of harmonizing all regulations related to securities has carried out a material and comprehensive analysis of the respective regulations by autumn 2013. The work of this working group should materialize as soon as possible by means of formulating proposals for changes to specific laws.
- A thorough public debate, which would result in a high-quality proposal of the Law on Financial Security, should be organized.
- The Draft Law on Securitization should be prepared and submitted to the National Assembly for immediate adoption.
- It is necessary to improve the general legal framework for performing operations with financial derivatives, first and foremost by enabling the full implementation of standardized ISDA master agreements.

JUDICIAL PROCEEDINGS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.	2012			√
Improve and justify the allocation of cases among courts and judges.	2011		√	
Establish online databases in the remaining courts, and (re)enable the search based on the names of the parties in the proceedings before the commercial courts.	2011		√	
Enactment of new amendments to the Law on Civil Procedure in order to assure flexibility of the time frame and deadlines for certain actions.	2011			√
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 2006 UNCITRAL Arbitration Rules.	2011			√

CURRENT SITUATION

From 2011 to 2016 a series of legislative reforms were carried out, affecting the organization of the judiciary and judicial proceedings: namely, the introduction of private and later public bailiffs and notaries, the restructuring of the court system, and in-depth regulation of the right to a speedy trial.

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

On 1 January 2014, a new network of courts was established by the Law on Seats and Jurisdictions of Courts and Public Prosecution (RS Official Gazette No 101/2013), whereby the number of court units was significantly reduced from 102 to 29, while the number of first instance courts was simultaneously increased from 34 to 66. This solution is justified by the economic unsustainability of the high number of court units, the costs of which were disproportionately higher in relation to the scope of their work. Amendments to the Law on the Organization of Courts of 2014 introduced another remedy that the citizens of Serbia can use (as of 21 May 2014) besides constitutional appeal. Namely, they can file a motion for the protection of the right to trial within a reasonable time. However, in practice, due to the frequent demands for the protection of this right and its inadequate regulation, the need has arisen for detailed and more precise legislative regulation. This resulted in the adoption of the Law on the Protection of the Right to Trial within a Reasonable Time (RS Official Gazette No 40/2015), which entered into force on 1 January 2016. This Law introduces such key changes as the differentiation of legal means available for the acceleration of the procedure from those that are used by parties for equitable relief when their right to trial within a reasonable time has been abused. The Law on the Protection of the Right to Trial within a Reasonable Time allows the parties the possibility to attempt to negotiate a settlement before the state attorney before filing a lawsuit. This "innovation" is not expected to have any significant effect in practice, bearing in mind that the previous Law on Civil Procedure imposed this as an obligation on the prosecutor. However, because it was unconstitutional and went on to be proven ineffective in practice, it was subsequently changed into an optional right of the party.

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

Dispute Resolution

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

In accordance with the Legal Practitioners Law (RS Official Gazette Nos. 31/2011 and 24/2012, as well as a Decision of the Constitutional Court), an additional requirement for becoming a licensed attorney, aside from the bar exam, is the successful completion of the attorney's exam, introduced on 17 May 2012. Also, this Law introduced the Bar Academy as a special body established by the Bar Association of Serbia, responsible for the professional education and specialization of attorneys and graduate lawyers. Since its establishment, however, the Bar Academy has only organized seminars. Keeping in mind, though, that the selection of lecturers and departments was only completed in 2015, and that the amendments to the Bar Academy program and the plan for implementing specific professional training of attorneys and legal trainees (foreseeing that in order to improve theoretical and practical knowledge and skills of present and future attorneys, vocational training will be provided through numerous lectures, workshops, and exercises) were adopted in November 2015, it is expected that in the near future, the Bar Academy will truly start providing specialized education to lawyers and postgraduate law school students. The Legal Practitioners Law provides for the possibility of foreign attorneys to register with the Bar Association of Serbia, and after three years of continuous practice of law in Serbia, to also represent parties in Serbia.

Enforcement

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

The new Law on Enforcement and Security has introduced a great number of innovations compared to the previous law regulating the matter. The goals intended to be achieved by the new Law are attaining the balance between the speed of procedure and the harmonization of court practice by introducing the new legal remedies; the acceleration of procedures by extending the role of public bailiffs, whose most important decisions are subject to court control; a reorganization of the general part of the enforcement procedure; elimination of practice uncertainties; the casuistic approach in order to achieve a greater legal security in this field; etc. What the limits of this Law are is difficult to estimate at this time, considering that it has been in use for only a short period of time. The concept of appeal is returned to the enforcement procedure as a legal remedy, on which the higher courts and the Commercial Appellate Court decide as second instance courts. Some concepts are returned to the system of enforcement procedure, which the previous law did not prescribe, such as the restitution in integrum, expertise, postponement of enforcement, and others. Under the new Law, public bailiffs are exclusively responsible for conducting enforcement, except in a few situations expressly prescribed by the Law, in which case it is the court that has exclusive jurisdiction. The public bailiffs are also, according to the new Law, exclusively responsible for conducting security injunctions. A part of the Law which pertains to security has also undergone certain changes. The new Law has regulated the field concerning public bailiffs in more detail. There are much stricter conditions for the appointment of the public bailiffs, whereas the new Law prescribes the criteria which the commission authorized to propose candidates for the appointment of public bailiffs applies. The Law prescribes

much a stricter procedure of control of the work of public bailiffs, as well as those new bodies within the Chamber of the Private Bailiffs, such as the Deputy President of the Chamber, the Disciplinary Prosecutor of the Chamber, the Deputy Disciplinary Prosecutor of the Chamber; while the statute of the Chamber may introduce other bodies as well. When it comes to disciplinary infringements, the Law clearly enumerates grave disciplinary infringements, while minor disciplinary infringements are determined by the statute of the Chamber. In contrast with the previous law, the disciplinary procedure is regulated by the Law.

POSITIVE DEVELOPMENTS

Most courts of general jurisdiction, as well as commercial courts, have established online databases showing the status of pending cases. While it is notable that the databases have been improved over the previous period, in terms of precision and functionality, they still do not warrant full confidence. However, not all the courts have online databases, such as the Administrative Court and the Constitutional Court of Serbia, Appellate Courts, Misdemeanour Courts, and the Supreme Court of Cassation. Although use of online databases greatly facilitates the daily work of attorneys and lawyers, the Commissioner for Information of Public Interest and Personal Data Protection has meanwhile banned any processing of data contrary to the Law on Personal Data Protection. Hence, unlike previous solutions, when the database could be searched by personal names of parties, as of 24 February 2014 the online databases solely allow the search by case file number in the competent court, and data on the parties in the proceedings is no longer publicly available. In our opinion, this solution is too general, because litigations before commercial courts involve legal, and not natural persons. Thus, when it comes to proceedings before commercial courts, all data on parties in the proceedings should be made publicly available, as the Law on Personal Data Protection pertains only to individuals.

Dispute Resolution

The current Law on Civil Procedure introduced some promising improvements in terms of the summoning and notification of parties and other participants in the proceedings in order to prevent present abuses by parties. Amendments to the Law on Civil Procedure of 2014 expanded the possibility of filing a revision as an extraordinary legal remedy by prescribing new situations where revision is always allowed, as well as by reducing the threshold to EUR 40,000; i.e. up to EUR 100,000 for commercial disputes (amounts calculated according to the median exchange rate of the National Bank of Serbia on the filing date of the lawsuit). Even if the amendments to the Law on Civil Procedure of 2014 stipulate that in the first instance litigation proceedings are conducted by a (non-professional) chamber, consisting of one judge and two lay judges. However, the law further explicitly lists and places the greatest number of court disputes within the jurisdiction of a single judge, leaving relatively little room for trial by trial chamber. The integration of the main hearing and evidence-presentation procedure are also notable improvements to a certain extent. In this regard, the court has an obligation to render a timeframe for the main hearing and for producing evidence. However, this timeframe is not very flexible, given that the course of litigation cannot always be predicted, while in practice judges often fail to comply with the established timeframes or they determine unnecessarily long timeframes of two or more years. This law establishes the liability of judges for breach of discipline, and they can even be faulted over delays in the procedure. The law also imposes higher fines for parties who abuse the proceedings. The appellate courts also have a deadline to render an appellate decision – within nine months from the moment they receive the case files (only in the case that the appellate court does not hold the hearing), and it is noteworthy that the presiding judges may be held accountable for breach of deadline. Finally, parties are provided with equal rights in remedial procedures, so that deadlines for submitting legal remedies are the same as deadlines for responding to such legal remedies (15 days for appeal and response on appeal). The circle of the authorized representatives of the party is extended by the amendment of the Law on Civil Procedure of 2014, and a natural person may be represented by a lawyer, blood relative in the direct line, brother, sister, or spouse, as well as by a representative from the legal aid unit of the local government who has a law degree and has passed the bar exam.

The current Legal Practitioners Law introduced the Bar Academy, which has organized only seminars since it was established. However, bearing in mind that the selection of lecturers and the formation of departments was completed only recently, and that the program of the Bar Academy was amended, it is expected that in the near future the Bar Academy will finally start providing specialized education for lawyers and postgraduate law school students. The attorney's exam, which includes content from the Code of Professional Ethics, Attorneys' Fees, the Legal Practition-

ers Law, and the Statute of the Bar Association of Serbia, is being successfully administered in practice.

Enforcement

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

REMAINING ISSUES

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

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

3. The new Law on Enforcement and Security prescribes that the higher courts and the Commercial Appellate Court act as the second instance courts. These courts have not encountered the enforcement procedures so far, while the proposer of the law did not foresee additional funds for the implementation of this law, and therefore there will be no increase in the number of employees in these courts, because of enforcement procedures now in their jurisdiction. We point out this

fact as something which indicates that time limits for deciding on appeals against decisions of lower courts will not be complied with, as second instance courts are already overloaded with a large number of cases, in which the decisions are often rendered after more than a year.

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

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

6. The Law contains problematic provision concerning the transfer of claims. According to the Law, enforcement procedure shall be conducted on the proposal and in favour of the party who is not designated as the enforcement creditor in the enforceable title or the directly enforceable title, if based on official or lawfully certified document such party proves that claim arising from the enforceable title or the directly enforceable title was transferred to him or her, and if such evidence is not possible – if he or she proves the transfer by the final and binding decision adopted in the civil, misdemeanour or administrative proceedings. This provision can be interpreted in such a manner that the enforcement procedure recognizes transfer of rights only when facts provided by the law are acquired, but not the transfer of rights based on the will of the parties; e.g. cession.

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

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

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

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

FIC RECOMMENDATIONS

- Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.
- Improve and justify the allocation of cases among courts and judges.
- Establish online databases in the remaining courts, 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.
- Increase the number of employees in second instance courts who work on the enforcement procedures.
- Concepts that allow for delay of procedure, such as postponement and restitution in integrum, have to be restrictively interpreted and implemented.
- Expand the concept of transfer of right so that it encompasses the transfer based on the statement of will of the enforcement debtor (e.g. cession) in order to avoid the restrictive interpretation of this provision that the transfer might be accepted only if based on the official or lawfully certified document, as well as on the final and binding decision adopted in civil, misdemeanour, or administrative proceedings.
- When it comes to counter-enforcement, introduce the provision by which it is possible for the enforcement debtor in the counter-enforcement of the pecuniary claim to claim the statutory default interest as of the day the enforcement creditor received the amount of the claim.

ARBITRATION PROCEEDINGS

CURRENT SITUATION

Arbitration represents an alternative to the state courts; a mechanism for the settlement of private law disputes. Parties can agree to arbitrate a dispute arising out of a domestic or international business transaction, or any private law matters which the parties can freely dispose of, except for disputes that are reserved to the exclusive jurisdiction of the courts.

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

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

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

Moreover, unlike court decisions, arbitral awards rendered by tribunals seated in Serbia can be fully enforced in almost all the countries of the world, keeping in mind that Serbia is a state party to the New York Convention on Recognition

and Enforcement of Foreign Arbitral Awards, signed and ratified by 150 states.

Arbitration proceedings in Serbia today are governed by the Law on Arbitration (RS Official Gazette No 46/2006), adopted in 2006. Taking into consideration the disputes that arose after the Law on Arbitration was passed in 2006, more than 250 parties from around the world took part in international commercial arbitration on the territory of the Republic of Serbia.

The Law is fully compliant with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration of 1985. However, the Law on Arbitration does not completely conform with the latest (2006) version of the UNCITRAL Model.

Given that the institution of arbitration is, in practice, a more efficient and cheaper dispute resolution alternative, it is definitely not a sufficiently used legal forum.

POSITIVE DEVELOPMENTS

Until recently, Serbia had two institutional arbitrations, both attached to the Serbian Chamber of Commerce: the Foreign Trade Court of Arbitration and the Permanent Court of Arbitration. Pursuant to the recent amendments to the Law on Chambers of Commerce, these two will merge into a single institution capable of dealing with both domestic and foreign disputes.

In addition, Serbian practitioners have founded new arbitration designed to promote arbitration in Serbia.

The Arbitration Association of the Republic of Serbia was formed in 2013 as a voluntary, non-governmental and non-profit association of citizens and legal professionals currently consisting of over 70 members – attorneys, university professors and lecturers, judges and commercial lawyers, all in Serbia and with expertise in both domestic and international arbitration.

The Arbitration Association established the Belgrade Arbitration Center (BAC) in 2013 as a permanent arbitration institution administering domestic and foreign disputes, assisting in technical and administrative aspects of ad hoc arbitral proceedings, as well as organizing and conducting mediation sessions and providing other services closely related to dispute settlement. The seat of the BAC is in Belgrade. The Belgrade Arbitration Center is competent to settle both domestic and foreign disputes in accordance with the BAC Rules. The Rules were adopted in 2014, and the first cases were filed at the end of 2015 (three cases in total, the biggest one with over EUR 1.5 million in value). BAC Rules provide for a recommended clause for contractual parties stating that all disputes arising out of or in connection with the present contract shall be finally settled by arbitration organized in accordance with the Rules of the Belgrade Arbitration Center (Belgrade Rules).

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

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

Legal entities choose to refer commercial disputes to arbitration panels due to their efficiency and expediency, as well as the fact that they can pick a professional to sit on the arbitration tribunal. Thus, parties can appoint an independent, dedicated, and responsible professional to act as an arbitrator. Added value in international disputes stems from the fact that arbitrators can be nationals of third states, further ensuring their neutrality and impartiality in relation to the parties.

REMAINING ISSUES

In practice, application of the Law on Arbitration has shown that the jurisdiction of the courts providing legal support

during arbitration proceedings, and recognizing and enforcing domestic and international arbitral awards, is not regulated in an adequate manner, meaning that both the Law on Arbitration and laws supporting the courts' organization and court seats have to be properly amended.

The following legal issues have yet to be addressed as part of these proposed changes to the Law on Arbitration:

- Regulation of provisions on court review of arbitral jurisdiction, especially as a preliminary matter.
- Clarifying the scope of application of the Law on Arbitration.
- Jurisdiction of the arbitral tribunal for determining the interim measures.
- Jurisdiction of state courts for determining the number of arbitrators and their appointment and challenge in ad hoc arbitrations.
- The territorial and jurisdictional competence of state courts to assist the arbitral tribunal in the evidence process.
- The procedure of delivering the arbitral award.
- Specialization and concentration of jurisdiction for claims for the annulment of an arbitral award.
- Legal consequences of an annulment of an arbitral award.
- Suspension effect of court proceedings for the annulment of an arbitration award.
- The legal effects of an arbitration award and its enforceability.
- The effects of bankruptcy on pending or future arbitration proceedings and on the validity of the arbitration agreement.

Also, the Law on Arbitration might benefit from being harmonized with the latest (2006) version of the UNCITRAL Model Law.

Therefore, relevant amendments reflecting the above topics to the Law on Arbitration would be welcomed.

FIC RECOMMENDATIONS

- Promote the possibilities and advantages of dispute resolution through arbitration by institutional support of the relevant governmental and non-governmental bodies by instructing professional organizations and companies to accept the jurisdiction of arbitration institutions.
- Develop a supportive legal framework for operations of arbitration institutions in Serbia in order to create conditions for achieving regional arbitration center status.
- Adopt Amendments to the Law on Arbitration and related laws in order to rectify those deficiencies identified in practice thus far, and in order to incorporate some of the innovations introduced by the 2006 UNCITRAL Model Law.

LAW ON BANKRUPTCY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The provisions on automatic bankruptcy in cases of a debtor's permanent insolvency should be returned to the bankruptcy regulatory framework, but in a form which would be in accordance with the Constitution of the Republic of Serbia.	2012			√
The procedures initiated on the basis of the pre-packed reorganization plans should be followed carefully in order to determine whether the amendments to the Law on Bankruptcy will succeed to reduce the length of the procedure and diminish noted abuses by bankruptcy debtors.	2014			√
Bankruptcy debtors should be encouraged to simultaneously initiate bankruptcy proceedings when filing a reorganization plan, providing an opportunity for more companies to stay active instead of being definitely wound up.	2010			√
Judges should be further educated and encouraged to use available legal means in order to prevent the debtors from abusing reorganization plans for the purpose of damaging creditors.	2013			√
Creditors should be encouraged to take a more active part in bankruptcy proceedings by filing a proposal for the opening of said proceedings, and in particular, by participating in creditors' bodies.	2011			√
Mediation should be encouraged in bankruptcy proceedings whenever possible, with the aim of ensuring cost-efficiency as well as the overall efficiency of bankruptcy proceedings.	2011			√
An overall analysis of actual problems arising over the course of the application of the Law on Bankruptcy is needed; and, with respect to the opinions and judgments of the Appellate Commercial Court, when they occur, preparation of the appropriate amendments to the Law on Bankruptcy is needed as well.	2015			√

CURRENT SITUATION

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

The goal of the Amendments to the Law on Bankruptcy was the elimination of issues noted in practice as a result of an imprecise and incomplete regulatory framework on bankruptcy, as well as acceleration of the bankruptcy procedure and the enabling of a more transparent way of settling creditors' claims. It is indisputable that most of those amendments had positive effects, but we also ascertained that some of the new solutions did not achieve expected results.

According to data released by the Bankruptcy Supervision Agency on 5 May 2016 there were a total of 2,096 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 (SFRY Official Gazette Nos. 84/89, SRY 37/93, and 28/96) and bankruptcy proceedings conducted against banks, which are within the jurisdiction of the Deposit Insurance Agency.

In the first four months of 2016 there were 120 bankruptcy proceedings initiated, which means that 30 bankruptcy proceedings were initiated per month. Compared to the 2015, when the monthly average was 20 bankruptcy proceedings per month, as well as 2013 and 2014, when the average was about 10, the increase in initiated bankruptcy proceedings is noticeable. However, that number is still sig-

nificantly under the monthly average of 80 initiated proceedings in 2012. The grounds for such a decrease in initiated bankruptcy proceedings after 2012 were presented in previous editions of the White Book, and we only emphasise here that the main cause was the Decision of the Constitutional Court of Serbia on the unconstitutionality of automatic bankruptcy.

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

In the first half of October 2016, public discussion on the amendments to the Law on Bankruptcy has started

POSITIVE DEVELOPMENTS

Due to the fact that the last Amendments to the Law came into force in 2014, we are unable to point out positive regulatory developments that have not been already presented in previous editions of the White Book. However, it is indisputable that the practice crystallises and confirms some positive developments that were adopted by the aforementioned amendments.

Examples of positive developments that could be mentioned include the position of pledge creditors (which are not at the same time a bankruptcy debtor's creditors) is now more clarified; the courts, in most cases, consistently obey the rule of limited duration of prohibited enforcement of the bankruptcy debtor's property in the proceedings initiated by pre-drafted plan of reorganization; as well as the fact that the courts more frequently reject the initiation of a bankruptcy proceeding proposal based on the pre-drafted plan of reorganization in cases where the plan does not contain all the required elements.

REMAINING ISSUES

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

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

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

A frequent practice by debtors, using the right to answer bankruptcy creditors' remarks regarding the pre-drafted reorganization plan, is to submit the revised text of the pre-drafted reorganization plan, thereby postponing hearings scheduled for the deciding and voting on the pre-drafted reorganization plan. Due to the fact that creditors have the right to submit

remarks on a revised pre-drafted reorganization plan, to which the bankruptcy debtor answers once again, the proceedings sometimes last for more than a year. This is one mechanism more by which bankruptcy debtors damage creditors, and the passive behaviour of judges – not reacting or not reacting in a timely fashion – contributes to this.

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

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

Furthermore, practice has shown that there is often uncertainty regarding the date of finality for the reorganization plan, with the result that creditors do not know when they should start with the implementation of the reorganization plan. Namely, the starting day for the implementation of the reorganization plan is the day envisaged by the plan itself, whereas that day could not be prior to the day of finality of the decision on the confirmation of the reorganization plan, or after the expiry of the 15 days' period from the day of the decision on the confirmation of the reorganization plan finality. In the case of appeal and confirmation of the plan in the second instance judgment, the stamp of finality has the date of the second instance judgment, with creditors sometimes getting the copy of the relevant decision significantly later. In practice, this causes a situation in which bankruptcy creditors become bound to implement a reorganization plan without even being aware of it.

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

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

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

increased for statutory default interest calculated up to the date of the opening of bankruptcy proceedings. This issue is particularly important in cases where the (pre-drafted) reorganization plan predicts a significant reduction of creditors' claims, receivables, write-offs, and the like.

Current legislation does not predict the possibility that potential buyers of a bankruptcy debtor's property will provide the funds necessary for paying a purchase price by pledging that property. Namely, bearing in mind that the bankruptcy administrator does not have the right to execute the pledge or mortgage agreement, potential buyers without property to be pledged in order to provide funds for paying the purchase price cannot participate in buying the bankruptcy debtor's property. It seems logical that by regulating this possibility, bankruptcy procedures might become significantly faster and more efficient because the circle of potential buyers of a bankruptcy debtor's property would become wider. Primarily, such amendments would be in favour of bankruptcy creditors whose settlements would be faster, higher, and more likely.

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

One of outstanding issues where there has been no progress is that of personal insolvency. Namely, we consider that regulation of this issue would be in favour of both the creditors of insolvent individuals and individuals who are overdue. Current possibilities for creditors related to insolvent debtors who are natural persons do not lead to the most favourable collective settlement; whilst there is the completely opposite case of the settlement of some creditors with some kind of enforcement procedure with other creditors, in most cases, not having any possibility to settle their claims with overdue natural persons. In that sense, we consider that the creation of a concept of personal insolvency would enable creditors a higher amount of settlement with the parallel protection of the integrity and basic necessities of overdue individuals.

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

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

FIC RECOMMENDATIONS

- The provisions on automatic bankruptcy in the case of a debtor's permanent insolvency should be incorporated into the bankruptcy regulatory framework, but in a form that would be in accordance with the Constitution of the Republic of Serbia.
- It is necessary to restrict additionally possibilities for banning enforcement against the bankruptcy debtor's property during the procedure of adoption of the pre-drafted reorganisation plan, in order to prevent bankruptcy debtors from averting an enforcement settlement over an indefinite period of time and without the support of the majority creditors through multiple consecutive initiations of bankruptcy proceedings.
- It is necessary to restrict the possibilities of postponing decision and voting hearings on a pre-drafted reorganisation plan and submitting a revised text of a reorganisation plan, as well as to determine clear criteria for determining the debtor's / plan submitter's abuse of rights so the court can penalise such acts of the plan

submitter and accelerate the procedure.

- It is necessary to regulate precisely situations in which a (pre-drafted) reorganization plan is not either entirely or predominantly implemented regarding the settlement of included creditors, and the (new) bankruptcy proceedings are opened over the debtor, and to determine whether the creditors in these cases are entitled to report only the amounts of claims listed in the (pre-drafted) reorganization plan, increased for the statutory default interest calculated up to the date of the opening of bankruptcy proceedings, or whether they are entitled to report the entire claim that they have against the debtor.
- To regulate the procedure of personal insolvency either by the amendments of the current Law on Bankruptcy or the adoption of a separate law.
- To regulate additionally the position of the secured and pledged creditors in a way that provides the two instance procedures with respect to their settlement from the sale of pledged property.
- To stipulate the possibility of pledging a bankruptcy debtor's property, in order to enable potential buyers without other property which could be pledged for the providing of funds necessary for the purchase price. Due to the fact that this issue includes other laws besides the Law on Property, the necessity for wider reform, including laws regulating mortgages, pledging movable property, and other laws, would appear.
- To stipulate the obligation of bankruptcy debtors to provide written consent of the majority creditors of each class separately when submitting the reorganisation plan during regular bankruptcy proceedings.
- To stipulate the possibility and procedure for amending the adopted reorganisation plan.
- To regulate the issue of delivery in bankruptcy proceedings in a way to make it faster and more efficient and to specify the provisions related to the finality date and starting date for the implementation of the reorganisation plan so that all participants can know with certainty when the adopted plan starts with the implementation.

INTELLECTUAL PROPERTY

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

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

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

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

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

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

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

The Law on Patents regulates the legal protection of inventions in the field of technology which are new, which

involve an inventive step, and which are subject to industrial application.

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

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

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

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

POSITIVE DEVELOPMENTS

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

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

REMAINING ISSUES

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

FIC RECOMMENDATIONS

- State authorities should enhance their efforts to combat online copyright infringement, especially with respect to the software, music, and film industries.

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

PROTECTION OF COMPETITION

COMPETITION LAW

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The harmonization with EU competition rules in Serbia began with the enactment of the currently applicable Law on Protection of Competition in 2009 (hereafter referred to as the "Law") which established better substantive and technical preconditions for the independent activity of the Commission for Protection of Competition (hereafter referred to as the "Commission"). The Law was amended only once, in 2013.

The legal framework of competition legislation was completed in 2009 and 2010, with the adoption of several by-laws prescribing in detail the obligations of market participants and the procedures before the Commission. The latest development in competition legislation is the adoption of the new Decree on the Content and Manner of Submission of Merger Notifications ("Merger Control Regulation") on 2 February 2016, as part of the process of harmonization with the EU acquis. The new Merger Con-

trol Regulation introduced the possibility of submitting a short-form merger notification, simplifying the procedure before the Commission by reducing the number of documents and information that companies are required to file as compared to the full notification. Introduction of the short-form merger notification has made merger notifications easier for those mergers taking place abroad which have little or no impact on competition in the Serbian market (the so-called "foreign-to-foreign transactions"), but which took up a significant portion of the Commission's roster in the past. However, regardless of the introduction of the short-form notification, the Commission is may still request a full merger notification if circumstances indicate that the conditions for allowing the merger have not been fulfilled, which means that the Commission is vested with considerable discretionary power in this regard. Moreover, the short-form notification cannot be filed if there were no precedents in defining the relevant market. It is unfortunate that the Merger Control Regulation does not extend the application of the short-form notification rules to foreign-to-foreign JV's with no or negligible activity in the Serbian market.

According to the Annual Report of the Commission for 2015, the Commission ruled on 183 cases and transferred 34 cases to the next period (2016). The Commission issued 174 opinions with regard to the interpretation of the competition rules and their application, which is a significantly higher number compared to previous years.

While most of the Commission's decisions are entirely publicly available (in particular the merger control clearances), which was praised as a positive development, not all relevant second instance court rulings on the Commission's decisions or the Commission's official opinions and decisions on individual exemptions are publicly available. This remains a major impediment to ensuring transparency and wide access to the information on and the reasoning behind certain key decisions. Another shortcoming is that the Commission's database does not allow the user to filter the Commission's case law by means of relevant criteria.

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

POSITIVE DEVELOPMENTS

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

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

Also, the new Merger Control Regulation is a successful outcome of the process of harmonization of Serbian regulations with EU competition law and simplifies the merger control proceedings, especially in cases which do not raise competition concerns on the Serbian market. The fact that the Commission expressed its readiness to organize pre-notification meetings with every interested person submitting a notification, to eliminate any ambiguities in the application of the new Merger Control Regulation, is especially commendable.

In the forthcoming period, as part of the harmonization process, the Commission has announced the enactment of several other by-laws to regulate in more detail the exemption of restrictive agreements in sectors such as sale of spare parts for motor vehicles, insurance, transfer of technologies, and road, rail and inland waterway transport. Identifying the need to specifically regulate these sectors is definitely a positive development, as it reflects the Commission's awareness of the importance of its role and, once again, confirms its aspiration to harmonize the competition legislation with EU standards and rules.

At the beginning of 2016, the Commission published instructions on how to file a request for the individual exemption of a restrictive agreement to help market participants avoid situations which would be in breach of the law if they were to stipulate a restrictive agreement. While this is a positive development, the practical significance of these instructions remains to be seen.

A clear step forward in the practice of the Commission was the increased number of unannounced inspections ("dawn raids") carried out. This opened a whole new chapter in the enforcement of competition regulations.

In addition, compared to previous years, the Commission clearly made a significant effort to develop competition advocacy. In fact, it is evident that it has started publishing its opinions and decisions and notifications of its activities on its website more often and organizing promotional activities. This positive development is important as it contributes to the overall improvement of the current legal framework and to a better understanding – both by the general public and the media – of the need for and importance of competition rules and of the role and activities of the Commission. Nevertheless, it would be helpful if the Commission could provide a monthly overview of its activities and not only within its Annual Reports. It would definitely contribute to increasing transparency if interested parties could receive regular, "fresh" updates throughout the year.

REMAINING ISSUES

The proceedings before the Commission still do not provide for a sufficient guarantee of all procedural rights of the parties. The Commission still lacks the requisite economic knowledge and even though it has identified this issue and invested serious efforts in solving it by engaging a greater number of economists, the problem is still apparent. This will, hopefully, also motivate the Commission to apply economic tests, confirmed in competition protection practices, and invest greater efforts into conducting a proper analysis of market conditions.

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

As for the leniency programme, Commission still lacks the public support for its implementation. Specifically, the business community is not widely open to the use of this mechanism, due to a lack of clear interpretation of existing rules.

Furthermore, while the Commission is particularly active in targeting the private sector, it would appear that it is much more tolerant of state-owned or public enterprises, opting for an "educational", instead of a "fine first" approach in the case of the latter.

FIC RECOMMENDATIONS

- The Commission should apply EU rules when assessing competition issues, to avoid inconsistencies in its application of the Law. When applying such rules, concrete cases should be mentioned in the Commission's decisions.
- In order to enhance transparency and legal certainty, clear guidelines and instructions for interpreting the Commission's understanding of certain terms should be drafted by the Commission. The FIC and other interested stakeholders should have the opportunity to participate in the drafting process. Also, the publishing of the Commission's statistics and reports on a monthly level would surely contribute to increased transparency.
- For legal certainty, aside from the Guidelines, the Commission needs to adopt by-laws defining certain categories core to the anti-trust framework in more detail, e.g. dominant position, the leniency procedure, and excluding certain types of agreements with respect to specific industries, i.e., insurance and the auto industry.
- Judges of the Serbian Administrative Court should complete advanced training in both competition law and economics. All rulings of the said court should be made publically available.

- The Commission should make its practice consistent towards all undertakings. Competition advocacy is certainly one of the strongest means for achieving such a goal.
- The Fee Schedule must decrease fees to a reasonable level in line with comparable jurisdictions in Central and South East Europe.
- Non-confidential versions of all decisions and official opinions of the Commission, as well as the Administrative Court rulings related to competition issues should be made publically available. The right balance must be found between the Commission's role in sanctioning illegal behaviour and in promoting competition rules, i.e. competition advocacy should not be overlooked and the Commission should promote competition law principles more effectively.

STATE AID

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Consistent and effective application of regulations with respect to state aid, i.e. practical application of standards and practices of the European Commission in state aid control.	2011		√	
Strengthening of independency and transparency of the Commission for State Aid Control.	2009		√	
Drafting a strategy and programme for granting state aid – reduction of sector and regional aid in comparison to horizontal aid.	2014		√	
Pressure by the Commission for State Aid Control (and the professional community) on public authorities to file notifications timely, so that the Commission is able to promptly commence with reviewing process.	2011		√	
Effective state aid control – utilizing different mechanisms in order to monitor state aid allocation, and also impose sanctions for the prohibited granting of state aid.	2014		√	
Harmonization of the fiscal policy with the EU acquis communautaire.	2015		√	
Abolish the practice of exempting companies in restructuring and privatization from state aid rules.	2015		√	
Education of state authorities and beneficiaries of state aid with respect to the procedure and purpose of granting state aid - raising public awareness on the abuses of state aid, and its positive effects, in cases of grants compliant with the relevant regulations.	2014	√		

CURRENT SITUATION

The legal framework regulating the granting of state aid in the Republic of Serbia consists of the Law on State Aid Control, the Regulation on the Rules for Granting State Aid, and the Regulation on the Rules and Procedure for State Aid Notification. In 2015 there were no changes in these regulations.

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

The latest publicly available edition of the CSAC's Annual Report is for the year 2014. In 2014, the total amount of state aid in Serbia amounted to EUR 904 million, which is around 30% more than in 2013. In 2014, state aid amounted to 2.74% of the country's GDP, which is an increase relative to 2013, when this percentage was 2.6%. By comparison, in 2014 EU Member States combined spent 0.72% of GDP on state aid.

In 2014, 31% of total state aid went to the agricultural sector and the remaining 69% to industry and services. Horizontal aid was the largest chunk of total aid in industry and services (28%), followed by sectoral and regional aid with 23.7% and 17.2%, respectively.

Subsidies remained the most widely used state aid instrument, accounting for 80.9% of total aid granted. This was followed by tax incentives (10.1%), guarantees (5.6%) and favourable loans (3.4%).

POSITIVE DEVELOPMENTS

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

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

In the last year for which official data is available (2014), the amount of horizontal state aid saw a significant increase, sectoral aid decreased slightly, while regional aid decreased significantly (by a half compared to 2013). Further, compared to 2013, de minimis aid decreased noticeably (around 26%).

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

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

In its Annual Report for 2014, the CSAC itself acknowledged that it should further promote awareness among grantors of state aid of the need to timely notify state aid to the CSAC. If this process is successful, fewer ex-post investigations should be expected, to the benefit of ex-ante assessments.

REMAINING ISSUES

As the Serbia is closing in on EU membership, improving the situation in the field of state aid becomes imperative, in terms of full implementation of the relevant legislation.

According to the EC Progress Report, a number of existing state aid schemes in Serbia, including fiscal ones, still need to be aligned with the acquis. The European Commission also noted that it is necessary to abolish the practice of exempting companies in restructuring and privatization from the rules for granting state aid (in order for aid to such companies to be compatible with state aid rules, it must satisfy the conditions laid down in the Regulation on the Rules for Granting State Aid).

The EC Progress Report also notes that Serbia needs to provide a transparent framework of state support to the private sector, redirecting it towards efficient and horizontal objectives, such as support to small and medium enterprises and research and development. While the total amount of horizontal aid has increased in 2014 compared to 2013, it is indicative that in 2014 no aid was granted for research and development, which leaves a lot of room for improvement.

While it should further support the private sector, Serbia should cut back support for loss-making state-owned enterprises, (in 2014, spending on these measures combined has reached the highest level since 2000). Nevertheless, the European Commission also noted that, signalling a change in policy, the 2015 budget law does not envisage new issuance of state guarantees for liquidity support and limits new project-based guarantees.

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 compa-

nies 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., taxpayer contributions).

In 2014, the CSAC adopted 26 decisions on permissibility of state aid – in 23 cases it found that the aid was compatible with state aid regulations, while in three cases it concluded that no state aid was involved. Out of the 23 cases that were found to be compliant, nine were decided in ex-ante and 14 in ex-post control. These numbers show that ex-post control still dominates the Commission's practice, which is an indicator that more should be done to ensure effective ex-ante control. While it is undeniable that the timely filing of state aid notifications is important, state institutions violate regulations and further hamper an adequate response by the CSAC.

The CSAC is yet to order the retrieval of granted state aid, which brings the independence and integrity of the CSAC itself into question. From the institutional side, the CSAC's status as a governmental body primarily composed by representatives of different ministries, rather than an independent authority, can bring its decision-making independence into question. Although certain steps have been taken, the CSAC's current capacity is still not sufficient for its important role.

The use of state aid as a tool for strengthening the competitiveness of the economy and to improve the economic structure of society is necessary. State aid policy must become predictable and consistent. Clear plans and programmes, based on which companies and the public can be informed, have to be adopted. Investments in the development of underdeveloped regions, as well as pinpointing areas to strengthen competitiveness, are essential starting points for achieving the clear and cost-effective granting of state aid.

Equally obvious is the fact that the CSAC is not updating the information on its activities as frequently as expected – the last publicly available annual report, which is the only available and relevant source of statistics on the activities of the CSAC, was published in 2014. The launching of the website and occasional publishing of decisions enacted by the CSAC, (the relevance of which is yet to be determined in the report for 2015 and report for 2016), is indeed a positive step forward with regard to solving the problem of the lack of transparency. However, for the purpose of establishing and strengthening legal certainty by enhancing the level of transparency to the greatest extent possible, it is essential that the CSAC increase its efforts to regularly update and publish its statistics, at the very least on an annual level.

Specifically, lack of transparency regarding contracts and negotiation procedures in relation to capital infrastructure investments enables potential misallocation of budgetary funds, distortion of market competition, and produces legal uncertainty regarding the role and responsibility of the state on the Serbian market.

The inclusion of both state aid beneficiaries and the general public in drafting state aid policy is of great importance, so as to be able to jointly reach specific, predictable, and effective solutions. The general public has to be involved, primarily through an extensive public discussion of strategic policies and tailored solutions. Certainly, the most important thing in building an efficient state aid system is the control of state aid granting, to prevent abuse, and increase transparency. An independent CSAC is the key for the realization of the goals set forth.

FIC RECOMMENDATIONS

- Consistent and effective application of regulations with respect to state aid, i.e. practical application of standards and practices of the European Commission in state aid control, (also to companies in restructuring and privatization).
- Strengthening of independency of the Commission for State Aid Control (CSAC).
- Further reduction of sector and regional aid relative to horizontal aid should be encouraged (in particular aid for small and medium enterprises and research and development).

- Regular publishing of CSAC's statistics and reports, on an annual and (preferably) monthly level to reduce lack of transparency.
- Pressure by the CSAC (and the professional community) on public authorities to file notifications timely, so that the Commission is able to promptly commence with the reviewing process.
- Effective state aid control – utilizing different mechanisms in order to monitor state aid allocation, and also impose sanctions for non-compliant state aid.
- Harmonization of the fiscal policy with the EU acquis.

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

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

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

In accordance with EU guidelines on active consumer protection policy, the acquis communautaire, and the Stabilization and Association Agreement, the Law introduced significant innovations relating to the effective resolution of consumer disputes. Court fees are waived for consumer disputes with a value not exceeding RSD 500,000 to encourage consumers to "fight for their rights" in court, which was not the case until now (when court fees were disproportionate to the value of the dispute and often a

reason for the reluctance on the part 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 must publicize a list of bodies meeting the requirements for such a procedure. An out-of-court procedure for the settlement of consumer disputes is subject to the provisions of the law governing mediation, arbitration, as well as other appropriate rules. The Law introduced a stronger role for the autonomous province and local governments, which, among other things, reflects support for the establishment and operation of bodies for out-of-court settlement of consumer disputes in the territory of the autonomous province and local governments.

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

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

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

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

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

POSITIVE DEVELOPMENTS

In comparison with the previous year, the adoption of the remaining by-laws prescribed by the Law is a significant improvement, as it completes to a large extent the legal framework, which should enable more efficient consumer protection and the further development of good business practices in this area.

Among these by-laws, the newly adopted Rules of Procedure of Bodies for Out-of-Court Resolution of Consumer Disputes seems especially significant. This by-law contains detailed provisions on the conditions for out-of-court settlement of consumer disputes, rules and criteria for the operations of the bodies performing this important task, as well as on registration of these bodies in the official List of Bodies for Out-of-Court Resolution of Consumer Disputes, maintained by the Ministry. The adoption of this by-law formally enabled the out-of-court (and therefore, as a general rule, more efficient and quicker) resolution of everyday consumer complaints related to procured goods and services which do not fulfil their legitimate expectations. Of course, entrusting the resolution of consumer disputes to these bodies primarily depends on the willingness and mutual agreement of consumers and traders to do so, if they previously failed to resolve the issue in direct communication.

In addition, consumer protection associations have been rather active in the previous year: they conducted numerous consumer education projects, organized round tables to discuss important issues in this area, prepared consumer protection guidelines for specific situations, tested a large number of consumer products and informed consumers about detected irregularities, etc. The websites of these associations provide an increasing number of useful publications for consumers and presentations of on-going issues in this area. Through these activities consumer asso-

ciations are increasingly fulfilling their main role, which is supplying consumers with information, education and advice, addressing their complaints, conducting independent tests and comparative analyses of the quality of goods and services, etc.

REMAINING ISSUES

Although the Law formally established a greater balance in the relationship between traders and consumers, the question is how and how well the Ministry will be able to reconcile their interests in practice without discriminating against one in favour of the other. According to the 2015 Report on the Activity of the National Consumer Complaints' Registry, the Consumer Protection Sector within the Ministry received 3,683 consumer complaints in 2015 over a toll-free phone number, while the regional consumer councils received a total of 14,504 consumer complaints. A large majority of complaints received (74%) concerned supply of goods (mostly footwear, mobile phones, and IT equipment), while the remaining 26% were connected with supply of services (most often public utilities and telecommunication services). Since the Law has been in effect for a year and a half now, the overall impression is that certain improvements are already noticeable in comparison to practices established under the previous law, but there are still a number of problems in the Law's implementation and effective enforcement of consumer rights in practice, as well as in the consumer's awareness of their entitlements under the Law.

FIC RECOMMENDATIONS

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

PROTECTION OF USERS OF FINANCIAL SERVICES

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

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

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

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

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

POSITIVE DEVELOPMENTS

According to the Annual Report of the Centre for Financial Consumer Protection and Education of the NBS for the period from 1 January 2015 to 31 December 2015 (hereinafter: the Annual Report), this body received a total of 2,038 complaints and early complaints in connection with the business activities of financial institutions (80% of which concerned banks). This represents a decrease of 4.8% compared to 2014. Reducing the number of complaints is also partly a result of the application of the new (modified) legislation.

Considering the amendments to the Law, the process of protecting the rights and interests of consumers of financial services has been modified to enable them to apply for mediation by the NBS before filing a complaint, as well as during and after the complaint handling process. As a result of this, according to the Annual Report (for the previously mentioned period), there were a total of 191 submit-

ted proposals for direct intervention, without addressing complaints, of which 48 proposals were accepted by the financial institution.

In order to further educate consumers of financial services, the NBS held 42 educational debates in 30 towns and villages throughout Serbia for about 1600 people with a variety of topics current in the financial sector, while five forums were intended for entrepreneurs and farmers, as well as new categories of entities covered by the amendments to the Law of 2015. In addition, the NBS Information Center received 17,037 phone calls by citizens and 1,025 questions submitted by e-mail. It also responded to 50 media requests by journalists, including a television recording for an RTS series on the topic of protecting and educating users of financial services in order to ensure the wider education of users of financial services.

Also, the Centre for Financial Consumer Protection and Education of the NBSP received 1,688 questions (23% more than in the previous year) related to financial services. This increase is due to the better awareness of users, as well as the interest of citizens and users of housing loans indexed to the Swiss franc, to find ways of solving the problem of the repayment of these loans, taking into account the Decision on measures for preserving the stability of the financial system in the context of foreign currency-indexed loans (hereinafter: the Decision), which came into force in March 2015 with the aim of resolving this problem.

In order to cover all the unresolved issues, the NBS has split the Decision into two parts. The first relates to each individual loan contract under repayment that a bank concluded before the Law became applicable, i.e. before 5 December 2011, regardless of the currency the loan had been denominated in. The second part of the Decision relates only to Swiss franc-denominated housing loans. Banks are obliged to offer to the users of these loans four annex frameworks to the contracts which would change the conditions for loan settlement while keeping the existing security instruments. According to the NBS, as of 31 October 2015, the banking sector of Serbia had about 21,000 active party housing loans indexed to the Swiss franc. Of that number, only about 3,200 users of those loans (approximately 15.4% of the total number of loan accounts) submitted a request to conclude an annex to the loan agreement in accordance with the Decision, while 305 users explicitly declared not to accept any offered models and will continue to repay their obligations in accordance with the agreed-upon schedule and under the conditions defined in existing contracts. From the above, it can be concluded that the problem of housing loans indexed to the Swiss franc in Serbia remains unresolved and that this issue in the future will continue to be one of the main issues in the relationship between banks and users of financial services.

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

REMAINING ISSUES

From the Annual Report, we can see that early complaints continue to take a significant share of the total number of complaints in 2015 (34.2%), which points to the fact that many users of financial services are still not familiar with the prescribed procedure for filing objections and complaints. In this respect, the continuous training of consumers of financial services about their rights and the way to exercise those rights is still needed.

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

Finally, although there was an announcement of a new Law on the Protection of Consumers of Financial Services with Respect to Distance Contracts, it basically does not resolve the issue of why this law was submitted for approval in the first place. The reasons for this are non-compliance with the local legal framework and the insufficient development of legislation dealing with electronic commerce. Taking all this into consideration, this law will be limited to customers who have registered an electronic signature in accordance with the Law on Electronic Signature, so that its application will continue to be limited.

FIC RECOMMENDATIONS

- Further harmonization of regulations of the protection of consumers of financial services with international and EU principles.
- Timely adoption of the remaining by-laws required under the Law.
- Further education of users of financial services regarding their rights.
- Harmonization of the announced legislation with the existing legislation already in force.

PUBLIC PROCUREMENT

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Synchronized action of the Public Procurement Office and Anti-Corruption Agency with the aim of developing a feasible plan for combating corruption.	2013		√	
Expansion of the administrative and expert capacities of the Public Procurement Office and State Audit Institution to effectively control the planning and execution of public procurements by contracting authorities and combat corruption.	2013			√
Amending the provisions of Law regulating the unusually low price.	2014			√
Amending the provisions of the Law to oblige contracting authorities to deliver anti-corruption internal plans and acts to the Public Procurement Department.	2015			√
Amending the Law in relation to the Public Procurement Office's and the Commissions' competence in cases of suspected "bid rigging", (the ability to implement special procedures for to control the implementation of executed contracts and the submission of the application for determination of the nullity of a public procurement contract).	2014			√
Active cooperation of the Public Procurement Office, the Ministry of Finance and Economy, Anti-Corruption Agency, Budget Inspection, the State Audit Institution and the Government of the Republic of Serbia on the implementation of Law on Public Procurement and Memordandum of Cooperation date on April 15, 2014.	2015		√	

CURRENT SITUATION

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

In August 2015 the National Assembly of the Republic of Serbia adopted Amendments to the Law, which apply as of 12 August 2015. These amendments introduced novelties in respect of reducing formalities, increasing the number of documents published on the Public Procurement Portal, reducing deadlines for the submission of bids to raise the efficiency and effectiveness of public procurement procedures. At the moment of drafting of this report, there are still no available analyses on the impact of these amendments.

