WHITE BOOK

Proposals for improvement of the business environment in Serbia

2018

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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Proposals for improvement
of the business environment in Serbia

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and Foreign Investors Council

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CONTENTS

PILLARS OF DEVELOPMENT

LEGAL FRAMEWORK

SECTOR SPECIFIC

top

FOREWORD

The Foreign Investors Council is proudly presenting the White Book, which provides holistic overview of the business climate in Serbia and gives concrete proposals for improvement of business environment in the country. Many FIC members contributed to writing this edition of the White Book demonstrating the commitment to serve the FIC purpose of making Serbia better place to do business through consistent dialogue with all key stakeholders - Serbian Government, the EU Institutions and the IFIs.

Following the positive trend of the last year Serbia continues to demonstrate macroeconomic stability with healthy GDP growth of 3.5%, further reduction of public debt and low inflation. Serbia today is well positioned as an attractive geography to invest. This has been confirmed by the growing inflow of foreign direct investments which is higher than the last year. Serbia continues steady but moderateprogress in improving the business environment.

However, investors' expectations are evolving following the strategic decision of Serbia to become EU member. These expectations are connected to the acceleration of the reforms needed to instigate stronger economic growth, further development of investor friendly business climate and strengthening the rule of law.

The White Book scorecard shows that the pace of the reforms process remains on the same moderate level as last year – 34% of the White book recommendations have been partially implemented. This level of progress is similar to the one of the previous year. FIC Index shows that 4 top performers remain the same as last year: construction land and development; protection of users of financial services; transport; and tobacco industry regulations.

The White Book Task Force, which has been formed in January 2017 with the purpose to accelerate the implementation of the White book recommendations, until now did not deliver the expected results. Out of 8 Task Force topics, only real estate and inspection control made notable progress. Digitalization