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

POSITIVE DEVELOPMENTS

According to the Report of the Public Procurement Office in the Republic of Serbia for 2015, the number of open competitive bidding procedures was increased to 89% from 85% in 2014. In addition to this, the share of negotiated procedures without prior publication of a call for competition was reduced to 4% in relation to 2014 when the share of negotiated procedures without prior publication of a call for competition was 5%. There is no general report of the Republic Commission for Protection of Rights of Bidders for 2015 available. The average number of bids submitted per tender is almost the same as in 2014 – 2.7%.

The recommendation from the previous editions of the White Book has been implemented, through the adoption

of a set of measures for the prevention of corruption and conflict of interest. A Cooperation Agreement was signed between the Public Procurement Office and the Anti-Corruption Agency on 2 March 2013. The purpose of this agreement is to enable the exchange of information between the signatories. Furthermore, the Public Procurement Office enacted the Model Internal Anti-Corruption Plan that contracting authorities which spend more than RSD 1 billion per year on public procurements are obliged to enact.

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

A novelty is the introduction of the institute of civil supervisor, responsible for supervising procurements exceeding RSD 1 billion. The civil supervisor has constant access to procedures, documentation and the contracting authority's communication with interested parties and bidders. We specifically underline here that the Law requires the contracting authority to request an opinion from the Public Procurement Office on the justifiability of applying a negotiated procedure, before launching the negotiated procedure.

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

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

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

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

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

REMAINING ISSUES

It remains to be seen how the new Law will be implemented in the field of prevention of corruption. The Public Procurement Office, in cooperation with the Anti-Corruption Agency, Republic Commission for Protection of Rights in Public Procurement Procedures, the Ministry of Finance, the Ministry of Trade, the State Audit Institution, the Anti-Corruption Council and the Commission for Protection of Competition are expected to implement the Memorandum of Cooperation of 15 April 15 2014 and Contract on Cooperation between the Public Procurement Procedure and the Anticorruption Agency of March 2, 2016 , which should result in the application of adequate procedures and the sanctioning of responsible persons in cases of corruption, i.e. bid rigging, restrictive agreements and unusually low bids.

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

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

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

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

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

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

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

FIC RECOMMENDATIONS

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

PUBLIC - PRIVATE PARTNERSHIP

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amendments to the Law on Public-Private Partnership and Concessions so as to fully enable contractual PPPs: i.e. implementation of PPP projects without the establishment of an SPV, in accordance with comparative examples (e.g. Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions [COM (2004) 327 final]).	2013		√	
Issuance of adequate guidelines of the PPP Commission or amendments to the Law on Public-Private Partnership and Concessions, in respect of the applicable law to public contracts.	2013			√
Amendments to the Law on Public Property to enable the encumbering of publicly-owned real estate and the foreclosure thereof, for the purpose of enforcing direct financing agreements related to PPP projects.	2013			√
Activities of the PPP Commission on the adoption of model public contracts and direct financing agreements.	2013			√
Activity of the PPP Commission on building the capacities of potential public partners for the implementation of PPP projects, and exchange of good comparative practices, which might improve the realization of PPP projects in the Republic of Serbia.	2012			√

CURRENT SITUATION

Driven by the ever-growing needs for building new public infrastructure, investing in assets and providing services of public interest, in late 2011 the Law on Public-Private Partnerships and Concessions (RS Official Gazette Nos. 88/2011 and 15/2016; herein: the Law on Public-Private Partnerships and Concessions) was adopted to regulate both concessions and public-private partnerships under a single legislative framework.

Prior to the adoption of the Law on Public-Private Partnerships and Concessions, the Law on Concessions (RS Official Gazette No 55/2003; which is no longer in force and has been succeeded by the new Law) regulated concessions as such; however public-private partnerships were altogether unregulated. With the adoption of the Law on Public-Private Partnerships and Concessions, the term "public-private partnership" was introduced into Serbian legislation for the first time and state and local authorities, also for the first time, are able to tend to their infrastructural and other public needs by resorting to a public-private partnership model.

Through the application of the Law on Public-Private Partnerships and Concessions over a four year period, a need for its amendment was recognized for several reasons. Specifically, the Law on Public-Private Partnerships and Concessions was changed the first time since its adoption in early 2016 to further its harmonization with EU legislation and cement the competences of the Ministry of Finance when approving PPPs, amongst other things.

Aside from the Law on Public-Private Partnerships and Concessions, other related laws were changed as well, such as the Law on Waste Management in the spring of 2016 and the Public Procurement Law in late 2015. According to publicly available information, 38 projects[1] were approved by the PPP Commission up to now, which is an indicator of the general lack of development in this area, in light of the existing potential.

POSITIVE DEVELOPMENTS

The newly adopted amendments to the Law on Public-Private Partnerships and Concessions aim to further regulate and upgrade certain provisions and to harmonize it with EU standards and provisions, as well as reinforce the role of the ministry in charge of finance in the process of approving public-private partnership projects in order to control the fiscal risks that these projects would undoubtedly carry.

1 http://www.ppp.gov.rs/dok/37/MISLJENJA%20KOMISIJE.pdf

In the Letter of Intent to the Republic of Serbia, the Memorandum on Economic and Financial Politics, and the Technical Memorandum of Understanding, all sent to the IMF on 6 February 2015, it was agreed to facilitate a full analysis of proposed public-private partnerships, analyses by the Ministry of Finance of key financial indicators, "cost–benefit" analyses and risk matrixes of all proposed public-private partnership projects, so that the statement on fiscal risk could be included for all PPPs beginning with the budget of the Republic of Serbia for 2016 and going forward.

As mentioned, one of the goals behind amending the Law on Public-Private Partnerships and Concessions was to allow the ministry in charge of finance to take on a significant role in approving PPP projects.

Amendments introduced into Article 27 of the Law on Public-Private Partnerships and Concessions (which regulates the content of a PPP project proposal) envisage that an integral part of a public-private partnership project proposal is, among other things, the financial effects of the proposed project to the budget of the Republic of Serbia; i.e., the budget of the autonomous province or budget of the local government unit during the life-cycle of a project term. This amendment was introduced in order to fulfil the requirements the IMF requested with regard to strengthening the role of the ministry in charge of finance; and on the other hand to allow projects of a smaller magnitude to develop in a more decentralized manner.

Article 27 of the Law on Public-Private Partnerships and Concessions introduces another amendment imposing the obligation of acquiring the opinion of the ministry in charge of finance before the PPP Commission passes its opinion on a project when the Republic of Serbia or another public body of the Republic of Serbia is a party proposing a public-private partnership project, and if the estimated value of such a project exceeds EUR 50 million.

Furthermore, Article 29 of the Law on Public-Private Partnerships and Concessions now also includes an amendment calling for the obtaining of the prior opinion of the ministry in charge of finance before the PPP Commission if the Republic of Serbia is the concession grantor; i.e., where the public bodies and the subject matter of the concession are within the scope of competence of the Republic of Serbia and if the estimated value of such a concession exceeds EUR 50 million.

The opinion of the ministry in charge of finance is specifically regulated with the new amendments to Article 29a, stating that the PPP Commission shall issue a positive opinion on the proposal of the public-private partnership project; i.e., on the proposal of the concession act, provided that the criteria, in compliance with the Law on Public-Private Partnerships and Concessions, have been complied with, and that the PPP Commission shall provide their opinion by additionally taking into account the previously obtained opinion of the ministry in charge of finance.

The ministry in charge of finance shall provide their opinion based on the compatibility of the direct financial liabilities of the public body contained in the project proposal for the public-private partnership; i.e., a draft concession act, inclusive of budget and fiscal projections, conditions, and limitations laid down by specific regulations.

Lastly, the Register of Public Contracts, which was introduced with the previous version of the Law on Public-Private Partnerships and Concessions (and the related by-law), has become fully functional.

REMAINING ISSUES

As the Law on Public-Private Partnerships and Concessions is a relatively new law which only recently regulated for the first time public-private partnerships, although a significant level of cohesion with related laws exists, certain contradictions are present between said law and others.

For example, a higher level of synchronization and cohesion could be achieved in relation to segments of the Public Procurement Law (RS Official Gazette Nos. 124/2012, 14/2015 and 68/2015; herein: the Public Procurement Law) which is explicitly referenced in the Law on Public-Private Partnerships and Concessions, with the Law on Public-Private Partnerships and Concessions stating that the procedure for selecting a private partner is either a process regulated under the Public Procurement Law or one envisioned under the Law on Public-Private Partnerships and Concessions. Another issue connected to the application of the Law on Public-Private Partnerships and Concessions is when another law is applicable at the same time, in which case it will probably be the case that no single authority shall be competent in providing an authentic interpretation on a particular subject matter regulated by two different sets of legislation. In addition, different authorities relevant to the authentic interpretation of a legislative act

might have, in the end, dissenting opinions on a particular matter, thereby rendering the search for such interpretation obsolete.

Having mentioned the Public Procurement Law as an example of a piece of legislation which could be more cohesive with the Law on Public-Private Partnerships and Concessions, a potential issue that might arise in practice is, for example, subcontracting. Article 80 of the Public Procurement Law prescribes that the percentage of the total procurement value to be entrusted to a subcontractor cannot be greater than 50%. On the other hand, the Law on Public-Private Partnerships and Concessions does not envisage such a restriction. Also, changes in consortia are permitted under Article 16 of the Law on Public-Private Partnerships and Concessions and Article 81 of the Public Procurement Law. Nevertheless, it should be clearly stated which of the two provisions of these two pieces of legislation should apply.

Another point that should further be clarified is the possibility of making payments in foreign currency, something explicitly permitted under Article 72 of the Law on Public-Private Partnerships and Concessions. Although permitted, its practical application may come to be less straightforward than expected as foreign exchange regulations in Serbia are rather strict.

What should also be taken into consideration is that the public partner under a PPP arrangement is restricted by budgetary regulations, specifically the Budgetary System Law which allows budgetary planning to be limited to a certain number of years that will most definitely not be as long as the contractual arrangement it would enter into under a PPP project. This in turn may ultimately affect the attractiveness of investing in Serbia by way of a PPP arrangement.

Restrictions under Article 16 and 17 of the Law on Public Property prescribing that immovables used by the authorities of the Republic of Serbia, autonomous province, or local government cannot be subject to foreclosure, mortgaged, or encumbered in any other way are especially noteworthy. Such a broad definition is stricter than the provisions addressing financing in the Law on Public-Private Partnership and Concessions, which otherwise are very favourable for potential financiers, and which refer to the application of the law regulating public property.

Another piece of legislation which introduces a certain ambiguity as to the definition of a concession is the Law on Communal Services, which sets an entirely different set of criteria on the basis of which a project qualifies as a concession. Specifically, Article 9, paragraph 3 of the Law on Communal Services implies that what makes a concession is the ability to "finance the performance of the communal services by directly charging end-users". On the other hand, the Law on Public-Private Partnerships and Concessions states that a concession is a contractual PPP with elements of a concession where the commercial use of a natural resource – that is, of resources in general use that are public property; or conducting an activity of general interest that the relevant public authority assigns to a domestic or foreign entity for a definite period of time under specifically prescribed conditions against payment of a concession fee by the private, i.e., public partner - is regulated by means of a public contract, wherein the private partner assumes the risk related to the commercial use of the subject matter of concession.

FIC RECOMMENDATIONS

- A more active role of the PPP Commission, which should include issuing guidelines, as well as further developing the capacities of potential public partners for the implementation of PPP projects, and an exchange of good comparative practices, which might improve the realization of PPP projects in the Republic of Serbia.
- Increase and improve the cohesive and synchronized activities of relevant authorities for the authentic interpretation of laws (joint guidelines and recommendations) which may materialize by the increased activity of the PPP Commission; e.g. the Ministry of Finance, the National Bank of Serbia, the Public Procurement Office, etc.

- Enact amendments to the Law on Public-Private Partnerships and Concessions fully ensuring cohesion with other laws intertwined with it (by explicitly pinning down the sole application of the Law on Public-Private Partnerships and Concessions where a matter is regulated differently).
- Enact amendments to the Law on Public Property enabling the encumbering of publicly-owned real estate and the foreclosure thereof for the purpose of enforcing direct financing agreements related to PPP projects.
- Continue to monitor the application of the Law on Public-Private Partnership and Concessions and identify all unclearly regulated areas.

TRADE

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The Law on Trade regulates the overall market and conduct of market participants, and as such 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 (RS Official Gazette 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 in the first half of 2014, and this primarily refers to the Law on Electronic Trade and Law on Consumer Protection. This resulted in a much-needed simplification of regulations, thus providing the basis for solving some practical problems from the past. Nevertheless, those who would 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 providing guidance for the application of the laws as well as non-compliance with the EU acquis remain the main problems inherited from the past; i.e. the by-laws did not keep pace with changes in regulation, 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, for the most part, still missing.

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

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

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

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

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 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 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 that 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, along with the corresponding proportional increase of fees.

Additionally, new amendments to the Trade Law entitle local authorities to decide on the working hours of traders on their territory and to limit the hours of the sale of certain products, the consumption of which may affect public order (as in alcoholic beverages). This provision limits the constitutional freedom of entrepreneurship and discriminates against 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 those in the countries of the EU, as is the case with specifying 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 Serbian 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.

Additionally, we must deal with certain absurdities in the field of exports of domestic products, even though increasing domestic exports should be a priority when it comes to the promotion of the national economy. Specifically, organizing an aggregate shipment of foods of animal origin produced by a variety of local producers and collected in the warehouse of the trader is impossible in practice, even if the warehouse is properly licensed for exports and supervised by a competent veterinary inspector. We would like to emphasise that the activity described herein was feasible in the past, until mid-2010 and the adoption of amendments to the Law on Veterinary Medicine. The fact that exporting aggregate shipments of products that have been imported into Serbia by a trader (so-called re-export) is perfectly legal adds to the absurdity. This problem has been pending for far too long, especially given the importance of this issue and the benefits small local producers would reap if it were resolved. Also contributing to the aggravated export of these types of products (especially meat and dairy products) to EU member states is the fact that Serbian regulations and standards in the food industry still are not harmonized with the appropriate regulations and standards applicable in the EU, meaning that the food produced in Serbia and which does not meet the quality standards prescribed in the EU cannot be exported to EU countries (e.g. pigs may not be exported

to the EU because vaccination against swine flu, strictly forbidden in the EU, is mandatory in Serbia).

At the beginning of October 2013, the Rulebook on Labelling and Advertising of Food (RS Official Gazette No 85/2013) was adopted and subsequently came into force in January 2014. The Rulebook regulates in a more detailed and adequate manner not only labelling, but also advertising of packaged food and food in general. In that regard, the Rulebook prescribes several useful solutions to problems previously occurred in practice, such as prescribing the minimum size of letters in which the content from the declaration of food should be indicated in order to avoid misleading consumers. 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 into Serbian legislation. This was not done explicitly, but rather by expanding the definition of what is a producer. By specifying that "a producer is a legal entity, a sole trader, or an natural person that manufactures a product, or declares itself as the producer, by putting its business name, logo, or other recognizable mark onto the product or otherwise," the legislation has actually made it possible to consider a trader of private label products who sells these products under its own brand by putting its name or trademark on the products as the manufacturer of those products.

The business environment was improved by providing the possibility of transporting goods accompanied only by the documents related to the transportation of goods, something which certainly contributed to the simplification of this business segment and also significant cost savings. We hope that this provision will be concretized in the near future, since this issue has to be elaborated in the accompanying by-laws, 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 competencies of the Centre, related to the monitoring of trade and the market, were transferred to the authority of the Ministry of Trade, Tourism, and Telecommunications.

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

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

One of the significant developments that occurred in April 2015 was the adoption of the Law on Inspection Oversight. Until the adoption of this Law, the various areas related to inspection oversight were regulated by approximately 1,000 laws, rules, and other regulations, often leading to inconsistencies and conflicts of legislative rules and even, in the same or equivalent situations, to different outcomes. A significant number of inspection services were even denied their jurisdiction because their respective authorities were not explicitly or sufficiently regulated. This legal uncertainty allowed for the blossoming of the grey economy, businesses without a license and illegal/unregulated labour, all of which also had a strong adverse effect on the state budget and consequently the entire economy of the country. The adoption of an umbrella law in this field resulted in a better coordination of inspection oversight and cooperation among the inspectorates, as well as better cooperation between inspections and other government

bodies and private sector entities, a state which is expected to significantly contribute to eliminating or substantially diminishing arbitrariness, inconsistencies, corruption, and other possible abuse; i.e. lead to the establishment of effective mechanisms for suppressing the grey economy and ensuring legal certainty.

What is also worth mentioning is the enactment of the new Law on Strong Alcoholic Beverages at the end of 2015, the application of which began on 1 January 2016. This law regulates the production, indication of geographical mark, quality, description, presentation, labelling, and advertising of strong alcoholic beverages. The law establishes a special register for producers of alcoholic beverages so that all producers of beverages falling within the classification of "strong" prior to production are obliged to register in accordance with this law. This is an especially important change in the production of alcoholic beverages in Serbia due to the fact that, so far, unregulated production of alcoholic beverages was widespread in this country, basically as part of a long-standing tradition. This is why producers resisted to be bound by any previously applicable, meagre regulations on the control of the production of alcoholic beverages for such a long time. In addition, when we take into account the fact that the relevant authority was insufficiently motivated to enforce these regulations, it is obvious that all this opened the door for a blossoming of illegal production and trade of alcoholic beverages. Enactment of this law will surely make illegal production and trade of alcoholic beverages less attractive, and it would hopefully prevent misleading consumers regarding the origin and quality of alcoholic beverages (especially with regards to fruit brandies), while also increasing the quality level of strong alcoholic beverages.

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

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

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

Last but not the least, we must point out that not enough has been done in the field of secondary legislation. The obligation to make the Law applicable through its implementing by-laws still has to be fulfilled in order to provide clear guidelines to state authorities and the business community and still ensure legal safety in this area. This leads to a situation whereby inspection services in different parts of the country apply different criteria in controlling and disciplining traders due to a lack of uniformity in their interpretation of regulations. The Law on Inspection Oversight, the application of which just recently started, should resolve this problem to a significant extent, but since this law is relatively new and there is still little practice in its implementation, the real effect of the law remains to be seen.

FIC RECOMMENDATIONS

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

ILLICIT TRADE FIGHT AND INSPECTION CONTROL

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introduction of specialized prosecutors for the processing of illicit trade; i.e. economic crime related cases.	2014		√	
Preparation and timely enforcement of changes in sector laws towards their harmonization with the framework envisaged by the Law on Inspection Surveillance.	2015			√
Allocation of adequate resources and funds to law enforcement bodies.	2014			√
Establishing a risk assessment system and preparing an overall plan for the control of industries associated with a higher estimated risk of illicit trade.	2014		√	
Regulating the system of performance assessment and incentives for officials engaged in fighting illicit trade.	2014			√
Promotion of public administration capacities in the area of enforcement of regulations by relocating surplus staff from administration to bodies engaged in controlling enforcement of regulations, as well as the further specializing of such staff.	2015			√
Introduction of integrated control of border crossings by all the involved departments, in order to prevent the illegal transit of goods across the border into Serbian territory and its further distribution through grey trade flows.	2015			√
Prescribing regulatory impact analyses that would require any legislation change to include assessment of potential effects of such changes on illicit trade.	2014			√
Within the Law on Tax Procedure and Tax Administration, amend the treatment of entities conducting illegal activities in terms of revising the terms on payment deadlines, reimbursement of seized goods, etc.; and introduce the possibility for the seizure of goods manufactured from illegally procured goods and equipment including parts that are used for performing such production.	2014		√	
Enhancing the efficiency in processing cases associated with illicit trade before judicial bodies and pronouncing statutory fines for entities involved in illicit trade, thus achieving the purpose of preventative actions on other entities on the market.	2015			√
Coordinate methods of maintaining databases between applicants and courts and prosecutors, so as to monitor the efficiency of application processing in an adequate manner.	2015			√
It is necessary to pass a Rulebook on the manner and terms of sale, cession without compensation, and destruction of goods, the adoption of which is prescribed by Article 65 of the Trade Law (Official Gazette of RS, No. 53/10 and 10/13).The Foreign Investors Council is ready to provide expert support in the process of adopting this rulebook.	2015			√

CURRENT SITUATION

Levels of activities associated with the grey economy have remained nearly the same as in previous years. The market has seen certain improvements concerning trade in excise products (oil products and tobacco), while an increase in the collection of value-added tax from the fast-moving consumer goods category suggests positive developments. From the economic point of view, illicit trade is the most harmful aspect of the grey economy and it is one of

the key factors hindering the improvement of the investment climate in Serbia. In the process of fiscal consolidation, curbing the grey economy becomes increasingly important. Accordingly, the FIC expects that such activities will be among the priorities of the new government.

It is encouraging that the implementation of the Law on Inspection Oversight has given the first results in the areas of control of unregistered businesses and suppression of undeclared work, which should have a positive effect on the motivation of authorities to fully implement the law, as well as raise awareness about the need to curb the grey economy in general.

The key problem remains the management of misdemeanour and felony complaints in the area of illicit trade by prosecutors and courts; in other words, inefficient processing and an overly lenient penal policy. Efficiency has been somewhat improved by the mass usage of the institute of prosecution delay ("principle of opportunity") but this has been done largely at the expense of an adequate penal policy. An inadequately efficient penal policy discourages authorities combating illicit trade on the ground, and incentivizes perpetrators due to the inappropriate level of risk associated with this type of illegal activity.

POSITIVE DEVELOPMENTS

The adoption of the National Programme for Countering the Shadow Economy in December 2015 represents an important step toward a systematic combat against this phenomenon, instead of the previous ad hoc approach. The program has its own action plan and established criteria for the evaluation of results, which need to be fulfilled in order to achieve the defined objective – reduction of the grey economy to a maximum of 26.7% of GDP within five years.

The implementation of the Law on Inspection Oversight has produced the first results in the areas of control of unregistered entities and combat against undeclared work, which was expected considering that these provisions had entered into force earlier. Harmonizing sector laws with this law needs to be completed in April 2017, and it is difficult to assess how much progress has been made in this process. Based on the above-mentioned law, a Coordination Commission was formed, and it is particularly important that within this body, a Working Group for Combating the Grey Economy, in which the FIC has a permanent representative, has begun to operate. We assess that direct participation of business representatives in the establishment of official state policy in this area is an important step forward.

The levels of illicit trade in excise products have either been reduced or remained at the same level in the case of oil products and tobacco products, but there have been no improvements when it comes to coffee and alcohol products. In the area of other fast-moving consumer goods, a slight improvement has been seen, reflected in a better collection of VAT.

REMAINING ISSUES

The Law on Inspection Oversight for most provisions allows a delayed implementation of up to two years. Consequently the capacities of institutes put to inspections' disposal have not yet been fully used and joint planning control is not at an appropriate level. The formation of an internal organizational unit responsible for the support of the Coordination Commission, within the ministry in charge of the state administration for professional, administrative, and technical jobs, has not been completed either, although this is expressly provided for by law.

The relevant law enforcement bodies have insufficient resources to systematically fight illicit trade, although their engagement is aimed at protecting budget revenues. This is mainly seen in an insufficient staff that would conduct control, but also in poor technical equipment. Given the rationalization of the state administration and the fact that a special status of the mentioned staff has not been defined in relation to administrative workers, it is expected that their number be reduced further, which would certainly have a very negative impact on the capacity of the state apparatus to combat the grey economy. In addition, inspection authorities have insufficient capacities for the storage of seized goods, which is a factor that limits their performance. The existing regulations also prevent, to a great extent, a further stimulation of employees working with bodies responsible for control of the implementation of regulations to achieve desired results in the fight against illicit trade and protection of public revenues.

The risk levels for those engaged in the grey economy, and especially illicit trade, is still perceived as low compared to potential earnings. This is due to inefficient processing and an overly lenient penal policy. A disproportionately small number of cases of illicit trade are currently being processed before relevant courts, and in most cases the per-

petrators are handed minimum sentences. Such cases are usually characterized as minor offenses, although there are grounds for criminal charges. Consequently, this sends the wrong message to potential perpetrators and additionally incentivizes illicit trade. Furthermore, no database coordination exists among applicants, prosecutors, and courts; and therefore the efficiency of processing cannot be adequately tracked.

FIC RECOMMENDATIONS

- Introduction of specialized prosecutors for the processing of illicit trade; i.e. economic crime related cases.
- Preparation and timely enforcement of changes in sector laws towards their harmonization with the framework envisaged by the Law on Inspection Oversight.
- Allocation of adequate resources and funds to law enforcement bodies.
- Establishing a risk assessment system and preparing an overall plan for the control of industries associated with a higher estimated risk of illicit trade.
- Regulating the system of performance assessment and incentives for officials engaged in fighting illicit trade.
- Adaptation of the plan of rationalization of public administration in the part related to the reduction in the number of staff for control in order to prevent further reduction of resources to combat the grey economy. We believe that this rationalization should primarily relate to the administrative staff, and that the number of employees in control needs to be increased.
- Introduction of integrated control of border crossings by all the involved departments, in order to prevent the illegal transit of goods across the border into Serbian territory and its further distribution through grey trade flows.
- Prescribing regulatory impact analyses that would require any legislation change to include assessment of potential effects of such changes on illicit trade.
- Within the Law on Tax Procedure and Tax Administration, amend the treatment of entities conducting illegal activities in terms of revising the terms on payment deadlines, reimbursement of seized goods, etc.; and introduce the possibility for the seizure of goods manufactured from illegally procured goods and equipment including parts that are used for performing such production.
- Enhancing the efficiency in processing cases associated with illicit trade before judicial bodies and pronouncing statutory fines for entities involved in illicit trade, thus achieving the purpose of preventative actions on other entities on the market.
- Coordinate methods of maintaining databases between applicants and courts and prosecutors, so as to monitor the efficiency of application processing in an adequate manner.
- Enactment of Code on the method and terms of sale, cession without compensation and the destruction of goods, the adoption of which is prescribed by the Article 65 of the Trade Law (RS Official Gazette No 53/10 and 10/13).

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 the industries' consent and a 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		√	
Minimizing usage of paper documentation and conversion to available electronic communication.	2012		√	
Increase the efficient resolution of claims in the customs administrative procedure.	2013		√	
Change the date of issuance of the customs invoice – it is recommended that this be the final date of clearance of goods, and not the date of declaration.	2013			√

The legal framework governing customs procedures in Serbia consists of the Customs Law (RS Official Gazette No 18/2010), the Customs Tariff Law (RS Official Gazette 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 on 3 April 2010, regulating customs procedures, whilst the organization of the Customs Administration is still mostly governed by the provisions of the old Customs Law (RS Official Gazette No 73/2003, 61/2005, 85/2005, 62/2006, 63/2006, 9/2010, and 18/2010).

The new Customs Law is similar to the previously applicable law regulating this area, with certain innovations such as simplified customs clearance procedures, summary declaration, previous declarations, the customs broker as indirect representative, now to be a declarant and 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 will require detailed secondary legislation. The Government has already enacted several implementing regulations related to duty exemptions for certain imports, the establishing and closing of certain customs offices, as well as content and form of declarations and the manner of populating and submitting them - in an ordinary and simplified customs procedure. However, additional regulations are expected to be issued for other areas as well.

The Customs Tariff

The Serbian Customs Tariff is harmonized every year with the EU Combined Nomenclature. In Serbia, there are several tariff regulations that are binding:

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

As regards the EU and WCO decisions, official translations

are regularly published in the RS Official Gazette.

Free Trade Agreements

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

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

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

POSITIVE DEVELOPMENTS

The Customs Law

The first certificates for authorized economic operators have been granted. Based on such a certificate, a legal entity may use various incentives in customs clearance procedure regarding safety and security, as well as other exemptions prescribed under the Customs Law.

The Convention on a Common Transit Procedure

In June 2015, the Parliament of the Republic of Serbia adopted the Law on Ratification of the Convention on a Common Transit Procedure, by which the transition to the new computerized transit system (NCTS) started. The NCTS is used as a unique transit system in the Member States of the EU, EFTA, and Turkey. During 2015, the NCTS was used in the Republic of Serbia only within its territory, and as of 1 February 2016, the use of the NCTS outside the national borders began. This way, customs clearance procedure between the states signatories of the respective convention can be performed based on one electronic declaration and one collateral, which are valid during the entire transit. The use of the NCTS excludes the preparation of a transit document on the border of the Republic of Serbia (a transit document issued in EU/EFTA/Turkey will be valid in this case). In addition, for the purpose of entering the territory of the EU, an NCTS transit issued in the Republic of Serbia will be valid as well. In this manner, the NCTS will also provide an incentive for the further increase of the number of means of transport transiting over the territory of the Republic of Serbia.

REMAINING ISSUES

The Customs Law

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

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

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

An important customs relief stipulated by Article 218 of the Customs Law - exemption of new production equipment from import customs duty under prescribed conditions - ceased to be applicable. Namely, the Customs Law left to the Decision on Determining Goods Exempted from Payment of Import Customs Duties to regulate the type, quantity, and value of goods exempted from import customs duties. Given that the decision stipulated that it would be in force until 31 December 2015, exemption of new production equipment

from import customs ceased to apply in 2016. However, there is still the possibility of exemption from the payment of customs duty for used and new equipment through foreign investment, in accordance with the Regulation on Conditions and Manner of Attracting of Investments. It should be noted that this model represents a more limited scope of exemptions than the previously applicable model. The Ministry of Finance stated that the reason for the revoking of the previously applicable model of exemption is existence of international treaties; however such treaties have not been signed with countries such as the United States or China.

Additionally, the Customs Administration and Customs Offices have not yet established a unique practice in terms of possibility and model of participation of foreign entities in customs procedures, particularly with regards to populating the content of customs declaration. This issue has become particularly important now that foreign entities may be registered as VAT payers via tax representatives for VAT. The aforementioned has a direct impact on VAT treatment, considering that the Tax Administration in practice determines the right to deduct the input VAT, or the right to tax exemption for export, primarily on the basis of the customs declaration.

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

The Customs Tariff

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

Free Trade Agreements

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

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

FIC RECOMMENDATIONS

- Increase efficiency on all levels of administration, especially in terms of resolving customs payers' appeals.
- Passing by-laws to enable the proper application of laws and avoid ambiguities in interpretation.
- The Customs Administration is to issue guidelines and additional explanations, in cooperation with the Fiscal System Department, in terms of handling the customs procedures in which the foreign entity occurs as a participant.
- Improvement or replacement of the Customs IT system (ISCS).
- No further trade liberalization should be pursued without the industries' consent and a positive impact assessment of relevant sectors.
- Continuous education and training of customs officers.

- Better online information system and introduction of online services within the customs procedure, with the possibility of companies having access to all relevant information.
- Minimizing usage of paper documentation and conversion to available electronic communication.
- Increase the efficient resolution of claims in the customs administrative procedure.
- Change the date of issuance of the customs invoice – it is recommended that this be the final date of clearance of goods and not the date of declaration.

GENERAL PRODUCT SAFETY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continuous and intensive enforcement of the Law, especially with regard to effectively alerting consumers, public involvement, regular inspections based on reliable analysis and hotspot identification, and the sanctioning of infringers, is crucial.	2011		√	
Adoption of by-laws and guidelines to assist the daily enforcement of the law and at the same time ensure transparency of the activities of inspectorates.	2014		√	
Public campaigns to increase awareness, and appropriate training of economic operators.	2009		√	
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.	2011		√	
Proper development of the NEPRO portal, raising the administrative bodies' visibility, and building their capacities.	2014			√
Linking the NEPRO portal with the RAPEX notification system.	2014			√
Abandoning direct market interference measures in favour of controlling competition infringements, general product safety, and information provided to consumers.	2012			√
Harmonization of national standards with relevant EU standards.	2014		√	

CURRENT SITUATION

General product safety has been directly regulated in Serbia since 2009, under a special law and corresponding by-laws for its implementation. Additionally, 2011 saw the adoption of the Law on Market Surveillance.

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

POSITIVE DEVELOPMENTS

The new Law on Market Surveillance regulates cooperation 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 coordination between the 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.

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

REMAINING ISSUES

The online NEPRO system of public information, a domestic match to the European Rapid Alert Point of Exchange (RAPEX), was established with the goal of informing consumers about dangerous products. However, the level of awareness of NEPRO's activities is insufficient (is not widely known, is not visible in the media, and doesn't forward information from RAPEX). Only nine cases were published in 2012 and only 13 in 2013. Twelve cases were published in 2014, 15 in 2015, and 13 since the beginning of 2016. Therefore, we can consider that the effect that this portal has on the market is relatively small. There were no improvements of the system regarding accessibility, statistics, and data analysis.

We think that it should be necessary to coordinate the work of the NEPRO system of public information with the RAPEX system, which is more widely known by the broader public, and with it the purpose of this system would be fulfilled and its use brought to a higher level.

There is a need for improving the publicity and transparency of the work of relevant authorities concerning food safety leading to strengthening and positive perception. There is a need for better coordination of parties involved in this area.

FIC RECOMMENDATIONS

- The continuous and intensive enforcement of the Law.
- Adoption of by-laws and guidelines to assist in the daily enforcement of the law.
- Public campaigns to increase awareness and appropriate training for economic operators.
- Development of a system for coordination, information exchange, and co-operation of all relevant players on a permanent basis, with concrete and effective activities and results undertaken.
- Linking the NEPRO portal with the RAPEX notification system.
- Harmonization of national standards with relevant EU standards.

E-COMMERCE REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further harmonization of e-commerce regulations with the relevant EU rules (e.g. the implementation of the principles of coordinated field and the internal market, amendments to the definition of information service providers in line with the Directive on Electronic Commerce 2000/31/EC, stipulating sanctions for the abuse of the institute of notification of illegal content).	2013		√	
Harmonization of secondary legislation relevant for e-commerce (e.g. the restrictive approach of the Foreign Exchange Act demanding proof of authenticity of the origin of money).	2013			√
Adoption of appropriate guidance by the National Bank of Serbia which would specify the use of foreign services for electronic money in accordance with existing regulations.	2015			√
Organizing public workshops, campaigns and educational programs in order to spread awareness about the importance and benefits of e-commerce.	2011			√
Changes to the relevant postal regulations, so as to allow for the delivery of mail with a digital signature from the recipient on the screen of courier scanners.	2013			√

CURRENT SITUATION

E-commerce is regulated primarily by the Law on E-Commerce, the Law on Electronic Document and the Law on Electronic Signature. Also of significance are financial regulations governing specific aspects of e-business, specifically the Law on Payment Services and the Law on Foreign Exchange Operations, which significantly affect payment transactions in e-commerce. The Law on Payment Services and the Law on Amendments to the Law on Foreign Exchange Operations were adopted in late 2014 and entered into force on 1 October 2015. Additionally, in late 2014 the Law on Amendments to the Financial Services Consumer Protection Law was adopted and entered into force on 1 October 2015 too. The Consumer Protection Law, adopted in 2014 and slightly amended in 2016, includes important aspects of the legal framework and, inter alia, regulates the protection of consumers in distance contracts. Finally, the Law on Advertising which entered into force in May 2016 introduced a long-awaited clarity and further regulation of Internet advertising closely related to e-commerce.

In previous years, the Internet market in Serbia experienced a significant and continual expansion. Simultaneously, the popularity of online shopping in Serbia has seen a stable growth trend. With the growth of information technologies, a modern information society has developed rapidly, followed by the introduction and modernization of an applicable legal framework. The trend that started several years ago continued last year as well. Data by the Statistical Office of the Republic of Serbia show that over 3,550,000 people used the Internet last year; over 2,950,000 people used the Internet every day or almost every day; and over 1,220,000 people made online purchases. In 2015, Internet access was available to 63.8% of Serbian households, with the number of Internet users increasing by 2.5% compared to 2014. A difference in Internet access rates is evident in both urban and rural Serbia. In fact, according to data provided by the Statistical Office of the Republic of Serbia, 70.1% of Serbian urban households had Internet connections in 2015, whereas in rural Serbia this percentage stood at 53.2%. Also, 56% of households used broadband Internet in 2015, an increase of 0.9% compared to 2014. The increased use of broadband Internet resulted in the growth of the share of Information and Communication Technologies (ICT) in the gross domestic product.

In 2015, over 1,220,000 Internet users made online purchases in Serbia, an increase of approximately 5% compared to the previous year, when there were 1,160,000. Such growth in e-commerce is the result of the development of local e-commerce services and of the increased availability of foreign payment services (PayPal).

POSITIVE DEVELOPMENTS

The main goal of the adoption of the Law on Payment Services and the Law on Amendments to the Law on Foreign Exchange Operations was further harmonization of national legislation with the regulations of the European Union, with the overall strategic aim of the Republic of Serbia becoming a Member State of the Union. Additionally, the previous Law on Payment Transactions was restrictive, allowing only banks and postal enterprises to engage in the activity of payment transactions. The previous Law was also a great deal outdated compared to the development of new payment technologies.

In this regard, the Law on Payment Services introduced two new categories of providers of payment services: payment institutions and electronic money institutions. This is an important step aimed at increasing competition on the market of payment services, resulting in a higher quality of service at a lower price. Furthermore, the Law on Payment Services introduced and defined electronic money. It also enabled the use of this new payment instrument, which will, without a doubt, be used all the more in the future. At the same time, the scope of the National Bank of Serbia's supervision was expanded and now includes supervision over all providers of payment services and issuers of electronic money. The adopted amendments to the Law on Foreign Exchange Operations merely aligned the law with the Law on Payment Services.

The Law on Advertising, meanwhile, further clarified what is Internet advertising and in particular the roles and liabilities of persons involved in the online advertising chain. Most notably, in Internet advertising, instead of two, there are now three participants in the advertising chain: the advertiser, the message transmitter, and the person who rents the space on a website. The message transmitter (in the context of the Law on E-Commerce, an information service provider) is not automatically liable for any illegal content of the message, but rather is bound to act upon the orders of a relevant inspection. Only after failing to act upon such orders may the message transmitter be liable for illegal content of the message.

As a result, the overall situation in e-commerce in Serbia can be seen as improving. It is a fact that the number of households using the Internet (including broadband), and the number of people shopping online is on the increase compared to previous years, and so is the turnover from e-commerce, with positive results from the use of electronic money yet to be seen in the future.

REMAINING ISSUES

Even though improvement in the field of financial legislation is evident, the remaining issue is the overall legal framework's efficiency, implementation, and compliance of existing regulations. The procedure for authenticating receipt of money from abroad is still rather complicated, with provisions to the Law on Foreign Exchange Operations stipulating, among other things, restrictions for Serbian residents related to the opening of foreign bank accounts, something that discourages e-commerce development.

Additional harmonization of national legislation with the regulations of European Union acquis is necessary. In this regard, the legislature must address the issues of the coordinated field and the 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 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 relevant authorities of that EU Member State requiring the information service provider to align with the coordinated field of that country. Not only is the transposition of the aforementioned provisions into Serbian legislation mandatory prior to EU accession; they are also very significant in view of the fact that one of the most important characteristics of e-commerce is in 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 further increased by the Law on Payment Services; however, efforts to raise awareness and disseminate information on reliability are required. Further progress will be made when local users of PayPal services are able to directly receive funds from abroad, which is currently impossible since this service is not possible without license of the National Bank of Serbia, 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.

A lack of capacity and limited market scope is reflected in the continuous hesitation of large companies to further engage in the e-market. Education and development of practices are the only solutions to the issues of trust in the online environment. This is the key constraining factor in Serbia, as it is worldwide. Security and safety of personal information, 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. Generally, the implementation of the legal framework by the relevant state bodies is currently not at a satisfactory level, rendering this area of law significantly under-applied and often improperly applied in practice. As a consequence, the lack of understanding of those who have to implement the law is often evident and market participants are, on a daily basis, faced with market inspections that do not know or cannot acknowledge the specifics of e-commerce, in particular the rights and obligations of an information service provider, when compared to regular commerce.

FIC RECOMMENDATIONS

- Further harmonization of e-commerce regulations with the relevant EU rules (e.g. the implementation of the principles of the coordinated field and the internal market).
- Harmonization of secondary legislation relevant for e-commerce (e.g. the restrictive approach of the Law on Foreign Exchange Operations demanding proof of authenticity as to the origin of money).
- Adoption of appropriate guidance by the National Bank of Serbia which would specify use of foreign services for electronic money in accordance with existing regulations.
- Organizing public workshops, campaigns, and educational programs in order to spread awareness about the importance and benefits of e-commerce.
- Training and education of market inspectors in the sphere of e-commerce by means of organized congresses, seminars, and workshops.
- Changes to relevant postal regulations, so as to allow for the delivery of mail with a digital signature from the recipient on the screen of courier scanners.

LAW ON PAYMENT TRANSACTIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Improving the efficiency of transfer orders by facilitating the adjustment of the transfer order's form (prescribed by the Decision on the Form, Contents and Manner of Use of Unique Payment Instruments) to the needs of SW programs, used for the orders' optical reading;	2014			√
The Law should be amended further and harmonized with the legal framework of the European Union.	2013		√	
With respect to the announced adoption of the Law on Payment Services, the following is needed:				
Specify the Law on Payment Services' provisions further to avoid difficulties in its interpretation.	2014		√	
Extend the time in which the banks are required to align their operations and internal acts with the Law on Payment Services to 1 January 2016.	2014			√
Regulate the areas that are not regulated by the by-laws, which is expected to happen in the forthcoming period.	2015		√	
The good side of the Law on Payment Services will become apparent only once its practical implementation begins.	2015		√	

CURRENT SITUATION

The Payment Services Law (RS Official Gazette No 139/2014), hereafter known as "PSL", established a new framework for the execution of payment transactions involving Serbian residents. The PSL regulates, amongst other issues, the definitions of payment transactions and payment instruments; types of payment services; and the list of entities authorized to provide such services. Payment services can now be provided by entities other than banks, i.e. payment institutions and electronic money institutions. The PSL defines a payment institution as a legal entity registered in Serbia that has been granted authorization by the National Bank of Serbia to provide payment services; and the electronic money institution as a legal entity registered in Serbia that has been granted authorization to issue electronic money.

The PSL regulates in a detailed manner the rights and obligations of participants (providers and users) in relation to the provision and use of payment services. These provisions cover the manner and conditions pursuant to which the user authorizes a payment transaction or withdraws its authorization; obligations with regard to the use of payment instruments; data protection; allocation of liability between participants for unauthorized payment transactions; refund rights; etc. The legislation further sets out the rules on the receipt, refusal, and revocation of payment orders; execution of payment transactions based on bills of exchange; execution time and value date; and other related matters.

The PSL regulates for the first time the issuance of electronic money, which is defined as "electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a natural person or legal entity other than the electronic money issuer". Authorized issuers of electronic money under the PSL include Serbian-licensed banks, Serbian-licensed electronic money institutions, post office giro institutions, the National Bank of Serbia, and the Treasury.

The National Bank of Serbia is responsible for the authorization and supervision of payment institutions and electronic money institutions. The minimum pecuniary share capital of a payment institution depends on the type of payment services that the institution intends to provide, being set at EUR 20,000 for money remittance services; EUR 50,000 for the execution of payment transactions where the consent of the payer to execute a payment

transaction is given by means of any telecommunications, digital, or IT device: and EUR 125,000 for all payment services envisaged by the PSL (that would also include services enabling cash to be placed on a payment account, including operations required for operating a payment account; services enabling cash withdrawals from a payment account, including operations required for operating a payment account and the execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider, or with another payment service provider; also, the issuing or acquiring of payment instruments). The minimum share capital of an electronic money institution is set at EUR 350,000. Payment institutions and electronic money institutions are further subject to tight prudential and capital requirements. The National Bank of Serbia has adopted a set of 19 by-laws further regulating, inter alia, its enforcement powers (requiring information, undertaking inspections, and imposing penalties) and the decision on the authorization requirements process.

POSITIVE DEVELOPMENTS

The PSL marks a significant step towards the alignment of national payment services regulations with the regulatory framework of the European Union. The bulk of the provisions found in Directive 2007/64/EC on payment services in the internal market (the Payment Services Directive) and Directive 2009/110/EC on the taking up, pursuit, and prudential supervision of the business of electronic money institutions (the Second E-Money Directive) were thereby transposed into Serbian law.

The legislation allows greater competition in the payment services industry previously dominated by the banks. This should lead to a decrease in transaction costs for payment service users and improve the quality and efficiency of that service. It is still too early, however, to estimate the benefits, given that only six payment institutions have been registered since 1 October 2015; i.e. the date of application of the PSL.

The new law is expected to increase market discipline, as the relationship and obligations of the authorized payment service provider towards its clients are now regulated more strictly. Market participants are subject to tight authorization and prudential requirements. The National Bank of Serbia was given a wide range of supervisory and enforcement powers enabling it to secure the appropriate protection of consumers; the integrity and stability of the payment system; and pursue and complete other objectives of the PSL.

REMAINING ISSUES

The PSL introduced significant changes to payment services regulations and new and existing market participants may require additional time to adapt, despite the considerable vacatio legis period. In addition, the wording of certain provisions is ambiguous and which requires the active guidance of the National Bank of Serbia as the regulator for most aspects of the law.

One of the matters in respect of which there is a considerable degree of uncertainty is the scope of payment services requiring authorization by the National Bank of Serbia versus those that are exempted. For example, the PSL exempts "payment transactions executed by means of any telecommunications, digital, or IT device, where goods or services purchased are delivered to and are to be used through a telecommunications, digital, or IT device, provided that the telecommunications, digital, or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services". If, however, the operator acts "only as an intermediary" facilitating the payment transaction, such activity would trigger the application of the PSL. Therefore, whether an operator will benefit from the exemption and in this way avoid the registration and authorization requirements will depend on whether its role goes beyond merely that of intermediary in payment services. Nevertheless, qualification criteria are not specified. The example is especially significant given the potential volume of network payments processed.

In practice, certain issues also arise in relation to payments made to recipients outside Serbia or received from payers outside Serbia ("one-leg payment transactions"). In this respect, criteria as to when a payment service is deemed to be provided in Serbia (thus triggering the authorization requirement for the provider), as opposed to service actually provided abroad (thus requiring no authorization in Serbia), is lacking.

The correlation between the PSL and the Foreign Exchange Law (RS Official Gazette Nos 62/2006, 31/2011, 119/2012 i 139/2014) is, in certain instances, unclear or needs further adjustments to make the provision of ser-

vices smoother and facilitate full regulatory compliance. Specifically, a number of foreign electronic money issuers have been providing services to Serbian residents on the basis of Article 32 paragraph 2 of the Foreign Exchange Law, enacted before the PSL was adopted. The specifics of various business models related to the issuance, redemption, and distribution of electronic money (e.g. via agents, cards, etc.) make difficult the determination as to whether a particular transaction still fits within the exemption under the Foreign Exchange Law.

At the time of the preparation of this contribution, only six payment institutions and no electronic money institutions were entered in the public register maintained by the National Bank of Serbia. The full economic and other benefits that the PSL brings will not be apparent until a sufficient number of market players are established and begin operations in Serbia. The sponsor of the PSL should analyse the reasons for the lack of a higher number of entrants and take appropriate measures to facilitate market entry.

As mentioned above, the rules set out in the Payment Service Directive have been transposed into the PSL. In the meantime, the implementation of the Revised Payment Services Directive has commenced in the European Union. The amendments were oriented towards the increase of consumer protection; security of payment transactions; competition in the market; etc. Also, the scope of the Directive was widened by covering new services and market participants. In order to continue with the harmonization process, the PSL should also be amended in the near future to reflect these given changes.

FIC RECOMMENDATIONS

- Analysis of reasons why investments in the market have been modest since the PSL began to apply, and the identification of potential barriers to market entry. In this regard, the legislator should consider adopting the waiver option under Article 26 of the Payment Services Directive and amending the PSL to allow the establishment of so-called "small payment institutions". These institutions are subject to a special regime of less stringent authorization requirements, but also face in return limitations in the scale of business and other specific conditions and restrictions.
- Further harmonization with the European Union's acquis.
- Publications and explanations by the National Bank of Serbia further detailng the scope of the PSL and the supervisory and enforcement approach of the regulator in order to improve legal certainty for companies tentering or continuing in the market.

NON-PERFORMING LOANS

CURRENT SITUATION

Non-performing loans (NPLs) have continued to accumulate since the financial crisis of 2008, which has had a high impact on the balances and liquidity of banks. NPLs in Serbia have already reached levels which are high enough to negatively influence the capital adequacy ratio of banks and the stability of the financial market. Over the last few years, the economic situation has improved somewhat, as evidenced by increasing interest in NPLs being sold in the market by commercial banks and special vehicle companies. Serbia has also been heavily influenced by the market turn and has consequently been forced to address NPLs. Regardless of that fact, however, the banking sector in Serbia continues to remain relatively highly capitalised. Regardless of the causes for the continuous increase in NPLs, the burden imposed on banks by NPLs is a serious concern and source of stress for banks. According to official statistics maintained by the National Bank of Serbia (NBS), the ratio of NPLs is continuously monitored on a quarterly basis.

So far regulators have introduced certain regulatory measures to assist banks in resolving the problem of NPLs. Considering the current level of NPLs, the banking sector's ability to absorb potential loss is still considered to be stable. Serbia has given NPLs their due recognition by adopting amendments to certain by-laws that are directly connected to the way that banks may attempt to resolve their NPLs. Specifically, the NBS, as the main regulatory authority supervizing, amongst other things, all banking and foreign exchange operations, amended the Decision on the Risk Management of Banks (hereinafter: Risk Management Decision). Amendments to the Risk Management Decision allowed for the possibility of receivables from NPLs disbursed to legal entities, entrepreneurs, and agricultural producers by a bank to be assigned to any legal entity. It is mandatory that the NBS be notified on each assignment at least 30 days prior to the conclusion of the relevant assignment agreement in spite of no prior approval process existing in this respect. Moreover, the NBS undertook certain regulatory measures to relax mandatory NPL-related reservation requirements in order to stimulate faster collection of these receivables.

After the latest amendments to the Risk Management Decision, banks are no longer required to attempt collection of their NPL receivables, and the assignee entity does not have to be a legal entity primarily engaged in financial activity (e.g. a bank, insurance company, etc.) The assignment of the same receivable to more than one party is no longer restricted. On the other hand, a notification requirement to the NBS has been introduced. With these amendments to the Risk Management Decision, the legal framework for the assignment of receivables from NPLs has now been made somewhat clearer. Specifically, depending on whether an NPL was extended to a legal entity/entrepreneur/agricultural producer or an individual, it could be assigned either under the Risk Management Decision to any legal entity (if granted to legal entities and entrepreneurs), or under the Law on Protection of Consumers of Financial Services solely to another bank (if granted to individuals).

According to the NBS' regular quarter-based statistics, after the adoption of the Strategy, in the last quarter of 2015, the percentage of NPLs slightly decreased, amounting to a total of approximately EUR 3.5 billion, which, according to officially published data, currently amounts to an NPL rate of 21.6%. Of the total amount, the vast majority of NPLs are from the corporate sector (46.7%). Corporate NPL portfolios in Serbia consist of different categories of debtor companies, with the prevailing ones being construction companies. Retail NPLs account for 17.3% of the overall percentage of NPLs on the market. Non-financial sector in bankruptcy amounts to 26.5% of the overall NPL percentage, with the remainder (9.5%) falling to the financial and public sectors. The corporate sector remains the dominant source of NPLs with a ratio of 19.6%, the highest ratio representing loans granted to construction companies – 38.2%. Private individuals (retail NPLs) represent a lower ratio of 11.7%.

POSITIVE DEVELOPMENTS

Regulators have identified the importance of the matter and both the Government and the banking regulator are working closely to enhance NPL transfer options. Recently, the Government adopted the Strategy for Resolving NPLs (hereinafter: Strategy). This was an obligation that Serbia undertook with the signing of a Memorandum with the IMF in February 2015. The aim of the Strategy is to provide incentives for the establishment of an effective system for dealing with NPLs and to remove obstacles to further transfer and assignment of NPLs. The Strategy was prepared in cooperation with the IMF, the World Bank, and the EBRD. Together with the Strategy, the Serbian Government issued an Action Plan to be followed in the ongoing harmonization of financial sector legislation with EU standards over the next few years (2015-2017). According to the Strategy and Action Plan, the Government defined the main goals, as agreed with the IMF, which are expected to be fulfilled

in a certain period in order to provide a better and easier manner of resolving problems with NPLs.

In addition, certain legislative interventions that were recognised as needed in relation to NPLs and agreed with the IMF have already commenced. For instance, the deficiencies that were present in the Mortgage Law which affected the enforceability of mortgages for several years (including by subsistence of lower ranked mortgages) were finally addressed by the amendments adopted in July 2015. These amendments are aimed at improving out-of-court foreclosure and better aligning incentives for debt restructuring. Also, the new Law on Enforcement introducing, among other things, the termination of enforcement procedures which are not finalized within two years of initiation, became applicable in July 2016.

REMAINING ISSUES

Due to difficulties in collateral valuations which hinder NPL market development, valuation standards and minimum criteria governing the activities of collateral appraisers would need to be legislated, alongside the creation of a framework for licensing private professional valuators. Notwithstanding the fact that the new Law on Enforcement became applicable in July 2016, long duration of the enforcement procedures still remains an issue in receivables collection practice.

Promoting out-of-court corporate debt restructuring is still undeveloped in practice and despite the framework for voluntary corporate debt restructuring established in 2011 and amended by the new legislative framework in 2015, this mechanism remains profoundly underutilised in practice. Practically, the lack of new funding remains an important obstacle in the implementation of out-of-court voluntary restructuring plans as fresh money providers are permanently protected only in the event of insolvency. Such fresh money priority/super-seniority is not guaranteed within the out-of-court reorganization plans, which negatively influences investors' intention to provide fresh money during reorganization. Another potential obstacle for resolving distressed situations may also be the non-assignability of performing corporate loans outside the banking sector which may prevent effective resolution of large distressed borrower groups under restructuring.

Although the definition of banking secrecy provides limited exceptions which may cover analysis of loan portfolio documents with regard to NPL transactions, the regulatory framework does not take into account specificities of NPL transactions. In that regard, it may be useful to be clarified by the regulator that the definition of banking secrecy should be broadly interpreted in relation to NPL transactions in order to enable investors to make decisions smoothly and efficiently.

The rules for tax deductibility of bad debt provisions/write-off for banks are often ambiguously interpreted in practice which may affect banks' intention to dispose of such loans. In that regard, eliminating the impediments to loan write-offs by banks should be clearly legislated.

The currently applicable legislation does not explicitly recognise the synthetic sale arrangement and also the synthetic sale of NPLs is not specifically recognised by the relevant tax laws.

Finally, strengthening of the institutional framework of real estate and pledge registries is important for the acceleration of the re-registration procedure of mortgages and pledges in the name of the new creditor.

FIC RECOMMENDATIONS

- Creation of a framework for licensing private professional valuators together with valuation standards and minimum criteria governing the activities of collateral appraisers.
- Acceleration of the enforcement procedure in practice and harmonization with the situation in practice with the newly adopted Law on Enforcement.
- Promoting out-of-court corporate debt restructuring in practice in accordance with the legislative framework

and motivating investors to provide fresh money with super-seniority ranking over existing creditors under out-of-court voluntary debt restructuring.

- Enabling assignment of corporate performing loans outside the banking sector in specific cases of distressed borrowers.
- Clarify by the regulator the application of the definition of banking secrecy with regard to NPL transactions in order to facilitate NPL transactions.
- Eliminating the impediments to loan write-offs by banks.
- Providing legislative framework for the recognition of synthetic sale arrangements (in order to avoid any misunderstanding whether such a concept is feasible under Serbian legislation).
- Strengthening of the institutional framework in order to accelerate the re-registration procedure for collaterals before the relevant authorities (i.e. real estate cadastres and pledge registries).

FOREIGN EXCHANGE OPERATIONS

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The issue of the necessity of further liberalization of the Law on Foreign Exchange Operations (hereinafter: the Law) is still in focus and identified as one of the main priorities of foreign investors, and accordingly FIC members. Namely, despite the intensive activity of the FIC, notably its legal committee, in terms of numerous meetings and letters sent to the National Bank of Serbia and the Ministry of Finance, there has been no significant breakthrough in the amending of key concepts of the Law, which would enable liberalization of foreign exchange (forex) operations in Serbia and create a business environment necessary for attracting more foreign investment (which has been, after all, proclaimed as the ultimate goal of the Serbian Government for more than a decade).

As of last year's edition of the White Book, several by-laws were adopted/amended to further regulate: opening and maintaining forex accounts of residents and RSD and forex accounts of non-residents; conditions for residents to keep their forex accounts with Serbian banks; and conditions

for payment and transactions in foreign currency. Unfortunately, there have been no material changes in the Law, and the vast majority of recommendations and issues raised by the FIC in previous White Book editions have still not been implemented.

Although the FIC was informed about the fact that the Government has formed a working group that is supposed to work on the proposal of amendments to the Law with the aim of further liberalizing forex operations in certain areas, we are not aware of its work or of any progress made yet.

In conclusion, we see the necessity for the further liberalization of forex regulations as one of the key priorities for the Government, given that the present Law is far more restrictive than similar laws in all neighbouring countries (save Bosnia), something which, in our view, significantly affects the attractiveness of investing in Serbia (in comparison to other countries in the region) for foreign investors.

POSITIVE DEVELOPMENTS

Apart from adoption and amendments of the aforementioned by-laws, there have been no material changes of the Law and/or the by-laws, and thus significant positive developments in this area have not been made.

As for the mentioned by-laws, the main progress has been made by amendments to the Decision on the Conditions for Payment and Transactions in Foreign Currency and in the respective guidelines for implementing this decision. The amended regulations, as an exception to the general rule, allow for cross-border direct debiting with regard to payments for electricity trading in the organized electricity market in Serbia (SEEPEX). The general rule on the prohibition on cross-border direct debiting, however, remains unchanged.

In addition, as of October 2015, when the Law on Payment Services became applicable, foreign electronic money institutions and payment institutions have been able to participate in cross-border payment transactions with Serbian residents without any additional licensing requirements. The issuing of electronic money in Serbia by foreign electronic institutions, however, remains prohibited.

REMAINING ISSUES

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

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

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

FIC RECOMMENDATIONS

- 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 bylaws as much as possible, regulating set-off when participants in the transaction are affiliated parties, in order to enable global netting between affiliated companies.
- Ease reporting obligations (from the opening of a simple bank account to facilitated reporting communication with the NBS, through less formal procedures).
- Regulate the provisions on the transfer of debts from realized foreign trade of goods and services of residents under Article 7 of the Law, by prescribing the requirement of the creditor's consent in the debt transfer, in order to protect the interests of creditors in the underlying transaction.
- Adjust and harmonize applicable legislation in this area, and resolve issues that are still unclear.
- Harmonization of the various financial laws and regulations (e.g. the Law, the Law on Capital Markets and planned Law on Investment) in order to avoid ambiguity in the application and interpretation thereof.
- Ensure that the relevant authority (especially the NBS) interpret the Law based on regular interpretation standards; e.g. by considering all types of transactions as permitted under the Law, unless they are explicitly prohibited.
- Make better public availability of official interpretations and opinions of State authorities in the field of forex operations, especially the NBS (e.g. create a section answering to questions on its website).
- Create mechanisms enabling the conduct of some operations that are not controversial from the aspect of forex regulations, with only precise by-laws in that field still missing (e.g. foreign transactions impossible due to the lack of a specified payment code or when the specific purpose of the cross-border loans is missing in by-laws, etc.).
- Enable securitization of domestic receivables from certain categories of non-residents.
- Enable cross-border direct debiting in general (not just for electricity trading).

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 to enable better communication between the Administration for the Prevention of Money Laundering and liable parties, as well as the government, and better co-operation with the Ministry of Foreign Affairs and the courts.	2009		√	
Influence public opinion on the necessity for more decisive and efficient action against money laundering and financing of terrorism.	2009		√	
Continue organizing adequate seminars and workshops to train entities subject to the Law, with a view to increasing effectiveness of its implementation.	2011		√	

CURRENT SITUATION

The Law on the Prevention of Money Laundering and Financing of Terrorism (RS Official Gazette Nos 20/2009, 72/2009, 91/2010, and 139/2014, hereinafter: the Law) provides definitions of money laundering, financing of terrorism, and other key terms; establishes the obligation of state authorities, lawyers, and other legal entities to take action; and stipulates measures for the detection and prevention of money laundering and financing of terrorism.

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

In accordance with this Law, the Government adopted the Rulebook Setting the Methodology for Execution of Actions in Conformity with the Law on the Prevention of Money Laundering and Financing of Terrorism (RS Official Gazette Nos 7/2010 and 41/2011, hereinafter: the Rulebook).

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

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

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

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

In 2015, the Administration for the Prevention of Money Laundering worked intensively on the preparation of the draft Law on Amendments to the Law. A working group was formed for this purpose, to ensure compliance of statutory provisions in this area with new standards and with legislation of the European Union and to introduce the obligation of payment service providers to collect certain information

on payers and recipients of electronic transfers.

According to the draft Law on Amendments to the Law, all authorized persons of liable parties will no longer have an obligation to obtain the license. The Administration for the Prevention of Money Laundering did not organize professional licensing exams for entities subject to the Law since November 2013, so current provisions related to this area of the Law already do not apply in practice.

The Administration for the Prevention of Money Laundering compiled a list of indicators for identifying suspicious transactions related to money laundering or financing terrorism that serve as guidelines for the following entities subject to the Law: lawyers and law partnerships; accountants; entities providing money transfer services; entities providing forfaiting services; postal services; tax advisors; issuers of guarantees; organizers of games of chance; auditing companies; certified auditors; insurance companies, and banks. Additional guidelines were adopted in 2015 and 2016 with an updated list of indicators.

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

In addition, the Government of the Republic of Serbia adopted the National Strategy for Combating Money Laundering and Financing of Terrorism with an Action Plan for its implementation, as well as the Decision on the Forming of a Permanent Coordination Group for Monitoring of the Execution of the National Strategy for Combating Money Laundering and Financing of Terrorism (RS Official Gazette No 37/2015).

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

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

POSITIVE DEVELOPMENTS

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

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

During 2015, the relevant state bodies worked on the implementation of activities defined in the Action Plan, which was adopted by the Administration; and during the execution of certain activities of the Action Plan, the relevant state bodies also considered other initiatives, processes, and plans of state bodies, as well as objective circumstances, which in turn caused the need for more flexibility in certain deadlines. Of 109 activities, 22 were completed, 39 were partially completed, whilst 48 remained unexecuted.

In 2015 the Administration organized several meetings with entities subject to the Law, in which representatives of interested parties could give their proposals and suggestions with the aim of improving the regulatory framework which governs the prevention of money laundering and financing of terrorism in the Republic of Serbia. In addition, the Administration published Check Lists on its website for some entities subject to the Law, based on which relevant supervisory activities are being conducted.

REMAINING ISSUES

The application of the Law primarily depends on the actions of the Administration and other bodies responsible for its implementation. Most of the standards and rules that apply in the European Union member states have been incorporated into the Law and the next step should be to find mechanisms for their implementation. The Administration for the Prevention of Money Laundering stepped up its activities and demands toward entities subject to the Law in 2015 and 2016, but there is still a lack of cooperation.

FIC RECOMMENDATIONS

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

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 data protection statute in co-operation with the Commissioner.	2009			√
Adopt a new data protection law as soon as possible, i.e. support the Model Law drafted by the Commissioner.	2014		√	
Adopt by-laws or issue precise instructions and standardized forms necessary to enable effective implementation of the data protection statute.	2009			√
Establish better communication between the Commissioner and other state authorities, non-governmental organisations (NGOs), and international organisations.	2010		√	
Conduct workshops and seminars in order to educate citizens and raise their awareness of the protection of their rights.	2009		√	

CURRENT SITUATION

The Personal Data Protection Law (hereinafter: DP Law) came into force on 1 January 2009 and was designed to introduce significant innovations and changes, all in accordance with the relevant European Union (EU) rules and international standards, such as freedom from interference with privacy, family, home, and correspondence provided under Article 8 of the European Convention on Human Rights; and protection of the processing and free movement of personal data within the EU provided under the Data Protection Directive (Directive 95/46/EC).

The DP Law provides that personal data may be collected and processed (with a limited number of exceptions) only if the data subject has given their consent, either in writing or as an oral statement entered into the data controller's records. The consent must be given in written form in the case of "particularly sensitive" personal data such as one's race, creed, ethnic origin, political affiliation, trade union membership, sexual identity, etc.

The DP Law provides for a broad definition of processing of personal data: as any operation undertaken in relation to personal data, including collection, classification, recording, use, copying, transfer, storage, disclosure, dissemination, search, concealment, etc. Upon expiry of the purpose for which the data was processed and maintained, further processing is explicitly prohibited if, inter alia, at such time the data subject is identified or identifiable. The DP Law also prohibits taking decisions with potential legal consequences on such characteristics as a person's working ability, creditworthiness, etc., solely based on automated processing of personal data pertaining to that person.

The data subject now has extensive rights to request information on a number of issues related to processing, such as where the data is transferred; to whom it is transferred; the purpose of the transfer; and the legal grounds for the transfer. Furthermore, the data controller is required to submit such information in writing. In fact, according to statistics published on the website of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: the Commissioner), the Commissioner carried out 63 inspections in May 2016, with 19 of these resulting in a warning to controllers regarding irregularities in the processing of personal data. During the first five months of 2016, the Commissioner carried out 362 inspections, almost the same number as in the first five months of 2015. The number of warnings issued to controllers due to irregularities in the processing of personal data decreased from 153 in the first five months of 2015 to 105 in the same period in 2016.

The Law's provision prescribing that consent to the processing of personal data must be in writing makes application of the Law in certain instances impossible. For example, ticking a box (which does not amount to providing a written consent) is in reality the only option available to a

website visitor to give consent to the processing of their personal data. In order to obviate this statutory hurdle, the Commissioner tends to accept notifications of data processing online if the processing has, as its ultimate purpose, conclusion of contracts with website visitors. The position of the Commissioner is based on a provision in the Law whereby, for the processing of personal data - the purpose of which is contract conclusion - consent of the data subject is not needed. The issue of the form of the consent thus becomes legally irrelevant.

It is also unclear whether a data controller has an obligation to notify the Commissioner about its intent to implement a whistle-blowing scheme or not.

As for cross-border transfers of personal data, the DP Law states that personal data may be freely transferred to parties of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. As almost all European states are members of the Council of Europe, this provision of the DP Law actually means that personal data may be freely transferred from Serbia to other European states. The DP Law further prescribes that personal data may be transferred to non-European countries (i.e., countries not parties to the Council of Europe Convention), provided that they have in place the same level of personal data protection as that established by the Convention and subject to prior approval, issued by the Commissioner. According to the DP Law, this level of protection is provided for either by a regulation or on the basis of a data transfer agreement. If the intention is to transfer personal data outside of Serbia, the local entity must first register a personal data filing system (zbirka podataka) and then obtain a data transfer authorization from the Commissioner.

Issues related to the transferring of data outside of Serbia are gaining momentum in practice, and therefore an improvement in this area is necessary. As a minimum, it would be advisable for the Commissioner to publish a list of countries that are not members of the Convention but are considered to provide an adequate level of personal data protection according to the criteria set forth in Article 44, paragraph 1, item 6. The procedures for rendering a decision allowing transfer of data to countries that are not Parties to the Convention are not governed by the DP Law, and this generates significant legal uncertainty. As there are no standard rules known to data controllers and the general public which the Commissioner follows in data transfer proceedings, the applicants for the transfer do not know how to prepare their request and which evidence to submit. The Commissioner's meagre practice in that regard discourages companies from submitting a request to the Commissioner. This particularly applies to cases of the transfer of data to companies within a multinational company or group of companies whose headquarters are located on different continents.

POSITIVE DEVELOPMENTS

In the first five months of 2016, the Commissioner resolved a total of 1,040 cases pertaining to personal data, compared to 987 cases resolved in the same period in 2015. Also in the first five months of 2016, the Commissioner issued 396 opinions pertaining to the application of the DP Law, a slight increase when compared to the 374 opinions issued in the first five months in 2015. According to the monthly report for May 2016, the total number of registered data controllers increased to 1,677, in comparison to the same period in the previous year when 1,484 data controllers were registered.

In 2015, the Commissioner acted upon 11 requests for the transfer of personal data from Serbia. The Commissioner issued nine decisions, authorizing the transfer in seven cases, suspending the proceedings in two, while the Commissioner is to decide during 2016 upon the two remaining requests. This is clearly a positive step forward in the handling of data transfer cases. It is hoped that the Commissioner will further reduce the legal insecurity with regard to costly and time-consuming data transfer proceedings by establishing tangible requirements that companies interested in cross-border data transfers need to meet.

REMAINING ISSUES

According to the draft of the Serbian Government's Action Plan for Chapter 23 (on Judiciary and Fundamental Rights) of the EU acquis communautaire, released on 8 May 2015, a new Personal Data Protection Law should have been enacted in the third quarter of 2015. According to the Action Plan, the new law should have been based on the widely acclaimed Model Law drafted by the Commissioner in May 2014. However, the first quarter of 2016 has now passed without that new law on the horizon. On 4 November 2015, the Ministry of Justice released a draft Personal Data Protection Law (hereinafter: Draft), but the Draft had little in common with the Commissioner's Model.

The Draft proposes solutions which are not in line with international standards, as embodied, in particular, in Directive 95/46/EC, and the newly adopted EU General Data Protection Regulation 2016/679. This disparity concerns, amongst other issues, the form of the data subject's consent (absence in the Draft of clear affirmative actions as a mode of expressing consent) and exemptions to the general rule that lawful data processing requires consent. The Draft contains slightly more details regarding territorial application than the DP Law (e.g. the Draft states that Serbian law does not apply to processing of personal data when such data is simply in transit through the territory of the Republic of Serbia). Unlike the solution provided in Directive 95/46/EC, which links the application of domestic law to the registered seat or permanent or temporary residence of the data controller, as well as to the use of processing equipment in the territory of the state, the Draft is clearly giving priority to the very act of processing of personal data. The Draft lacks criteria for determining whether data processing is carried out in the territory of the Republic of Serbia. It is unclear why the Draft deviates from the solution provided by the Directive 95/46/EC, and also from the legislative solutions in the region, all of which use as the criterion for application of the national law the residency of the data controller or use of equipment in the territory.

Although the Draft defines video surveillance and biometric data processing, it omits provisions that would further address these issues.

As of June 2016, the Ministry has not decided whether to continue the procedure for the enactment of a law based on the Draft or to propose a new Draft based on solutions from EU General Data Protection Regulation 2016/679. The Ministry has hinted that work on the enactment of the new Law might be postponed until Regulation 2016/679 enters into force (spring 2018).

The number of filing systems registered in the Central Registry, despite the significant increase in percentage points compared to last year, is still noticeably below the number of filing systems that should be registered in accordance with the Law. The total number of filing systems in May 2016 was 8,651, compared to 7,622 in May 2015, but the number of filing systems maintained by various data controllers in Serbia likely numbers in the hundreds of thousands.

In practice, even though the Commissioner's staff has shown eagerness, substantial knowledge, and professionalism in assisting data controllers in fulfilling their obligations under the DP Law, overly restrictive rules in the Law often result in an application for data transfer triggering months-long negotiations with the office of the Commissioner. As a result, data controllers face significant administrative and legal costs whilst attempting to fulfil their obligations under the DP Law and conduct business in the same manner as their counterparts in the EU.

The need for more precise and comprehensive legislative regulation in this area continues to be evident. Current legislative solutions applicable in Serbia lack clear rules governing important issues such as video surveillance, biometric data, use of a citizen's unique identification number, online data processing, photocopying and scanning of documents, organizational and technical measures for ensuring safety of the data, the relationship between the controller and the processor of data, etc. In the absence of adequate statutory rules, difficulties arise in the implementation of the DP Law, related to personal data processing in these areas. There is also a need to further harmonize the relevant legislation with EU standards, in matters such as the form of the data subject's consent and exemptions to the general rule that lawful data processing requires consent.

FIC RECOMMENDATIONS

- Provide the Commissioner with better working conditions, equipment and staff.
- Determine the supervisory bodies that would monitor the implementation of the data protection statute in cooperation with the Commissioner.
- Adopt a new data protection law as soon as possible, i.e. support the Model Law drafted by the Commissioner.

- Adopt by-laws or issue precise instructions and standardized forms necessary to enable effective implementation of the data protection statute.
- Establish better communication between the Commissioner and other state authorities, non-governmental organizations (NGOs), and international organizations.
- Conduct workshops and seminars in order to educate citizens and raise their awareness of the protection of their rights.

LAW ON THE CENTRAL REGISTER OF TEMPORARY RESTRICTION OF RIGHTS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to make a significant refinements and changes in order to, in the best way possible, minimize the possibility that under the impact of the Law enter business entities and their members / bodies that operate entirely bona fidae.	2015			√

CURRENT SITUATION

On 30 December 2015, the National Assembly of the Republic of Serbia adopted the Law on the Central Register of Temporary Restriction of Rights of Entities Registered in the Business Registers Agency (RS Official Gazette No 112/2015), which came into force on 7 January 2016 (hereinafter: the Law).

The Law envisages the establishment of a unique central register, i.e. an electronic database that will contain information on business entities, their owners, directors, representatives, and members of their bodies, whose business has been subject to criminal, misdemeanour, or administrative sanctions (hereinafter: Central Register).

From 1 June 2016, the date of the beginning of the implementation of the Law, founders, management, directors, legal representatives, and other bodies of a company may be subject to a temporary prohibition of conducting a business activity, starting a business, and taking any steps concerning shares in the company money, etc.

The basis for a temporary restriction of rights are acts of the State or other relevant authority containing legal facts or actions required by law in the form of legally binding or enforceable judgments, decisions, or other formal acts submitted to the Business Registers Agency (SBRA) for entry into the Central Register and which have temporary restriction as the legal consequence.

POSITIVE DEVELOPMENTS

The goal of introducing additional discipline in the operations of business entities in the Republic of Serbia and minimizing the possibility of misuse and causing damage to third parties - that is, to introduce sanctions for those who misuse their functions in business entities - is highly positive and is fully supported by the FIC, which has advocated for just that ever since its establishment.

The coordination of various authorities (such as, for example, the Ministry of Interior and the National Bank of Serbia) in the sense of a timely exchange of data on business entities and their members and bodies which do not respect the applicable legislation related to operations of business entities in any way is also a positive signal of the Law.

Establishment of the Central Register should bring about the promotion of business transparency for every business entity in the Republic of Serbia which shall, on the one hand, increase the level of security of legal transactions of all participants, and on the other, have a preventive effect on business entities operating in accordance with regulations.

Registered data shall give a complete picture of the business reliability of any specific business entity, since it will contain details of all restrictions imposed on the business entity, or persons performing the function of its bodies or representatives, which should thereby remove the possibility of any business entity acting contrary to it, despite imposed prohibitions.

It is important to mention Article 20 of the Law, which states that the data from the central records pertaining to individuals to whom bans and security measures in judicial proceedings were imposed cannot be public and may be made only in accordance with the rules governing criminal records.

REMAINING ISSUES

Article 3 of the Law prescribes grounds for temporary restriction, listing specified measures. Consequently, no other grounds for temporary restriction, except those listed therein, may be the ground for a temporary restriction.

The aforesaid grounds are not always necessarily a consequence of abuse of rights by the party/person whose rights would be restricted. In fact, there are numerous cases of business entities having their accounts blocked, or undergo-

ing bankruptcy proceedings, where such account blockage or bankruptcy are not the consequence of any fraudulent activity; i.e. both members and bodies of business entities have acted bona fide. As an example, we point out the case of business entities that are in such a situation because the state or local authorities have failed to pay their debt to these entities, as well as the case of a cooperate chain (notably in the construction industry) where account blockage or bankruptcy over one of the entities in the chain triggered a domino effect for other members in the chain below.

Some provisions in the Law are too general and imprecise and, as such, can produce a variety of negative consequences in practice.

In addition, we are of the view that the number of persons encompassed by the Law is too wide, and that only persons who undertook actions or supported actions that led to misuse should be made subject to the restrictions imposed by the Law (members/shareholders and members of bodies).

It is necessary to additionally define legal consequences of the temporary restriction due to the fact that Article 5 only prescribes that they last during validation period in the manner prescribed in Article 3 of the Act

The Law should contain appropriate solutions regarding the liability for entering incorrect data, especially in a situation where there was no fraudulent intent. We emphasize this, keeping in mind the automated registration process, the public registry, and the weight of potential consequences resulting from the application of the provisions stipulated by the Law.

FIC RECOMMENDATIONS

- Significant changes should be made and certain provisions should be more precise (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the possibility that the Law is applied to business entities and their members/bodies acting bona fide.
- It is necessary to regulate liability for entering incorrect data into Central Register.

LAW ON WHISTLEBLOWERS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to implement the Law, it is necessary to take measures of education (especially citizens and employers), as well as the necessary administrative/technical measures.	2015			√
It is necessary to specify the concept of an authorized body and the relationship of internal and external whistleblowing.	2015			√
It is necessary to appropriately predict criminal offenses in connection with the whistleblowing, as well as any special penal responsibility for grave violations of the rights of whistleblowers.	2015			√
It is necessary to regulate a situation whereby retaliation for whistleblowing is made by a third party, and not the employer; and to protect the whistleblower in such a situation, in an appropriate manner.	2015			√
To consider the introduction of rules on remuneration.	2015			√

CURRENT SITUATION

The National Assembly of the Republic of Serbia adopted the Law on the Protection of Whistleblowers (RS Official Gazette No 128/2014, hereinafter: the Law), on 25 November 2014, and the Law subsequently entered into force on 4 December 2014 and started applying on 5 June 2015. This Law regulates whistleblowing, a whistleblowing procedure, the rights of whistleblowers, obligations of the state and other bodies and organizations, and legal and natural persons in connection with whistleblowing, as well as other issues of importance for whistleblowing and the protection of whistleblowers (Article 1 of the Law).

As defined by the Law, whistleblowing is the disclosure of information about violations of law, violations of human rights, abuse of public authority, danger to life, public health, safety, the environment, and to prevent major damage; while a whistleblower is a natural person who performs whistleblowing in connection with his work, recruitment process, using the services of the state and other authorities, holders of public authorities or public services, business co-operation, and the right of ownership of a business enterprise.

The Law prohibits retaliation against whistleblowing. It protects whistleblowers from adverse actions, which is every act or omission in connection with whistleblowing that threatens or violates the rights of a whistleblower or a person entitled to protection as a whistleblower, or places such persons in unfavorable positions. Entitled to protection are all persons engaged in work, i.e. persons employed, persons who work under non-employment contracts, volunteers, persons holding positions, as well as persons who perform every other actual work for the employer. Besides whistleblowers, under certain conditions, the Law protects persons connected with the whistleblower, as well as any person wrongly labeled as a whistleblower, person who performs official duties, and person seeking information regarding the case of whistleblowing.

Abuse of whistleblowing is expressly prohibited. The Law prescribes the protection of the personal data of whistleblowers. Certain conditions are set, under which a person is entitled to protection, and one of the conditions is regarding the deadline: the whistleblower is protected if he/she exposes information within one year from the date of learning of the action for which whistleblowing is performed, and no later than ten years from the execution of said action.

Whistleblowing can be internal (disclosure to the employer), external (disclosure to an authorized body) and whistleblowing in public (disclosure of information to the media, through the Internet, at public meetings or in any other manner in which information can be made available to the public). The employer and the authorized body are also obliged to act based on anonymous tips regarding the information, within their authority.

Internal whistleblowing surely takes the central place in the Law. The Law obliges the employer to protect whistleblowers, within the framework of their powers, from adverse actions, as well as to take necessary measures in

order to eliminate adverse actions and the consequences of adverse actions. Article 21 of the Law more closely regulates what constitutes putting persons engaged in work in an unfavorable position, inter alia relating to: employment, work under non-employment contracts, career advancement, working conditions, termination of employment, salary, severance pay, transfer to another place of work, etc. (therefore it is not numerus clausus).

The Law stipulates that the employer is obliged to provide all persons engaged in work with written information about the rights covered by the Law. The employer is also required to appoint a person authorized to receive the information and the conduct of proceedings in connection with whistleblowing. On the other hand, employers that have more than ten employees are obliged to regulate the general act of an internal procedure of whistleblowing. They are also obliged to make this general act public, in a visible place accessible to every person engaged in work, as well as on the website of the employer, if technically possible. The deadline for the adoption of a general act was one year from the Law's date of entry into force, i.e. the deadline was 4 December 2015.

The Law generally regulates the procedure for internal whistleblowing initiated by the submission of information to the employer. Employers are obliged to act according to the information without delay and no later than within 15 days of receipt of the information. They are obliged to inform a whistleblower about the outcome of the conclusion thereof, within 15 days after completion of the procedure. An employer shall also, upon the request of a whistleblower, provide the whistleblower with information on the progress and actions undertaken in the proceedings, as well as allow the whistleblower to review the case files and attend procedural actions.

External whistleblowing starts with providing information to an authorized body, although the Law does not specify which body. As for whistleblowing in public, the public can be alerted, without prior notification to the employer or the competent authority in the case of imminent danger to life, public health, safety, the environment, the occurrence of large-scale damage, or if there is an immediate risk of evidence being destroyed. When alerting the public, the whistleblower is bound to respect the presumption of innocence of the accused, the right to protection of personal data, as well as not to endanger the conduct of judicial proceedings.

The judicial protection of whistleblowers is also envisaged. Accordingly, a whistleblower subjected to adverse action taken in connection with whistleblowing has the right to judicial protection. The claim must be filed within six months from the date of learning of the undertaken adverse action (subjective term), and the objective term is three years from the date when the adverse action toward the whistleblower was taken.

Subject matter jurisdiction belongs to the Higher Court, and territorial jurisdiction to the court in whose territory the adverse action was taken or the place of residence of the prosecutor (elective jurisdiction). The procedure is urgent and revision is always permissible. In the first instance, an individual judge is acting; in the second, a council of three professional judges. The Law clearly refers to the application of the provisions of the Code of Civil Procedure, specifically labor disputes as separate civil proceedings. The court is also obliged to urge parties to the dispute to resolve said dispute through mediation.

A lawsuit seeking protection in connection with whistleblowing may call for the following:

- Determining that adverse action was taken against the whistleblower;
- Prohibition of committing and repetition of adverse action;
- Removal of the consequences of adverse action;
- Pecuniary and non-pecuniary damage;
- The decision passed in the lawsuit filed for the above-mentioned reasons to be published in the media, at the expense of the defendant.

If during the proceedings a plaintiff has made it credible that he/she had been subject to adverse action in connection with whistleblowing, the defendant has the burden of proving that the harmful action is not causally related to the whistleblowing. It is possible to adopt interim measures. The proposal for an interim measure may be required for the court to postpone the legal effect of the act that prohibits the performance of adverse action, as well as to avert the consequences caused by adverse action.

The Ministry of Justice adopted the By-Law on the Program for the Acquisition of Specific Knowledge Concerning the Protection of Whistleblowers (RS Official Gazette No 4/2015), in accordance with the Law, which was enacted on 24 January 2015. This By-Law regulates the program for the acquisition of specific knowledge concerning the protection of

whistleblowers, which aims at judges receiving additional theoretical and practical knowledge in the area of whistleblowing and protection of whistleblowers and acquiring the skills required for professional and efficient trials in proceedings relating to the protection of whistleblowers, as well as obtaining the necessary expertise in other areas that will help them better understand the concept of distress and adverse consequences suffered by a whistleblower or a person who is entitled to protection as a whistleblower. The program is envisaged to be divided into three thematic sections, after offering practical exercises in the form of a simulated case for the application of acquired knowledge.

Another regulation is the By-Law on the Method of Internal Whistleblowing, the Method of Determining the Person Authorized by the Employer, as well as Other Issues of Importance for Internal Whistleblowing at an Employer who has more than Ten Employees, which was adopted by the Ministry of Justice and enacted 13 June 2015, after its publication in RS Official Gazette No 49/2015.

This By-Law shall apply to employers in the Republic of Serbia who have more than ten employees, and these employers were required to make a general act governing the whistleblowing by 4 December 2015 at the latest. The By-Law also focuses on specific elements of internal whistleblowing, such as written and verbal whistleblowing; issuing confirmation upon receipt of information; the sending of anonymous information; reports on actions; and the like.

POSITIVE DEVELOPMENTS

The National Strategy for the Fight against Corruption for the Period from 2013 to 2018, and the accompanying Action Plan envisage establishing efficient and effective protection of whistleblowers or persons reporting suspected corruption as one of the objectives that needs to be achieved. In addition, the obligations of the Republic of Serbia to regulate the issue of the protection of whistleblowers arise from international treaties which the country has ratified. The above clearly shows the importance of adopting this Law.

Formerly, whistleblower protection was regulated by the Law on Civil Servants, the Law on Free Access to Information of Public Importance, and the Law on the Agency for the Fight against Corruption, as well as the Rulebook on the Protection of Individuals who report suspicions of corruption. This protection was extremely limited in scope (definition of persons enjoying protection - civil servants or persons employed in the public authorities, the scope of protection, cases in which protection is granted, non-regulated area of sanctions for those who carry out reprisals, etc.). Therefore, and because this matter cannot be set up without proper legislation in a comprehensive way, the Minister of Justice in September 2013 formed a working group, which resulted in today's Law.

Since the enactment of the Law, there has been an increase in the number of filed lawsuits and court issues, a temporary measure significantly faster than the legal limit.

Therefore, the adoption of the Law itself is a big improvement over the situation that has existed so far. In most countries this kind of law is mainly related to labour disputes, while a whistleblower may be any person, including persons engaged in work, and not only persons who are employed. By the adoption of this Law, the Republic of Serbia is ranked among the very limited circle of European countries having specific legislation regulating whistleblowing (the United Kingdom, Luxembourg, Romania, and Slovenia).

REMAINING ISSUES

As noted, the mere adoption of this regulation represents an important step for the Republic of Serbia and its society, although there is room for improvement in the Law.

The Law does not specify more closely the nature and function of the authorized body, and does not define the relationship between internal and external whistleblowing, which leaves room for doubt. In addition, the Law does not provide the same protection from criminal offenses in connection with whistleblowing, as well as specific offenses in cases of serious violations of the rights of whistleblowers and other persons under the same protection. Although there were plans to regulate the foregoing, up to the moment of the writing of this text, there have been no developments. There were also no amendments to the Criminal Code, which would, as an alternative to the above-mentioned option, prescribe those criminal offenses in the Criminal Code, which is sedes materiae in this area. We believe that this can be extremely important, especially in whistleblowing related to corruption and a threat to the environment and human health.

The Law contains other deficiencies, primarily in terms of vagueness of certain provisions or predictions of modalities of violation of the rights of whistleblowers and their

protection. For example, the law remains powerless in situations where retaliation for whistleblowing is made by a third party, and not the employer. In addition, the Law does not provide the rules on remuneration or the right of whistleblowers to require fair compensation instead of the annulment of the act constituting adverse action.

FIC RECOMMENDATIONS

- In order to implement the Law, it is necessary to take educational measures (especially targeting citizens and employers), as well as the necessary administrative/technical measures.
- It is necessary to specify the concept of an authorized body and the relationship of internal and external whistleblowing.
- It is necessary to appropriately predict criminal offenses in connection with whistleblowing, as well as any special penal responsibility for the grave violations of the rights of whistleblowers.
- It is necessary to regulate cases of retaliation for whistleblowing made by a third party who is not the employer, to adequately protect the whistleblower in such a situation.

LAW ON NOTARIES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend legal provisions stipulating the number of public notaries that can be appointed, for the purpose of increasing the availability and quality of their services.	2015		√	
Decrease the fees for services provided by public notaries, to match the economic purchasing power of the citizens.	2015		√	
Resolve all disputed competence-related issues between lawyers and public notaries, to achieve a higher level of legal security.	2015	√		
Continue implementation of regulations on public notaries and comprehensive training of all participants, especially users of notarial services.	2015		√	

CURRENT SITUATION

The newly established public notary profession, was introduced into the Serbian legal system under the Law on Public Notaries (hereinafter: the Law), which entered into force on 1 September 2014.

The introduction of public notaries was aimed at disburdening courts; efficiently performing activities to be undertaken before a public notary; introducing legal security regarding certain activities and processes with which public notaries were vested; and introducing protection for certain vulnerable groups. After almost two years since the profession was introduced, we may say that these aims have mostly been achieved and that today we have an efficient, available, and reliable profession managing to meet the various needs of citizens and companies with regard to legislative transactions. However, this legal profession has not yet been firmly established, so there is still a parallel authority for certain issues amongst courts, municipalities, and notaries Still, a positive development is that companies and citizens are now aware of who notaries are, what their authorities are, and which issues may be referred to them. This legal profession is, therefore, taking hold, and its gradual introduction into the legal system has proven to have been the right course. Yet in more than 20 municipalities and cities in Serbia, public notaries have yet to be nominated, so until this happens the solemnization procedure for documents of which the law requires the exclusive authority of public notaries in said cities and municipalities shall therefore be within the purview of the basic courts in accordance with the Law. Pursuant to the Law on the Verification of Signatures, Manuscripts, and Transcripts (RS Official Gazette No 93/2014 and 22/2015), a public notary is authorized for the verification of signatures, manuscripts, and transcripts, which, before this law entered into force, courts and the local administration were in charge of, though the basic courts and local administration will continue to have the authority to certify signatures, manuscripts, and transcripts until 1 March 2017. Therefore, slowly but surely, the introduction of the notary institution is ensuring that a good chunk of a constricting, bureaucratic, and inert administration is being transferred from courts to notaries, in what has resulted in increased efficiency that has not in turn adversely affected the quality of services or legal certainty.

POSITIVE DEVELOPMENTS

After the implementation of the Law was launched and public notaries started their work, the need arose to make amendments to the Law on Public Notaries, with the result that the Law has been amended several times. Once these amendments were adopted, certain new authorities were introduced for public notaries, so that probate proceedings were partially transferred to notaries at the beginning of May 2016. In the future, therefore, public notaries shall draft death certificates and the inventory of the property of the deceased, as well as conduct other probate proceedings courts decide to transfer to them. Citizens shall, as before, submit a request for probation proceedings to a court, and the court may then adopt a decision to forward the case to a public notary. When naming a public notary to handle proceedings, it is appropriate, for the purpose of reducing costs, that the president of the court name a public notary within that court territory jurisdiction covering the municipality in which the deceased had legal residence.

Also, amendments to the Law introduced new cases in which a public notary is obliged to reject the performance of a

required official activity. Earlier, a public notary, in the case of doubt that a client has initiated an action fictively, or in order to avoid legal obligations, or to illegally make damages upon a third person, had the option to refuse to undertake the case. Now, however, following the adoption of the amendment to the Law, a public notary must refuse to perform the named action. In that way, notaries' discretionary right to perform certain services has been eliminated, and their obligation not to act in the aforementioned cases has been prescribed. The introduction of this obligation for notaries is praiseworthy given that it has eliminated arbitrariness and consequent deficiencies of legal actions that, as a result, can be declared null and void, while it should also be noted that this arbitrariness in practice resulted in unfair competition amongst public notaries and undermined legal certainty. Also, the obligation was introduced for public notaries to refuse to render a service when there is any doubt as to whether a client has a serious intent or free will to conclude the transaction in question.

One more significant amendment to the Law which brought about positive changes in this area is the cancellation of the obligation of securing notarial minutes for the minutes of a founding assembly or other shareholder meeting for joint stock companies with more than 100 shareholders, as well as for the minutes of sessions of other bodies of a joint stock company when the body, in accordance with the law regulating companies and the general act of the company, decides on issues within the authority of the shareholder assembly. Therefore, these minutes are not be subject to obligatory certification in the form of notarial minutes, cutting in this way additional costs for joint stock companies with a large number of shareholders.

Amendments to the Law regarding notaries' depositary role when accepting and holding funds specify that when deposited funds are in a foreign currency, a public notary shall act in accordance with the regulations regulating foreign exchange operations or a lex specialis, in what provides greater legal security and represents a positive change to the Law.

REMAINING ISSUES

A disproportionate number of named notaries, as well as the problems of non-nomination of notaries in more than 20 municipalities and cities in Serbia, remains a problem yet to be resolved. Even though the solemnization of documents is within the purview of basic courts, , residents of cities and municipalities yet to name public notaries have to travel to the closest city or municipality that has named a public notary in order to obtain notarial minutes. In this way, the already high cost of notarial minutes is additionally increased due to travel expenses.

What remains a burning issue in this area are the costs of services of public notaries. Despite the fact that the costs have been reduced by changing the notarial tariff several times, these costs remain unacceptably high for citizens, with the result that these services still pose a heavy burden for businesses and remain a privilege of the rich.

The introduction and implementation of regulations regarding public notaries as a newly established legal institution in the Serbian legal system presents a comprehensive process of significant importance. However, numerous amendments to the Law make for a certain legal insecurity and show that public notaries, as well as lawmakers and all participants in business transactions, have a long way to go before a public notary as a legal institution important for everyday life is implemented and harmonized.

FIC RECOMMENDATIONS

- Further amendments to legal provisions regulating the number of public notaries and increase the number of appointed public notaries.
- Further reduction of fees for services of public notaries, to levels appropriate for the purchasing power of individuals and the financial strength of businesses.
- Further implementation of regulations regarding public notaries and comprehensive education of all participants in the process.

TAX

A. CORPORATE INCOME TAX (CIT)

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Many of the existing problems in corporate taxation are related to the practical implementation of the CIT Law. These problems should be dealt with in the by-laws of the Ministry of Finance to introduce greater flexibility in this area.				
Primarily, by-laws should provide guidelines with respect to taxation of permanent establishments.	2010			√
Aligning domestic practices with respect to the definition of royalties for withholding tax purposes with the best international practices and definitions applied in the relevant tax treaties (especially related to the treatment of proprietary software licensing).	2012			√
Some of the problems require amendments of 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.	2010			√
Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose the payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account.	2010			√
Taxation of corporate reorganisations, as the currently applicable legislation completely lacks provisions on the taxation of such reorganisations. Provisions regulating this area should be introduced in the CIT Law.	2011			√
Introducing a system of new tax incentives for investments into fixed assets amounting to less than RSD 1 billion, in the form of a tax credit or a reduced corporate income tax rate for a certain period, and in proportion to the investment made.	2014			√
Regulate in more detail recognition of long-term provisions expenses for cases when they are being reversed or used, to ensure that these expenses are not permanently unrecognized.	2014			√
Regulate tax depreciation calculation in a manner that does not lead to expenses of tax depreciation being permanently unrecognized.	2014			√
Revise Rulebook that governs regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes in order to implement proportional tax rate for groups II to V, as well as determine more realistic estimations for useful life of fixed assets (for example, tax rate of 20% or 30% is more appropriate for company cars, nowadays).	2015			√
Change the rules regarding tax deductibility of impairment expenses, so that it is clear that decrease of fair value of assets does not represent an impairment expense. In this way the increases and decreases of fair value of assets would be treated in a fair way.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introduce a rule stipulating that the difference between liquidation remainder and invested share capital is regarded as capital loss.	2015			√
Tax recognized depreciation expense should be allowed for fixed assets acquired before 2013 (present in the accounting records on 01.01.2013) and whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in the Republic. We suggest that this change should be implemented in Rulebook that governs regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.	2015			√

CURRENT SITUATION

The taxation of companies in Serbia is governed by the Law on Corporate Income Tax (hereinafter: the CIT Law) and ratified international agreements. The CIT Law is supplemented by several by-laws governing the implementation of its provisions.

Since 2014, amendments to the CIT Law were made three times: (1) in July 2014 (RS Official Gazette No 68/2014); (2) December 2014 (RS Official Gazette No 142/2014); and at the end of 2015 (RS Official Gazette No 112/2015), with most of the provisions of the latest amendments entering into force on 1 January 2016.

The most significant change is the introduction of withholding tax on the income of non-resident legal entities coming from services provided or used, or which will be provided or used in the territory of the Republic of Serbia. This tax was applied 1 March 2016, but its application in practice still causes certain issues and concerns.

Other changes are related to the harmonization and recognition of expenditures for tax purposes; compliance with the law governing accounting; and certain refinements of existing provisions aimed at eliminating doubts regarding their application in practice as well as bringing them in line with explanations given in the opinions of the Ministry of Finance.

As for international treaties, a new one on the avoidance of double taxation with Norway entered into force on 1 January 2016, replacing the old treaty dated 1986. Also, in addition to existing treaties on avoidance of double taxation already in force, Serbia is currently in the process of negotiation or ratification with 25 other countries regarding the conclusion of new treaties or amendments to existing ones.

POSITIVE DEVELOPMENTS

The specified amendments to the CIT Law did not introduce significant improvements, and are mostly related to refinements of a few provisions with the purpose of eliminating doubts regarding their application in practice and special rules for certain situations and types of taxpayers. Principally, the following amendments can be highlighted:

- A more precise definition concerning the recognition of the write-off of receivables covered by an approved prepacked reorganization plan, upon the validity of the decision on the approval of the plan.
- Introduction of a simplified mechanism for banks regarding recognition of the value of write-offs which are based on loans and which apply to uncollectible receivables from unrelated entities with maturity of over two years.
- Expenses based on adjustment of receivables' value which were not recognized in the accounting period in which they were stated are recognized in the period in which the conditions for the recognition of the write-off are fulfilled (proof that the claims were under litigation, the enforcement proceedings were initiated, or that the claims were filed in bankruptcy or liquidation proceedings).
- The remaining portion of the receivable which was not settled from the funds realized from the sale of a debtor's real estate was recognized as an expense.
- More precise definitions in connection with the number of workers employed for an indefinite period concerning the application of tax exemptions for incentives on investments.
- Clarifications on time and type of recognized expenditures with respect to employee benefits in the form of severance and termination of employment, which are paid in the next fiscal year.

- In addition to donations for social welfare institutions, donations granted to other social service providers are also recognized as expenditures for tax purposes.
- It was better defined which institutions are considered non-profit organizations, reducing the risk of donations not being recognized as expenditures.

REMAINING ISSUES

- Administrative burdens, legal uncertainty, and additional costs are caused by extending the tax liability arising from withholding tax on services on the income of all non-resident legal entities. Specifically, Article 40 of the CIT Law provides that the income of non-resident legal entities derived from services provided or used, or which will be provided or used in the territory of the Republic of Serbia, is taxable. In practice, it is not always clear which services are considered provided or used in the territory of the Republic of Serbia, while there are no additional guidelines nor instructions by the relevant authority in terms of adequate and accurate application of such provisions, leading to legal uncertainty, additional costs, as well as the potential civil or criminal responsibility of taxpayers. Additional financial and administrative burdens for non-residents and domestic companies is caused by: (i) gathering and translating documentation necessary for the application of the tax exemption specified in agreements on avoidance of double taxation; (ii) potential refund of taxes paid in the event that the necessary documentation could not be obtained at the time withholding tax was applied; and (iii) an administrative burden for domestic companies for filing tax returns for withholding tax upon payment of each individual fee for services rendered, and especially a daily submission of tax returns for which there is no obligation to pay withholding tax.
- The provisions governing taxation of permanent establishments continue to be scarce and vague, and do not provide sufficient guidance as to what constitutes a permanent establishment; a methodology for establishing taxable income; and the filing and payment of CIT in situations where a foreign business is not registered in Serbia, etc.
- The deductibility of marketing expenses is limited to 10% of a taxpayer's total revenues. The nature of certain industries is such that it requires significant investments in marketing, often resulting in non-deductible marketing expenses, which represents a discrimination of taxpayers for whom such expenditures are necessary for their business activities.
- Occasionally, interpretations by the Ministry of Finance pertaining to withholding tax differ from provisions of the relevant double tax treaties and the best international practice. This is especially true in the case of proprietary software licensing. Such interpretations result in legal uncertainty and a higher tax burden for taxpayers, which is not in line with the rights provided in the relevant double tax treaties;
- The CIT Law does not contain a single provision governing the taxation of investment funds. The result is a distortion of the tax neutrality of investment funds and different forms of investment funds, in particular closed-ended and open-ended funds.
- Taxation of corporate reorganization remains unclear as currently applicable legislation completely lacks provisions regarding the taxation of such reorganization.
- Provisions of the law pertaining to the method for calculating tax depreciation create continuing discrepancies and permanently unrecognized expenses in the tax balance sheet in cases where, at the moment of disposal of an asset, the current accounting value is lower than the current tax value of said asset, as well as in cases where a fixed asset is being disposed of, where that asset was not previously depreciated for tax purposes, as its cost value at the moment of purchase was lower than the average salary in the Republic of Serbia.
- Tax depreciation is not calculated on fixed assets purchased before changes of the CIT Law from the beginning of 2013, and whose individual value was below the average gross salary at that time.
- During 2015 and the first half of 2016, the Ministry of Finance published opinions regarding the method of calculation of the cost and recognition of tax depreciation for the first group of fixed assets on 31 December 2003, causing numerous dilemmas and controversial interpretations in practice.
- The CIT Law does not make a clear difference between impairment of assets and decrease of fair value of assets (e.g. investment property), for which IFRS prescribes different rules and treatment. As a result, the decrease of fair value of assets is interpreted as an impairment expense which is non-deductible until such assets are sold. On the other hand, every increase of fair value of assets is immediately taxable. This results in an unfair increase of taxable income for taxpayers.
- The CIT Law does not specify the treatment of losses

arising from liquidation, or bankruptcy estate, which is less than the capital invested in a company ceasing to exist in the process of liquidation or bankruptcy.

– The CIT Law does not contain provisions recognizing a resident capital gains tax paid abroad, leading to double taxation in cases where Serbia has not signed an agreement on the avoidance of double taxation with such a country.

FIC RECOMMENDATIONS

Many of the existing problems in corporate taxation are related to the practical implementation of the CIT Law provisions. These problems should be dealt with in the by-laws of the Ministry of Finance, as well as to better define provisions of the CIT Law, in order to introduce greater flexibility in this area.

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

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

- Make provisions of the CIT Law more precise in order to allow taxpayers a proper application of withholding tax on services in practice, as well as to amend other relevant provisions of the CIT Law in order to reduce the administrative and financial costs of the application of this tax for domestic and foreign legal entities by introducing monthly or quarterly tax filings (instead of for each transaction separately).
- Provisions of the CIT Law regulating deductibility of advertising and marketing expenses should be amended in a way to allow a full deductibility of such expenses.
- Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose a payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account.
- Taxation of corporate reorganization, as currently applicable legislation completely lacks provisions for the taxation of such reorganization. Provisions regulating this area should be introduced in the CIT Law.
- Introducing a system of new tax incentives for investments in fixed assets amounting to less than RSD 1 billion in the form of a tax credit or reduced corporate income tax rate for a certain period, and in proportion to the investment made.
- Revise the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes in order to implement a proportional tax rate for groups II to V, as well as to determine a more realistic estimation of the useful life of fixed assets (for example, a tax rate of 20% or 30% is more appropriate for company cars nowadays).
- Regulate tax depreciation calculation in a manner that does not lead to expenses of tax depreciation being permanently unrecognized.

- Change the rules regarding tax deductibility of impairment expenses, so that it is clear that a decrease of fair value of assets does not represent an impairment expense. In this way, increases and decreases of fair value of assets would be treated in a fair way.
- Tax recognized depreciation expense should be allowed for fixed assets acquired before 2013 (present in the accounting records on 1 January 2013) and whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in Serbia. We suggest this change should be implemented in the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.
- Further clarify the method of calculation and recognition of tax depreciation cost for the first group of fixed assets on 31 December 2003, which caused numerous dilemmas and controversial interpretations in practice;
- Introduce provisions in the CIT Law which would clearly regulate the treatment of liquidation remainder below the level of invested capital.
- Amend the provisions of the CIT Law in order to recognize a resident tax credit for capital gains tax paid abroad, up to the amount of corporate income tax which would be payable on such capital gains.

B. PERSONAL INCOME TAX

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The application of the schedular system of taxation of personal income remains a problem of the Serbian system, to which there is no adequate solution. This system was abandoned as unclear and unjust by criteria of many advanced tax jurisdictions, and the Serbian government should consider the introduction of a synthetic system which would enable Serbian tax legislation to keep up with advanced tax systems.	2008			√
The provision 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			√
Change the general opinion of Ministry of Finance in respect of "team building" expenses, as these expenses should be treated on a case by case basis.	2015			√
Standardize the position and practices of the tax authorities in order to facilitate the taxpayer's legal right to use tax credit for taxes paid in another state.	2015			√
Amend the PIT Law while observing the IAS rules, all with the aim to eliminate taxation of income not yet received i.e. to ensure that the tax liability correspond with the moment of acquisition of the right to dispose of the securities by an employee.	2014		√	

CURRENT SITUATION

The issue of personal income tax for detached workers in Serbia who remain on a foreign country payroll is on-going. In practice, foreign nationals who have an employment agreement with their foreign employers are most often detached to the employer's related entity in Serbia. Such individuals still have an employment agreement only with the employer abroad, which invoices all the costs related to these detached employees to its related entity in Serbia. The Personal Income Tax (hereinafter: PIT) Law defines clearly that the obligation to pay taxes for income abroad is on the side of the detached employee. While the PIT Law and the Finance Ministry's opinions seem to clearly stipulate that individuals-income recipients themselves are obliged to report income and taxes via the PP OPO form (irrespective of whether the foreign salary costs are invoiced to the local Serbian entity or not), the Tax Administration requires legal entities to which individuals are detached and costs of these individuals' salaries are invoiced to declare and pay withholding tax. The Tax Administration relies on the principle of the economic payer, which, as such, does not exist in any of Serbian tax regulations, and completely ignores the fact that taxes are already paid by the individuals in question, so the ultimate effect is twice-paid tax on the same income. In some cases, the Tax Administration tries to find a base for this treatment by way of the application of the principle of facticity (the principle of substance over form), which is absolutely not applicable in this situation because the tax is already paid by individuals.

Taxation of individuals is governed by the Personal Income Tax Law (hereinafter: PIT Law), last amended in December 2015, as a continuation of the tax reform that started at the end of 2012. The newly adopted amendments introduced new incentives, in addition to existing ones, for hiring new employees, offering the right to a refund in the amount of 65%-75% of paid taxes and contributions, depending on the number of newly employed workers.

Since 1 January 2016, tax liability for capital gains is again determined by a decision of the Tax Administration. The previous version of the Law envisaged self-taxation of capital gains for individuals. According to the amendments of the Law, tax liability is again determined by the Tax Administration, while the Law now more closely regulates the deadline for submitting a tax return when a fee is generated in several tranches.

The amended provisions of the PIT Law define the tax base for individuals resident in Serbia detached abroad by a legal entity resident in Serbia. The tax base is the amount of wages that an individual resident would achieve on the same or similar job in the Republic of Serbia, according to the Law, the Company Act, and Employment Agreement, instead of the amount of wages paid for the performed work.

A new method of calculating costs when an employee uses a private vehicle for business purposes has been introduced. The newly-introduced method involves two categories of expenses that should be reimbursed to the employee – depreciation of the vehicle and fuel spent on a business trip.

POSITIVE DEVELOPMENTS

Newly-introduced incentives for hiring new employees, pursuant to the foreign direct investment by-law, are a positive development.

REMAINING ISSUES

Amendments to the PIT Law treating employees' profit sharing 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 employees are performing for their employers.

A specific problem is the compensation of expenses to individuals for business travel abroad given that it is not regulated how these expenses are to be documented by Serbian companies or what thresholds 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, not just state bodies. However, we are of the opinion that, like the Decree itself, these instructions are not in line with Serbian legislation.

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

In 2015, the Ministry of Finance issued an opinion qualifying "team building" expenses as fringe benefits of an employee,

which entirely changes the tax treatment of these expenses in terms of the PIT Law, as well from in terms of the Corporate Income Tax Law. With this opinion, the Ministry of Finance changed its earlier practice with respect to this issue, which has additionally affected legal certainty. We are of the opinion that this is not justified from the legislative and economic perspective of these expenses, as in most cases the purpose of this investment is to increase the productivity of employees by organizing joint activities.

In practice, taxpayers encounter difficulties in exercising their legal right to use the tax credit for taxes paid in another state given that the tax authorities did not unify their positions or practices with respect to this matter. Such conduct by the tax authorities generates legal uncertainty and is questionable as to its constitutionality.

The PIT Law stipulates that an employee's personal income also includes securities granted to that employee by the employer, or by the employer's related entity, as well as securities granted by the employer or its related entity to an employee as a bonus (stock options and similar). These securities will be taxed as the employee's personal income, i.e. salary, as soon as the employee has acquired the right to dispose of these securities. If the cost is borne by the employer, taxation will be triggered at the moment when the cost is accounted for in the employer's bookkeeping system. Problems arise in practice when the cost is covered by the employer because the IAS requires that the employer account for this cost in its bookkeeping system; and when the date on which the cost is accounted for does not correspond with the date the employee has acquired the right to dispose of these securities. In other words, the expense will be accounted for in the employer's business books for a given fiscal year and taxed accordingly, even though the employee has not actually earned this income yet. To make things worse, these securities are sometimes never transferred to the employee (e.g. the requirements for the bonus were not met, which might take a few years in some cases), and so they are taxed for income that they never actually received.

The payment of taxes and contributions when an employer pays life insurance for its employees should be regulated. We suggest that the taxes and contributions should be paid at the moment of payment of the sum insured at the expiration of the employee's insurance, as the employee is generating revenue at that moment. Should there be an interruption in the process of insurance and such funds were returned to a legal entity paying the insurance, then there would be no obligation to pay taxes and contributions. We are of the opinion that foreign entities will be stimulated to insure their employees, as these costs would represent the costs of reservation and would be deductible for tax purposes at the moment of payment of the sum insured with calculated and paid taxes.

FIC RECOMMENDATIONS

- Amend the PIT Law so as to establish clear rules and procedures on taxation of detached workers in Serbia who remain on a foreign country payroll. More precisely, determine who (individual-income recipient or the local entity) and when such an individual or entity is obliged to report income received from abroad for work in Serbia and pay tax.
- 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 the criteria of many advanced tax jurisdictions, and the Serbian government should therefore consider the introduction of a synthetic system which would enable Serbian tax legislation to keep up with advanced tax systems.
- The provision stipulating subsidiary guarantee of adult members of a household with their own property in the case of a sole proprietor failing to fulfil their tax obligation should be deleted from the PIT Law.
- Change the general opinion of the Ministry of Finance with respect to "team building" expenses, as these

expenses should be treated on a case-by-case basis.

- Standardize the position and practices of tax authorities in order to facilitate the taxpayer's legal right to use tax credits for taxes paid in another state.
- Amend the PIT Law whilst observing IAS rules, with the aim of eliminating taxation of income not yet received; i.e. to ensure that tax liability corresponds with the moment of acquisition of the right to dispose of the securities by an employee.
- A special by-law should closely regulate the calculation of per diems during business trips and reimbursement of costs incurred (documenting, defining and refining the concept of per diem, etc.).
- It is necessary to clarify the calculation of the costs of using private cars for official purposes.

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 which relate to the status of foreign entities within the Serbian VAT system should be reconsidered and amended in order to achieve compliance with best practices, such as abolishing the requirement to register for VAT for foreign suppliers of goods and services for which the recipient, as the taxable entity, is required to account for the VAT, including services that are taxable at the place of recipient.	2007	√		
The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks that treat only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.	2007			√
Changes in the VAT Law should exempt the taxpayer from the obligation to notify the Tax Authority about changes in data that are kept in the records of the Serbian Business Registers Agency and which the Agency is required to report to the Tax Authority.	2011			√
The rule for the place of supply of services should be revised in accordance with the EU VAT Directive.	2011			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.	2013			√
Amendments to the VAT Law should specify that interest in the case of financial leasing should not be included in the taxable amount (i.e., that it should be VAT exempt).	2013			√
VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies to decrease their administrative costs.	2014			√
The provision of the VAT Law that deals with correction of output VAT needs to be amended and adapted to suit present economic conditions. The recommendation is for a correction to be allowed when there is proof of initiation of liquidation or bankruptcy proceedings, or in the event of an out-of-court settlement.	2014			√
The rulebook that regulates provision of small value gifts, advertising materials and samples needs to be reviewed. The limits specified for small value gifts and advertising materials are unrealistically low, especially in view of the fact that the limit in terms of the market value of individual goods provided as advertising material or a small value gift was set at 2,000 dinars in 2004. The application of the rule with respect to the provision of samples for analysis purposes, as required by regulations, needs to be further clarified.	2014			√
The Ministry of Finance and the Tax Authority should take the initiative for establishing reciprocity with all European countries in respect of VAT refunds to all foreign entities.	2015			√
The Law should specify that the obligation to account for VAT lies with the transferee of goods and services in the following instances: 1) in the case of in-kind contributions, when the supply of goods and services as an in-kind contribution is subject to VAT and 2) in the case of change of status, when the supply of goods and services in a change of status is subject to VAT.	2015			√

CURRENT SITUATION

The Value Added Tax is governed by the Law on Value Added Tax (RS Official Gazette No 84/2004, 86/04 – correction, 61/05, 61/07, 93/12 and 108/13, 142/2014, and 83/2015; hereinafter the "VAT Law").

The Law on Amendments to the Law on Value Added Tax was adopted in October 2015. The major changes are effective as of 15 October 2015.

The most important changes enacted in October 2015 relate to new rules regarding the taxation of electricity and natural gas, which correspond to rules and practices in Member States of the European Union, as well as the registration of foreign entities for VAT.

POSITIVE DEVELOPMENTS

- The October 2015 amendments to the VAT Law allow for a foreign entity performing taxable supplies in Serbia to register for VAT.
- New provisions regarding the taxation of electricity and natural gas, which differ depending on whether supply is directed to the end customer or to further sale.

REMAINING ISSUES

- Amendments to the VAT Law allow non-Serbia established foreign companies to register for VAT when they make taxable supplies in Serbia. However, the statutory obligation to register for VAT applies to all entities making taxable supplies in Serbia. The only exceptions are entities performing electronically supplied services and entities providing bus transportation services for which customs authorities calculate VAT. This is not in line with the best practices in other countries, both in EU and non-EU countries.
  The requirement to register for VAT, envisaged in the VAT Law, will pose an undue administrative burden and will increase costs for companies making taxable supplies of goods and services to recipients that, as taxable entities, are required to account for the VAT liability. The aforementioned is also suspect from the perspective of VAT administration by tax authorities, as it will introduce a significantly higher number of companies into the VAT system than is justified by economic and tax considerations. This will also impose additional costs on the tax administration, including risks of abuse. Besides, the solution adopted by the Law results in situations where certain services are not taxed at all; for instance, services provided electronically to end customers.
  The Ministry of Finance issued an Explanation dated 23 May 2016, according to which provisions of the VAT Law regarding the registration of foreign entities for VAT should be interpreted in such a way that registration is possible but is not an obligation of foreign entities providing supplies in Serbia. Furthermore, in the Explanation, it is stated that a foreign entity cannot be penalized if it does not register for VAT.
- The relevant rules for applying the VAT Law are still scattered throughout various by-laws, which are frequently not sufficiently detailed and do not provide adequate explanations for application of specific provisions of the Law in different situations, instead of being integrated into a single piece of legislation (currently there are 21 rulebooks and three decrees).
- To reflect changes in the European Union VAT Directive, the provision related to the place of supply of services should be amended. As a general rule, it is stipulated that the place of supply of services to another taxpayer is the place where the service recipient performs its commercial activity. There are also exceptions to this general rule. These amendments were adopted by all EU Member States and went into effect 1 January 2010. Harmonization with the European Union VAT Directive is of great importance, as existing provisions result in double taxation or double non-taxation of those 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.
- VAT is accounted for by the recipient of goods and services performed by a foreign supplier (applying the so-called reverse charge mechanism) at the moment when the supply takes place or at the moment when advance payment is made, depending on which occurs earlier. In case there is no advance payment, VAT should be accounted for at the moment the service is rendered, something often unfeasible in practice, especially in the case of services for which the price in the contract was not specified as a fixed amount, but rather depends on a contractually specified calculation. At the moment of supply, or up to the deadline for filing a tax return, the VAT payer frequently does not have the supplier's invoice or information on the amount of the compensation, and so cannot know what the taxable amount is.
- VAT legislation provides that in cases where taxable amount has changed after the supply of goods and services has taken place (e.g. subsequently approved discounts), the supplier should issue a document (credit note) containing certain obligatory items. VAT legislation does not provide for the possibility for the recipient of goods/services to issue this document, as is the business practice in other countries. Because of this, additional costs are imposed on companies since they have to change their business practices due to Serbian VAT rules.
- The VAT law specifies the possibility for correction of output VAT only in the event of an enforceable court decision on the completion of bankruptcy proceedings and based on a certified copy of the court settlement record. In the present economic situation, in view of the duration of bankruptcy proceedings, such a provision appears overly restrictive.
- VAT regulations specify that VAT is not calculated on small value gifts and advertising materials. Small value gifts and advertising materials, after all other conditions are met, are considered to be goods whose individual market value is below RSD 2,000, exclusive of VAT. The total value of advertising materials and other small value gifts in a tax period cannot exceed 0.25% of the taxpayer's sales in that tax period. The RSD 2,000 limit was specified back in 2004. In view of the depreciation of the value of the dinar, the appropriateness of this limit is questionable. Also, the threshold amount, in terms of the total value of advertising mate-

rials and small value gifts, is also questionable.

- A VAT refund to a foreign taxpayer is possible, under conditions of reciprocity and fulfilment of other prescribed conditions. The list of countries with which there is reciprocity has been expanded, but not sufficiently so. Serbia continues to have reciprocity with a relatively small number of countries. This also negatively affects Serbian companies, given that due to a lack of reciprocity they are unable to exercise their rights to a refund of VAT paid in other countries also applying the reciprocity rule.
- In practice, there is an issue with VAT treatment of in-kind contribution of goods and services and status changes. Specifically, in such instances the VAT accounted for by the transferor of assets is income for the transferor and an expense for the transferee, and consequently in-kind contribution and status changes are not neutral from the perspective of the income statement, as they should be, essentially. For this reason, in such instances, the transferee should be the one to account for the VAT (applying the reverse charge rule).
- In 2014, the new Rulebook was enacted, defining in which cases the return of goods is not regarded as a new supply subject to VAT. In general, unsold publications (remitenda) and the return of goods whose expiration date determined by the manufacturer has expired or is expiring is not regarded as a new supply. However, in practice, it is questionable how the term "remitenda" is defined, as well as in which cases it will be determined that the expiration date of goods has expired. Moreover, the Rulebook does not define precisely that the return of goods due to reclamation is not a new supply, e.g. when the wrong goods have been delivered or in larger quantity than was ordered. All of this leads to legal uncertainty and possible differences in interpretation by both the taxpayer and the tax authorities.
- The amendments also define new rules regarding assessment of VAT in the case of supplies in the field of construction. The rules relate to the classification of business activities, which results in numerous questions and uncertainties in practice, because, in substance, the classification was not drafted for tax purposes. Consequently, taxpayers have to deal with legal uncertainty due to the different interpretation of taxpayers themselves and tax authorities. Due to this divergence in interpretation, taxpayers face the risk that tax authorities assess output VAT to the supplier, although the recipient as the taxpayer assessed VAT, or that the input VAT deduction is disputed to the recipient who assessed output VAT, because tax authorities deem that the obligation to assess VAT is on the side of the supplier, even though none of these two approaches is to detriment of the state budget.

FIC RECOMMENDATIONS

- We are of the opinion that the issue regarding registration of foreign entities for VAT cannot be appropriately solved by an Opinion or Explanation issued by the Ministry of Finance. It is necessary that the Law itself be amended. Amendments should be done in such a way as to correspond to the best practices in EU Member States. It is necessary to define that registration is an obligation, but not in cases where supply is rendered to entities which are not VAT payers or when a VAT payer as recipient is not a VAT debtor. Moreover, it is necessary to define that the VAT payer is a VAT debtor for the supply of goods conducted by a foreign entity. We believe that the provisions on registration are closely related to provisions on VAT reimbursement to a foreign taxpayer and that it is crucial the position of a foreign taxpayer be perceived as a whole in the course of amendments to the Law.
- The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks treating only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.
- The rule for the place of supply of services should be revised in accordance with the EU VAT Directive.
- VAT Law amendments should specify that, in the case of financial leasing, the base for VAT assessment should not

include interest (interest should be VAT exempt), in the manner in which this has been applied in the Member States of the European Union.

- With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity, the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.
- VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/ services. This practice is in line with VAT rules in other countries and a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of a mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or a credit note. This practice also corresponds to a usual business practice. Insisting on exclusively one approach represents an imposition of additional costs, whereby from the VAT collection point of view, there is no reason why both approaches cannot be applicable.
- The provision of the VAT Law dealing with the correction of output VAT needs to be amended and adapted to suit present economic conditions. The recommendation is that a correction be allowed when there is proof that liquidation or bankruptcy proceedings (including reorganization in line with the bankruptcy legislation) were opened, or in the event of an out-of-court settlement.
- The rulebook regulating the provision of small value gifts, advertising materials, and samples needs to be reviewed. The limits specified for small value gifts and advertising materials are unrealistically low, especially in view of the fact that the limit in terms of the market value of individual goods provided as advertising material or a small value gift was set at RSD 2,000 in 2004. The application of the rule with respect to the provision of samples for analysis purposes, as required by regulations, needs to be further clarified.
- The Ministry of Finance and the Tax Administration should take the initiative in establishing reciprocity with all European countries with respect to VAT refunds for all foreign entities.
- The Law should specify that the obligation to account for VAT lies with the transferee of goods and services in the following instances: 1) in the case of in-kind contributions, when the supply of goods and services as an in-kind contribution is subject to VAT; and 2) in the case of a change in status, when the supply of goods and services in such is subject to VAT.
- It should be specified that, in case of the return of goods, regardless of the expiration date, the supplier of goods may issue a credit note or the purchaser may issue an invoice, depending on their mutual agreement. This approach cannot jeopardize collection of VAT because, regardless of who issues the credit note, the same VAT rate is applicable.
- It is necessary to specify that in the case of supplies in the field of construction, parties may chose taxation in line with the general principle – that is, VAT charged by supplier. Namely, in the Member States of the EU, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment. Bearing in mind this motive for the determination of the recipient as tax debtor, there is no reason to prevent the supplier from assessing VAT, nor to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor.
- In order to decrease administrative burden, correcting an error made in a VAT return for the previous tax period through a VAT return for the current tax period (without the submission of an amended VAT return) within a certain time period (e.g. within 6 months from the submission of the VAT return in which an error has been made, which would be separately disclosed in the VAT return for the current tax period) should be enabled, with payment of penalty interest.

D. PROPERTY TAX

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The provisions of Article 7 of the Law should be harmonized with the provisions of the Law on Accounting.	2015			√
Provisions of the Property Tax Law which determine the method of the calculation of property tax base using the zoning method should be revisited in order to avoid the negative consequences of the current regulations in the next fiscal year in a timely fashion.	2014			√
In particular, it is recommended that the implementation of corrective factors in the determination of the market value of real estate be considered.	2014			√
Furthermore, it is advisable to institute a greater level of monitoring in the zoning of each municipality and organize training of personnel in order to avoid situations in which neighbouring properties that are territorially spread out in different municipalities are taxed differently.	2014			√
It is recommended to impose, by the Law, the obligation of the local tax authorities to publish data on all real estate sales per zone, as well as data used for the calculation of the average market prices.	2015			√
Prescribe in the Law the method of calculation of the property tax base of the real estate classified as held for sale, or inventories, according to IFRS 5 and IAS 2, respectively. It is recommended to calculate the property tax base of such real estate based on their fair value assessed by a certified appraiser on the last day of the year preceding the year for which the property tax is calculated, whether the fair value is stated in the business records of the taxpayer or not. In case the fair value of the real estate is not assessed by a certified appraiser, the tax base would be calculated by using the average prices published by the local tax authorities.	2015			√
It is recommended that data by which the tax authorities determine property transfer tax be made available to the public, to ensure the transparency of work of the tax authorities.	2015			√
Forming a working group consisting of members of the Foreign Investors Council and the relevant Ministry to devise an effective set of amendments is recommended.	2014			√

CURRENT SITUATION

Property tax is governed by the Law on Property Taxes (RS Official Gazette No 26/2001; FYR Official Gazette of No. 42/2002 – decision CC; and RS Official Gazette No 80/2002, 80/2002 – as amended, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 - decision CC, 47/2013 and 68/2014 – as amended) (hereinafter: the Law).

Since its adoption in 2001, the Law has been amended several times, with significant changes adopted in 2013. These changes refer to the method for determining a real estate property's tax base and the introduction of the property tax self-assessment principle. Namely, companies that keep business records determine the tax base for property tax based on the real estate's market value (except in cases prescribed by the Law). The market value of a real estate represents the fair value stated in business records for those taxpayers that

use the fair value method according to the International Accounting Standards (hereinafter: the IAS), the International Financial Reporting Standards (hereinafter: IFRS), and their accounting policy; and if the fair value method is not used, the market value represents a value calculated in a way prescribed by the Law, taking into consideration average market prices determined by local tax authorities.

One of the main reasons for amendments to the Law in 2013 was the integration of the building land use charge into property tax, since the building land use charge was abolished on 31 December 2013.

Last amendments to the Law were in 2014, which referred to the elimination of misdemeanours for bodies performing the verification of signatures of the contractual parties to an agreement, something now governed by the Law on the Transfer of Property (RS Official Gazette of the No. 93/2014, 121/2014, and 6/2015).

POSITIVE DEVELOPMENTS

Compared to the previous year, there have been no significant improvements in this area.

REMAINING ISSUES

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

Bearing that in mind, it should be noted that the Law on Accounting (RS Official Gazette No 62/2013) entered into force after the adoption of amendments to the Law of 2013, and that the Law on Accounting provides that small and medium-sized enterprises apply IFRS for small and medium-sized enterprises (hereafter: IFRS for SME), as well as that micro businesses may opt for the application of the aforementioned standards. Article 7 of the Law does not specify whether this article refers to the companies that apply IFRS for SME and it remains unclear whether the property tax base for these companies amounts to the fair value of the property, expressed in accordance with IFRS for SME on the last day of the financial year of the taxpayer in the current year.

One of the main parameters for the calculation of the value of property is now the zone to which the property belongs, as determined by the relevant municipality. Municipalities are granted discretionary authorization in the determination of zones in the process of ascertaining the market value of real estate.

Zoning is not mutually co-ordinated between municipalities. Specifically, each local municipality enacts a decision on zoning for their territory and there are already cases in which property tax for neighbouring real estate bordering zones of different municipalities differ drastically even though there is practically no difference in the level of utility development. It should also be noted that no criteria for value adjustments are envisaged regarding the quality/age of a particular property. In practice, this means that the tax base of a newly-built real estate and one that may be 50 years old will not differ at all (depending on their respective surface areas).

Prices of construction land published by certain local tax authorities for the purpose of determining the property tax base for 2014 were twenty times higher than the prices they used for the calculation of transfer tax in the period before the last amendments to the Law (in this particular case, in 2012) for land in the same zone. Prices of construction land published for the purpose of determining the property tax base for 2015 are six times higher than the aforementioned. This trend of increasing prices of construction land continued in 2016, with the exception of some local governments (such as Belgrade and Kragujevac) where, comparing to 2015, the price of construction land has been reduced to a certain extent, but only in the most developed zone. Big fluctuations of the published prices of construction land within a short period of time indicate that the sample, based on which local tax authorities calculated average market prices, is not representative and cause doubt as to whether the rules for the calculation of average market prices prescribed by the law are respected.

As a result of the aforementioned issues, market values of properties assessed by certified appraisers significantly differ from their market values calculated by using the average prices published by local tax authorities. Therefore, those taxpayers who evaluate real estate in their business records at fair value and those who use some other method of evaluation are in an unequal position.

The method of calculation of the property tax base for real estate classified in the business records of the taxpayer as assets held for sale in accordance with IFRS 5 (after expiration of the period in which they are exempted from prop-

erty tax) or as inventories, according to IAS 2, is unclear, taking into account the method of their valuation prescribed in the aforementioned standards. Namely, according to IFRS 5, non-current assets held for sale are initially measured at the lower of their carrying amount (purchase price) and fair value less costs to sell. Subsequent measurement requires adjustment to fair value, if the fair value is lower than the carrying value; or recognition of gains from the increase in fair value up to previously recognized impairment loss. The measurement method of real estate classified as inventories is similar to that previously described. As a result of the measurement of real estate according to IFRS 5 and IAS 2, they can be carried at fair value in one tax period, and at the value which is not equal to the fair value in the other.

The tax authorities have been given exclusive rights regarding the determination of the tax base of property transfer tax. Internally determined market prices unknown to taxpayers are being used in practice for the purposes of the determination of a tax base while the contractually determined price is often rejected without a clear explanation as to why such a price is not found to correspond to market price.

FIC RECOMMENDATIONS

- The provisions of Article 7 of the Law should be harmonized with the provisions of the Law on Accounting.
- Provisions of the Property Tax Law which determine the method of the calculation of property tax base using the zoning method should be revisited in order to avoid the negative consequences of the current regulations in the next fiscal years.
- In particular, it is recommended that the implementation of corrective factors in the determination of the market value of real estate be advised.
- It is advisable to institute a greater level of monitoring in the zoning of each municipality (be it at the level of the ministry or through a separate body) and organize the training of personnel in order to avoid situations in which neighbouring properties that are territorially spread out in different municipalities are taxed differently.
- It is recommended that local tax authorities be obliged, by the Law, to publish data on all real estate sales per zone, as well as data used for the calculation of average market prices.
- Prescribe in the Law the method of calculation of the property tax base of real estate classified as held for sale, or inventories, according to IFRS 5 and IAS 2, respectively. It is recommended that the property tax base of such real estate be calculated based on their fair value as assessed by a certified appraiser on the last day of the year preceding the year for which the property tax is calculated, regardless of whether the fair value is stated in the business records of the taxpayer or not. In case the fair value of real estate is not assessed by a certified appraiser, the tax base would be calculated using the average prices published by the local tax authorities.
- It is recommended that data by which the tax authorities determine property transfer tax be made available to the public, to ensure the transparency of work of tax authorities.
- Forming a working group consisting of members of the Foreign Investors Council and the relevant ministry to devise an effective set of amendments is recommended.

E. TAX PROCEDURE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amending Article 80 of the Law on State Administration to remove the legal uncertainty of whether the opinions of the ministries are legally binding if so prescribed by a separate law. In addition, introducing an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance.	2014			√
Introducing provisions to the PTA Law which would govern liability of competent persons and adequate penalties for failure to issue binding opinions within the 30-day deadline prescribed by Article 80 of the Law on State Administration.	2014			√
Amending the PTA Law to allow taxpayers to file the amended tax returns an unlimited number of times, in connection with tax returns that are filed electronically.	2014			√
Abolishing the provision of the PTA Law by which the Business Registers Agency is prohibited to erase a taxpayer from the register, register status changes or amend information for the duration of a tax audit.	2014			√
Regulating the provisions of the Criminal Code concerning tax crimes in more detail to allow taking into account the size of the legal entity and the volume of taxable activities.	2014			√
The introduction of a presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the statutory deadlines.	2011			√
Special tax departments should be established within the Administrative Court with judges exposed to more training with regard to the understanding of tax issues.	2011			√
Abolishing provisions that require banks to control settlement of tax liabilities. Amending provisions requiring banks to notify the Tax Administration of incoming and outgoing payments in a way that would limit such a requirement only to cases of a tax audit, upon request of the Tax Administration.	2014			√
Until the time of complete transition to the electronic filing of tax returns, enable taxpayers who wish to file tax returns electronically to do so.	2014			√

CURRENT SITUATION

The regulatory framework for tax procedure in Serbia is governed by three principal laws:

- The Law on Tax Procedure and Tax Administration, RS Official Gazette No 80/2002, last amended in March 2016, (PTA Law);
- The Law on General Administrative Procedure, RS Official Gazette No 33/97, last amended in May 2010, (GAP Law);
- The Law on Administrative Disputes, RS Official Gazette No 111/2009, (AD Law).

The tax procedure is a special type of administrative procedure governed primarily by the PTA Law which regulates in detail the organization and functioning of the Tax Administration, as well as the procedures for the assessment, control and collection of tax. 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 was amended twice since the last issue of the White Book- at the end of 2015 and beginning 2016. The most important amendment to the PTA Law from December 2015 refers to the possibility of deferred payment of outstanding tax debts, which are not exceeding RSD 2,000,000, and the write off of interest due until entering into force of these amendments. The amendments from 2016 are aimed at the increase in efficiency of tax audit and tax collection, the deadlines for the transition to electronic filing are changed (postponed), the order of settlement of outstanding taxes, interest and collection expenses has changed etc.

Due to these changes, the Ministry of Finance has issued/ amended several rulebooks.

POSITIVE DEVELOPMENTS

There were no significant changes in the legal framework in 2015 and 2016.

REMAINING ISSUES

- The existing regulatory framework governing tax procedure still does not provide sufficient protection to taxpayers against discretionary decisions of tax authorities.
- Rules on tax-related criminal offences still do not take into consideration the size and volume of taxable activities of taxpayers and apply the same threshold to both small-sized and the largest companies in the Republic of Serbia.
- More than often tax inspectors do not apply the substance over form principle in good faith. This fact regularly leads to highly unfavourable decisions for the tax payers, which are practically impossible to change;
- The tax authorities routinely fail to comply with 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. Along with frequent changes in tax laws and insufficiently clear legal framework, this issue contributes to legal uncertainty and uncertainty of doing business in Serbia.
- Limiting the filing of amended tax returns to two times is not justified. In fact, in most cases the mistakes are made unintentionally, especially in case of large taxpayers who have large-scale and complex internal organization systems. Given that a taxpayer cannot amend a tax return in the event of a tax audit for a specific period, the abolition of the aforementioned limitation would not create an additional burden for the Tax Administration, while it would contribute to more efficient tax collection.
- In the period starting from the receipt of the Tax Administration's notification about the planned tax audit of the taxpayer until receipt of the notification that the audit has been completed the Business Registers Agency cannot erase a taxpayer from the register, register status changes or amend information referring to a shareholder, name, seat, share capital or form of organization. As there is no statutory limit for the tax audit duration, this provision may cause numerous issues in practice for reorganizations, capital increase, withdrawal or expulsion of a shareholder, etc. In addition, considering that certain tax liabilities become due regardless of whether a company is actually doing business (e.g. mandatory social security contributions, municipal taxes), the imprecision of this provision may prohibit termination of a company due to initiation of a tax audit, creating additional tax liability for the company regardless of the results of the audit, constituting de facto a form of an arbitrary punishment of taxpayers without any grounds.
- The PTA Law should be aligned with provisions of new Law on Inspection Supervision ("LIS"). The LIS provides that inspectors are required to act not only in order to find illegal activities and penalize entities that violate the law, but also to prevent irregularities and provide advice to controlled entities in order to minimize risks from illegal acts.
- The competent authority that decides upon the appeals of taxpayers against the first instance decision is the Tax Administration, same as in the first instance. This does not provide certainty to the taxpayer that the decision of the second instance will be unprejudiced and that the second instance will act as an independent authority that will consider the arguments of the first instance and the arguments of the taxpayer with the same level of attention.
- Serbian courts do not have a sufficient level of specialization and expertise to decide on tax disputes. The

time needed to issue a court decision is too long - typically a tax-related court case takes more than one year to resolve. Considering that the procedure before the court does not postpone tax liability, i.e. that the taxpayer still has to settle the disputed tax previously, even if he eventually wins the case, the litigation and legal costs, inflation and fluctuations of the foreign exchange rate usually result in taxpayers receiving refund of the disputed tax of a realistically lower value. In addition, courts almost never decide on the merits of the case. They usually remand the case back to the Tax Authority or simply confirm the decision without giving sufficient reasoning for such a ruling. Under these circumstances, judicial control of the Tax Administration's decisions is completely meaningless, as it fails to properly protect taxpayers.

- Serbia did not yet sign an Intergovernmental Agreement with the U.S. related to the Foreign Account Tax Compliance Act (FATCA) and there is no publicly available information about the intentions of the Serbian Ministry of Finance concerning current compliance with FATCA reporting requirements by Serbian financial institutions.

FIC RECOMMENDATIONS

- Amending Article 80 of the Law on State Administration to eliminate legal uncertainty with regard to whether the opinions of the ministries are legally binding if so prescribed by a separate law. In addition, introducing an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance; i.e. oblige the Tax Administration to provide answers to questions. Amending the PTA Law in a way that the opinions of the Tax Administration sent by email are binding for the Tax Administration.
- Amending Art147, para 1 of the PTA Law, as to read that an appeal suspends the tax collection;
- Introducing provisions to the PTA Law which would govern liability of competent persons and adequate penalties for failure to issue binding opinions within the 30-day deadline prescribed by Article 80 of the Law on State Administration.
- Defining the responsibility of persons in the Tax Administration, who do not comply in their work with the laws, i.e. decisions of the second instance authorities and courts.
- Amending the PTA Law to allow taxpayers to file the amended tax returns an unlimited number of times.
- Abolishing the provision of the PTA Law which prohibits the Business Registers Agency from erasing a taxpayer from the register, registering status changes or amending information for the duration of a tax audit.
- Regulating the provisions of the Criminal Code concerning tax crimes in more detail to allow taking into account the size of the legal entity and the volume of taxable activities.
- The introduction of a statutory deadline for tax audit duration, and presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the deadline, both for the Tax Administration and the Ministry of Finance.
- Provisions that regulate preventive tax audits and advisory activities of tax inspectors should be introduced into the PTA Law in order to align the provisions of PTA Law with the LIS.
- The authority to decide upon the appeals against the first instance decisions of the Tax Administration should be transferred to the Ministry of Finance to provide more certainty to taxpayers.

- Special tax departments should be established within the Administrative Court with judges exposed to more training to gain better understanding of tax issues.
- Before full transition to electronic filing of tax returns, enable taxpayers who wish to file tax returns electronically to do so.
- The Ministry of Finance should issue a unified rulebook for every tax, and instructions, manuals and similar acts adopted in accordance with the Act on Tax Procedure and Tax Administration, which concern the application of tax laws, should be made availabe publicly.
- The Serbian Ministry of Finance and the Tax Administration should intensify their activities in implementing the FATCA agreement and cooperate more closely with Serbian financial institutions in this process.
- As a general remark, the laws should be adopted and/or amended in the regular procedure and not in a urgent procedure, as to enable the very important public debate.

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 holds that reforms need to be continued by ensuring consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues.	2013			√
The FIC holds that the draft Law on Fees for Use of Public Resources should be completed with a comprehensive analysis and alignment with solutions and tendencies of sectorial laws. The original concept of integrating all fees, and introducing new ones only under this law, proposed and implemented by the Ministry of Finance, should not be abandoned.	2013			√
Continuation of the reform of parafiscal levies by reviewing all other parafiscal levies which place a financial burden on legal entities, and for which they do not get any corresponding benefits in return, in terms of specific rights, services or resources.	2015			√
Adoption of the Law on Fees for Use of Public Goods.	2014			√
Apply the business signage tax ceiling to the obligation of one taxpayer, regardless of the number of facilities with displayed business signs that he has in the territory of one municipality.	2014			√
The FIC believes that any new tax burden to businesses and individuals in Serbia should be pre-announced to taxpayers, and should be introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies or other ministries.	2013			√

CURRENT SITUATION

According to the World Bank's Doing Business 2016 ranking, Serbia is ranked 59th out of 189 economies. In the area of tax payment, Serbia is ranked 143rd, which is an improvement compared to Doing Business 2015, in which Serbia was ranked 165th. Payment of taxes, and dealing with construction permits, are still the two worst-ranked areas.

The ranking of tax payment is based on three indicators: 1) number of tax payments per year; 2) time required, as total number of hours per year; and 3) the total tax rate as a percentage of profit.

Progress in the area of tax payment has been made mainly due to the introduction of an electronic system of filing of tax returns and payment of value-added tax and social security contributions, as well as abolishing construction land usage fee. The FIC is of the view that the tax system is suffering negative reviews due, amongst other things, to the existence of a number of parafiscal levies in parallel with existing tax forms in Serbia, which increases the effective burden on the economy under conditions that are often non-transparent and unfair. As a kind of public levy, parafiscal levies actually impose an obligation which does not provide (at all or in adequate proportion) a specific service, right, or good in return. An additional problem is that the provisions governing this area are not unified, but rather are dispersed throughout various laws and secondary pieces of legislation governing different legal areas.

The authorities recognize this fact, which is why parafiscal reform was carried out in late 2012, abolishing 138 parafiscal levies. The reform also envisaged the adoption of the Law on Fees for the Use of Public Resources. In fact, the Ministry of Finance prepared a draft Law which was the subject of a public debate concluded in March 2013, in which the FIC actively participated. However, the reform subsequently entered a period of stagnation in which no further steps were taken to adopt this Law, abolish or review particular parafiscal levies, or seek solutions to curb the practice of uncontrolled parafiscal levying. The last initiative of the Ministry of Finance has been the preparation of the draft of the new Law on Financing of Local Governments.

POSITIVE DEVELOPMENTS

The draft of the new Law on Financing of Local Governments has been prepared by the Ministry of Finance, which decreases the number of non-tax and parafiscal levies. However, the next step in this field must be the adoption of this law, and its adequate implementation as well.

REMAINING ISSUES

In practice, we continue to witness the introduction of new parafiscal levies through various non-tax regulations, while existing parafiscal levies have not yet been abolished.

According to NALED and USAID, businesses in 2015 were paying 384 non-tax levies, of which 247 were parafiscal levies, while in 2016, in accordance with data available in the registry of non-tax and parafiscal levies of NALED, this number has been increased to 403.

Bearing this in mind, the adoption of the Law on Fees is a priority for the reform of parafiscal levies.

A particular problem that we deem should be emphasized concerns the local utility tax for business signs display (business signage tax). Business signage tax costs for remaining taxpayers significantly increased since the regime for the payment of the business signage tax changed. The overall liability of a business entity for business signage reached significant amounts, inter alia, due to diverse practices amongst local governments.

Furthermore, the FIC has warned of the growing issue of the unequal implementation of tax regulations and inconsistency of tax laws and by-laws (e.g. the Tax Administration does not recognize documented operating expenses incurred in relation to business activity not listed in the Articles of Association or other relevant acts of a company, despite the fact that such an obligation is not envisaged under the Company Law and that the respective practice is not in line with tax regulations). Additionally, issues also occur where tax authorities act in accordance with mandatory acts pertaining to the implementation of tax regulations, (explanations, opinions, instructions, guidelines, etc.), issued by the minister responsible for finance, or another body authorized by the minister. In relation to the aforementioned, it is unclear whether the opinions issued by Fiscal System Department pertaining to the implementation of international accounting standards, which have an influence on the interpretation of tax regulations, are mandatory.

One of the remarks in the World Bank's Doing Business 2016 ranking was that the amount of property tax and eco tax

was increased in Serbia. Eco tax is to be paid for: (i) the use of residential and business buildings, apartments and business premises for habitation or conducting business activity, including the use of land in order to conduct business activity; (ii) conducting business activity that influences the environment; (iii) transport of oil and oil derivatives, as well as raw materials and products, semi-finished products, and chemical and other dangerous substances from the industry or for the industry in the territory of the local government with the status of endangered environment in the area of importance for the Republic of Serbia. The Law on the Protection of the Environment delegates to local governments the right to determine the amount of eco tax in accordance with the Rulebook on Criteria for Determining and the Maximum Allowed Amount of Eco Tax.

The FIC reiterates that the introduction of new taxes and duties, or increasing existing ones, during the fiscal year, without prior notice to taxpayers that would enable them to adapt their business to the new fiscal burden, adversely affects the predictability of the business environment and the operating results of companies.

FIC RECOMMENDATIONS

- The FIC holds that reforms need to be continued by ensuring a consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues.
- The FIC holds that the draft Law on Fees for the Use of Public Resources should be completed with a comprehensive analysis and alignment with solutions and tendencies of sectorial laws. The original concept of integrating all fees, and introducing new ones only under this law, proposed and implemented by the Ministry of Finance, should not be abandoned.
- Continuation of the reform of parafiscal levies by reviewing all other parafiscal levies which place a financial burden on legal entities, and for which they do not get any corresponding benefits in return, in terms of specific rights, services, or resources.
- Adoption of the Law on Fees for the Use of Public Goods and the Law on the Financing of Local Governments.
- Apply the business signage tax ceiling to the obligation of one taxpayer, regardless of the number of facilities with displayed business signs that they have in the territory of any one municipality or whether they have more business facilities on other municipality territories in the territory of Serbia (banks, insurance companies, telecom companies, etc.)
- The FIC believes that any new tax burden, or increase to the existing one, to businesses and individuals in Serbia should be pre-announced to taxpayers, and should be introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies, or other ministries.
- The FIC is of the opinion that competence for resolving second-instance proceedings should be assigned to the Ministry of Finance. Also, the specialization of the Administrative Court for tax matters, or at least the establishment of a special department within the Administrative Court with sole jurisdiction over tax disputes, would be of great benefit.

ENVIRONMENTAL REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Support new and accelerate existing procedures for IPPC waste management licensing, and the training of employees in local authorities regarding the licensing process.	2011		√	
Support the establishment of new and development of existing companies engaged in the production and/or services in the field of environmental protection, and in the production of energy from alternative sources.	2009		√	
The introduction of economic incentives for investment in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, eco-innovation, etc.).	2010		√	
Encourage the establishment of partnerships between public and private participants, together with local authorities to help the implementation of the Government's waste management policy, which is a necessary precondition for the establishment of an appropriate program that will provide a framework for further investments and growth in the private sector.	2010		√	
Reinforce cooperation with operators licensed for thermal treatment of waste to solve the issue of permanent waste disposal and significantly reduce quantities deposited in landfills.	2014		√	
Stimulate investments into treatment of animal waste and ensure adequate solutions for such waste.	2015			√
Continue developing local and regional waste management plans.	2009		√	

CURRENT SITUATION

Compared to 2015, this year saw few new developments and progress in the field of environmental protection. The process of amending the Law on Environmental Protection, the Law on Waste Management, and the Law on Nature Protection, launched in 2013, was finally completed in late February 2016, with all of these laws now largely harmonized with EU's environmental protection Directives.

Amendments to the Law on Environmental Protection stipulate the founding of a Green Fund of the Republic of Serbia as a budget financed fund, with the purpose of recording resources intended to finance the preparation of implementation and development of programs, projects, and other activities in the scope of preservation, sustainable use, protection, and improvement of the environment. The founding of this Fund will significantly incentivize recycling and the use of waste as secondary raw material, for energy production and other similar purposes and projects. Furthermore, the responsibility of companies and individuals for rehabilitation and remediation has been tightened.

Changes and amendments to the Law on Waste Management enables determining the end-of-waste status if waste is used for purposes such as recycling or other re-use operations. Furthermore, waste brokers' operations have been regulated. Also, facilities with integrated licences have been enabled to import waste for re-use for own purposes. Sorting of communal waste from households is also stipulated, as well as the obligation of local authorities to provide adequate conditions for the collection of all types of waste, not later than three years after the date of these amendments entering into force, i.e. 1st of March 2019.

Packaging waste is collected pursuant to the Waste Management Law and the Law on Packaging and Packaging Waste. However, there is no system-wide solution for the disposal of pesticide packaging waste in Serbia.

The Rulebook on Methods and Procedures for Waste Tire Disposal Management stipulates the recycling of at least 80% and the use for energy purpose of not more than 20% of the total quantity of collected waste tires over the previous year. This puts users of this type of waste in an unequal

position. Operators do not have any information, nor are they allowed to have any information according to competition rules, about the quantity of waste tires used for energy recovery by another operator. This also means that none of them knows if the target stipulated by the Rulebook has been or will be reached during the year.

Additionally, the current incentives for the re-use of waste as alternative raw material (EUR 160/t), or for generating energy (EUR 30/t), are not based on actual costs of processing these products once they become waste, which is the primary purpose of these incentives. The unjustifiably big difference between incentives for the different types of waste treatment has led to:

- disruption in the waste oil and waste tire market, depriving operators licensed for thermal treatment of waste oil and waste tires for energy purposes of permanent and stable sources of alternative fuels, in what contributed to the development of a black market in energy sources;
- immense, unnecessary waste of state funds, of a minimum of EUR 10 million in the case of tires, considering that the entire quantity can be treated in cement plants at no additional cost or at a significantly lower cost. All of the above would not lead to a loss of tire collection jobs.

POSITIVE DEVELOPMENTS

The founding of the Green Fund of the Republic of Serbia, as one of the key mechanisms in financing programs and projects in the area of environmental protection, has enabled the financing of projects and subsidies aimed at environmental protection; while significant investments into large infrastructure projects in the field of waste management and waste water management infrastructure have also been announced. Procedures to forge public-private partnerships for communal waste management and its permanent disposal have commenced as well. Additionally, legal conditions for sorting household communal waste and the obligations of local communities to create conditions for the collection and separation of such waste have been created; while legal entities owning an integrated permit for the operation of facilities have been enabled to import non-hazardous waste for re-use for own purposes, something which will significantly facilitate a balanced use of waste as well as increase competitiveness on the market.

The realization of the "Improvement of hazardous waste management system in the Republic of Serbia" twinning project was also announced. The general goal of this project is to help Serbia comply with EU environmental protection legislation, through institutional capacity building and improvement of infrastructure in the area of environmental protection. The purpose of the project is to develop and improve the waste management system, by finalizing legislation, strategic planning, and implementing the framework for managing special hazardous waste flows in accordance with EU standards and Serbian legislation.

REMAINING ISSUES

- A legal framework for the waste trade is not in place and the waste market is underdeveloped.
- The monitoring and reporting system is not sufficiently developed to enable the completion of the national and local register of pollution sources.
- There is no system of incentives for investing in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, environmental investments, recycling, etc.).
- No thermal treatment of hazardous waste is being done and such waste is not being collected for reasons such as a lack of permits and a lack of appropriate preparation lines for this type of waste.
- A lack of adequate means for the treatment and proper disposal of animal waste is a huge problem throughout Serbia.

FIC RECOMMENDATIONS

- Support the establishment of new and development of existing companies, engaged in production and/or services in the field of environmental protection, and in the production of energy from alternative sources.
- The introduction of economic incentives for investment in environmental protection (clean production, pollution

reduction, energy efficiency, waste reduction, eco-innovation, etc.)

- Encourage the establishment of partnerships between public and private stakeholders, together with local authorities, to help the implementation of the Government's waste management policy, which is a necessary precondition for the establishment of an appropriate programme that will provide a framework for further investments and growth in the private sector.
- Reinforce cooperation with operators licensed for thermal treatment of waste to solve the issue of permanent waste disposal, thereby significantly reducing quantities deposited in landfills.
- Stimulate investments into the treatment of animal waste and ensure adequate solutions for such waste.
- Stimulate local communities to provide conditions for the collection and selection of communal waste from households.
- Permanent education of the population in the field of waste selection and environmental protection.
- Continue developing local and regional waste management plans.
- Continue introducing by-laws in order to secure a proper implementation of changes to regulations in the field of environmental protection.

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SECTOR SPECIFIC

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FOOD AND AGRICULTURE

A. FOOD SAFETY

1. FOOD SAFETY LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Establish the Expert Council for Risk Assessment in the Field of Food Safety in accordance with Article 23 of the Law.	2015			√
Base the food safety strategy on risk analysis. Classify importers based on the risk analysis.	2015			√
Enable the work of all departments of the National Reference Laboratory and create the conditions for the Laboratory to carry out all of its statutory activities.	2015			√
Facilitate the acceptance of certificates of foreign accredited laboratories.	2015			√
Clearly define the difference between the costs of analysis and super-analysis of samples referred to in Article 70 and the fee for laboratory analyses referred to in Article 71, or, if there is no relevant difference, amend the parts which create the confusion.	2014			√
Clearly define super-analysis and define which authority should perform super-analyses (if a super-analysis is done by another certified laboratory, how is it possible for the results to be different?).	2014			√
Clearly define the term "special control", mentioned in Article 70, and define whether a special control differs from the already defined "official control".	2014			√
Clearly define the responsibilities under Article 12.	2014			√
Article 30 should clearly define what is meant by proof of food safety (analysis in accredited laboratories) and frequency of analyses.	2014			√
Fully harmonize the Rulebook on Declaration and Labelling of Packed Foods with EU Regulation 1169/2013.	2015			√
Pass the Rulebook on the Criteria for General Food Safety at the Level of Food Retailers.	2014			√
The Rulebook on the Quality of Minced Meat, Semi-finished Products and Meat Products needs to be amended and harmonized with the relevant Rulebook on the Quality of Livestock, Poultry and Game Meat and the Rulebook on the Slaughter of Pigs and Pork Categorization.	2014		√	

CURRENT SITUATION

The Food Safety Law was adopted in 2009 and jurisdiction in the area of inspection was split between two relevant ministries: the Ministry of Agriculture and Environmental Protection, whose phytosanitary, veterinary, and agricultural inspectorates are responsible for conducting official controls of food of animal and plant origin in primary production, processing, trade, import, transit, and export; and the Ministry of Health, whose sanitary inspectorate is responsible for controlling new types of food, dietary products, additives, flavourings, non-animal-derived enzymatic preparations, and for all types of potable water.

In May 2013, the Ministry of Agriculture and Environmental Protection announced that the Food Safety Law (hereinafter: the Law) would be amended to place the control of food and food products of non-animal origin under the jurisdiction of the sanitary inspectorate of the Ministry of Health, while the veterinary inspectorate would remain responsible for control of foodstuffs of animal origin. Furthermore, it was announced that the Directorate of the National Reference Laboratories would not be a part of the Ministry of Agriculture, but an independent authority in accordance with EU practices. However, these announced amendments to the Law have yet to be implemented. In May 2015, the same ministry announced the finalization of the new Food Safety Law, scheduled to enter Parliament by the end of the year at the latest. The Ministry said changes would only be made to those provisions that have yet to be fully harmonized with EU legislation, the end effect of which would further contribute to the improvement of food safety monitoring in Serbia.

By the end of September 2016, however, the announced changes never took place.

Although the Food Safety Law was adopted in 2009, it has yet to be fully implemented. Article 18 of the Law prescribes the founding of the Directorate for the National Reference Laboratory (NRL) for laboratory testing activities and related expert activities in the food chain. The duties of the National Reference Laboratory, envisaged by the Law, include activities in the fields of food safety, animal health, plant health, agricultural and decorative plant seedlings, residues, milk, and the plant gene bank.

The NRL opened on 9 March 2015 and its work is divided into the following sections: the Phytosanitary Laboratory; the Laboratory for Food and Animal Feed and Milk Quality Testing; the Laboratory for Physical and Chemical Testing of Food and Testing of Veterinary Drug Residues, Pesticides, and Other Harmful Materials in Food and Animal Feed; the Seed Laboratory with the Plant Gene Bank; and the Department of Organic Production. However, although some testing began in mid-February 2015 in the Phytosanitary and Seed Laboratories, the NRL is still not conducting all the activities envisaged under the Law (e.g. the Phytosanitary Laboratory currently only analyses potatoes). This means, among other things, that the required conditions for risk analysis, envisaged under the Law, have not been met. The NRL's Plant Gene Bank started its activity, and the Ministry of Agriculture and Environmental Protection announced that it will fully equip the Laboratory for Physical and Chemical Testing and the Laboratory for Milk by the beginning of next year, something hugely important for assuring food and milk safety and quality. Still, despite these announcements by the relevant institutions, the pace at which the Law is currently being implemented is not satisfactory. The causes preventing the National Laboratory from carrying out all its statutory duties must be identified and eliminated. Thus, the situation here is exactly the same, i.e. at the end of May 2016 announced changes are yet to be in force.

Furthermore, Article 23 of the Law envisages the formation of an independent Expert Council for Risk Assessment in the Field of Food Safety. In May 2013, the Ministry of Agriculture announced that 15 experts would be appointed to this Council by mid-June 2013 at the latest to monitor food safety within nine different committees and warn the appropriate authorities of any irregularities. There has been no progress on this issue to date. Instead of the current approach to testing food safety, which is based on testing finished products, the production process control should be based on risk assessment. As the activities of the Council include improvement of and coordination in the application of risk assessment methods, the absence of the Council is a major obstacle to the risk analysis envisaged under the Law. Under the current approach, inspectors make decisions on sampling and testing products (both finished products and those intended for further processing) and it is not uncommon for the goods of an importer adhering to regulations to be held, which impacts product freshness, overall costs, and makes imported products less competitive than domestic products. Risk analysis would facilitate the classification of food business operators into low risk and high risk, which, on the one hand, would speed up customs clearance and placement on the market of low-risk goods, and importers assessed as low-risk could save money and time through fast-track procedures; and, on the other hand, enable the allocation of inspection resources to the testing of risky products. Risk analysis would reduce the workload of the inspectorates and relieve pressure on their limited resources. Furthermore, Article 38 of the Law and Article 8 of the Rulebook on the Manner of the Establishment and Organization of a Rapid Alert System for Food and Feed, stipulates that the Expert Council must also participate in the rapid alert system. Specifically, the Law stipulates that the line minister for public health affairs issues a licence for the placement of new food products on the market, of genetically modified food and genetically modified animal feed on the basis of the prior opinion of the Expert Council. These are all additional and pressing reasons for the immediate formation of the Council and for bringing the activity of the National Reference Laboratory to its full capacity.

Another important issue is food and feed safety monitoring as a mechanism for the systematic control of pollutants in food and feed at all stages of production, processing, and marketing. Although the provisions of the law governing the corresponding programme have been in force since 1 January 2009, their implementation has yet to begin.

A measure that could additionally contribute to improving the general situation in the field of food safety is the formation of a Food Safety Agency, the equivalent of which exists in all EU Member States as an independent authority with overarching responsibilities in the field of food safety as part of the European Food Safety Agency (EFSA), which is responsible for exchanging information of importance for controlling the content and quality of food. This agency is not envisaged under Serbian legislation.

A working group was formed within the Ministry of Agriculture in April 2015 with the aim ensuring the rules on the maximum allowable residues of pesticides in food and feed and on food and feed for which the maximum allowable amounts of residues of plant protection are determined, Annex 4 – maximum permitted levels of certain contaminants in food and feed of plant and animal origin, comply with current EC Regulation No 1881/2006. The working group, however, determined that these requested changes and harmonization with the aforesaid EU regulation is not necessary, and so producers, importers, and exporters of food in the Republic of Serbia still face problems in business with products for which there are still different test parameters in place. The most common problem lies in the importing of raw materials for food production and maximum limits for heavy metals.

POSITIVE DEVELOPMENTS

Since 31 December 2015 the working group formed as part of the Serbian Veterinary Administration has applied the Rulebook on the Quality of Minced Meat, Semi-Finished Products and Meat Products having harmonized it with the applicable legislation (RS Official Gazette No 94/2015 and 104/2015).

REMAINING ISSUES

Under Article 70 of the Law, the costs of analysis and super-analysis of all samples must be borne by the party from which the sample was taken, if it is found in the final procedure that the sample does not conform to prescribed requirements. If a sample conforms to the prescribed requirements, the costs of laboratory analyses and super-analyses are covered by funds allocated by the budget of the Republic of Serbia. Furthermore, food or feed business operators whose products are sampled and analysed are entitled to an additional expert opinion (super-analysis). However, this does not delay the enforcement of emergency measures in case of an emergency. Furthermore, under Article 71 of the Law, food and feed business operators must pay a fee for laboratory analyses of samples taken in official controls, as well as for official controls carried out in case the result of such analysis is unfavourable, unless otherwise prescribed by the Law. Revenues generated by the state from this fee are kept in a separate account in the national budget. The amount of the fee is set by the Government.

However, in practice, only importers pay for analyses. Thus, food and raw material importers in the food industry face hidden parafiscal levies. Although the state is obliged to refund them for the costs of food and feed analyses if results are favourable, this does not happen in practice because there is no designated institution to which companies could submit requests for the refund of the costs of analysis. Only one such request was submitted to the Plant Protection Administration of the Ministry of Agriculture between 2009 and the present day, and this request was rejected.

Furthermore, the Law defines "official sample", not "samples", and since the latter is predominately used throughout the Law, it is not fully clear whether these two terms have the same meaning. There is also no definition of "super-analysis", mentioned in Article 70, apart from the description that it is an "additional expert opinion". Finally, it is unclear whether the fee for laboratory analyses of samples, under Article 71, is the same as the costs of the analysis and super-analysis in Article 70. Consequently, the exact extent of the costs of the analysis to food and animal feed business operators is unclear.

Article 12 defines the food safety-related responsibilities of the state administration, with a list of these authorities. However, there is an overlapping of duties and the division of responsibilities is unclear.

Article 31 states that food and feed business operators are required to ensure that food or feed meets the requirements prescribed by this Law and other special regulations, and to prove compliance with such requirements in all stages of food and feed production, processing, and circulation. There is no clear definition of what is meant by proof of food safety, nor is frequency of analyses specified.

In addition, there are several inconsistencies with respect to the relevant By-Laws.

There were problems in the interpretation of the Rulebook on Food Declaration, Labelling and Advertising in 2015. The Phytosanitary Inspectorate began interpreting the Rulebook differently. In this regard, inspectors began holding importers' trucks at customs and issuing decisions banning the import and placement on the market of these products more frequently than was the case previously. After importers and business associations reacted, the Ministry of Agriculture and Environmental Protection issued an opinion on the interpretation of the Rulebook in March 2015. However, to avoid further problems with interpretation, the Rulebook has to be amended. (More on this in the section entitled "Quality Assurance, Declarations on Food Products, Nutrition and Health Claims").

A general rulebook on food safety criteria in retail stores has still not been passed. The rulebook currently in use treats food retailers as food producers, which results in additional costs for retailers (hygienic and sanitary prerequisites, preparation of premises and sampling units).

FIC RECOMMENDATIONS

- Establish the Expert Council for Risk Assessment in the Field of Food Safety in accordance with Article 23 of the Law.
- Base food safety strategy on risk analysis. Classify importers based on risk analysis.
- Enable the work of all departments of the National Reference Laboratory and create the conditions under which the Laboratory can carry out all its statutory activities.
- Facilitate the acceptance of certificates of foreign accredited laboratories.
- Clearly define the difference between the costs of analysis and super-analysis of samples referred to in Article 70 and the fee for laboratory analyses referred to in Article 71; or, if there is no relevant difference, amend those parts which create the confusion.
- Clearly define super-analysis and define which authority should perform super-analyses (if a super-analysis is done by another certified laboratory, how is it possible for the results to be different?).
- Clearly define the term "special control", mentioned in Article 70, and define whether a special control differs from the already defined "official control".
- Clearly define the responsibilities under Article 12.
- Article 30 should clearly define what is meant by proof of food safety (analysis in accredited laboratories) and frequency of analyses.
- Fully harmonize the Rulebook on Food Declaration, Labelling and Advertising with EU Regulation 1169/2013.
- Pass the Rulebook on Criteria for General Food Safety at the Level of Food Retailers.

2. SANITARY AND PHYTOSANITARY INSPECTIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to create a stable business environment, certain changes must be implemented in order to increase predictability:				
The consistent application of standard operating procedures by the inspection services in terms of costs, time frames, and mechanisms implemented on the ground.	2011			√
Discretionary rights of inspections to make arbitrary decisions on the number of samples taken, sampling procedures, and costs of laboratory analyses should not be allowed. As a consequence of this situation, the number of samples ranges from 10 to 30 among the different inspections, and differs even within the same inspection, depending on the inspector on duty, because decisions on these issues are often left to the discretion of the individual inspectors.	2011		√	
Inspectors should not have the discretionary right to determine the types of laboratory tests to be performed. Prices are standardized among laboratories, but the number and type of tests affect the price.	2011			√
Improving border inspection control, since importers are unable to predict and plan their business operations in Serbia, as there is no fixed time frame for completing the border inspection and validation formalities. This time frame varies based on factors unknown to the importer. The length of time between the unloading of a shipment and the release of the goods into circulation ranges anywhere between 3 and 20 days, depending on whether the inspector samples goods for analysis or not; then at the laboratory the inspectors sent the samples to; and various other factors.	2012			√
The importer should be protected since he bears the financial burden of possible loss or destruction, as samples taken from original packages often damage the goods and their packaging.	2014			√
Barriers to trade should be overcome and the principle of free movement of goods should be respected. Currently, it is impossible to predict which goods are going to be held up for quality inspection; consequently, importers cannot plan the time of release of the goods which in turn affects their plans for monthly volumes, promo activities, etc.	2013		√	
It is necessary to clearly separate the fee for the import for laboratory analysis, which would provide a fixed fee, not variable and dependent on the choice of inspectors.	2015			√

CURRENT SITUATION

Responsibilities of the Phytosanitary Inspectorate and the Sanitary Inspectorate in the field of food safety are defined by the Law on Food Safety (RS Official Gazette No 41/2009) (hereinafter: Law). The Phytosanitary Inspectorate, part of the Ministry of Agriculture and Environmental Protection, is responsible for food of plant origin in the phases of primary production, imports and transit, and exports, as well as for food of mixed origin in the phases of imports and transit along with border veterinary inspection service. The Sanitary Inspectorate, part of the Ministry of Health, is responsible for the control of new foods, dietary products, and food for children - infant milk substitutes, dietary supplements, and salt for human con-

sumption, as well as for the production of additives, flavorings, non-animal enzyme products, and non-animal origin supplements, and drinking water of all kinds.

The work of inspection services is also regulated by the Law on Inspection Oversight, which entered into force in April 2015; in application since April 2016. Inspection services, whose regulations and practices are specific and complex, including the phytosanitary inspection service, are developing the models of the application of this law in their sectors. Harmonization of sectorial regulations with the Law should be completed by April 2017.

POSITIVE DEVELOPMENTS

There has been certain progress in the work of the Phytosanitary Inspectorate in terms of the number of products sampled and the sampling frequency, which leads to the conclusion that the monitoring process has begun in a way.

At the end of 2013 and during 2014, there were significant changes in terms of the quality control of wine and other alcoholic beverages. The validity period of a laboratory certificate was set at six months for each lot, along with specification about the types of analysis required for getting an export license and control number. A database of all legal entities engaged in the production of wine and a list of relevant inspectors and authorized laboratories was created.

Based on experiences gained during the implementation of the Food Safety Law adopted in 2009, and on identified deficiencies of the Law, the draft of the new Law was prepared which should improve control of food and increase the level of food safety in a unique way. Public debate on the Draft Law on Amendments and Supplements to the Law on Food Safety was realized in the period from 15 October to 3 November 2015.

The Ministry of Agriculture and Environmental Protection established a working group for amending the Rulebook on the Declaration, Labeling, and Advertising of Food (RS Official Gazette No 85/2013 and 101/2013). The working group also prepared a Draft of the Regulation which has not yet been adopted.

REMAINING ISSUES

One of the causes of problems in the work of phytosanitary and sanitary inspectorates is a lack of risk analysis envisaged under the Law on Food Safety. Risk analysis should speed up the customs clearance process and the process of release of goods; it should also reduce the workload of inspectorates and relieve the pressure on their limited resources. On the other hand, importers assessed as "low- risk" would also benefit from the faster issuance of documents by the savings in money and time. At this time, inspectors themselves determine when and which goods should be sampled. This practice results in a high number of sampled goods; in the same SKU sampling within a short period of time; in the sampling of goods before the expiry of the period of six months (period of the validity of laboratory analysis); and in the seizure of goods in quarantine during the period of analysis.

The general impression is that the period of time needed for the issuing of a decision for customs clearance of goods by an authorized inspector was prolonged compared to the previous year. Deadlines for the issuing of decisions (results of analysis) are violated, and an analysis of a sample is known to arrive at a time when the shelf life of the product has already expired. Allegedly, the cause for this negative tendency is a lack of human recourses.

Companies bear the high costs of sampling and analysis of imported goods. Article 70 of the Law on Food Safety is not being applied – this article determines that the costs of analyses and super analyses of all samples shall be borne by the party from which the sample was taken if it is determined that the sample does not comply with the prescribed characteristics. If the sample complies with the prescribed characteristic, costs of laboratory analyses and super analyses should be borne by the budget of the Republic of Serbia. Nevertheless, inspectors require that companies indicate that the costs would be borne by the importer. Their interpretation of Article 70 of the Law on Food Safety is that it applies only to raw materials.

A particular challenge is encountered in beer imports and sampling, since only an analysis conducted by domestic laboratories of each lot/batch number, provided by the importer, is regarded as sufficient evidence of product safety. This is not in accordance with the Guidelines on the Official Sampling of Food and Animal Feed of Plant and Mixed Origin during Import issued by the Ministry of Agriculture and Environmental Protection, Directorate of Plant Protection.

The Rulebook on Declaration, Labeling, and Advertising of Food was enacted in 2013 with application deferred until

April 2015. In January 2015, the Phytosanitary Inspectorate changed the way of interpretation of the Rulebook in terms of defining what constitutes a transport box and what a multipack; they changed the way of issuing Decisions, revoking the document called Certificate of Customs Clearance. This change disabled a larger number of importers to ensure the normal way of doing business - stocks increased, as well as the cost and time needed to place affected products on the domestic market. By mid-2015, the situation returned approximately to the prior level, but the example brought into question the validity and accuracy of the Rulebook and opened the door to different interpretations of its articles, and consequently to differences in implementation. The adoption of a new Rulebook should remove ambiguities from the previous one.

The most recent example of the lack of precise guidelines for the application of a law which results in different interpretations of the law by relevant inspectorates is the Law on Strong Alcoholic Beverages, which went into force sin January 2016. In Article 44 of the Law related to the import of strong alcoholic beverages, it is said that during their import, the importer should submit an "appropriate document of the exporting country on the quality of the product." The law does not specify the type of document, what it needs to contain, and who should issue it. In addition, the exporting country is often a transition country, not the country of origin of the product. This issue caused a delay in customs clearance in January 2016. Currently, decisions for customs clearance are being issued, but the possibility of different interpretations of the law by inspectors remains.

FIC RECOMMENDATIONS

- The consistent application of standard operating procedures by the inspection services in terms of costs, timeframes, and mechanisms implemented on the ground.
- Discretionary rights of inspection services to make arbitrary decisions on the number of samples taken, sampling procedures and the costs of laboratory analyses should not be allowed. As a consequence of this situation, the number of samples ranges from 10 to 30 among different inspection services, and differs even within the same inspection service, depending on the inspector on duty, because decisions on these issues are often left to the discretion of individual inspectors.
- Inspectors should not have the discretionary right to determine the types of laboratory tests to be performed. Prices are standardized among laboratories, but the number and type of tests affect the price.
- Improving border inspection control, since importers are unable to predict and plan their business operations in Serbia when there is no fixed timeframe for completing border inspection and validation formalities. This timeframe varies based on factors unknown to the importer. The length of time between the unloading of a shipment and the release of goods into circulation ranges anywhere from three to 20 days, depending on whether the inspector samples goods for analysis or not, then on the laboratory to which the inspectors sent the samples, as well as various other factors.
- Importers should be protected since they bear the financial burden of possible loss or destruction, as samples taken from original packages often damage both 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 goods which in turn affects their plans for monthly volumes, promotional activities, etc.

- To adopt new the Law on Food Safety.
- To adopt Amendments to the Rulebook on Declaration, Labeling, and Advertising of Food.
- To harmonize inspection regulations with the Law on Inspection Oversight.
- Inspection oversight should be carried out in accordance with risk analysis.

3. QUALITY ASSURANCE, DECLARATIONS ON FOOD PRODUCTS, NUTRITION AND HEALTH CLAIMS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Fully align the Rulebook on the Declaring and Labelling of Packaged Groceries (Official Gazette of RS No 85/2013, 101/2013) with EU Regulation 1169/2011 – adopt Regulation (EC) No. 1169/2011 (dated 25 September 2011) of the European Parliament and Council on the provision of food information to consumers, in order to enable a better and more uniformed declaring of food products.	2015		√	
Adopt the amendments to the Law on Food Safety pursuant to the relevant European legislation.	2013			√

CURRENT SITUATION

The Rulebook on Food Declaration, Labelling and Advertising (RS Official Gazette No 85/2013 and 101/2013), in force since 5 April 2015 (except for the rules relating to the labelling of allergens, which have been in force since 1 January 2014), brought food labelling rules closer to European standards, even if not yet fully in line with Regulation (EU) No 1169/2011. These rules allow more flexibility to manufacturers, but the conflicting interpretation of these rules by relevant inspectorates and laboratories still remains an issue.

Amendments to the Law on Food Safety (RS Official Gazette No 41/09) are under way. The focus is on methods of controlling food safety.

The Rulebook on Nutrition and Health Claims is being prepared. This Rulebook will prescribe the requirements for labelling, advertising, and presentation of food in the context of nutrition and health claims. The labelling of food products making nutritional claims is regulated only by Article 30 of the Rulebook on the Declaring and Labelling of Prepacked Foods (Official Journal of Serbia and Montenegro, No 4/2004, 12/2004 and 48/2004). The labelling of food products making health claims is regulated by the general principles under Article 30 of the Law on Food Safety, (RS Official Gazette No 41/09), prohibiting the misleading of consumers and by Article 11 of the Law on Advertising (RS Official Gazette No 6/16), prohibiting misleading advertising .

POSITIVE DEVELOPMENTS

Amendments to the Rulebook on Food Declaration, Labelling and Advertising (RS Official Gazette No 85/2013 and 101/2013) are currently being drafted. The aim is to comply with the relevant EU legislation regarding the mandatory labelling of nutritional information on the product,

and revise labelling elements that are locally regulated, or unclear in terms of implementation.

A Draft of the Regulation on Nutrition and Health Claims is aligned with Regulation (EC) 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, which means that, after its publication, authorized claims from the EU Registry, can be used on the product. In this way, food business operators, especially those exporting food to the EU, will have a standardized product communication approach to local and export markets.

REMAINING ISSUES

Jurisdiction for the interpretation of regulations in the area of food safety has not been defined by the Food Safety Law which has led to laboratories interpreting regulations, effectively preventing inspectors, as the designated authority, from making decisions in line with the official position of the Ministry which issued the rulebook. The legal assessment and determination of non-compliances is the exclusive responsibility of inspectors, pursuant to Article 37 of the Law on Inspection Oversight. At the same time, the official position issued by the competent Ministry is not binding for inspection services. All of the above has led to difficulties for food business operators and major constraints in long-term business planning.

Ambiguous transitional provisions in the Draft Amendment to the Rulebook on Food Declaration, Labelling and Advertising remain an issue, considering that, as in the case of the first version of the Rulebook, a transitional period is stipulated for the foods' packaging and not for selling prepacked foods, to which the Regulation should apply, and which are subject to alignment with the new labelling requirements. Upon entry into force of amendments to the Rulebook (8 days from the date of publication in the Official Gazette of the Republic of Serbia) manufacturers will not be able to get the agreed quantities of packaging from their suppliers/printing companies. Consequently, food operators will not be able to align with the new requirements by the end of the transition period (because of delivery schedule lines of existing packaging; modification of labels and placement of orders for new packaging, while trying to minimize losses related to the destruction of existing packaging and costs of developing new packaging; delays in production due to the time required for the development of new labels and the delivery of new packaging, etc.).

Examples below illustrate daily operational problems:

- Lack of uniformity in the implementation and different interpretation of the Rulebook's provisions on the type of food packaging (collective, combined, transport packaging).
- Different interpretations of the wording of the labelling of Country of Origin and Place of Provenance.
- The obligation to declare the country from which the prepacked foods are imported makes it difficult for food business operators to import the same product from different countries, given that some companies may have regional warehouses in different locations.
- Subjective approach of the laboratories that control the food and the competent inspectorates in evaluating the accuracy of the product label or product name, although the Rulebook provides a definition in Art. 17 and 18 of the name of the food referring to specific legislation, while in the absence of specific legislation allows the use of the common name, the descriptive name or the name used in the country of the manufacturer.
- Different interpretations of the "field of vision", even though this is defined in the Regulation.
- Subjective approach in assessing the elements that could mislead consumers.
- Although the Rulebook on Food Declaration, Labelling and Advertising (RS Official Gazette No 85/2013 and 101/2013) applies to food intended for the final consumer, the relevant inspectorate requires that even raw materials and semi-finished products intended for further processing be marked according to this Rulebook. Given that this is not applied in the EU, suppliers of raw materials do not fully label these commodities, but in B2B relations, as a rule, the supplier submits all relevant information to the customer in the documents accompanying the goods and, in advance, when signing the sales contract. Because of this issue, the authorities will often prevent their circulation on the market until the labelling is fully aligned with the labelling requirements in the Rulebook, even though the producer does not require additional information on the product because these are contained in the documents accompanying the goods. This causes long delays in production and supply chain for domestic producers.

The Rulebook on Nutrition and Health Claims is still not finished; i.e. it is uncertain when it will be passed and put into effect, which leads to the presence of inadequately declared products on the Serbian market. Inherently, consumer rights may be compromised because they may be provided with inaccurate claims not allowed in Europe.

FIC RECOMMENDATIONS

- Fully align the Rulebook on Food Declaration, Labelling and Advertising (RS Official Gazette No 85/2013, 101/2013) with EU Regulation 1169/2011; adopt Regulation (EC) No. 1169/2011 of 25 September 2011 of the European Parliament and of the Council on the provision of food information to consumers, to enable better and more uniformed food labelling.
- Adopt the Guidelines for the Implementation of the Rulebook on Labelling, providing necessary guidance and examples modelled to EU regulations, to avoid different interpretations and inconsistent application.
- Adopt amendments to the Law on Food Safety pursuant to the relevant EU legislation.
- Define the responsibilities of the institutions for the interpretation of regulations on food safety and make the official position of the Ministry binding for all stakeholders in the chain.

4. MILK PRODUCTION QUALITY STANDARDS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
This year again, we underline the need to urgently activate the National Reference Laboratory (NRL), as prescribed by the Food Safety Law, and secure the NRL is fully independent, properly staffed and technically equipped.	2010			√
Streamlining the National Reference Laboratory's (NRL) workflow, at least when it comes to raw milk control, on the basis of purely economic parameters. This primarily involves securing efficient raw milk sampling. We propose to establish centres for the collection and processing of samples in Belgrade, Novi Sad and Kraljevo, as they are already equipped for this kind of activity, i.e. they have licensed laboratories, while the National Reference Laboratory (NRL) would be an umbrella authority.	2010			√
Finding a model to lower the current price of raw milk testing and make it more affordable for a majority of milk producers. One of the ways to do this entails sharing the costs between the state, dairy farmers and dairy plants. EU has a similar system; for instance, in France, dairy plants and farmers share the costs equally. Hence, the Task Force of the Ministry of Agriculture responsible for devising a plan for creating a network of laboratories and milk quality analysis in the Republic of Serbia should be instructed to move in this direction.	2014			√
Activation of trained staff in the area of farmer education, along with the creation of a training system and raise funding from EU accession funds and other financial institutions for the projects that are essential for competitiveness growth in milk production, and consequently for the improvement of raw milk quality.	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Establish a premium/subsidy for quality (or premium differentiation for quality milk according to milk quantity delivered) to stimulate split farming estates to: 1) expand livestock population, and 2) raise the quality of raw milk supply. The goal is to make a selection and stimulate farmers who opt for this kind of production. The merging of farms into larger units that would be able to produce 100–200 litres of milk per day would be an important achievement, because the larger the nucleus herd is, the lower the production costs, due to the economy of scale effect.	2015			√
Adoption of an action plan to raise the number of registered farms. Farm registration is necessary to allow export to the EU. Farm registration regulations should be amended to simplify the procedure and make it more efficient.	2015			√
Promotion of a proactive approach to primary milk producers. Setting up an institutional mechanism to ensure that primary agricultural producers have constant professional support during the production process – either in the form of personal education or hired experts.	2015			√
Formation of a development bank for supporting the development of agricultural production.	2015			√

CURRENT SITUATION

The food industry still faces numerous challenges where the production and sale of finished products are concerned. The domestic market's purchasing power, which has been stagnating for a second year in a row, as well as fierce competition from foreign markets are the major obstacles to a substantial increase in milk and dairy production.

Creation of a new economic value going forward is under huge risk amid shocks in this industry on a global scale, triggered by the EU–Russia dispute. After Russia banned food imports from the EU, the latter lost access to a large export market for EU dairy products. In order to resolve the product surplus issue, EU companies decided to place surplus products in Southeast Europe, the Middle East, and Africa at much lower prices (by 15-27%, depending on the product) than the selling price of these products in the previous period.

One of the key factors and priorities that could significantly help domestic companies increase the sale of milk and dairy products, especially in foreign markets, is the building of a raw milk quality system on solid foundations with the active support of the Government and its agencies.

In spite of the global crisis in recent years, changing global and local market conditions offer good prospects and options for opening new markets for dairy products, as is the case now, following the shift in Russia–EU relations. Again, this highlights the need for establishing a sustainable, consistent, clear, and simple raw milk production system compliant with global and EU quality standards, in particular milk microbiology standards.

The Ministry of Agriculture and Environment established in mid April 2015 a working group for milk which made provisional protective measures (levies) on imports of milk and milk products from the EU. The group also made changes to existing legislation on the maximum levels of pesticides in food and feed and the maximum permissible content of aflatoxin M1 in raw milk with 0.05 mg / kg increased to 0.25 mg / kg, applicable from 5 April 2016.

POSITIVE DEVELOPMENTS

Specific measures by the Serbian Government, and a positive signal for the improvement of the environment in which it takes place, for the domestic production of milk and dairy products is the introduction of temporary protection measures (levies) on the import of milk and milk products from the EU in 2015. The main objective of this measure is to maintain the primary production of milk and dairy products through ameliorating the domestic market arising from increased imports of milk and milk products

from the EU, and to finding a sustainable business model for the primary production of milk. The situation in the first half of 2016 remained exactly the same and it is not clear at what point existing protective measures will be abolished.

What has improved somewhat is the fact that the testing of the quality of raw milk has increased, and is carried out in authorized national laboratories. It should be noted, however, that this is a quality testing of raw milk to domestic rules, whose criteria are lower than those in the EU

REMAINING ISSUES

The quality of raw milk in Serbia needs to improve and be harmonized with EU standards by 2020.

The Food Safety Law was adopted in 2009. In May 2013, and again in May 2015, changes were announced but their finalization by the end of May 2016 was not implemented, and national laboratories are still not functioning fully, as provided for by the Law on Food Safety.

FIC RECOMMENDATIONS

- This year again, we underline the need to urgently activate the National Reference Laboratory (NRL), as prescribed by the Food Safety Law, and secure the NRL as fully independent, properly staffed, and technically equipped.
- Streamlining the NRL's workflow, at least when it comes to raw milk control, on the basis of purely economic parameters. This primarily involves securing efficient raw milk sampling. We propose establishing centres for the collection and processing of samples in Belgrade, Novi Sad and Kraljevo, as they are already equipped for this kind of activity; i.e. they have licensed laboratories, while the NRL would be an umbrella authority.
- Finding a model to lower the current price of raw milk testing and make it more affordable for a majority of milk producers. One of the ways to do this entails sharing the costs between the state, dairy farmers, and dairy plants. The EU has a similar system; for instance, in France, dairy plants and farmers share costs equally. Hence, the Task Force of the Ministry of Agriculture responsible for devising a plan for creating a network of laboratories and milk quality analysis in the Republic of Serbia should be instructed to move in this direction.
- Activation of trained staff in the area of farmer education, along with the creation of a training system, and raise funding from EU accession funds and other financial institutions for projects essential for competitive growth in milk production, and consequently for the improvement of raw milk quality.
- Establish a premium/subsidy for quality (or premium differentiation for quality milk according to milk quantity delivered) to stimulate split farming estates to: 1) expand livestock population; and 2) raise the quality of raw milk supplies. The goal is to make a selection and stimulate farmers opting for this kind of production. The merging of farms into larger units that would be able to produce 100–200 litres of milk per day would be an important achievement because the larger the nucleus herd is, the lower are production costs due to the economy of scale effect.
- Adoption of an action plan to raise the number of registered farms. Farm registration is necessary to allow exports to the EU. Farm registration regulations should be amended to simplify the procedure and make it more efficient.
- Promotion of a proactive approach to primary milk producers. Setting up an institutional mechanism to ensure that primary agricultural producers have constant professional support during the production process – either in the form of personal education or hired experts.
- Formation of a development bank for supporting the development of agricultural production.

5. REGISTRATION PROCESS FOR PLANT PROTECTION PRODUCTS (PPPS)

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
To introduce European standards into Serbian legislation, in terms of efforts made by the Republic of Serbia to fully harmonize its legislation with that of the EU and the World Trade Organization (WTO).	2010			√
Complete harmonization with EU standards and a proper realization of the registration process of plant protection products in the Republic of Serbia, with the purpose of ensuring the safety of food for consumers, as well as fair competition between foreign and domestic business entities.	2010			√
Creating favourable market conditions for foreign investments, among other means by enacting only the Law on Plant Protection Products of 2009, and by reviewing the current resolutions on the registration of plant protection products as of October 2015.	2010			√
Harmonization with EU standards is also necessary due to the fact that only upon the closure of all 35 chapters (Chapter 12 is related to food safety, veterinary, and phytosanitary policy) will it be possible to sign an agreement of membership of Serbia with all other EU states.	2015			√
Passing the new by-laws or revision of existing ones in accordance with the new Law on Plant Protection Products, which will facilitate the efficient registration, inspection, sale, import, and use of plant protection products in agriculture and forestry.	2012			√

CURRENT SITUATION

The situation in the area of registration of plant protection products has only slightly improved relative to 2009 when expectations from the newly adopted Law on Plant Protection Products were far greater.

Amendments to the Law on Plant Protection should put a stop to the on-going parallel application of two conflicting laws which are currently in force: the old one from 1998 and the more recent one from 2009. Foreign investors are hoping to see improvements once these amendments are enacted as expected.

Over the last 7 years, the process of registration of plant protection products and adoption of EU standards has been slower than expected and the major problem is the constant delays in these processes.

The most recent example is the delay of the re-evaluation of existing, i.e., registered plant protection products in Serbia. The process was scheduled to start on 1 October 2015, but was subsequently postponed to 2017. Companies were notified that, as of 4 January 2016, they could collect in person the Decision on the postponement of the deadline for the submission of documents for the PPPs re-evaluation. The Decision was dated 24 September 2015, so the question is why it took three months to deliver this Decision to the companies.

We want to stress the need for consistent enforcement of decisions. One of the most recent examples of obstruction of decisions is the case of the so-called "clone registration", i.e. registration of an already registered plant protection product under a different trade name.

Specifically, after several already approved decisions on registration of plant protection products according to the

clone registration principle, we were informed that registration applications would no longer be considered and that even the decisions that had already been issued on these grounds might be revoked.

We believe that this could prompt foreign investors to question the safety and predictability of doing business in Serbia.

REMAINING ISSUES

The lack of staff at the Ministry of Agriculture, i.e., specifically at the Plant Protection Administration, has to be solved. Solving this issue and the process of harmonizing laws with the EU acquis will facilitate doing business and prevent great delays in issuing registration decisions.

Delays in this segment of activity significantly reflected not only on business performance of foreign investors, but also on benefits that local agricultural producers could reap by adopting and using innovative technologies brought by foreign investors to Serbia.

Both foreign investors and local agricultural producers need the firm resolve of state bodies in following international standards to make Serbian food producers competitive on the global market.

We believe that the right solution is the harmonization of Serbian regulations with the EU acquis, not only for the sake of food safety and consumer protection in Serbia, but also for the sake of increasing food exports to the European Union.

FIC RECOMMENDATIONS

- Adoption of the Draft Law Amending the Law on Plant Protection Products and its application.
- Full alignment with EU standards and proper implementation of the registration andre-evaluation process of plant protection products in the Republic of Serbia to ensure food safety and consumer protection, as well as fair competition between foreign and local companies.
- Consistent enforcement of decisions taken. We believe that this recommendation should be the foundation of further work.

B. 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 food crop used as livestock feed.	2012			√
A team of expert should be assembled to design a long-term sustainable development strategy in 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

If we were to analyse the structure of agricultural production in Serbia, there is no doubt that the results would show that livestock production is the leading industry. There is no developed agriculture without a developed livestock production, and as Serbia has excellent natural conditions, the development of livestock production has great potential.

Livestock production accounts for only 38% of the gross value of agricultural production in Republic of Serbia in year 2015. In 2015, agriculture generated a gross output of about USD 4.7 million, registering a 7.5% decrease compared to the previous year (2014). At the same time, the value of livestock production for the previous year showed an increase of 3.5% compared to 2014.

The existing livestock population, the ratio of cattle to agricultural land is unsatisfactory, but there are over 1.4 million hectares of high quality perennial meadows and pastures and significant unused facilities for the accommodation of cattle and sheep, which is a major development resource.

To maximize agriculture's contribution to Serbia's economic growth, the share of livestock production in total agricultural production should be at least 50%, with one animal per hectare of arable land.

POSITIVE DEVELOPMENTS

Improvement in livestock production observed in the previous period included the following activities:

- Adoption of amendments to the Law on Agricultural Land (RS Official Gazette No 62/2006, 65/2008 - as amended, 41/2009 and 112/20015), applicable from January 2016, stipulating in Article 64a a pre-emptive right to lease agricultural land.
- Adoption of amendments to the Law on Livestock Breeding in February 2016. New legislation will solve the problem that breeders have in livestock production to improve this branch of agriculture, primarily through harmonization with EU regulations in the field of livestock and troubleshooting, observed in the implementation of the Law on Livestock (RS Official Gazette No 41/2009 and 93/2012).
- Defining the National Programme for Agriculture for the 2015–2020 Period and the National Programme for Rural Development 2015–2020.
- Starting 2016, EUR 175 million from the IPARD fund will be available to the Serbian agriculture, which will be a great stimulus for our producers in the country. Priority is given to farmers, dairy producers, producers of meat, vegetables and fruit, and will be invested primarily in the construction or reconstruction of buildings, purchase of new machinery and technologies. Only accreditation of Agency for Agricultural Payments remains.
- NPAA - the National Programme for the Adoption of the Acquis. Defines development and strategic goals, appropriate policies, reforms and measures necessary for the implementation of these goals, establishes a detailed plan for the harmonization of legislation and defines the human and budgetary resources, as well as other resources required for the implementation of planned tasks.
- The draft National Agriculture and Rural Development Strategy (NARDS) for the 2014– 2024 period was adopted in August 2014. This strategy defines the main goals of agricultural development.

REMAINING ISSUES

Contemporary livestock production imposes ever-growing requirements on breeders and animals too, in all areas. The requirements or objectives are: to produce more, better and cheaper, while keeping the product healthy, safe and usable for end users and processing industries. Farms, depending on their size, i.e. the number of animals that are raised on them, will have to set out on a development pathway to meet the set objectives:

- increase livestock production to become competitive in the world market,
- provide food that meets the needs of consumers in terms of safety and security,
- development of a comprehensive, coordinated and integrated national system for monitoring and controlling disease in animals,
- providing support to raise living standards of livestock producers,
- in addition to the standard selection methods to improve the production potential of certain species of domestic animals, start using new molecular genetic methods,
- increase interest in organic farming,
- improving the genetic stock of some species, strengthening national livestock gene pool, increasing livestock breeds and the number of heads.

FIC RECOMMENDATIONS

- Intensification of livestock production and increasing the participation of this sector in total agricultural production.
- Encouraging producers to improve the species composition of livestock and increase the meat and milk yield per animal.
- Laws and by-laws must be applied in a uniform manner across the board and without exceptions.
- State bodies have to introduce protective measures for livestock producers (milk producers in particular) to protect them from excessive fluctuations of prices of crop products used as feed for livestock.
- A group of experts should be established to develop a long-term sustainable development strategy in close contact with farmers.

TOBACCO INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is important for the focus of all relevant State institutions with Work Group combating tobacco smuggling to be shifted on the effective implementation of the Law in order to combat the illegal tobacco market, which has a significant negative effect on all of Society. The Foreign Investors Council also supports efforts of the Serbian Government in combating the illicit trade in tobacco and tobacco products and proposes the formation of a special department within the Prosecutor's Office which would be responsible for excise goods.	2013		√	
Open dialogue between the Serbian Government and the tobacco industry in order to adopt the amendments on Excise Tax Law that would define the excise tax calendar for the period of 2017-2020.	2012		√	
Efficient adoption of the new Law on Advertising -The Council believes that the regulator must set clear rules on the advertising of tobacco products that could be effectively enforced and that would create a level playing field for all market participants.	2013		√	
Taking into account the overall additional restrictions that are included in the Ministry of Health's Action Plan Draft, the Foreign Investors Council believes it is necessary, prior to its adoption by the Government, to conduct transparent dialogues and consultations between the government, the tobacco industry and all third parties that will be affected by measures from this Plan (tobacco growers, retailers, the hospitality sector, suppliers, etc.).	2013		√	
The Foreign Investors Council strongly supports an open and transparent dialogue between the legislature and the tobacco industry according to the principles of participation, transparency, accountability, effectiveness and coherence.	2013		√	
The existing Tobacco Law, although satisfactory, requires certain adjustments that may be efficiently achieved through amendments and additions to the existing Law rather than through the creation of a new Tobacco Law. Additionally, it is necessary to work on the elimination of certain problems in the practical application of the Law. Given that these changes are not essential to demand a change of the entire legal framework, the Foreign Investors Council supports limited changes to the amendments of the Tobacco Law, in the interest of improving the text itself, while harmonization with Directive 2014/40/EU should be postponed, due to its complexity, until Serbia's accession to the European Union.	2014		√	
The Council believes that, taking into account the current state of the tobacco product market in the Republic of Serbia, a number of substantial changes to the regulations and the additional obligations imposed by the Directive to legitimate market participants, as well as a significant period of adjustment for the Member States themselves, which is due to the complexity thereof, the process of alignment with the Directive should be postponed until the accession of the Republic of Serbia to the EU, and in any case for the period after 2018. In addition, such an approach would put Serbia in a position, until its own entry into the EU, to have access to all positive and negative experiences which have resulted from the implementation of the Directive in other Member States (which are still underway) and to make a timely decision regarding decisions it deems most appropriate.	2015			√

CURRENT SITUATION

Despite years of economic crisis, the tobacco industry is constantly one of the strongest and most vibrant sectors of the Serbian economy. The export of tobacco and tobacco products is constantly increasing and it has reached almost 250 million US dollars in 2015. At the same time fiscal revenues from the sales of tobacco products contributed with 12% of total budget revenues in Serbia in the previous year. Three leading global tobacco companies have set up their manufacturing facilities in Serbia, while the level of foreign investment in the tobacco industry exceeded the amount of EUR 1.2 billion, which is a clear indicator of medium-term and long-term business commitments in Serbia. Taking into account the aspirations of Serbia towards EU membership and the economic importance of the tobacco industry, the importance of having a predictable fiscal and regulatory environment, that is gradually being harmonized with EU directives in this field, is crucial to ensuring the sustainability and further development of the industry. In 2013 and 2014, the market of tobacco products had been reduced for more than 1/3, while in 2015 that trend has been changed and the recovery of legal market is noticeable. Above all, it is the result of concrete Government measures in order to combat the grey market in 2015 regarding the previous two years. The illegal market still has an approximately constant level of illegal cut tobacco and an increasing level of illegal cigarettes.

POSITIVE DEVELOPMENTS

One of the most significant legislative achievements in the tobacco field and a further step in the direction of the gradual harmonization with relevant EU directives (2011/64/EU) is the existence of a multi-annual plan on excise taxes on cigarettes (until the end of 2016) and other tobacco products stipulated in the Excise Tax Law. Additionally, the Ministry of Finance has shown a willingness to open the topic of a new excise calendar, in a timely manner, with representatives of the tobacco industry, contributing in this manner to the predictability of the regulatory environment.

The adoption of a new Law on Advertising has set clearer rules in the field of tobacco products advertising. The efficient application of those rules provides equal conditions for all participants in the market.

In 2015 and the first half of 2016 there has been an increase in the trend of seizing of illegal tobacco above all, but also more and more of illegal cigarettes. Although the amount of seized tobacco in the first six months of 2016 increased almost 80% compared to the same period of 2015, increased activity of organs controlling the implementation of regulations will remain without effect if it is not completed by appropriate court rulings.

REMAINING ISSUES

a. Illegal trade of tobacco products - A wave of price increases caused by an excessive increase of the tax burden in 2012, with the simultaneous decline of purchasing power, have led to the emergence of a growing illegal market for tobacco products. The above-mentioned initial tax and price impact on consumers has influenced the legal tobacco market to be reduced by 1/3 over a period of two years, both in urban and rural locations across Serbia (green markets, street vendors, registered retail facilities, the Internet ...). Consequently, this phenomenon has led to a substantial and sudden drop in the legal market of tobacco products, which directly led to a significant reduction in expected government revenue in 2013 and 2014. In 2015, 14% of excise tax on tobacco has been collected more than planned (Eur. 90 million more), i.e. 16% more compared to the year 2014. But, in addition to market stabilization, it is still noticeable an increased negative impact of the illegal cut tobacco market which jeopardize the viability of the entire supply chain within the tobacco industry (growers, processors, manufacturers, distributors and retailers), as is employment and the GDP, on which the production chain of tobacco products has a direct impact. Moreover, illegal tobacco products have a negative impact on the consumer because of unknown origin, uncontrolled manufacturing, uncontrolled storage and transportation conditions as well as the fact that illegal tobacco products are available to minors, that they do not contain the statutory health warnings, that they are illegally advertised and the like. The Government of the Republic of Serbia is investing great efforts in combating illicit trade in tobacco products, which can be seen, primarily, through the seized quantities of tobacco and cigarettes. Namely, in the first six months of 2016, about 90,400 kg of tobacco and tobacco products were seized in total , which is a big step forward when compared to 2015 (in 2015 about 50.563 kg was seized. Also, during 2015, about 700 procedures were initiated against various offenders in the illicit trade of tobacco and tobacco products by the Ministry of Interior Affairs alone. However, there is a clear lack of adequate reaction from the prosecutor and the courts since, according to data available to the

public, only one legally binding criminal judgement was sentenced, which is not conditional, or not being based on the principle of opportunity.

b. Excise Tax Law - The Excise Tax Law is a step in the right direction because it represents further harmonization with the European Union in the field of tobacco taxation. Ensuring that the open dialogue between the State and the industry brings the amendments of Excise Tax Law that will provide a new excise tax calendar for the period of four years (2017-2020) is of great importance given the importance of tax policy in the field of tobacco and its predictability for both State revenue and the tobacco industry.

c. Law on Advertising - The Law on Advertising, which entered into force in May 2015, contains very restrictive provisions relating to the advertising of tobacco products, even in comparison to many countries of the European Union. However, some of its provisions are more precise compared to the previous version therefore diminishing the possibility of arbitrary interpretation and leading to difficulties in the implementation of the Law, for both competent inspections and the tobacco industry. The Foreign Investors Council encourages the efficient application of the new Law on Advertising, thus enabling uniform rules of competition for all participants.

d. Action Plan of the Ministry of Health - The Draft of the Plan contains some extreme provisions that could have serious consequences on the entire supply chain within the tobacco industry, starting from the growers, manufacturers all the way to the retailers, as well as on boosting the expansion of the illicit market, State revenue, level of employment as well as the hospitality sector. Among other measures, the Plan provides amendments to the Law on the Protection of the Population from Exposure to Tobacco Smoke in order to secure a 100% tobacco-free public and work space. The introduction of such measures would have very serious economic consequences, primarily on the hospitality sector but consequently on the economy as a whole, on the other hand this does not represent an obligation of Serbia towards any international agreement, including the process of harmonization of regulations with EU acquis.

e. For the most part, the existing Tobacco Law is compliant with all EU directives, except with Directive 2014/40/EU which was supposed to be implemented in most part during 2016 by the member states with a deadline for compliance of two to six years. The length of the transition period shows precisely the complexity of such Directive, even for EU member states whose administrative capacities surpass the local ones. At the moment when the legal market for tobacco and tobacco products is in the phase of sensitive consolidation and recovery, we think that it would be counterproductive to jeopardize such trend with amendments of the existing regulations in order to comply them prematurely with the Directive. More precisely, those amendments would impose additional levies and obligations exclusively to subjects operating legally on the market, whilst they would have no impact on the subjects dealing in illegal trade, or they would even stimulate their concurrency. On the other side, the Council supports eventual amendments of the Law that would be addressed to further combat the illegal market of tobacco and tobacco products and that would be adopted with the consultation of the industry and academic public.

f. Harmonization of regulations with EU acquis - The Foreign Investors Council strongly supports European integration process of the Republic of Serbia, and key segment of the membership negotiations is the adoption, implementation and enforcement of EU acquis, including the harmonization of domestic legislation with the chapters 16 and 28 which are of great importance for the tobacco industry.

g. The regulation that governs the field of tobacco and tobacco products is largely in compliance with relevant EU directives while in some areas, such as tobacco advertising, it is even more rigorous than some EU member states. Any hasty changes to legislation can lead to further distortion of the legal market for tobacco and tobacco products which will result, primarily, in the further expansion of the black market. Specifically, one of these possible changes is to comply with provisions of Directive 2014/40/EU prior to Serbia's accession to the European Union. Within the National Programme for the Adoption of the Acquis (NPAA) it has been stated that by the end of 2018 the Ministry of Finance will align provisions of the Tobacco Law with, among others, provisions of the said Directive. This approach would certainly lead to the further expansion of the black market for tobacco in terms of supplementary obligations, which the Directive imposes only on legitimate market participants, and which would consequently increase

operating costs, unless the aforementioned amendments to the Tobacco Law did not prescribe a transitional period for the application of certain provisions to be applied after Serbia's accession to the European Union. Such a regulatory solution already exists in Serbian legal practice (e.g. the Law on Insurance).

FIC RECOMMENDATIONS

- It is important for the focus of all relevant State institutions with Work Group combating tobacco smuggling to be shifted on the effective implementation of the Law in order to combat the illegal tobacco market, which has a significant negative effect on all of Society. The Foreign Investors Council also supports efforts of the Serbian Government in combating the illicit trade in tobacco and tobacco products and proposes the formation of a special department within the Prosecutor's Office which would be responsible for excise goods.
- Open dialogue between the Serbian Government and the tobacco industry in order to adopt the amendments on Excise Tax Law that would define the excise tax calendar for the period of 2017-2020.
- Efficient adoption of the new Law on Advertising -The Council believes that the regulator must set clear rules on the advertising of tobacco products that could be effectively enforced and that would create a level playing field for all market participants.
- Taking into account the overall additional restrictions that are included in the Ministry of Health's Action Plan Draft, the Foreign Investors Council believes it is necessary, prior to its adoption by the Government, to conduct transparent dialogues and consultations between the government, the tobacco industry and all third parties that will be affected by measures from this Plan (tobacco growers, retailers, the hospitality sector, suppliers, etc.).
- The Foreign Investors Council strongly supports an open and transparent dialogue between the legislature and the tobacco industry according to the principles of participation, transparency, accountability, effectiveness and coherence.
- The existing Tobacco Law, although satisfactory, requires certain adjustments that may be efficiently achieved through amendments and additions to the existing Law rather than through the creation of a new Tobacco Law. Additionally, it is necessary to work on the elimination of certain problems in the practical application of the Law. Given that these changes are not essential to demand a change of the entire legal framework, the Foreign Investors Council supports limited changes to the amendments of the Tobacco Law, in the interest of improving the text itself, while harmonization with Directive 2014/40/EU should be postponed, due to its complexity, until Serbia's accession to the European Union.
- The Foreign Investors Council strongly supports European integration process of the Republic of Serbia and the harmonization of domestic legislation with EU acquis. The Council also believes that, taking into account the current state of the tobacco product market in the Republic of Serbia, a number of substantial changes to the regulations and the additional obligations imposed by the Directive to legitimate market participants, as well as a significant period of adjustment for the Member States themselves, which is due to the complexity thereof, the process of alignment with the Directive should be postponed until the accession of the Republic of Serbia to the EU, and in any case for the period after 2018. In addition, such an approach would put Serbia in a position, until its own entry into the EU, to have access to all positive and negative experiences which have resulted from the implementation of the Directive in other Member States (which are still underway) and to make a timely decision regarding decisions it deems most appropriate.

INSURANCE SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
LIFE AND NON-LIFE INSURANCE/COMPOSITE COMPANIES AND SHARED SERVICES				
Discrimination between composite players and those who meet the legal obligation (having separate companies for life and non-life insurance) should be eliminated through an extensive and tax neutral interpretation of the Shared Services introduced by the new Insurance Law.	2015			√
INSURANCE FOR NATURAL DISASTERS				
We believe that a strategy should be devised for natural disaster insurance coverage to secure that, in case of an extremely damaging event, an important share of losses is transferred to insurance companies. It is important to avoid new taxes on existing contracts, a measure already proposed by the Ministry of Finance that would entail additional costs for the minority that currently has insurance coverage.	2015			√
Considering the social impact that this kind of measures may have, they could be implemented progressively by: i) introducing mandatory insurance for all state and public properties and infrastructures; ii) introducing mandatory coverage for all properties pledged as collateral to secure financing; iii) introducing a mandatory natural disaster coverage for every property with fire insurance, based on the French model.	2015			√
THE LAW ON PERSONAL INCOME TAX				
Amend the listed Articles of the law to create the conditions for introducing tax incentives for all types of life insurance premiums, which would additionally stimulate the development of the insurance sector and create conditions for the improvement of the social role of these types of insurance, or provide the necessary protection to persons close to the insured in case of accident , which will simultaneously reduce the state's duty to care for those persons and decrease the amount of money allocated for this purpose. This would also, equalize tax treatment and rights arising under pension plans contracts with the tax treatment and rights arising under life insurance contracts.	2015			√
CORPORATE GOVERNANCE ISSUES				
Allow insurance companies to determine the number of executive directors in their articles of association, i.e. harmonize this article with Article 417 of the Serbian Company Law, which offers the possibility for the company to choose whether it will have one or several executive directors.	2015			√
Leave the election of supervisory board members to the competence of the shareholders' assembly, which could then decide whether to elect an independent member, or not, without being limited in this respect.	2015			√
Restrict membership in management boards only to another joint stock insurance company and/or another insurance holding company in the Republic of Serbia. Thus, a person could be appointed as a member of the management board, even if that person is in the management board of another joint stock insurance company with which the insurance company shares the same shareholders.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
To simplify the procedure for the recognition of foreign qualifications and reinstate to former requirements.	2015			√
MOTOR THIRD PARTY LIABILITY INSURANCE MARKET				
"Create a level playing field in line with European standards by working in two directions: - strengthen the action of the regulatory body to enforce the legal provisions across the entire market with penalties that should be meted out promptly and indiscriminately; - change the regulatory framework leveraging best practices already present in other markets and in line with European Union standards. Possible initiatives being:"	2013			√
Allow MTPL price liberalization which would immediately favour both traditional distribution channels (independent outlets), as well as the development of prospective alternatives such as internet and bank outlets.	2013			√
Allow insurance companies to perform car registrations on their own business premises.	2013			√
Revise the number and timelines of mandatory technical checks for newer vehicles.	2013			√
Develop a joint project with OUS and the police to enable online sales of MTPL policies.	2015			√
LAW ON INSURANCE				
Adoption of amendments to the provisions of the Law on Insurance pertaining to the obligation to notify/inform policy holders and insured persons.	2015			√
Enable the merging of insurance companies that perform life and non-life insurance activities separately if such companies have the same shareholders, or if those shareholders have a controlling share in both companies.	2013			√
Regulation of the tax issue, in cases when companies performing life and non-life insurance activities separately conduct joint business activity, provided that the companies have the same shareholders.	2015			√
Adoption of a new set of laws on insurance: the Insurance Supervisory Law – ISL, Insurance Contract Law – ICL and Insurance Brokers and Agents Law.	2013			√
LABOUR REGULATIONS				
Either: amend the Insurance Law to liberalize the recruitment of persons for the sale of insurance or other tasks allowing agreements on work outside the employment relationship (temporary and periodical work contracts, service contracts, supplemental work contract and similar), or:	2015			√
or Amend Articles 197, 198, 199, 201 and 202 of the Labour Law, which enable the establishment of agreements on work outside the employment relationship, by eliminating the restrictions listed above. In addition, restore the previous provisions of the Labour Law, or by-laws, on agent jobs which the new Labour Law does not recognize.	2015			√

OVERVIEW OF THE INSURANCE MARKET

CURRENT SITUATION

There are 21 active insurance companies (same as last year) and four reinsurance companies in Serbia. Regarding insurance companies, six are life insurance companies, nine are P&C companies, and six are composite players.

The market is still very concentrated. The market leader, Dunav, covers 25% of the market; the three biggest insurers cover 61%, and the top five players have a combined market share of 79%.

Companies with majority foreign ownership (17 out of 21) clearly dominate the market with a 70% share in total revenues (65% in P&C and 87% in life).

Based on data from 2015, insurance market turnover amounted to RSD 80.9 billion in premiums, recording a 16.6% growth compared to 2014. The market has shown two very different trends over the last 10 years:

- 2005-2008: +15% Compound Annual Growth Rate (CAGR) driven by Casco business (+25%)
- 2009-2015: +7% CAGR due to increased life insurance (+16%)

In terms of business mix, the market shows some signs of change:

- The share of life insurance gross premiums written is at 23.9%; an encouraging rate but still low compared to the majority of European countries,
- P&C business (76.1% of share) remains stable and has a large stake coming from motor insurance: 43.5%, of which 35.8% is compulsory car insurance. This share was increased after the tariff increase implemented by the National Bank of Serbia (NBS) in July 2014.

LIFE AND NON-LIFE INSURANCE

CURRENT SITUATION

Insurance companies and their activities are mainly regulated and governed by the new Insurance Law, adopted in December 2014, as amended, and related by-laws adopted by the National Bank of Serbia (NBS).

Other relevant legal sources are the Law on Compulsory Traffic Insurance and the by-law on Voluntary Health Insurance adopted by the Government of the Republic of Serbia. The relevant lateral legal source is the Traffic Safety Law.

The NBS is the relevant authority for the issuance and withdrawal of insurance companies' licenses and for insurance sector oversight. It also extends its opinions on the laws regulating this area. The Ministry of Finance is the relevant authority for drafting amendments to major laws. The Ministry of Interior is responsible for drafting and implementing the Traffic Safety Law.

The following is regulated by the Insurance Law:

- licensing of insurance companies – mandatory requirements related to assets, organization, internal documents, business policy, and business plans;
- common organization requirements for insurance companies - requirements related to the Memorandum of Association and Statute, the mandatory bodies (Shareholders' General Meeting, Management and Supervisory Boards, and General Manager), as well as "relevant and appropriate" requirements for their appointment;
- issues related to actuaries and internal audit;
- reinsurance;
- activities of insurance agents and brokers and related licenses;
- supervision of insurance activities by the NBS.

The following is regulated by the Law on Compulsory Traffic Insurance (hereinafter: CTI Law):

- basic contractual elements in the CTI Law;
- association of insurers and its authorities;
- procedures for price limitation (including the Association of Insurers and the NBS);
- legal framework of the CTI policies.

The following is regulated by the by-law on Voluntary Health Insurance:

- the authority of the Ministry of Health for issuance and withdrawal of licenses for voluntary health insurance;
- mandatory priority of social components of health insurance (no client can be denied insurance);
- eligibility requirements for voluntary health insurance, even though one set of conditions has already been met when licenses were issued to companies for dealing with this type of insurance, so the "duality" will continue to create confusion.

COMPOSITE COMPANIES AND SHARED SERVICES

CURRENT SITUATION

According to the Insurance Law, an insurance company cannot simultaneously be engaged in life insurance and non-life insurance (Article 24). However, this Law: i) allows exceptions for composite companies through an alternative solution (Article 25); and ii) prevents this possibility for other "players" leading to inevitable discrimination regarding present as well as future investors.

This issue was introduced in the White Book back in 2013, due to discrimination between composite players and those who have established separate life and non-life insurance companies to meet legal requirements.

For the purpose of solving problems, a provision has been included into the Insurance Law (Article 26), requesting the limiting of inequality by allowing separate companies with the same shareholder to perform jointly:

(i) stipulation of insurance contracts;
(ii) promotional and related marketing activities; and
(iii) general, personnel, administrative; and technical support activities.

REMAINING ISSUES

Initiatives were taken with the Ministry of Finance over the course of 2015 and 2016 in order to obtain a tax neutral interpretation of "Shared Services". However, by the Opinion of Ministry of Finance No 011-00-332/2016-04 dated 17 May 2016, "Shared Services" for separate companies with the same shareholder have been defined in 2016 as services turnover, performed by a tax payer, with VAT taxed in accordance with the law.

With this interpretation by the Ministry of Finance and with the mandatory VAT payment, the intention of the Insurance Law to reduce discrimination in comparison to the composite companies is actually terminated, and that means we're returning to the beginning.

FIC RECOMMENDATIONS

- It is necessary to eliminate, as much as possible, discrimination between composite players and those who meet the legal obligation (having separate companies for life and non-life insurance) through amendments to the Law on VAT defining "Shared Services" for separate companies with the same shareholder as non-taxable services turnover, as governed by EU laws.

INSURANCE COVERAGE FOR NATURAL DISASTERS

CURRENT SITUATION

Because of its geography, Serbia is quite often exposed to natural disasters (2005, 2006, 2010, 2014, and 2015 in this century alone). Even after the catastrophic floods of 2014 which caused damages in the amount of more than EUR 1.5 billion, the number of natural disaster insurance policies sold did not change drastically in 2015, although floods occurred in west Serbia in 2015 as well, albeit on a smaller scale than the previous year, and effects have not been not officially reported to this day.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

In Serbia, insurance in general and insurance for natural disasters in particular is perceived as a cost or a levy but not as a way of transferring the risk, and therefore the growth rate is among the lowest in Europe.

FIC RECOMMENDATIONS

- We believe that a strategy should be constituted/devised for natural disaster insurance coverage to secure that, in case of an extremely damaging event, an important share of losses is transferred to insurance companies. It would be important to avoid new taxes on existing contracts, a measure already proposed by the Ministry of Finance that would entail additional costs for the minority that currently has insurance coverage.
- Considering the social impact these kinds of measures may have, they could be implemented progressively by:

  (i) introducing mandatory insurance for all state and public properties and infrastructures;
  (ii) introducing mandatory coverage for all properties pledged as collateral to secure financing;
  (iii) introducing a mandatory natural disaster coverage for every property with fire insurance, based on the French model.

THE LAW ON PERSONAL INCOME

CURRENT SITUATION

Taxation of individuals is governed by the Personal Income Tax, last amended in July 2014. Currently the Law does not exempt life insurance premiums or fees arising from life insurance contracts from the taxable income in any of its Articles 9, 14b, 21a, and 84, or Article 13 of the Law on Mandatory Social Insurance Contributions.

FIC RECOMMENDATIONS

- Amend the listed Articles of the law to create the conditions for introducing tax incentives for all types of life insurance premiums, which would additionally stimulate the development of the insurance sector and create conditions for the improvement of the social role of these types of insurance, or provide the necessary

protection to persons close to the insured in case of accident, which will simultaneously reduce the state's duty to care for those persons and decrease the amount of money allocated for this purpose. This would also equalize tax treatment and rights arising under pension plans contracts with tax treatment and rights arising under life insurance contracts.

CORPORATE GOVERNANCE ISSUES

CURRENT SITUATION

The long-awaited amendment of the Insurance Law did not provide a less conservative approach in all of its aspects, and unfortunately, those pertaining to corporate governance will influence management operations in the future, i.e. as of the end of 2015. The articles on management bodies and their structure/function are certainly an issue of major concern.

Currently, Supervisory board members are appointed by the Assembly, adequately represented at the top level by shareholders of an insurance company. At the same time, these are all members of managing bodies in financial sector entities. The only restriction here is related to membership in another joint stock insurance company. Rules on the composition of executive management are governed by the Company Law, stipulating that insurance companies can choose whether to have one or more executive directors.

REMAINING ISSUES

In reviewing the application of insurance legislation in other countries in the region - Romania, Bulgaria and the Czech Republic - it has been found that there are no such restrictions or exceptions with regard to the management bodies of controlled/controlling companies, or affiliates in the same group.

Firstly, the new Insurance Law strictly defines that no alternative choice can be made with regard to the executive function – it recognizes only the Executive Board as an essential part of company management, which must consist of at least two members. When concluding business transactions and taking legal actions, the chairperson of the executive board must obtain the signature of one member of the executive board, where the member of executive board may not have deputies.

Further, the Supervisory board must have at least three members, including its chairperson, and at least one third of its members must be independent persons. However, how will a person outside of the financial world, who is not a top level manager, and is not a member of an Executive/Supervisory board of another financial entity, be able to offer expertise, excellence, and top support to insurance activities? Furthermore, maybe even more questionable – how will an independent member, someone who is not fully involved in the insurance business – on a daily level – be able to represent the shareholders' best interests on all major, strategic decisions/actions taken on behalf of the insurance company?

The shareholders' assembly must be notified in writing in detail about salaries, compensations, and other income of the members of the supervisory board and executive board at least once a year and about all contracts signed between the joint stock insurance company and these entities and other related entities that can produce gains for these entities, as well as about the supervisory board's proposal on salaries, compensations, and other gains for these entities for the following year.

Finally, restrictions with regard to management membership are too strict, since a board member cannot be a person who is a management member or supervisory board member or proxy in another insurance/reinsurance company or another entity from the financial sector. At least one member of supervisory board or one member of executive board must be proficient in the Serbian language and have residency in the Republic of Serbia. The remaining members of the executive board must also be Serbian residents and must be full time employees of the joint stock

insurance company. In a special by-law, i.e. the Decision on the Implementation of Provisions of the Insurance Law on the Licensing of Insurance/Reinsurance Companies, the National Bank of Serbia stipulates detailed requirements for the position of a member of the management board, as well as evidence, documents, and information that the joint stock insurance company is required to submit with its application for obtaining the required approval. These requirements are also a difficulty for non-residents, since they need to have their diploma/other evidence on education validated by Serbian authorities, which requires additional time and costs for the applicant companies.

FIC RECOMMENDATIONS:

- Allow insurance companies to determine the number of executive directors in their articles of association, i.e. harmonize this article with Article 417 of the Serbian Company Law, which offers the possibility for the company to choose whether it will have one or several executive directors.
- Leave the election of supervisory board members to the competence of the shareholders' assembly, which could then decide whether to elect an independent member, or not, without being limited in this respect.
- Restrict membership in management boards only to another joint stock insurance company and/or another insurance holding company in the Republic of Serbia. Thus, a person could be appointed as a member of the management board, even if that person is in the management board of another joint stock insurance company with which the insurance company shares the same shareholders.
- To simplify the procedure for the recognition of foreign qualifications and reinstate to former requirements.

MOTOR THIRD PARTY LIABILITY INSURANCE MARKET

CURRENT SITUATION

Motor Third Party Liability (MTPL) is by far the most important segment of the insurance market in Serbia (35.8% of the total in 2015 up by 2.1 percentile points relative to 2014) 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. Articles 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. This legal provision has been largely disregarded by the market for many years, with notable differences in the conduct of individual companies, which paid commission rates of up to 50%, in spite of the statutory prohibition. Despite the minimum tariff increase (up by 45% as of 1 July 2014) that gave "relevant oxygen" in terms of cash flow and profitability to the market, the aforementioned practice makes the overall insurance market sustainability and predictability questionable.

There has been deterioration in the MTPL market with the new Tax Administration approach, in the MTPL distribution, and with respect to office space rent payments from entrepreneurs which are used for the purpose of MTPL sales. By its interpretation, the Tax Administration has transferred tax liabilities to insurance companies instead of to entrepreneurs and has collected huge penalties from a certain number of companies, so that companies have initiated legal proceedings against the Tax Administration. As per that effect, we have a situation with deteriorated business conditions in the market and some insurance companies having withdrawn from selling this kind of insurance from the active market.

Presently, any company acting in full compliance with the law and the National Bank of Serbia's strict interpretation of it do not take a significant part in the MTPL market. Without a more or less aggressive infringement of legal provisions,

defending one's market share is simply impossible under present market conditions, let alone increasing it.

The National Bank of Serbia has initiated activities aimed at ensuring the implementation of legal provisions. However, this does not lend itself to a radical solution to the problem.

The prospect of either losing a very important business portfolio or having to operate in grey area of illegality is unacceptable for any foreign investor. An equitable interpretation of the applicable legal provisions as well as their immediate and equal enforcement are indispensable prerequisites for a functioning market, as is compliance with the rule of law, the applicable Serbian law, and European legal standards.

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 channels (technical check-points) in line with the market requirement, ranging up to 20-25% of the premium written and the new unpredictable approach of the Tax Administration. This phenomenon is currently limiting market attractiveness for foreign investors and/or for those already present, limiting their willingness to further invest in Serbia.

A possible option is activation of the Internet as a distribution channel for mediation in MTPL policies. This method of distribution has become highly relevant in mature markets because a large reduction in distribution costs in conjunction with a price liberalization system brings about significant value and profits to end-users and insurance companies.

FIC RECOMMENDATIONS:

- Influence resolving and change of the Tax Administration approach to tax treatment of MTPL policies distribution.
- Create a level of playing field in line with European standards and change the regulatory framework leveraging best practices already present in other markets as well as those in line with European Union standards. Possible initiatives being:
- Allow MTPL price liberalization which would immediately favour both traditional distribution channels (independent outlets), as well as the development of prospective alternatives, such as the Internet and bank outlets.
- Allow liberalization of MTPL commissions and allow insurance companies to pay the MTPL commission in line with market conditions, imposing limitations only by its own loadings, with possible general limitation of the amount of loading.
- Allow insurance companies to perform car registrations on their own business premises.
- Revise the number and timelines of mandatory technical checks for newer vehicles.
- Decrease the number of technical checks with increasing the quality of their basic services, which would returned technical checks to its core business and would benefit to the road safety.
- Develop a joint project with OUS and the police to enable online sales of MTPL policies.

LABOUR LAW

CURRENT SITUATION

The new Labour Law, adopted in 2014, has defined entry into labour relations as working without labour relations, i.e. temporary and periodical work contracts, special service contract, contract on professional training, and contract on additional work (Articles 197, 198, 201 and 202), with the following features that are limiting insurance companies to hire the working population on the sale of insurance policies as per the following features:

- temporary and periodical work is limited to 120 days (if an insurance company intends to hire salesmen under such a contract, the 120 days period is a limiting factor);
- a special service contract does not allow insurance companies to hire insurance a sales force under this contract, since this has already been provided by the job systematization of the insurance company (directly from the internal sales network);
- a contract on professional training is not a proper form of engagement for an insurance sales force; it has a term character, and the financial compensation is not considered a salary;
- a contract on additional work has predicted only persons who are already employed, which limits insurance companies to engage the potential working population (approval from the current employer is necessary, etc.)

The New Insurance Act has partially liberalized work establishment outside of work employment along with that in agent companies, with the insurance agents, banks, post office, and leasing, as well as authorized representatives, where one may establish work contracts outside of employment contracts (temporary and periodical work contracts, special service contract, and contract on additional work).

In developed insurance markets, insurance companies, as well as external sales, are able to establish such types of labour contracts, thus liberalizing the labour market to the possibility of additional work and the working population with education and certification, or insurance companies, or by the supervisory authority (i.e. the NBS).

In case of such liberalization, insurance companies would be able to expand the sales network to recruit more salesmen, which would contribute to the general development of the insurance industry and would be able to predict and plan sales costs more easily and more accurately.

FIC RECOMMENDATIONS:

- Correct with by-laws:
  - either the Insurance Law which would, on the same basis as with insurance agents, liberalize engagement of persons for the purpose of insurance sales or other work in the form of work contracts outside of employment contracts (temporary and periodical work contracts, special service contract and contract on additional work, etc.);
  - either adjust the Labour Law in Articles 197, 198, 199, 201, and 202, which would make possible work contracts outside of employment contracts, without the described limitations; additionally, restore into the Law, by using by-laws, the previous Articles of the Law pertaining to the representation activities which the new Labour Law does not recognize.

INSURANCE LAW

CURRENT SITUATION

The Insurance Law (RS Official Gazette No 139/2014) came into force on 26 December 2014 and started implementation on 27 June 2015, and with the harmonization obligation of all participants in the insurance sector no later than 26 December 2015.

The following by-laws were adopted in 2015, in accordance with the Article 278 of the Insurance Law:

- Decision on the capital adequacy of the insurance company, established under the old law, continues to function/reinsurance (RS Official Gazette No 51/2015);
- Decision on investment of insurance funds (RS Official Gazette No 55/2015);
- Decision on reporting of insurance/reinsurance companies (RS Official Gazette No 55/2015);
- Decision on content and manner of keeping data register of insurance/reinsurance companies and other supervised entities in the insurance business (RS Official Gazette No 42/2015);
- Decision on the content of the report on the audit of financial statements of insurance/reinsurance companies (RS Official Gazette No 42/2015);
- Decision on the content of the certified actuary's opinion (RS Official Gazette No 38/2015);
- Decision on the governance system in insurance/reinsurance companies (RS Official Gazette No 51/2015);
- Decision on the implementation of the provisions of the Insurance Law relating to license issuing for performing insurance business/reinsurance and certain consents of the National Bank of Serbia (RS Official Gazette No 55/2015 and 69/2015 - corr.);
- Decision on the implementation of provisions of the Insurance Law relating to conducting insurance brokerage i.e. insurance representation (RS Official Gazette No 55/2015);
- Decision on acquiring the title of and the perfecting of authorized broker and authorized insurance agent (RS Official Gazette No 38/2015);
- Decision on acquiring the title of certified actuary and training (RS Official Gazette No 38/2015);
- Decision on technical reserves (RS Official Gazette No 42/2015);
- Decision on the conditions and mode of supervision of insurance/reinsurance companies and other supervised entities in the insurance business (RS Official Gazette No 51/2015); and
- Regulation on determining the risks which may be insured or reinsured with foreign insurance and reinsurance companies (RS Official Gazette No 56/2015).

Then there's the by-law adopted on the basis of the Law on the Protection of Users of Financial Services, stating the: Decision on modes of rights and interests protection of insurance services users (RS Official Gazette of No 55/2015).

The majority of by-laws were adopted prior to legally prescribed expiration of the statutory deadline for their adoption, which has significantly shortened the time left for compliance and led to a delay in the very process of harmonization.

The Insurance Law (RS Official Gazette No 139/2014) was laid down 26 December 2015 as the deadline for compliance, although the majority of participants in the insurance market did not receive the Decision on compliance until the middle of 2016.

The current situation creates a legal uncertainty for the majority of insurance market participants and since it is theoretically possible that from the moment of submission of compliance documentation till the issuance of a Decision on compliance can take a lot of time, insurance market participants are not quite sure whether they should comply with internal regulations not aligned with the new legal provisions, as well as by-laws in this interim period, or administer the effective law and by-laws without taking into account the applicable internal regulations.

REMAINING ISSUES

Article 62, paragraphs 5 and 6 of the Law, require that at least one member of the supervisory board, and one member of the executive board, has to possess an active knowledge of the Serbian language and be a resident of Serbia, whereas other members of the executive board have to be temporary residents of Serbia, and all of them have to be full-time employees of the joint stock insurance company.

The analysis of the above provisions of the Law from the point of view of separated companies leads to the conclusion that these companies must duplicate the aforementioned functions and thus be immediately punished for

complying with legal provisions. In addition, paragraph 3 item 1 of the same Article, stipulates that a board member must not be a person who is a member of a managing or supervisory body or a proxy in another insurance or reinsurance company, or any other financial sector entity, further complicating the selection of members and procurators for the separated entities, thus putting them in an unequal market position. This is in contradiction to Article 84 of the Constitution which provides that everyone shall have an equal legal position in the market, i.e. acts limiting the freedom of competition are prohibited, which ultimately entails the equal position of foreign and domestic entities in the market.

The new Insurance Law has made significant progress towards harmonization with applicable EU legislation. Evidently, the intention of the legislator was to achieve a high level of harmonization with EU practices, and create an environment for further progress in this field, considering that a new directive will enter into force in the EU insurance industry on 1 January 2016 (Solvency II), which will introduce significant changes to the business practices of insurance companies in the EU.

According to the Law, persons licensed by the National Bank of Serbia may provide insurance brokers and agent services, within an insurance brokerage and agency company, respectively, based on an employment contract or service contract.

Insurance agent services, based on the prior approval of the National Bank of Serbia, may be performed as additional activities by:

- banks seated in Serbia and established in accordance with the Law governing banks;
- financial leasing providers seated in Serbia and established in accordance with the Law governing financial leasing;
- public postal operators seated in Serbia and established in accordance with the Law governing postal services.

In addition, insurance broker/agent activities may also be performed by entities not subject to the Law on Insurance, provided that the amount of annual insurance premium per insurance contract does not exceed EUR 100; that the contract is not concluded for a period longer than five years; and that the contract's subject matter is not mandatory or life insurance.

The Law introduced innovations in terms of content and obligation to notify, i.e. inform policy holders and insured persons prior to conclusion of the insurance contract, as well as during the contract period. These provisions will lead to problems in practice, given that insurance companies are not always able to obtain proof as to the insured's awareness, particularly in the case of group insurance. Additionally, one must bear in mind that issues dealing with protection of users' rights are within the competence of other laws, specifically: the Law on the Protection of Users of Financial Services and the Law on Consumer Protection, thus leading to the risk of multiple sanctioning of insurers.

The equal treatment of all insurance market participants must be ensured. In this sense, amendments to the Law should enable merging of companies performing life and non-life insurance activities separately, if the companies have the same shareholders, or if such shareholders have a controlling share in both companies. The Law envisages that companies that separately perform life or non-life insurance activities can conduct joint business activity when such companies have the same shareholders, but provides no solution for the disputed issues (e.g. the tax treatment of joint business activity).

To improve accuracy and systematic regulation, following the example of the legislation of some European countries, and in accordance with EU Guidelines and Directives, the insurance activity should be regulated through three different laws: the Insurance Supervisory Law – ISL, the Insurance Contract Law – ICL and the Insurance Brokers and Agents Law. While the ISL primarily deals with the relationship between the competent authority and insurance company, as well as with status issues, and the ICL defines the relationship between the insured person and insurer, i.e. with contractual obligations between them, the Insurance Brokers and Agents Law deals with regulating the manner in which insurances are sold through other licensees or, alternatively, a tripartite law.

FIC RECOMMENDATIONS:

- Adoption of amendments to the provisions of the Law on Insurance pertaining to the obligation of notifying/informing policy holders and insured persons.
- Enable the merging of insurance companies that perform life and non-life insurance activities separately if such companies have the same shareholders, or if those shareholders have a controlling share in both companies.
- Regulation of the tax issue, in cases when companies performing life and non-life insurance activities separately conduct joint business activities, provided that the companies have the same shareholders.
- Adoption of a new set of laws on insurance: the Insurance Supervisory Law – ISL, Insurance Contract Law – ICL, and Insurance Brokers and Agents Law.

DRAFT CIVIL CODE

CURRENT SITUATION

The public discussion on a Draft Civil Code has been concluded. The working text of the Code contains more than 480 alternative solutions, the fate of which will depend on the results of public discussion (in the part that relates to insurance, there are only two proposed alternative solutions: Articles 1394 and 1479).

The proposed solutions are aimed at improving and completing the existing legislative solutions in line with current scientific knowledge and the needs of business and legal practice in exercizing and protecting civil rights.

One of the innovations is introduced by Article 1399, the "Clause on Abuse" in part of the Civil Code under the common provisions for property insurance and insurance of people, which stipulates that a clause that was not subject to "special negotiations" does not oblige the policy holder, which leaves a lot of confusion as to when it comes into practical application in practice. The question is what the legislator means by the term "special negotiations" and "simple and understandable language" in Section 1399.

Obligations of the insurer prior to concluding the insurance agreement are, within the Civil Code, regulated in Article 1402, although this issue was already provided for in Article 82 of the Insurance Law, so that the same issue is regulated in different laws in different ways.

The Insurance Law provides a fine for insurance companies in case of the violation of Article 82 of the Law, and the Civil Code gives the possibility to the insured, in case the insurer violates the obligation to provide information, to seek termination of the agreement and compensation of damages.

POSITIVE DEVELOPMENTS

The Civil Code provides for the following improvements:

- The obligation to inform the insured in case collective insurance is transferred to the Policyholder for collective insurance, otherwise the Insurer is entitled to compensation for damages from the Policyholder.
- The possibility of issuing an insurance policy in electronic form with mechanical signature.

REMAINING ISSUES

Apart from slight improvements brought on by the Civil Code, many questions remain unanswered and are not regulated but are left to the will and arbitrary interpretation of the contracting parties, so the dilemmas that have existed so far in practice will remain.

The new Insurance Law allows investment in investment

units of investment funds, but the Decision on investment of insurance funds stipulates that up to up to 25% of technical reserves arising from this type of product may be invested in investment units of a Fund. In the Serbian market there are a small number of investment funds, which additionally discourage this type of investment. Furthermore, Article 137, paragraph 3 provides that insurance funds invested abroad may not exceed 25% of share capital, which further limits investment opportunities and, on this basis, potential development of new products.

FIC RECOMMENDATIONS:

- Opening of opportunities for investing in investment funds abroad in excess of 25% of the share capital, if the local market cannot offer better conditions.
- Remove the provisions of the Draft Civil Code that allow for the possibility to contract an informal insurance agreement, but keep the provisions on the electronic signing of policies, in addition to the use of the mechanical signature on the screen of the electronic device (Art. 1407 para. 7).
- Redefine the liability insurance provisions and introduce an optional, additional period for filing a claim at the time when picking up the claim form.
- Redefine the provisions on the method of delivering the notice, providing for the option to make an agreement on the notice form, without the obligation of delivering a written notice by registered mail (Art. 1427. para. 1. and 1471. para. 1).

LEASING

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Initiation of amendments to the Law on Value-Added Tax concerning interest taxation, to abolish VAT charged on interest contained in the leasing fee.	2009			√
Initiation of amendments to the decisions on public car parks of local governments, to designate the lessee as the user of a public car park in the case of leased vehicles.	2011			√
Financial leasing companies should also be given the possibility to conduct operating leasing according to IAS 17 and the Rulebook on criteria for determining when a delivery of goods based on a lease or rental contract is considered as a sale of goods.	2014		√	
The Insurance Law should be harmonized with the Law on Financial Leasing in terms of provisions on the right of the Guarantee Fund to seek recourse upon payment of damages caused by a means of transport, for which a contract on compulsory insurance was not concluded, from the owner i.e. registered user of the means of transport.	2012			√
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."	2014		√	
Leasing and Insurance companies should be on the same level playing field as banks regarding Article 85 of the Law on Personal Income Tax regarding write-off of receivables from individuals.	2015			√
Capital requirements for performing leasing operations involving immovable assets should be lowered in order to make real estate leasing more attractive on the Serbian market. We suggest that, for the performance of financial leasing operations, the monetary share of the Lessor's founding capital may not be below the dinar (RSD) equivalent of EUR 500,000 at the official median exchange rate on the date of payment.	2015		√	

CURRENT SITUATION

The development of leasing in Serbia dates back to the beginning of 2003, when the Law on Financial Leasing was adopted. There are 16 leasing companies currently operating in Serbia, mainly affiliates of distinguished financial institutions, leaders in the banking and finance markets in Central and South-East Europe. These groups have applied their knowledge and high corporate business standards to the Serbian market as well. As a result of market competition, it is expected that the number of active leasing companies will adjust to the market needs and be reduced in the future. This will contribute to further affirming the quality and high standard of leasing services offered by market leaders.

In the last three years the leasing market has been stable, and the value of leasing contracts has shown an upward trend again. This indicates a recovery of the leasing market, with a positive effect on future tendencies. All system changes affecting the development of leasing as a form of financing (allowing funding of the real estate business, abolishing the minimum leasing contract period and minimum deposit),

made leasing a serious competitor to other available sources of funding on the market. Despite these positive changes, further improvements in the field of leasing development are still needed, taking into account that leasing is a very important source of mid-tem and long-term funding, as a cost-effective solution for the procurement of funds required for business by companies, especially small and medium enterprises.

POSITIVE DEVELOPMENTS

The following positive developments were seen over the course of 2015 and 2016..

The new Insurance Law, applicable from 27 June 2015, stipulates in Article 98 that leasing companies may also engage in insurance activities. The National Bank of Serbia (NBS) issued a decision on the implementation of the stipulations of the Insurance Law on insurance brokers and agents, thus providing leasing companies with precise rules for acquiring operating licences and other detailed conditions for conducting these activities. In 2015 and 2016, leasing companies initiated the procedure for obtaining the prior consent form the NBS and one part of the procedure has been successfully completed. This is very important for improving profitability and competitiveness in the sector and is much appreciated by the Serbian Leasing industry.

REMAINING ISSUES

1. Interest in financial leasing is a taxable

Financial leasing is subject to VAT taxation and the taxation base is the value of the lease and interest. In this way, financing through leasing is less favourable for certain customer segments than other forms of financing, as the VAT on interest is an additional cost.

2. Leasing companies are charged parking tickets, even though the users of the parking services are the lessees of the vehicle

According to the rules on public car parks in the cities and municipalities in Serbia, users of public car parks are the drivers of a vehicle, or owners, if drivers are not identified. These rules further envisage that any user of public car parks who violates the provisions of these decisions by not paying the parking fee will be obliged to pay a fine. In the case of leased vehicles, rules on public car parks do not take into account financial leasing transactions and thus fines are sent to leasing companies, even though these vehicles are used by the lessees.

3. Operating leases is not regulated by law so finance lease companies cannot provide operating leases

Operating leases are not regulated by law, nor are they subject to oversight by a regulatory body. Providers of financial leases are not allowed to simultaneously provide operating leases. Operating leases account for 15% of total leasing services provided by leasing companies operating in Serbia. It is a financial product (off-balance sheet financing), present everywhere in the world as an alternative way to procure and use fixed assets. Due to its off-balance nature, it is highly sought by companies. Operating leases are much closer to financial leases than to classic leases. The application of International Accounting Standards 17 (IAS 17) and the disclosure 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.

4. The Guarantee Fund may have the right to file recourse claims from leasing companies for the damage caused by the lessee using the leased asset

According to the Law on Financial Leasing, the Guarantee Fund of the Association of Serbian Insurers has the right to recourse, upon payment of compensation for damages by the owner of the means of transportation for the amount paid for damages, plus interest and costs.

The Insurance Law is not aligned with the Law on Financial Leasing, which introduced a completely new legal transaction into Serbia's legal system that, according to the definition of the rules on liability for the use of the leased asset, is in conflict with the existing rule on the Guarantee Fund's right to file a recourse claim against the owner of the means of transportation. The fact that the lessor is not in the position to influence the behaviour of the lessee or other parties using the leased asset and prevent the use of the means of

transportation in traffic without stipulating an agreement on compulsory insurance, as long as the lessee is in possession of the leased asset, has been completely neglected.

Currently, leasing companies are facing recourse claims by the Guarantee Fund of the Association of Serbian Insurers, which they reject on grounds of the Law on Financial Leasing. On the other hand, despite understanding the essence of the dispute, the Guarantee Fund has no legal possibility to subrogate against any other person, apart from the owner and possibly the driver of the means of transportation, on grounds of personal liability of the person who caused the damage.

5. Financial leases are not included in the financing options in some of the state incentives programmes

In developing incentives programmes (agricultural and other), policy makers have excluded financial leasing as a financing option. On the other hand, there are positive examples such as the Decree on support to small enterprises for the purchase of equipment in 2016, which equalized all financing forms so that recipients of the subsidies can choose between a loan and leasing.

6. Leasing and insurance companies in the case of write-off of receivables from personal income taxpayers

When a leasing or insurance company fails to recover a debt from a customer through the courts, and subsequently adopts a decision to write off that irrecoverable debt, that company is still obliged to pay a 20% personal income tax rate because written-off receivables have the status of "other revenues". This is defined in Article 85 of the Law on Personal Income Tax. Consequently, in addition to suffering a loss resulting from uncollected debts, the leasing or insurance company is also obliged to pay personal income tax on these.

To make the paradox even greater, this is also included in the annual personal income tax base, and consequently, a person unable to settle its debt to a leasing or insurance company can become liable to pay the annual tax, if the value of the write-off, together with other revenues, exceeds RSD 2.2 million. This tax paradox was noticed by the Ministry of Finance, so the Law on Personal Income Tax was amended in 2013 to provide an exception for banks as creditors. However, other financial institutions, also under the control of the National Bank of Serbia (NBS), were "forgotten" on that occasion.

7. High level of capital requirement for leasing companies for leasing of real estate in the amount of EUR 5 million

The high level of capital requirement in other financial institutions (banks, insurance companies or pension funds) is in keeping with the intention to ensure security in managing the client's assets, whereas, unlike the above mentioned, leasing companies manage their own assets and are not depository institutions, i.e. they invest their own capital and the founder of the leasing company fully bears the risk of business operations. At the meetings organized by the USAID, representatives of the ALCS and NBS brought the conclusion that the aforementioned legal changes in order to reduce the required capital makes sense and that will be support by NBS.

The proposal to apply the same minimum capital requirement to leasing operations involving movable assets and those involving immovable assets is based on the fact that leasing operations involving immovables do not carry a greater risk than that involved in standard financial leasing operations. In both cases, the leasing company remains the actual owner of the leased asset, whether movable or immovable, and this allows for a much quicker and simpler enforcement in case of default. The current minimum capital requirement of EUR 5 million for leasing companies to perform leasing operations involving immovables limits the development of this sector. Applying the same capital requirement to leasing of movables and leasing of immovables would create adequate grounds for the development of this type of leasing in Serbia.

8. The initiative to amend the Law on the Prevention of Money Laundering and Financing Terrorism as related to financial leasing

Actions and measures that leasing companies are obliged to take in order to prevent and detect money laundering are the same as for banks. Leasing transactions are conducted exclusively through accounts with banks and leasing companies do not operate with cash. All cash flows should have already been controlled by the banks in the context of prevention of money laundering, which means that these activities are duplicated. Bearing in mind the limited resources at the disposal of leasing companies there is a need to launch an initiative for the partial reduction of liabilities of leasing companies through the determination of certain types of transactions and the materiality threshold.

FIC RECOMMENDATIONS

- Initiate amendments to the Law on Value-Added Tax concerning interest taxation, to abolish VAT charged on interest contained in the leasing fee.

- Amend the Law on Financial Leasing to explicitly transfer the obligation to settle unpaid parking tickets to the lessee, allowing the Parking Services to directly collect the payment from the lessees that are registered in the Registry of Motor Vehicles kept by the Ministry of Internal Affairs.

- Regulate operating leases by law and enable finance lease providers to provide operating leases as well. By extending the jurisdiction of the National Bank of Serbia (NBS) to this type of leases as well, one part of the financial flow would be included in the NBS surveillance and control, which would lead to even greater safety of the financial system. The NBS has long considered that operating leases are a consequence of strict limitations that apply to finance leases (primarily to individuals). The regulation of operating leases could result in the equalization of the rules for both types of leasing. Operating leases should be defined as a type leasing in which all risks and benefits are transferred to the client. This basic principle of differentiation between finance and operating leases can be tested based on IAS 17 criteria. As the latter are descriptive, it is important to additionally specify and quantify them. Most importantly, the maximum allowed level (in percentages) of repayment of the initial value of the leased asset during the contract period should be defined, as well as the maximum length of the lease contract in relation to the economic lifecycle of the leased asset.

- The Insurance Law should be harmonized with the Law on Financial Leasing in terms of provisions on the right of the Guarantee Fund to seek recourse upon payment of damages caused by a means of transport, for which a contract on compulsory insurance was not concluded, from the owner i.e. registered user of the means of transport, so the insurance company may request recourse by leasing user instead of leasing company.

- In developing a programme of incentives for the economy, (industry, agriculture, etc.), and drafting laws and regulations in this matter, policy makers should envisage the possibility of using bank loans and other forms of financing such as financial leasing to support the implementation of incentives. Given the fact that finance leases are also a suitable way of funding, they should be included in the subsidized programmes of the Government of the Republic of Serbia in order to improve the competitiveness of the financial market and offer favourable form of financing.

- Leasing and Insurance companies should be on the same level playing field as banks in the context of Article 85 of the Law on Personal Income Tax, i.e. in the case of write-off of receivables they should not be required to pay additional personal income tax if they have previously met statutory requirements. Amendments should include a simple change in adding the word “insurance company” or “lessor” next to the word “bank customer”.

- Capital requirements for performing leasing operations involving immovable assets should be lowered in order to make real estate leasing more attractive on the Serbian market. We suggest that, for the performance of finance lease activity, the monetary share of the lessor’s founding capital may not be below the dinar (RSD) equivalent of EUR 500,000 at the official median exchange rate on the date of payment.

- Launch an initiative for the partial reduction of liabilities of leasing companies in the context of prevention of money laundering and terrorism financing by determining the types of transactions and the materiality threshold.

OIL AND GAS SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to increase legal safety of business entities, it is important to regulate the collection of fiscal charges by establishing a functional system for reviewing the existing charges and fees paid to public service providers and the any new charges and fees prescribed at local and national level.	2015			√
The level of business predictability should be increased by engaging industry stakeholders in the process of adopting or amending regulations and by-laws which might affect their operations.	2015		√	
The use of the fee intended for establishing mandatory goods reserves partly for the construction of publicly owned storage capacities should be reviewed.	2015			√
The missing by-laws arising from the Law on Commodity Reserves should be adopted.	2015	√		
Taking into account that a number of controls of licenses for wholesale trade in petroleum products and controls of compliance with minimum technical requirements for retail and wholesale energy facilities that were carried out in 2014 were part of the planned activities of inspection authorities rather than a statutory requirement, the Energy Law should be amended to introduce a system of mandatory and regular control of compliance with licensing requirements.	2013		√	
As a successful approach in fighting illegal trade, continue with, intensive inspection and control of marker concentration in petroleum products, and with the improvement of regulations in accordance with the energy stakeholders' suggestions.	2013		√	
Please note that the Law on Explosive Goods with the accompanying by-laws still has to be adopted to define the production and circulation of explosives and other dangerous goods, along with the Law on Flammable Liquids and Gases and accompanying by-laws to better regulate the storage of dangerous goods, flammable liquids and gases.	2014		√	
Amend the applicable Rulebook on the construction of stations for supply of motor vehicles with fuel and the storage and reloading of fuel (Official Gazette of the SFRY No. 27/1971), and the Rulebook on minimum technical requirements for trading in crude oil and biofuels (Official Gazette of the Republic of Serbia No. 68/2013), or adopt a new regulation which would include and govern the requirements for the construction of an automated filling station without crew and the requirements for trading in petroleum products and biofuels.	2015			√

CURRENT SITUATION

The business environment in 2015 was overshadowed by low prices of crude oil which, together with foreign exchange losses, significantly aggravated the operation of oil and gas production companies. However, the first half of 2016 was witness to a gradual recovery in the price of crude oil due to a decrease in production and global supplies and also due to an expected increase in global demand.

Fiscal consolidation measures undertaken in the Republic of Serbia in 2015 and again at the beginning of 2016 contributed to the stabilisation of macro-economic indicators and a strengthening of the economy. Additionally, the lower prices of products and measures against illegal trade jointly contributed to the increase of the volume of trade in oil products in the Republic of Serbia and also helped increase the amount of excise tax collected by approximately 5% on an annual basis.

Legislative activities significant to the oil and gas sector were very intensive during 2015. Regulations were enacted which have great importance for various areas of this sector; primarily, the Law on Inspection Oversight as the framework regulation governing the implementation and coordination of inspection supervision, and which will also significantly help fight illegal trade. Likewise, the National Assembly of the Republic of Serbia adopted the Law on Amendments to the Law of Fire Protection and the Law on Flammable and Combustible Liquids and Flammable Gases, as well as regulations of importance for the design, construction, reconstruction, and use of facilities which, inter alia, are used for the production, storage, and sale of oil products. The Government of the Republic of Serbia amended the Decree on the Designation (Marking) of Oil Products by prescribing the actions to be taken with respect to oil products withdrawn from the market. The National Assembly also enacted the Decree on the Monitoring of the Quality of Oil Products and Biofuels, which establishes control procedures aimed at increasing product quality.

A high fiscal burden on oil derivatives characterizes business operations in the oil and gas sector in the Republic of Serbia. Oil product prices are among the highest in the region. This is particularly conspicuous in the trade in liquid petroleum gas, where the fiscal burden is the highest compared to other countries in the region. Due to this high fiscal burden, the consumption of LPG has been dramatically reduced. Also, the share which the fiscal burden has in the total retail price of diesel fuel is among the highest in the region, contributing to reduced sale volume, and encouraging illegal trade in oil products due to illegal imports from neighbouring countries.

POSITIVE DEVELOPMENTS

Within the scope of the fight against illegal trade, the relevant authorities intensively implemented the obligation of marking and controlling of oil products. According to publicly available data from the Market Inspectorate in 2015, market inspectors conducted about 1,650 inspections and took about 7,000 samples of fuel. An insufficient concentration of marking fluids was found in only 0.6% of samples, a figure close to the average percentage for European countries. Active implementation of the Decree on the Designation (Marking) of Oil Products is very important to maintain the results achieved in reducing illegal trade and increasing the quality of oil products traded on the territory of the Republic of Serbia.

In addition, the inspection of the quality of oil products commenced in December 2015 in accordance with the Decree on the Monitoring of Quality of Oil Products and Biofuels. Market inspectors collected about 300 samples a month and it is expected that continued inspections will ensure a further increase in the quality of oil products being traded in the Republic of Serbia.

Based on the working plan of inspection authorities, energy companies were subjected to control with the aim of determining whether they meet the requirements for holding a license for:

- The warehousing of oil, oil products, and biofuels.
- Trade in oil, oil products, biofuels, and compressed natural gas.
- Trade in motor and other fuels at transportation vehicle filling stations.

State authorities also revoked some licenses, either temporarily or permanently, held by those energy companies in which irregularities were observed with respect to meeting the requirements for possession of such licenses and carrying on such business activity.

The entry into force of the Law on Amendments to the Law on Fire Protection and the Law on Flammable and Combustible Liquids and Flammable Gases marks progress in the regulating of the warehousing of hazardous substances, flammable liquids, and gases, and the trade thereof through retail sales channels.

By-laws were also enacted on the basis of the Law on Commodity Reserves, and a procurement plan was devised regarding the creation of mandatory reserves of oil and oil products. The Annual Rules on Defining the Annual Program for the Creation and Maintenance of Mandatory Reserves of Oil and Oil Products are enacted on a regular basis.

REMAINING ISSUES

The collection of parafiscal charges (i.e. reduction of the number of charges and stricter control of the introduction of new levies) has not been regulated regardless of the fact that, in the previous period, state authorities had been announcing a resolution to this burning issue that affects the entire Serbian economy.

In order for an efficient fight against illegal trade to be con-

tinued, it is necessary to resolve the lack of coordination and overlapping of jurisdictions of inspection bodies by ensuring a comprehensive implementation of the Law on Inspection Oversight.

An increased import of base oils was observed in the previous period (i.e. oil products used solely in the manufacture of lubricants). Imported quantities significantly exceed the realistic consumption of base oils in the process of the manufacture of lubricants. Bearing in mind the fact that base oils have no other purpose, it can be concluded that the surplus is used for blending with motor oils (i.e. as a substitute for diesel fuel).

No progress has been observed during the previous period regarding regulation in the area of production and marketing of explosives and other hazardous substances.

In order to further improve the marking of oil products, and to eliminate the factor of human error in the process of adding necessary quantities of marking fluid, it is necessary to start using automatic marking equipment for oil products.

FIC RECOMMENDATIONS

- In order to increase the legal certainty of companies, it is vital to regulate the area of the collection of parafiscal charges by establishing a functional audit system and by reducing the number of existing taxes and charges imposed by public service providers, and by establishing better control in prescribing new taxes and charges both at the local and national level.
- It is necessary to increase the predictability of business operations by involving and consulting industry representatives in the process of enactment or in the amendment of existing laws, regulations, and by-laws which may have impact on their businesses.
- Bearing in mind that a certain number of inspections conducted in 2015 were part of planned activities by inspection authorities and not due to legal obligations, with respect to licenses for warehousing and the wholesale trade of oil products, and to ensure that minimum technical requirements are met by retail and wholesale energy companies, it is still necessary to establish a system of mandatory and regular controls in order to ensure that requirements are being met for holding the aforementioned licenses by amending the Energy Law.
- The activities of intensive control of the presence and concentrations of marking fluid in oil products and improvement of regulations in line with suggestions made by energy companies should be continued as they have proven to be a successful approach in fighting illegal trade.
- We note that it is still necessary to enact the Law on Explosive Substances accompanied with related by-laws which would define activities in the area of the manufacture and marketing of explosives and other hazardous substances.
- For the purposes of a detailed regulation of retail channel sales, the following related by-laws must be enacted in addition to the adopted Law on Amendments to the Law on Fire Protection and the Law on Flammable and Combustible Liquids and Flammable Gases: the Rulebook on the Construction of Facilities for Flammable and Combustible Liquids and on Warehousing and Loading/Unloading of Flammable and Combustible Liquids, and the Rulebook on the Construction of Filling Stations for Motor Vehicles and on Warehousing and Loading/Unloading Fuels.
- The current Rulebook on the Construction of Filling Stations for Motor Vehicles and Warehousing and the Warehousing and Loading/Unloading of Fuels (Official Gazette of SRFY, No. 27/1971) and the Rulebook on the

Minimum Technical Requirements for Trading in Oil Products and Biofuels (RS Official Gazette No 68/2013) should be amended or new regulations enacted which would uniformly regulate requirements for the construction of automated unmanned filling stations and requirements for trading in oil products and biofuels.

- The percentage of the total fiscal burden imposed on oil products sold in the Republic of Serbia should be reviewed and reconciled with that of neighbouring countries.
- Inspection of oil products imported into the country for the purpose of re-export should be reinforced through the coordinated actions of the relevant authorities, taking into consideration abuses which occur in relation to these declared goods.
- Activities of the relevant authorities with respect to the import, sale, and use of base oils should be coordinated. The introduction of mandatory marking of base oils should also be reviewed.

PHARMACEUTICALS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The legal framework must be completed and harmonized with EU legislation; transparency and predictability of business and legal security are the basic prerequisites for the sustainable functioning of the pharmaceutical industry in Serbia.	2013			√
The Government must ensure the predictability of the decision-making process, with clear time frames and a transparent consultations process with the representatives of the industry. This primarily implies that the NHIF should come up with figures on savings made through each centralized drug tender, or when prices are adjusted in line with the Rulebook criteria. Based on these fundamental, transparent data, the Central Drug Committee could establish the amount of financial resources that has been freed up and is available for innovative therapies and for broadening the indications of already listed generic medicines.	2013			√
Setting up a clear framework for the negotiations process between NHIF and the pharmaceutical industry is equally important, including a mandatory consultations stage. As a result of the negotiations, the two sides should conclude the Managed Entry Agreement, aiming to secure sustainable drug funding. In light of that, the Government must incentivize the application of Managed Entry Agreements as, potentially, the best instrument to simplify the listing of new innovative therapies.	2013		√	
Serbia's health budget must be financially consolidated and made more transparent to increase business predictability and safety of investment in the health and pharmaceutical sector.	2013			√
Pledges that the manufacturers have logged into the Register of Pledges should be treated as a part of public debt and duly paid, and this should be regulated through amendments to the law and the opinions of the Ministry of Finance.	2013			√
Equalize the customs fees for finished medicinal products and raw materials for medicines production.	2013			√
The same tax treatment should be provided for the whole pharmaceutical sector in the field of import of finished products and raw materials.	2014			√
Accelerate administrative approval of customs quotas for raw materials not manufactured in the Republic of Serbia.	2013	√		
Adjust the VAT rate for raw materials to the level applied to finished medicinal products.	2013			√
Abolish VAT on donations of medicines and medical devices to health institutions.	2014			√
Abolish outer packaging control labeling of medicines as an unnecessary expense for the industry, as it is merely an illusion that it can effectively protect against forgeries.	2013			√
Annul the provisions stipulating that the expenses of waste management i.e. export of pharmaceutical waste collected from the population are borne by the pharmaceutical companies proportionally to the share of the company in the total turnover of medicines in the Republic of Serbia.	2013			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Abolish the practice of determining medicines' maximum wholesale price considering that the Government already determines the price of medicines on the reimbursement list. Limiting medicines' wholesale prices does not contribute to the development of a free market and competition, but prevents the entry into the market of medicines that cannot fit into a determined price range. It is an administrative barrier which postpones the entry of medicines that already have a marketing authorization.	2013			√
The Rulebook on criteria for forming the prices of medicines for human use should be adopted every three months level automatically whenever the difference between the official exchange rate of the National Bank of Serbia and the exchange rate from the valid Rulebook exceeds 3%. Besides, for determining the price of medicines on the C list, the NHIF should use the same exchange rate and the same model of calculation as for medicines on the A, A1 and B lists.	2013			√
The NHIF should define the reference prices for all medicines on the reimbursement list and the difference in price should be paid by insurers for medicines on the A1 list. The NHIF should not limit the level of co-payment for the A1 list drugs as this is not an additional financial burden on the NHIF budget. The upper price limit should be the maximum price approved by Government. This should ensure better accessibility of original and branded generic drugs to patients.	2014			√
It is necessary to continue improving the process of determining the price of medicines and including them in the reimbursement list. This process should be transparent, with clear rules, mandatory rationale of the final decision and right to appeal; relevant patients' associations should be involved in making decisions on the medicines to be included on the reimbursement list.	2013			√
The added value of innovations in the health sector should be recognized, as it is the basis for accomplishing the highest quality of public health and reducing the expenses of treatment; access to innovative therapies needs to be better and faster, especially for groups of patients most in need of those medicines. Local and foreign pharmaceutical companies have the same goal – to provide the best possible therapy to all patients in Serbia.	2013			√
Expand groups of medicines that can be issued without prescription while at the same time excluding those medicines from the reimbursement list. Reduce deadlines for issuing licenses for manufacturing and traffic of psychoactive substances in the Republic of Serbia and harmonize them with the regulatory practices in the region. This will strengthen the competitiveness of local pharmaceutical companies and boost exports.	2013			√
Initiate changes in existing regulations on import of finished drugs (INNs, whether or not registered on the Serbian market), standard substances and placebos to facilitate contract manufacturing, development, (bioequivalence studies, stability studies, installation and validation of analytical methods for the registration of licensed products ...), research and export of drugs.	2015	√		
Reject proposed amendments to the Law on Waste Management as an additional, unfair and unnecessary financial burden of pharmaceutical companies.	2015			√

CURRENT SITUATION

The production of medicinal products is one of the most important industries globally, not only from the point of view of economic activity but also of its impact on the health of the population. The pharmaceutical sector is important for the Serbian economy (approximately 6,500 employees; medicines exports amounted to EUR 180 million in 2014; the state collected around EUR 50 million in revenues from different taxes, contributions, custom duties, and other applicable fees). The pharmaceutical sector is a trustworthy partner of the health system in Serbia considering that it ensures the regular supply of all necessary medicines.

On the other side, 18.4% of the overall healthcare budget in Serbia, which is approximately EUR 1.8 billion, is allocated for medicines. By comparison, Hungary allocates approximately 32% of the total health budget for drugs. For several years now, the National Health Insurance Fund (NHIF) budget for medicines has been ranging from EUR 350 to EUR 370 million, and in 2015 the public pharmaceutical expenditure was additionally reduced on the level of 330 million, which means that GoV allocates only EUR 46 per capita. To make things worse, Serbia allocates as little as 2% of its health budget for specialized innovative medicines – only EUR 43.5 million (C-list of expensive drugs). As a consequence, Serbia is the only country in Central and Eastern Europe where no innovative drug has been introduced on the Reimbursement List in the last 4 years. As a result, patients in Serbia are not treated with the most advanced therapies available to patients in the neighbouring countries.

The root of the issue lies in the tacit decision of the Government to "sacrifice" the health sector as a whole when it comes to its financing. Though as much as 10.6% of the Serbian GDP is spent on financing the healthcare needs of the population, only 60% of that amount is covered by state resources (National Health Insurance Fund, Ministry of Health, local governments), while the remaining 40% is paid for by individuals ("out-of-pocket"), which means that a considerable share of healthcare costs has been shifted to private individuals. By comparison, in the EU member states, public spending is in the range from 70% to 80% of total healthcare costs. The financial burden of out-of-pocket payments for healthcare can often lead to deep impoverishment.

There are a few therapeutic areas in which the state must step forward to avoid the economic destruction of individual patients (cancer, cardiovascular diseases, diabetes etc.). For instance, cancer treatments are financially the most demanding and therefore the Government must take on the role of its "financier". The state of Serbian oncology is best reflected in the discrepancy between the incidence rate (18th in Europe) and mortality rate (2nd in Europe).

The constant decrease in the NHIF budget and the prolonged period for the introduction of modern, more efficient therapies on the Reimbursement List, as well as the announced new Rulebook on maximum prices have had huge negative impact on prices, especially for drugs. In the last 5 years, these factors have put innovative companies under big pressure to cut budgets and downsize their workforce.

As a result of budget cuts and government medicine-related programmes, the number of people that currently work in innovative companies in Serbia decreased by half, and some pharmaceutical companies are withdrawing from the market.

On top of that, overly narrow indications for already listed medicines additionally contribute to the inadequate accessibility to essential medicines. Lack of investment in health and medicinal products cannot remain without consequences. In comparison with EU member states, the overall mortality of Serbia's population is approximately 46% higher than the EU average (14.2/1,000 vs. 9.7/1,000). Average life expectancy in Serbia is also significantly lower relative to the EU average (74.7 vs. 80.2 years). According to the EU Consumer Index which measures the state of health systems in the countries of Europe each year, Serbia is at the bottom of the ladder. Considering that one of the major indicators within the EU Consumer Index is "investment in medicines", where Serbia is ranked last in Europe, as reported by the World Health Organization (WHO), it is evident that increasing budget allocation to drugs is vital.

The legal framework is still a cause of special concern. It is underdeveloped and non-compliant with EU legislation in many important aspects, causing great uncertainty in the health sector and allowing non-transparent procedures at different levels, including the Government and the NHIF decision-making level. There are no deadlines in place for several important decisions, while the existing deadlines are often too long and are usually not adhered to.

The pharmaceutical industry is seldom, and in most cases only declaratively, included in a small segment of the decision-making process, without being given the opportu-

nity to fully contribute or enable the transfer of experience from other markets (the pharmaceutical industry is totally excluded from drafting the Law on Medicines and the Law of Medical Devices, as well as from all other relevant acts. As a result, regulations are often unsustainable and impossible to implement in practice. At the same time, patients' associations are marginalized and have no influence on decisions concerning the medicines to be included on the so-called reimbursement list.

POSITIVE DEVELOPMENTS

Since the publishing of the White Book 2015, there were slight improvements in the pharmaceutical sector, as reflected in the scorecard evaluation.

REMAINING ISSUES

1. Illiquidity of the pharmaceutical sector

All segments of the pharmaceutical sector are deficient in liquid assets. The key generator of illiquidity is the state that fails to pay real expenses for the uninsured persons (estimated at approximately EUR 60 million annually). Companies in the restructuring or privatization process were "absolved" by the state from the payment of their debt for years of unpaid health insurance contributions (estimated at over RSD 120 billion). Moreover, in May 2014, the state decreased the compulsory health insurance contributions rate from 12.3% to 10.3% (Official Gazette of RS No 57/2014), thus reducing NHIF revenues by EUR 350 million on an annual level, which can be observed in 2015 NHIF Financial Plan as well. Although the plan proposed to compensate a share of this reduction with transfers from the state budget, for FIC members it remains uncertain whether these transfers materialized and to what extent. The NHIF additionally contributes to illiquidity, as its allocations to pharmacies and hospitals are insufficient to cover their real costs of medicines.

2. Taxes and costs of doing business

In accordance with the general trend of liberalization of foreign trade in Serbia's multilateral relations with the EU (Serbia obtained the status of EU candidate country and opened the first negotiations chapters), WTO, CEFTA, EFTA and bilateral relations through the Free Trade Agreement (FTA) with Russia, Belorussia, Kazakhstan and Turkey, Serbia's customs policy does not prescribe protective customs duties for imported finished products. The same principle should apply to raw materials (currently, custom duties range from 1% to 5% depending on the tariff number, 3.5% on average).

The Law on Payment Deadlines in Commercial Transactions (Official Gazette of RS No 119/2012) contributed to the unequal treatment of local manufacturers and importers, as the local manufacturers are required to collect payment for medicines from the wholesaler within 60 days, while this provision does not apply to importers (who offer longer payment terms of up to 210 days or more to wholesalers).

Of particular concern is the fact that regulatory standards applied at national level are not compliant with global and European standards, and are only creating additional expenses for the industry. One example is the control label on the outer packaging of medicines, introduced in 2011 in an attempt to efficiently prevent forgeries. Another example is the draft Law on Waste Management, which foresees that the expenses of managing and exporting pharmaceutical waste collected from citizens by pharmacies are to be borne by the manufacturer, proportionally to its share in the total revenues from medicines sales in the Republic of Serbia.

Amendments to the Law on Waste Management are in the process of adoption and if the National Assembly adopts them the cost of pharmaceutical waste management which retail pharmacies collect from citizens will be proportional to the market share of each pharmaceutical company.

3. "Duality" of medicine prices

Prices of medicines are under strict administrative control and the pricing process is long, non-transparent and includes double pricing policy:

a. According to Article 58 of the Law on Medicines, after the marketing authorization is obtained from ALIMS, the Government, in agreement with the Ministry of Health and the Ministry of Trade, determines the maximum wholesale price of the medicines. The medicines cannot be placed on the market before this decision is taken. Since this is a decision of the Government, as the holder of executive power, and not an administrative act, there is no time frame for reaching this decision. Therefore, there is no strict deadline for acting upon submitted requests. An additional problem is that the maximum wholesale prices are determined based on the ratio of the national currency (RSD) and the Euro,

which is published in the Regulation on criteria for the pricing of medicines for human use from time to time. Nevertheless, no deadlines are foreseen for issuing the Regulation, even when the official EUR-RSD exchange rate is significantly fluctuating. Pharmaceutical companies have been suffering losses of up to 20% of their total turnover in the past several years because of the difference between the official exchange rate of the National Bank of Serbia and the exchange rate in the Regulation and Reimbursement List. As an illustration, the Government established and published maximum prices in October 2015 based on the exchange rate from 7 July 2015. Although the exchange rate grew in the meantime, the NHIF has not yet applied this rate for reimbursed products. All of this resulted in additional losses to pharmaceutical companies.

b. Only once the Government reaches a decision on the maximum wholesale price of a medicine, can the marketing authorization holder submit an application for the inclusion of the medicine on the List of Medicines prescribed and dispensed at the expense of the compulsory health insurance fund (the so- called reimbursement list). Nevertheless, the law prescribes that when including a medicine on the reimbursement list, the price of that medicine is determined once again, this time by the NHIF, based on the prices in reference countries (Italy, Slovenia and Croatia), and on prices of medicines already included in the List of Medicines. Thus, every medicine on the Reimbursement List goes through the administrative procedure of determining the price twice, which not only increases the expenses for the marketing authorization holder, but also prolongs the waiting time before the medicine is made available to the insured in the Republic of Serbia. By applying the Rulebook on the List of Medicines of April 2014, NHIF has decreased the prices of reimbursed original off-patent and generic drugs by up to 50% since the beginning of 2015. This type of decision-making leads to the delisting and termination of the production of certain medicines. To make matters worse, the savings were not used for enabling patient access to new therapeutic options.

c. List of Medicines
Article 30 of the Rulebook on criteria for inclusion in the List of Medicines of April 2014 foresees that the difference in the price between original and generic A-list medicines with the same or similar pharmaceutical properties and in the same strength may not exceed 30%, which is co-paid by patients. The availability of medicines is thus limited, above all of original and branded generic medicines that often cannot fit into such limited prices and therefore cannot be included on the list of medicines. As this difference in price is not a financial burden for the NHIF, the possibility of a price difference of up to the maximum approved price would ensure much better availability of original and branded generic drugs.

4. Lack of transparency in the process of including medicines on the Reimbursement List

Even though the Rulebook was published in April 2014, the criteria for putting medicines on the Reimbursement List and removing them from that list are still not transparent. Likewise, the Rulebook failed to regulate clear rules for the negotiations process between NHIF and pharmaceutical companies. Despite some progress in the communication the provisions foreseeing broad use of Managed Entry Agreements as instruments to secure sustainable drug funding have not been applied yet in the practice.

In August 2014, the NHIF introduced an online application process which allows follow-up of the status of submitted requests and the new Rulebook introduced deadlines for the NHIF to process request. However, in practice the NHIF fails to comply with defined deadlines. Consequently, currently the number of new INNs pending reimbursement approval is very high and constantly increasing. The NHIF is still not required to forward the decision of the competent bodies to the applicant for the inclusion of a medicine on the Reimbursement List, while the right to appeal the decision is limited to the possibility of starting an administrative procedure before the Administrative Court.

5. Administrative procedures and marketing authorization

The state administration is slow in issuing different permits, decisions, approvals of import trade and distribution of raw materials and finished products, often lacking coordination and communication between the line ministries, the Medicines and Medical Devices Agency of Serbia (ALIMS), the NHIF and other state institutions.

According to the current legislation, the first condition for placing a medicinal product on the market is the issuing of a marketing authorization by ALIMS. The law stipulates that this

procedure must be completed in 30+30+210 days, with the possibility of a fast-track procedure and a deadline of 30+150 days for medicinal products registered in the EU through the so-called centralized procedure. In practice, already fairly long timelines are regularly overrun. Similarly, according to existing legislation relevant timelines for the approval of advertising and promotional materials are up to 60 days but in practice these deadlines are being substantially broken.

According to the Law on Controlled Psychoactive Substances (Official Gazette of RS No 99/2010), the deadline for issuing export licenses for products that contain narcotic substances, (control samples, finished and semi-finished products), is 90 days. Considering that this concerns exports of finished products whose placement on the market is regulated by purchase contracts with strict, time-bound delivery, such long licensing deadlines often result in local pharmaceutical companies paying penalties for exceeding the delivery deadline. This is often the case with products acquired through tender procedures. Export licensing deadlines are considerably shorter in the region, (8 days in Bosnia and Herzegovina and Croatia, and 15 days in Macedonia and Montenegro).

6. List of OTC products

Medicines that can be dispensed without a prescription and are paid by patients (so-called Over-the-Counter, or OTC products), considerably reduce the burden on the health budget. This, combined with the decrease of the number of physician office visits, results in double savings for the state. The list of OTC products in Serbia is not harmonized with similar lists in the EU, which contain a much larger number of medicines.

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. Representatives of the pharmaceutical industry should to be included in the legislative process.
- The Government must ensure the predictability of the decision-making process, with clear time frames and a transparent consultations process with the representatives of the industry. This primarily implies that the NHIF should come up with figures on savings made through each centralized drug tender, or when prices are adjusted in line with the Rulebook criteria. Based on these fundamental, transparent data, the Central Drug Committee could establish the amount of financial resources that has been freed up and is available for innovative therapies and for broadening the indications of already listed generic medicines.
- Setting up a clear framework for the negotiations process between the NHIF and the pharmaceutical industry, including a mandatory consultations stage. As a result of the negotiations, the two sides should conclude a Managed Entry Agreement, to secure sustainable drug funding. In light of that, the Government must incentivize the application of Managed Entry Agreements as, potentially, the best instrument to simplify the listing of new innovative therapies.
- Serbia's health budget must be financially consolidated; to ensure continued growth of the budget for medicines at double rate compared to the rate of GDP growth and the health needs of the insured in the Republic of Serbia. Make the budget more transparent to increase business predictability and safety of investment in the health and pharmaceutical sector.
- Equalize customs duties for finished medicinal products and raw materials for medicines production.
- The same tax treatment should be applied to the whole pharmaceutical sector, in the field of import of finished products and raw materials.

- Adjust the VAT rate for raw materials to the rate applied to finished medicinal products.
- Abolish VAT on donations of medicines and medical devices to health institutions.
- Abolish outer packaging control labelling of medicines as an unnecessary expense for the industry, as it is merely an illusion that it can effectively protect against forgeries.
- Annul the provisions stipulating that the expenses of waste management i.e. export of pharmaceutical waste collected from the population are borne by the pharmaceutical companies proportionally to the share of the company in the total turnover of medicines in the Republic of Serbia.
- Abolish the practice of determining medicines' maximum wholesale price considering that the Government already determines the price of medicines on the reimbursement list. Limiting medicines' wholesale prices does not contribute to the development of a free market and competition, but prevents the entry into the market of medicines that cannot fit into a determined price range. It is an administrative barrier which postpones the entry of medicines that already have a marketing authorization.
- The Rulebook on criteria for the pricing of medicines for human use should be adopted every three months, automatically whenever the difference between the official exchange rate of the National Bank of Serbia and the exchange rate under the applicable Rulebook exceeds 3%. Furthermore, the NHIF should use the same exchange rate and the same model of calculation for determining the price of medicines on the C list, as for medicines on the A, A1 and B lists.
- The NHIF should define the reference prices for all medicines on the reimbursement list and the difference in price should be paid by insurers for medicines on the A1 list. The NHIF should not limit the level of co-payment for the A1 list drugs as this is not an additional financial burden on the NHIF budget. The upper price limit should be the maximum price approved by Government. This should ensure better accessibility of original and branded generic drugs to patients.
- It is necessary to continue improving the process of determining the price of medicines and including them in the reimbursement list. This process should be transparent, with clear rules, mandatory rationale of the final decision and right to appeal; relevant patients' associations should be involved in making decisions on the medicines to be included on the reimbursement list.
- The added value of innovations in the health sector should be recognized, as it is the basis for accomplishing the highest quality of public health and reducing the expenses of treatment; access to innovative therapies needs to be better and faster, especially for groups of patients most in need of those medicines. Local and foreign pharmaceutical companies have the same goal – to provide the best possible therapy to all patients in Serbia.
- Expand groups of medicines that can be issued without prescription while at the same time excluding those medicines from the reimbursement list. Reduce deadlines for issuing licenses for manufacturing and traffic of psychoactive substances in the Republic of Serbia and harmonize them with the regulatory practices in the region. This will strengthen the competitiveness of local pharmaceutical companies and boost exports.
- The new Law on Waste Management should not introduce additional, financial burdens for pharmaceutical companies.

PRIVATE SECURITY INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continue with the monitoring of the preparation process for the introduction of the by-laws of the Law on Private Security, while continuously insisting that the by-laws should be harmonized with the European models of legislation as far as possible, but also adjusted to local specific features; licensing of the companies should be handled by the Government (Ministry of Interior) or a government agency in order to avoid monopolization of this sector and a conflict of interests.	2009	√		
The goal of Law adoption is legislative regulation, not taxation of the security industry; therefore, the principle of economy must be taken into account, which means having reasonable costs that would certainly, at the end of the process, be borne by the recipient of security services.	2011			√
In the implementation of the Law, the security industry should be legalized pragmatically, meaning that it is necessary to set a reasonable time schedule and deadline for the training and licencing of security officers and companies.	2011		√	
Allowing and enabling of distance learning by changing the bylaws in order to establish legitimate way of training of potential candidates for obtaining a security licence.	2015			√
The Government should encourage close co-operation between security sector stakeholders (both public and private), while consulting large private security investors who can present their experiences and best practices from other EU countries where they operate.	2009		√	

CURRENT SITUATION

Serbia's private security sector employs over 30,000 people and has over 150 active security companies, and after a long period of being the only country in the region and Europe having such a sector of the economy without a law regulating its functioning, Serbia finally got its Law on Private Security at the end of 2013. The adoption of the law is a key, but by no means the only step towards the regulating and proper functioning of the private security industry in the Republic of Serbia.

The long-held misconception that the mere adoption of the Law on Private Security would solve the problems of the grey economy in this industry is now more evident than ever. Companies that obey the laws, pay taxes and contributions, and which have commenced licensing activities, have been faced with high costs for these activities, and thus their prices are uncompetitive.

Meanwhile, companies operating in the grey economy generate significant profits, enter the market with the lowest prices, intending to use their "privileged" position after expiry of the time limits that have been provided for full compliance with the Law on Private Security (1 January 2017.).

Previous activities in the field of transformation and full implementation of the law show that many companies still have certain expectations, hoping that certain changes will be implemented in order to "mitigate" licensing requirements. It is expected that there will be orchestrated pressure (through trade unions, associations, interest groups) to once again extend the deadline for licensing and full implementation of the Law.

The Government is one of the biggest users of private security services; yet it holds a contradictory position with regard to public procurement of security services. In fact, the Government is highly interested in having enterprises and citizens duly pay taxes and social contributions, and its policy thereon is rigorous. However, when it comes to public procurement of security services, the most common criterion is the lowest bid, and in most cases the contracting authority (the Government or a public enterprise) does not pay attention to whether the selected bidder

has paid all due taxes and contributions, or whether its employees are paid regularly, and what their employment status is, etc.

In this manner, accepting "the most advantageous" bid based on the lowest price actually has negative consequences because the net effect is less favourable for the Government (the alleged savings gained by selecting the "most advantageous" bidder are lower than the amount of revenues that the Government could collect if it were to regularly collect all taxes to which the bidder is subject under the law).

POSITIVE DEVELOPMENTS

The Ministry of Internal Affairs has opened channels of communication with the industry, which is of the utmost importance. Finally, after more than a decade of attempts by stakeholders to influence the adoption of the Law, state authorities have, realized the importance of bilateral communication, and so have formed an Expert Council for the improvement of private security, private investigator activities, and public-private partnerships in the security sector.

REMAINING ISSUES

When passing the law and by-laws the legislators did not take into account the economic possibilities of the security industry, or the number of people employed in the industry. Officers who earn around EUR 200 a month (the minimum guaranteed wage) will have to provide EUR 400-500 for mandatory training, a professional examination, a medical examination, along with administrative fees. Vocational training programmes are too ambitious, extremely comprehensive, and overloaded with topics, while only the mandatory one hundred and one theoretical classes take at least two working weeks to complete, for which the trainees will have to use their annual leave. The mandatory programme is extremely rigid, and lacking modern practices, such as dual education, distance learning, etc. The accredited training centres (active ones) are only available to employees in the major cities in Serbia, and not in small towns.

FIC RECOMMENDATIONS

- Continue monitoring the application of the Law on Private Security, while continuously insisting that its implementing by-laws be harmonized with EU models of legislation to the extent possible, while at the same time taking into account local specificities.
- The goal of the law's adoption and application is normative, not fiscal regulation of the security industry; therefore, the principle of cost-effectiveness must be taken into account, which means having reasonable costs that would certainly, by the end of the process, be transferred to the user of security services.
- Support the Ministry of Internal Affairs in its commitment to inspect all entities that are in the grey area to ensure that they comply with the adopted Law to the fullest extent.
- Change by-laws to allow and enable distance learning as a legitimate way of training potential candidates for obtaining a security licence.
- The Government should encourage close co-operation between security sector stakeholders (both the public and private sectors).

HOMECARE PRODUCTS AND COSMETIC INDUSTRY

BIOCIDES AND CHEMICALS IN 2016

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
BIOCIDES AND CHEMICALS				
While complying with the new rules regarding the visual elements of product packaging introduced by the CLP Regulation, there is also a need to continue and enrich cooperation with consumers, industry representatives, trade and Ministries.	2015			√
SANITARY INSPECTIONS AT THE BORDER-CONTROL OF CHEMICALS AND BIOCIDAL PRODUCTS				
The control system of imported products should focus primarily on documentation (product dossier) and should not involve laboratory analyses of the safety of general use items.	2015			√
The Government needs to encourage coordination between the Ministry of Health, the Sanitary Inspectorate, the Ministry of Agriculture and Environmental Protection, the Sector for Chemicals, and the Ministry of Trade, because chemicals are currently under the jurisdiction of three Ministries. Moreover, the jurisdiction over and control of chemicals and biocidal products, both on the market and at the border when importing goods, should be precisely defined. Support should be provided to organized cooperation of representatives of consumers, the relevant ministry and industry representatives for regulating the handling of chemicals through various activities, as was the practice in the past.	2015			√
Once again, the chemicals sector should be regulated only by the Law on Chemicals, as chemicals are definitely not general use items.	2015			√
SEPARATION OF CERTAIN CLEANING PRODUCTS IN RETAIL STORES				
Cleaning and hygiene products labelled as "irritants" should have the same treatment as in the EU member states, where such products are not subject to requirements on separate shelving.	2014			√
IMPLEMENTATION OF THE LEGISLATION RELATED TO UNIT PRICING IN SERBIA				
In the context of having different types of concentrations it is important for consumers to know the price per wash and not only the price per kg or l. This will facilitate comparison of prices for different types of detergents and help consumers make an informed decision. An official decision or by-law is required from the Ministry of Trade to define price per wash load as the official unit in order to increase transparency and avoid misleading consumers, and make a step forward in harmonizing with EU regulation (European Union member states already have the obligation to communicate of price per wash load).	2015			√
COSMETIC INDUSTRY				
Administrative procedures for adopting regulations have to be accelerated. Just to note that so far the process of adoption of the Rulebook has been twice as long as the time the working group needed to prepare the whole regulation. Since EU legislation on cosmetic products is constantly being updated, due to continuous research in this sector, the Rulebook must be enacted as soon as possible to ensure smooth and timely harmonization in the future.	2013			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The system for the control of cosmetic products in Serbia should be based on internal market control, which is the practice in EU countries, while import control should mainly focus on documentation (product dossier). Harmonization with EU technical requirements, through the adoption of the Rulebook on cosmetic products safety, is just the first step towards the harmonization of market control with the EU.	2013			√
The adoption of a specific regulation on cosmetic products would avert differences in interpretation, and consequently differences in the requirements by different inspections (especially in the area of product labelling), which are the consequence of the application of different general regulations that neglect the specificities of certain product groups (in this case cosmetic products).	2013			√

CURRENT SITUATION

Regulatory harmonization in the area of chemicals, biocides, and detergents has become a regular topic, as well as the regulatory framework for the annual registration of chemicals.

Cooperation with the industry and the relevant experts has continued through projects organized by the Ministry of Agriculture and Environmental Protection for topics that will be important during the implementation period (REACH implementation, etc.).

POSITIVE DEVELOPMENTS

The Ministry of Agriculture and Environmental Protection prepared some control lists for the implementation of the Law on Inspection Oversight.

REMAINING ISSUES

Further harmonization with changes in EU regulations on chemicals and biocides is still in focus. Nevertheless, mutual cooperation between respective governmental bodies, representatives of the industry, and scientific institutions should be improved.

FIC RECOMMENDATIONS

- While complying with the new rules regarding the visual elements of product packaging introduced by the CLP Regulation, there is also a need to continue and enrich cooperation with consumers, industry representatives, trade and Ministries.

SANITARY INSPECTION AT THE BORDER – CONTROL OF CHEMICALS AND BIOCIDAL PRODUCTS

CURRENT SITUATION

The latest amendment to the Law on Chemicals (RS Official Gazette No 36/2009, 88/2010, 92/2011, 93/2012 and 25/2015) re-established the authority of the sanitary inspectorate in the sphere of chemicals, and consequently, import of chemicals is once again subject to control, in compliance with the Law on the Safety of General Use Items (RS Official Gazette No 92/2011), and Rules of Procedure on requirements for the safety of general use items that may be placed on the market (Official Gazette of SFRY No 26/83, 61/84, 56/86, 50/89 and 18/91), as the relevant by-law.

Every year, according to the Law on Chemicals, chemicals

have to be entered into the integrated Register of Chemicals. When registering, the importer/manufacturer of chemicals is required to submit detailed data on the ingredients, origin of the chemical, its classification, and use.

POSITIVE DEVELOPMENTS

Improvements were noticeable in 2012, when the sanitary inspection of import products was abolished, but with last year's imprecise amendments to the Law on Chemicals we have practically taken a step backward. There have been no positive developments since last year.

REMAINING ISSUES

The latest amendment to the Law on Chemicals again impose costs of laboratory analyses on importers, significantly prolonging the period of time from the moment of submitting import documentation to launching sale.

Trade in chemicals is regulated once again together with trade in other general use products, despite the fact that a separate regulation was enacted specifically to regulate this issue – the Law on Chemicals.

FIC RECOMMENDATIONS

- The control system for imported products should focus primarily on documentation (product dossier) and should not involve laboratory analyses of the safety of general use items.
- The Government needs to encourage coordination between the Ministry of Health, the Sanitary Inspectorate, the Ministry of Agriculture and Environmental Protection, the Sector for Chemicals, and the Ministry of Trade, because chemicals are currently under the jurisdiction of three Ministries. Moreover, the jurisdiction over and control of chemicals and biocidal products, both on the market and at the border when importing goods, should be precisely defined. Support should be provided to organized cooperation of representatives of consumers, the relevant ministry, and industry representatives for regulating the handling of chemicals through various activities, as was the practice in the past.
- Once again, the chemicals sector should be regulated only by the Law on Chemicals, as chemicals are definitely not general use items.

SEPARATION OF CERTAIN CLEANING PRODUCTS IN RETAIL STORES

CURRENT SITUATION

Since 2012, cleaning products classified as "irritants" have to be placed on separate shelves in the stores with instructions for consumers (Rulebook on detailed conditions for keeping hazardous chemicals in the sales area and marking that space, RS Official Gazette of No 31/11 and 16/12).

Although the by-law is clear in terms of which products are included, it does not provide precise information about how to separate these products and no clear directions for shelving.

The separation of the cleaning products classified as "irritants" is a unique solution in Serbia, and not in harmony with EU regulations and practices. The currently applicable Law on Chemicals (RS Official Gazette No 36/09) does not even require special packaging for these products, as their safety profile does not justify such provisions.

POSITIVE DEVELOPMENTS

No positive developments since last year.

REMAINING ISSUES

The by-law on detailed requirements for keeping hazardous chemicals in the sales area can be qualified as a trade barrier that imposes additional (unjustified) restrictions on the trade and retail sale of cleaning and hygiene products. With the entry into force of the new EU Regulation on Classification, Labelling, and Packaging of products on 1 June 2015, the negative impact of the by-law could be even higher.

FIC RECOMMENDATIONS

- Cleaning and hygiene products labelled as "irritants" should have the same treatment as in the EU Member States, where such products are not subject to requirements on separate shelving.

IMPLEMENTATION OF LEGISLATION RELATED TO UNIT PRICING IN SERBIA

CURRENT SITUATION

This legislation refers to the initiative for displaying unit prices per wash load for detergents in retail stores. The current maturity of the cleaning products market in Serbia requires implementation of similar practices as in the European Union Member States with a long history in showing the price per wash load on the shelf to provide consumers with correct and complete information. There are currently several types of cleaning products for households in Serbia: powder and liquid detergents of different levels of compaction/concentration, tablets (solid powder detergents), and gel caps. The same applies to softeners. The Rulebook on detergents requires producers to put the number of wash loads on the pack, which is the practice.

The Ministry of Trade does not recognize the importance of communicating the price per wash load together with price per pack because this price unit is not seen as an official one. On the other hand, the current communication of prices is misleading for consumers because there are different types of products on the market (e.g. powder, gels, and caps), with different compaction/concentration levels, so the prices per pack and per unit (kg/L) are not comparable. The introduction of the price per wash load would help consumers compare prices of products with different compaction/concentration levels and in different forms.

POSITIVE DEVELOPMENTS

All detergent and softener producers communicate the number of wash loads per pack together with the number of unit (kg/l) per pack on the product (package) and through different types of sales point materials (wobblers, leaflet pictures, info leaflets, dividers, etc.) in order to provide the consumers with transparent information about the dosage and number of washes per pack, to raise awareness of compaction/concentration levels and to make it easier for consumers to compare prices of different products. Consumer protection associations have supported communication of price per wash load together with price per pack. However, there have been no positive developments in terms of understanding and acceptance from the authorities' point of view.

REMAINING ISSUES

This initiative is fully consistent with the Law on Consumer Protection, where the unit price is defined as "price per kilogram, litre, square meter, cubic meter or other unit of measurement that is in regular use and corresponds to the nature of the goods". Moreover, this has been a standard practice throughout European countries for a long time (more than 20 years). As a business association dedicated to the promotion and implementation of European standards in the Serbian market, and taking into consideration the presented arguments, the FIC would like to win the support of the authorities as well for this initiative to better inform consumers, in line with the technical adaptation to the current technologies that allow different levels of concentrations for various types of cleaning products.

Official authorities have not yet (but should) issue a statement specifying pricing information to be officially communicated to consumers, considering that on the detergent market there are currently different product types, in different form, with different number of wash loads (e.g. powder detergent, liquid detergent, caps); and in the softener category, the same pack size can have different concentration levels, meaning different number of washes. Regular shelf and sale prices of all these products are communicated in retail as price per pack or price per unit (kg/l) but without stating price per wash load, which is more relevant when comparing prices of two different forms of product or same pack sizes with different number of washes.

FIC RECOMMENDATIONS

- In the context of having different types of concentrations it is important for consumers to know the price per wash and not only the price per kg or l. This will facilitate comparison of prices for different types of detergents and help consumers make an informed decision. An official decision or by-law is required from the Ministry of Trade to define price per wash load as the official unit in order to increase transparency and avoid misleading consumers, and make a step forward in harmonizing with EU regulation (European Union Member States already have the obligation to communicate price per wash load).

COSMETIC INDUSTRY

CURRENT SITUATION

Safety of cosmetic products is regulated by the Law on Safety of General Use Products (RS Official Gazette No 92/2011) and the Rulebook on Requirements for the Safety of General Use Products that May be Placed on the Market (Official Gazette SFRY Nos. 26/83, 61/84, 56/86, 50/89, and 18/91).

The control of cosmetic products is the responsibility of the Ministry of Health, Sanitary Inspection Department, and Inspection Affairs Sector.

During import, cosmetic products are subject to control by the border sanitary inspection and cannot be sold on the market before a decision, issued by the sanitary inspector approving the import of goods, is obtained. The official control by sanitary inspection includes evaluation of all the evidence, i.e. documentation relevant for the determination of safety, provided by the importer. According to the Law, the official control may also include inspection sampling and laboratory examination if the inspector suspects the safety of the product or if safety cannot be determined in another way. The problem often faced by importers in practice is that inspection sampling and laboratory examination are very often performed as part of a regular process and not just in the aforementioned situations. This creates instability and uncertainty in terms of doing business, but also in terms of costs (with the costs of examination being borne by the importer). Due to laboratory examination, the whole process of official control may last up to ten days, sometimes even longer, which affects the normal flow of business.

Another problem which exists is nonconformity of the regulations on cosmetic products in the Republic of Serbia with the appropriate regulations of the European Union. Bearing in mind that the by-law is dating back more than twenty years and that the Law, although from 2011, has been harmonized with regulations of the European Union to a very small extent, there are huge differences to the regulations of the European Union in terms of the way of control, labelling, physico-chemical characteristics, etc., creating problems to companies operating in this sector.

Harmonization of regulations on cosmetic products with the relevant EU legislation is planned as a part of Serbia's EU accession process. The adoption of cosmetics legislation is the responsibility of the Ministry of Health.

Within the Ministry of Health in May 2012, a working group for the preparation of a by-law was formed and

in April 2013 it completed a draft of the by-law, harmonizing it, to the greatest possible extent, to the Cosmetics Regulation of the European Union. However, due to a lack of legal basis in the existing Law, the by-law has not been adopted. In the meantime, a new working group was formed in October 2015 by the Ministry of Health with the task of preparing a new Law of Safety of General Use Products. The preparation of the new Law is on-going, albeit very slow.

POSITIVE DEVELOPMENTS

Unfortunately, there have been almost no positive developments since last year. The only positive step is the establishment and start of the work of the working group for the preparation of the law, but the process is going very slowly.

REMAINING ISSUES

Problems in the cosmetics sector are the consequence of Serbian regulations not- being harmonized with those of the European Union. The biggest differences exist in the way of control of imported cosmetic products (pre-market control in Serbia and in-market control in the European Union for all cosmetic products), and in technical requirements and reference values, which leads in turn to the need for additional labelling, additional analyses, etc.

Although prepared, the by-law is "waiting" for the adoption of the Law. As for the Law, due to the fact that the current law has transposed EU regulations to a very small extent, it was determined that, instead of Amendments, a new law has to be written instead.

FIC RECOMMENDATIONS

- Administrative procedures for adopting regulations on cosmetic products and other general use products have to be accelerated. This includes preparation of the Law on Safety of General Use Products, harmonized with EU regulations, in the shortest possible time, and the adoption of appropriate by-laws (Rulebook on Safety of Cosmetic Products).
- The system for the control of all cosmetic products in Serbia should be based on internal market control, as is the case in EU Member States, while import control should focus mainly on documentation (product dossier). Harmonization with EU technical requirements, through the adoption of the Rulebook on Safety of Cosmetic Products, is just the first step towards the harmonization of market control with the EU. In order to achieve this, in addition to the adoption of new regulations, the practice of the authorities should be changed, i.e. the focus should be moved from border control to in-market control, so that all cosmetic products are treated the same way.

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FIC MEMBERS

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ADDIKO BANK A.D. BEOGRAD
Bulevar Mihajla Pupina 6, 11070 Beograd
Tel: 011 2226 000, Fax: 011 2226 555
E-mail: office.rs@addiko.com
Web: www.addiko.rs

AIRPORT CITY BELGRADE
Omladinskih brigada 88, 11070 Beograd
Tel: 011 2090 525
E-mail: office@airportcitybelgrade.com
Web: www.airportcitybelgrade.com

ALPHA BANK SRBIJA A.D.
Kralja Milana 11, 11000 Beograd
Tel: 0800 250 250, Fax: 011 3243 516
E-mail: gm-office@alphabankserbia.com
Web: www.alphabankserbia.com

APEX SOLUTION TECHNOLOGY D.O.O.
Makenzijeva 24, 11000 Beograd
Tel: 011 7155 171, Fax: 011 7155 171
E-mail: office@apextechnology.rs
Web:www.apextechnology.rs; www.busplus.rs

AUNDE SRB D.O.O.
Industrijska zona BB, 35000 Jagodina
Tel: 035 740 910, Fax: 035 740 910
E-mail: office@aunde.rs
Web: www.aunde.com

AXA OSIGURANJE
Bulevar Mihajla Pupina 6, 11070 Beograd
Tel: 011 2200 400, Fax: 011 2200 401
E-mail: contact@axa.rs
Web: www.axa.rs

BAKLAJA IGRIĆ TINTOR ADVOKATSKA KANCELARIJA
Gospodar Jevremova 47/1, 11000 Beograd
Tel: 011 3284 110, Fax: 011 3346 425
E-mail: office@bit-law.com
Web: www.bit-law.com

BALL PACKAGING EUROPE BELGRADE LTD.
Batajnički drum 21A, 11080 Zemun - Beograd
Tel: 011 3770 600, Fax: 011 3167 290
Web: www.ball-europe.com

BANCA INTESA A.D. BEOGRAD
Milentija Popovića 7b, 11070 Beograd
Tel: 011 3108 888
E-mail: kabinet@bancaintesa.rs
Web: www.bancaintesa.rs

BASF SRBIJA D.O.O.
Omladinskih brigada 90B, 11070 Beograd
Tel: 011 3093 403, Fax: 011 3093 423
Web: www.basf.rs

BAYER D.O.O.
Omladinskih brigada 88b, 11070 Beograd
Tel: 011 2070 252, Fax: 011 2070 261
Web: www.bayer.rs

BDK ADVOKATI
Majke Jevrosime 23, 11000 Beograd
Tel: 011 3284 212, Fax: 011 3284 213
E-mail: office@bdklegal.com
Web: www.bdklegal.com

BOJOVIC & PARTNERS A.O.D. BEOGRAD
Čika Ljubina 16/II, 11000 Beograd
Tel: 011 7850 336, Fax: 011 7850 337
E-mail: office@bojovicpartners.com
Web: www.bojovicpartners.com

BPI D.O.O. SOMBOR
Venac Radomira Putnika 1, 25000 Sombor
Tel: 025 451 800, 025 5150 161, 025 5150 162
Fax: 025 451 800, 025 5150 185
Web: www.bpi-holding.com

BRITISH AMERICAN TOBACCO SOUTH-EAST EUROPE D.O.O. BEOGRAD
Bulevar Mihaila Pupina 165g, 11070 Beograd
Tel: 011 3108 700
Web: www.bat.com

CARLSBERG SRBIJA D.O.O.
Proleterska 17, 21413 Čelarevo
Tel: 021 7550 600, Fax: 021 7550 658
E-mail: info@carlsberg.rs
Web: www.carlsbergsrbija.rs

COCA-COLA HBC - SRBIJA D.O.O.
Batajnički drum 14-16, 11080 Beograd
Tel: 011 3073 100, Fax: 011 3073 199
Web: www.coca-colahellenic.rs

CREDIT AGRICOLE SRBIJA A.D. NOVI SAD
Braće Ribnikar 4-6, 21000 Novi Sad
Tel: 021 4876 876, Fax: 021 4876 976
E-mail: info@creditagricole.rs
Web: www.creditagricole.rs

CRH (SRBIJA) D.O.O.
Popovac bb, 35254 Popovac
Tel: 035 572 200, Fax: 035 572 207
E-mail: general-info@rs.crh.com
Web: www.crhserbia.com; www.crh.com

CROWE HORWATH BDM D.O.O.
Terazije 5/4, 11000 Beograd
Tel: 011 6558 500, Fax: 011 6558 501
E-mail: office@crowehorwath.rs
Web: www.crowehorwath.rs

DDOR NOVI SAD A.D.O.
Bulevar Mihajla Pupina 8, 21000 Novi Sad
Tel: 021 4886 000, Fax: 021 6624 831
E-mail: ddor@ddor.co.rs
Web: www.ddor.co.rs

DELHAIZE SERBIA D.O.O.
Jurija Gagarina 14, 11070 Novi Beograd
Tel: 011 7153 400, Fax: 011 7153 900
E-mail: office@delhaize.rs
Web: www.maxi.rs; www.delhaizegroup.com

DELOITTE D.O.O.
Terazije 8, 11000 Beograd
Tel: 011 3812 100, Fax: 011 3812 112
E-mail: ceyuinfo@deloittece.com
Web: www.deloitte.com/rs

DELTA HOLDING
Vladimira Popovica 6, 11070 Beograd
Tel: 011 2011 164, 011 2011 921. Fax: 011 2011 111
E-Mail: office@deltaholding.rs
Web: www.deltaholding.rs

DEUTSCH-SERBISCHE WIRTSCHAFTSKAMMER (AHK SERBIEN)
Topličin venac 19-21, 11000 Beograd
Tel: 011 2028 010, Fax: 011 3034 780
E-mail: info@ahk.rs
Web: www.serbien.ahk.de/rs; www.serbien.ahk.de

ECOLAB HYGIENE D.O.O.
Tošin bunar 272/V, 11070 Beograd
Tel: 011 2076 800, Fax: 011 2076 802
E-mail: office.belgrade@ecolab.com
Web: www.ecolab.rs

EKO SERBIA A.D.
Member of Hellenic Petroleum group
Tošin bunar 274a, 11070 Novi Beograd
Tel: 011 2061 500, Fax: 011 2061 555
E-mail: administracija@hellenic-petroleum.rs
Web: www.ekoserbia.com

ERNST & YOUNG D.O.O. BEOGRAD
Španskih boraca 3, "Blue Center", 11070 Beograd
Tel: 011 2095 800
E-mail: ey.office@rs.ey.com
Web: www.ey.com/rs

ERSTE BANK A.D. NOVI SAD
Bulevar oslobođenja 5, 21000 Novi Sad
Erste Poslovni centar, Milutina Milankovića 11b, 11000 Beograd
Tel: 0800 201 201, 060 7979 000
E-mail: info@erstebank.rs
Web: www.erstebank.rs

EUROBANK A.D. BEOGRAD
Vuka Karadžića 10, 11000 Beograd
Tel: 011 2065 880, Fax: 011 3027 536
E-mail: office@eurobank.rs
Web: www.eurobank.rs

EVROPSKA BANKA ZA OBNOVU I RAZVOJ
Španskih boraca 3, 11070 Beograd
Tel: 011 2120 530, Fax: 011 2120 534
E-mail: bergd@ebrd.com; kilibara@ebrd.com
Web: www.ebrd.com

EXLRT D.O.O.
Mornarska 7, 21000 Novi Sad
Tel: 021 6301 548, 021 6392 826
E-mail: info@exlrt.com; office@exlrt.com
Web: www.exlrt.com

FCA SRBIJA D.O.O. KRAGUJEVAC
Kosovska 4, 34000 Kragujevac
Tel: 011 3030 906, Fax: 011 3030 914
Web: www.fiatsrbija.rs; www.fiat.com

FINDOMESTIC BNP PARIBAS GROUP
Bulevar Mihaila Pupina 115a, 11000 Beograd
Tel: 011 3331 733, Fax: 011 3331 766
E-Mail: office@findomestic.rs
Web: www.findomestic.rs

FRESENIUS MEDICAL CARE SRBIJA D.O.O.
Beogradski put bb, 26300 Vršac
Tel: 011 3951 000, Fax: 011 3951 009
E-mail: vera.trunic@fmc-ag.com
Web: www.fmc-ag.com

G4S SECURE SOLUTIONS D.O.O.
Viline Vode 6, 11000 Beograd
Tel: 011 2097 900, Fax: 011 2097 914
E-mail: direkcija@rs.g4s.com
Web: www.g4s.rs

GENERALI OSIGURANJE SRBIJA A.D.O.
Vladimira Popovića 8, 11070 Novi Beograd
Tel: 011 2220 555
Web: www.generali.rs; www.generali.com

GRAND CASINO BEOGRAD
Bulevar Nikole Tesle 3, 11080 Beograd
Tel: 011 2202 800, Fax: 011 2202 810
E-mail: info@grandcasinobeograd.com
Web: www.grandcasinobeograd.com

GRUNDFOS SRBIJA D.O.O.
Obilazni put Sever 21, 22320 Inđija
Tel: 022 367 300, Fax: 022 367 302
Web: www.grundfos.rs; www.grundfos.com

GTC INTERNATIONAL DEVELOPMENTS LLC BELGRADE
Milutina Milankovića 9ž, 11070 Beograd
Tel: 011 3130 751, Fax: 011 3130 752
E-mail: office@gtcserbia.com
Web: www.gtcserbia.com; www.gtc.com.pl

HARRISONS
Bulevar Mihajla Pupina 6, PC Ušće, 11000 Beograd
Tel: 011 3129 825, Fax: 011 3129 823
E-mail: office@harrison-solicitors.com
Web: www.harrison-solicitors.com

HAUZMAJSTOR D.O.O.
Dunavska 57a, 11000 Beograd
Tel: 011 3034 034, Fax: 011 2070 995
E-mail: office@hauzmajstor.rs
Web: www.hauzmajstor.rs

HEINEKEN SRBIJA D.O.O.
Omladinskih brigada 90b, 11070 Beograd
Tel: 011 3538 600, Fax: 011 3538 691
E-mail: info.serbia@heineken.com
Web: www.heinekeninternational.com

HEMOFARM A.D.
Beogradski put bb, 26300 Vršac
Tel: 013 803 500, Fax: 013 831 503
E-mail: svakodobro@hemofarm.com
Web: www.hemofarm.rs

HENKEL SRBIJA D.O.O.
Bulevar oslobođenja 383, 11040 Beograd
Tel: 011 2072 200 , Fax: 011 2072 294
Web: www.henkel.rs

HEWLETT PACKARD D.O.O.
Omladinskih brigada 90b, 11070 Beograd
Tel: 011 2056 855
Fax: 011 2056 895

HUAWEI TECHNOLOGIES D.O.O.
Vladimira Popovića 38/V, 11070 Beograd
Tel: 011 2209 607, Fax: 011 2209 607
E-mail: office.serbia@huawei.com
Web: www.huawei.com

HYATT REGENCY BELGRADE
Milentija Popovića 5, PO Box 07, 11070 Beograd
Tel: 011 3011 234, Fax: 011 3112 330
E-mail: belgrade.regency@hyatt.com
Web: www.belgrade.regency.hyatt.com

IB INTERBILANZ CONSULTING & AUDIT D.O.O.
Bulevar Mihajla Pupina 115 D, 11070 Beograd
Tel: 011 6557 043, Fax: 011 6557 052
E-Mail: office@ibgroup.rs
Web: www.ibgroup.at

IKEA SRBIJA D.O.O.
Autoput 22, 11070 Beograd
Tel: 011 2098 800
Web: www.ikea.com

INTERALLIS CHEMICALS
Neznanog junaka 27a, 11040 Beograd
Tel: 011 3679 230, Fax: 011 3679 231
E-mail: serbia@interallis.com
Web: www.interallis.com

INTESA LEASING D.O.O. BEOGRAD
Cara Uroša 54, 11000 Beograd
Tel: 011 2025 400, Fax: 011 2025 433
E-mail: ilbhead@intesaleasing.rs
Web: www.intesaleasing.rs

JANKOVIC, POPOVIC & MITIC O.D.
Vladimira Popovića 6, NBGP Apt. 11070 Beograd
Tel: 011 2076 850, Fax: 011 2076 899
E-mail: office@jpm.rs
Web: www.jpm.rs

JCMM AUTOMOTIVE D.O.O
Kosovska 4, 34000 Kragujevac
Tel: 034 308 222
E-mail: Milan.Radovic@adient.com
Web: www.johnsoncontrols

JELEN DO D.O.O. CARMEUSE SERBIA
Jelen Do bb, 31215 Jelen Do, Požega
Tel: 031 590 599, Fax: 031 590 570
E-mail: info@carmeuse.com
Web: www.carmeuse.com

JONES LANG LASALLE D.O.O.
Danube Business Center, Bulevar Mihajla Pupina 10L,
11070 Novi Beograd
Tel: 011 7850 600, Fax: 011 7850 597
E-mail: belgrade@eu.jll.com
Web: www.joneslanglasalle.rs

JT INTERNATIONAL A.D. SENTA
Subotički drum 17, 24400 Senta
Tel: 011 2050 300, Fax: 011 2050 301
Web: www.jti.com

KAPSCH D.O.O.
Sava Business Center, Milentija Popovića 5B,
11070 Beograd
Tel: 060 073 0303, Fax: 011 2282 679
E-mail: kapsch.srb@kapsch.net
Web: www.kapsch.net; www.kapsch.rs

KARANOVIĆ & NIKOLIĆ
Resavska 23, 11000 Beograd
Tel: +381 11 3094 200 , Fax: +381 11 3094 223
E-mail: knserbia@karanovic-nikolic.com
Web: www.karanovic-nikolic.com

KNAUF INSULATION D.O.O.
Batajnički drum 16b, 11080 Beograd
Tel: 011 3310 800, Fax: 011 3310 801
E-mail: office.belgrade@knaufinsulation.com
Web: www.knaufinsulation.rs; www.knaufinsulation.com

KPMG D.O.O. BEOGRAD
Kraljice Natalije 11, 11000 Beograd
Tel: 011 2050 500, Fax: 011 2050 550
E-mail: info@kpmg.rs
Web: www.kpmg.rs

KUPUJEM PRODAJEM D.O.O.
Sazonova 75/16, 11000 Beograd
Fax: 011 2836 958
E-mail: marketing@kupujemprodajem.com
Web: www.kupujemprodajem.com

LAFARGE BFC D.O.O.
Trg BFC 1, 21300 Beočin
Tel: 021 874 102, Fax: 021 874 143
E-mail: lbfc.office@lafarge.com
Web: www.lafarge.rs; www.lafargeholcim.com

L'OREAL BALKAN D.O.O.
Bulevar Zorana Đinđića 64a, 11070 Beograd
Tel: 011 2205 900, Fax: 011 2205 901
Web: www.loreal.com

LUKOIL SRBIJA A.D. BEOGRAD
Bulevar Mihajla Pupina 165d, 11070 Beograd
Tel: 011 2220 200, Fax: 011 2220 294
Web: www.lukoil.rs

MAGNETI MARELLI D.O.O.
Kosovska 4, 34000 Kragujevac
Tel:034 502 748
Web: www.magnetimarelli.com

MARBO PRODUCT D.O.O, A COMPANY OF PEPSICO
Đorđa Stanojevića 14, 11070 Beograd
Tel: 011 3637 000, Fax: 011 3637 069
E-mail: belgrade.office@pepsico.com
Web: www.pepsico.com
www.facebook.com/PepsiCoSrbijaOfficial;
twitter.com/PepsiCoSrbija

MARIĆ, MALISIĆ & DOSTANIĆ O.A.D.
Resavska 32/4, 11000 Beograd
Tel: 011 3024 900, Fax: 011 3024 910
E-mail: office@mmd-associates.com
Web: www.mmd-associates.com

MERCK D.O.O.
Omladinskih brigada 90v, 11070 Beograd
Tel: 011 2175 761, Fax: 011 2176 781
E-mail: merck@merck.rs
Web: www.merck.rs; www.merck.de

MERKUR OSIGURANJE A.D.O.
Bulevar Mihaila Pupina 6/22, 11070 Beograd
Tel: 011 7852 727, Fax: 011 7852 728
E-mail: office@merkur.rs
Web: www.merkur.rs

MESSER TEHNOGAS A.D.
Banjički put 62, 11000 Beograd
Tel: 011 3537 200, Fax: 011 3537 291
E-mail: postoffice@messer.rs
Web: www.messer.rs

MINI PANI D.O.O.
Hipodromska bb, 24107 Subotica
Tel: 024 621 521, Fax: 024 621 522
E-mail: kontakt@minipani.com
Web: www.minipani.com

MIRABANK A.D. BELGRADE
Španskih boraca 1, 11070 Beograd
Tel: 011 6355 400, Fax: 011 6355 404
E-mail: office@mirabankserbia.com
Web: www.mirabankserbia.com

MOJI BRENDOVI D.O.O. BEOGRAD
Andre Nikolića 1-3, 11000 Beograd
Tel: 011 3817 017
E-mail: office@mojibrendovi.com

MONDELEZ D.O.O. BEOGRAD
Omladinskih brigada 88b/III, 11070 Beograd
Tel: 011 3530 800, Fax: 011 3133 788
E-mail: kontakt@mdlz.com
Web: www.mondelezinternational.com

NBG LEASING D.O.O.
Airport City, Omladinskih brigada 88, 11070 Beograd
Tel: 011 2287 982; 2288 071; 2288 074; 2288 079
Fax: 011 2287 984
E-mail: office@nbgleasing.co.rs
Web: www.nbgleasing.rs

NESTLÉ ADRIATIC S D.O.O.
Železnička 131, 11271 Beograd - Surčin
Tel: 011 2019 301, Fax: 011 3132 022
E-mail: info@rs.nestle.com
Web: www.nestle.rs

NIS A.D. NOVI SAD (NAFTNA INDUSTRIJA SRBIJE)
Narodnog fronta 12, 21000 Novi Sad
Tel: 021 4811 111, Fax: 021 6366 433
E-mail: office@nis.eu
Web: www.nis.rs

NOKIA SOLUTIONS AND NETWORKS SERBIA D.O.O. BEOGRAD
Đorđa Stanojevića 14, 11070 Beograd
Belgrade Office Park, Building II, Gallery Floor
Tel: 011 3070 123; 3070 111, Fax: 011 3070 167
Web: www.nsn.com

PATRIMONS D.O.O.
Sterijina 7, 11000 Beograd
Tel: 011 2772 729, Fax: 011 2781 829
E-mail: office@patrimons.com
Web: www.patrimons.rs

PERNOD RICARD SERBIA
Bulevar oslobođenja 211, 11000 Beograd
Tel: 011 3975 246, Fax: 011 3974 380
Web: www.pernodricard.com

PETRIKIĆ & PARTNERI A.O.D. IN COOPERATION WITH CMS REICH-ROHRWIG HAINZ
Cincar Jankova 3, 11000 Beograd
Tel: 011 3208 900, Fax: 011 3208 930
E-mail: belgrade@cms-rrh.com
Web: www.cms-rrh.com

PFB PROPERTIES D.O.O. - COURTYARD BELGRADE CITY CENTER
Vase Carapica 2-4, 11000 Beograd
Tel: 011 400 3000, Fax: 011 400 3002
E-mail: reception.belgrade@courtyard.com
Web: www.courtyardbelgrade.com

PHILIP MORRIS SERVICES D.O.O. BEOGRAD
Bulevar Zorana Đinđića 64a, 11070 Beograd
Tel: 011 2010 800, Fax: 011 2010 824
Web: www.philipmorrisinternational.com

PHOENIX PHARMA D.O.O. BEOGRAD
Bore Stankovica 2, 11030 Beograd
Tel: 011 3538 100, Fax: 011 3538 200
E-mail: office@phoenixpharma.rs
Web: www.phoenixpharma.rs

PIRAEUS BANK A.D. BEOGRAD
Milentija Popovića 5b, 11070 Beograd
Tel: 011 3024 000, Fax: 011 3024 400
E-mail: banka@piraeusbank.rs
Web: www.piraeusbank.rs

PMC AUTOMOTIVE D.O.O. KRAGUJEVAC
Bulevar oktobarskih zrtava bb
34000 Kragujevac
Tel: 034 309 600

PRICEWATERHOUSECOOPERS D.O.O.
Airport City Belgrade, Omladinskih brigada 88a,
11070 Beograd
Tel: 011 3302 100, Fax: 011 3302 101
E-mail: rs-office@rs.pwc.com
Web: www.pwc.rs

PRISTOP
Bulevar Milutina Milankovića 136, ulaz A/I,
11070 Beograd
Tel: 011 7151 764, Fax: 011 7151 740
E-mail: office@pristop.rs
Web: www.pristop.rs

PROCREDIT BANK
Milutina Milankovića 17, 11000 Beograd
Tel: 011 2077 906, Fax: 011 2077 905
E-mail: info@procreditbank.rs
Web: www.procreditbank.rs

RAIFFEISEN BANKA A.D. BEOGRAD
Đorđa Stanojevića 16, 11070 Beograd
Tel: 011 3202 100
E-mail: info@raiffeisenbank.rs
Web: www.raiffeisenbank.rs

RAIFFEISEN LEASING D.O.O.
Đorđa Stanojevića 16, 11070 Beograd
Tel: 011 2207 400, Fax: 011 2289 007
E-mail: info.leasing@raiffeisen-leasing.rs
Web: www.raiffeisen-leasing.rs

RAUCH SERBIA D.O.O.
Baja Pivljanina 13, 11000 Beograd
Tel: 011 2652 225, Fax: 011 2652 298
E-mail: office.serbia@rauch.cc
Web: www.rauch.cc

RINGIER AXEL SPRINGER D.O.O.
Žorža Klemansoa 19, 11000 Beograd
Tel: 011 3334 701, Fax: 011 3334 703
E-mail: komunikacije@ringieraxelspringer.rs
Web: www.ringieraxelspringer.rs;
www.ringieraxelspringer.com

RIO TINTO - RIO SAVA EXPLORATION D.O.O.
Takovska 45/IV, 11000 Beograd
Tel: 011 2761 477, Fax: 011 2752 376
Web: www.riotinto.com;
www.riotintoserbia.com

ROBNE KUĆE BEOGRAD D.O.O.
Makenzijeva 57, 11000 Beograd
Tel: 011 3206 540, Fax: 011 3206 550
E-mail: office@rkbeograd.rs
Web: www.rkbeograd.rs

ROCHE D.O.O.
Milutina Milankovica 11a, 11070 Beograd
Tel: 011 2022 803, Fax: 011 2022 808
E-mail: serbia.office@roche.com
Web: www.rochesrbija.rs; www.roche.com

S&T SERBIA D.O.O.
Đorđa Stanojevića 14/III, 11070 Beograd
Tel: 011 3116 221, Fax: 011 3117 665
E-mail: info@snt.rs
Web: www.snt.rs

S-LEASING D.O.O.
Bulevar Milutina Milankovića 11a/IV,
11070 Novi Beograd
Tel: 011 2010 700; 2010 701, Fax: 011 2010 702
E-mail: office@s-leasing.rs
Web: www.s-leasing.rs

SANOFI-AVENTIS D.O.O.
Španskih boraca 3, 11070 Beograd
Tel: 011 2225 900, Fax: 011 2225 924

SAVA OSIGURANJE A.D.O. BEOGRAD
Bulevar vojvode Mišića 51, 11000 Beograd
Tel: 011 3644 801, Fax: 011 3644 889
E-mail: office@sava-osiguranje.rs
Web: www.sava-osiguranje.rs

SBB - SERBIAN BROADBAND
Bulevar Zorana Đinđića 8a, 11000 Beograd
Tel: 011 4001 146, 19900
E-mail: info@sbb.co.rs
Web: www.sbb.rs

SBERBANK SRBIJA A.D. BEOGRAD
Bulevar Mihaila Pupina 165g, 11070 Beograd
Tel: 0700 700 800, 011 2257 498, Fax: 011 2013 270
E-mail: info@sberbank.rs
Web: www.sberbank.rs

SCHNEIDER ELECTRIC SRBIJA D.O.O.
Vladimira Popovića 38-40, 11070 Beograd
Tel: 011 3773 100
E-mail: podrska.klijentima@schneider-electric.com
Web: www.schneider-electric.com

SGS BEOGRAD D.O.O.
Jurija Gagarina 7b, 11070 Beograd
Tel: 011 7155 277, 011 7155 288
Fax: 011 2284 241
E-mail: sgs.beograd@sgs.com
Web: www.sgs.rs

SIEMENS D.O.O. BEOGRAD
Omladinskih brigada 21, 11070 Beograd
Tel: 011 2096 305, Fax: 011 2096 061
E-mail: office.rs@siemens.com
Web: www.siemens.rs

SLADARA MALTINEX D.O.O.
Industrijska zona b.b, 21400 Bačka Palanka
Tel: 021 752 910, Fax: 021 6042 399
Web: www.soufflet.com

SOCIETE GENERALE BANKA SRBIJA A.D. BEOGRAD, CLOSED JOINT STOCK COMPANY
Bulevar Zorana Đinđića 50 a/b, 11070 Beograd
Tel: 011 3011 400, 011 2221 200, Fax: 011 3132 885
E-mail: Retail banking -stanovnistvo.sgs@socgen.com
Corporate clients - privreda.sgs@socgen.com
Web: www.societegenerale.rs

SOCIETE GENERALE OSIGURANJE A.D.O. BEOGRAD
Bulevar Mihajla Pupina 115dj, 11070 Beograd
Tel: 011 2608 662, Fax: 011 2607 330
E-mail: info.osiguranje@socgen.com
Web: www.sogeosiguranje.rs;
www.societegenerale.com

SOGELEASE SRBIJA D.O.O.
Bulevar Zorana Đinđića 48B, 11070 Beograd
Tel: 011 2221 369, Fax: 011 2221 388
E-mail: sogelease.srbija@socgen.com
Web: www.sogelease.rs

STAR IMPORT D.O.O.
Omladinskih brigada 33, 11070 Beograd
Tel: 011 3019 001 , Fax: 011 3019 036
E-mail: informacije@starimport.rs
Web: www.mercedes-benz.rs

STMG CONSULTANCY D.O.O. BEOGRAD
Bulevar Zorana Đinđića 144v, 11070 Beograd
Tel: 011 3535 400, Fax: 011 3535 401
E-mail: sasa.trajkovic@stmgconsultancy.com
Web: www.stmgconsultancy.com

STRAUSS ADRIATIC D.O.O.
Milosa Obilica 41, 22310 Simanovci
Tel: 022 408 000, Fax: 022 408 067
E-mail: info@strauss-group.rs
Web: www.strauss-group.rs; www.strauss-group.com

SWAROVSKI SUBOTICA D.O.O.
Batinska 94, 24000 Subotica
Tel:024 636 785, Fax: 024 636 904
E-mail: subotica@swarovski.com
Web: www.swarovskigroup.com

TELEKOM SRBIJA A.D.
Takovska 2, 11000 Beograd
Tel: 011 3337 171, Mob: 064 789
E-mail: prsektor@telekom.rs
Web: www.telekom.rs

TELENOR BANKA A.D. BEOGRAD
Omladinskih brigada 90v, 11070 Beograd
Tel: 011 4409 670, Fax: 011 4409 650
E-mail: officebanka@telenor.rs

TELENOR D.O.O.
Omladinskih brigada 90, 11070 Beograd
Mob: 063 9000
Web: www.telenor.rs

TETRA PAK PRODUCTION
Milutina Milankovića 9ž, 11070 Beograd
Tel: 011 2017 361, Fax: 011 2017 380
Web: www.tetrapak.rs

THE COCA-COLA COMPANY (BARLAN S&M D.O.O.)
Batajnički drum 14-16, 11080 Beograd
Tel: 011 3081 100 , Fax: 011 3081 166
E-mail: obelgrade@eur.ko.com
Web: www.thecoca-colacompany.com

THE INTERNATIONAL SCHOOL OF BELGRADE
Temišvarska 19, 11000 Beograd
Tel: 011 2069 999, Fax: 011 2069 944
E-Mail: isb@isb.rs
Web: www.isb.rs

TIGAR TYRES D.O.O. PIROT
PREDUZEĆE ZA PROIZVODNJU GUMA
Nikola Pašić 213, 18300 Pirot
Tel: 010 2157 000, Fax: 010 2157 010
Web: www.michelin.rs

TITAN CEMENTARA KOSJERIĆ D.O.O.
Živojina Mišića b.b, 31260 Kosjerić
Tel: 031 590 300, Fax: 031 590 398
Web: www.titan.rs

UBQ D.O.O.
Tosin bunar 272, 11070 Beograd
Tel: 011 4142 289
Web: www.ubq.no
E-mail: marija.matic@ubq.no

UNICREDIT BANK SRBIJA JSC
Rajićeva 27-29, 11000 Beograd
Tel: 011 3777 888, Fax: 011 3342 200
E-mail: office@unicreditgroup.rs
Web: www.unicreditbank.rs

UNIQA NEŽIVOTNO OSIGURANJE A.D.O.
Milutina Milankovića 134G, 11070 Novi Beograd
Tel: 011 2024 100
E-mail: info@uniqa.rs
Web: www.uniqa.rs

VICTORIA GROUP A.D.
Bulevar Mihajla Pupina 115b, 11070 Beograd
Tel: 011 3532 700, Fax: 011 3532 728
E-mail: office@victoriagroup.rs
Web: www.victoriagroup.rs

VIP MOBILE D.O.O.
Omladinskih brigada 21, 11070 Beograd
Tel: 060 1234, Fax: 011 2253 334
E-mail: komunikacije@vipmobile.rs
Web: www.vipmobile.rs

VOJVOĐANSKA BANKA A.D. NOVI SAD
- MEMBER OF NBG GROUP
Trg Slobode 5-7, 21000 Novi Sad
Tel: 021 421 077, Fax: 021 6624 859
E-mail: kabinet@voban.groupnbg.com
Web: www.voban.co.rs

WIENER RE AKCIONARSKO DRUŠTVO
ZA REOSIGURANJE BEOGRAD
Trešnjinog cveta 1, 11070 Beograd
Tel: 011 2209 960, Fax: 011 2251 711
E-mail: wienerre@wiener.co.rs
Web: www.wienerre.rs; www.vig-re.com

WIENER STÄDTISCHE OSIGURANJE A.D.O. BEOGRAD
Trešnjinog cveta 1, 11070 Beograd
Tel: 011 2209 800, Fax: 011 2209 900
E-mail: office@wiener.co.rs
Web: www.wiener.co.rs

WOLF THEISS IN COOPERATION WITH LAW OFFICE
MIROSLAV STOJANOVIC
Poslovni centar Ušće, Bulevar Mihajla Pupina 6,
11070 Beograd
Tel: 011 3302 900, Fax: 011 3302 925
E-mail: beograd@wolftheiss.com
Web: www.wolftheiss.com

ZIVKOVIC SAMARDZIC A.O.D. BEOGRAD
Makedonska 30, 11000 Beograd
Tel: 011 2636 636, Fax: 011 2635 555
E-mail: office@zslaw.rs
Web: www.zslaw.rs

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ACKNOWLEDGEMENTS

The White Book 2016 has been produced through joint efforts of numerous FIC member companies, while the FIC Working Committees had the key role in the drafting process.

We wish to acknowledge the following companies for their contributions to the White Book 2016:

AXA Osiguranje

Baklaja, Igric& Tintor

BASF Srbija d.o.o.

Bayer d.o.o.

BDK Advokati/Attorneys at Law

Bojovic & Partners a.o.d. Beograd

BPI d.o.o.

British American Tobacco SEE d.o.o. Beograd

Crowe Horwath BDM d.o.o.

Delta Holding

Ecolab Hygiene d.o.o.

EKO Serbia a.d.

G4S Secure Solutions d.o.o.

Harrisons

Hemofarm a.d.

Henkel Srbija d.o.o.

Intesa Leasing

Jankovic, Popovic & Mitic o.d.

JT International a.d. Senta

Karanović & Nikolić

KPMG d.o.o.

Lafarge BFC d.o.o.

L'Oréal Balkan d.o.o.

Lukoil Srbija a.d. Beograd

Marbo Product d.o.o, a company of PepsiCo

Maric, Malisic & Dostanic o.a.d. - correspondent law firm of Gide Loyrette Nouel

Merck d.o.o.

Mondelez d.o.o. Beograd

Nestlé Adriatic S d.o.o.

NIS a.d. Novi Sad (Naftna industrija Srbije)

Petrikić & Partneri a.o.d. in cooperation with CMS Reich-Rohrwig Hainz

Philip Morris Services d.o.o. Beograd

PricewaterhouseCoopers d.o.o.

Roche d.o.o.

Sanofi-Aventis d.o.o.

Societe Generale Osiguranje a.d.o. Beograd

Sogelease

Telenor banka

Telenor d.o.o.

UniCredit Bank Srbija JSC

Victoria Group a.d.

Vip Mobile d.o.o.

Wiener Städtische osiguranje a.d.o. Beograd

Zivkovic Samardzic a.o.d. Beograd

We would like to thank Smart Kolektiv for their expert help and contribution in compiling the text on Corporate Social Responsibility Manifesto and the Association Kozmodet for their expert help and contribution in compiling the text on Homecare Products and Cosmetic Industry.

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Publisher:
Foreign Investors Council
47 Gospodar Jevremova Street, IV floor
11000 Belgrade
Serbia
e-mail: office@fic.org.rs
www.fic.org.rs

Layout, realization, production:
Metropolis Co. d.o.o.
Admirala Vukovića 16
11000 Belgrade
Serbia
www.metropolis.rs

Printed by:
BiroGraf, Belgrade

top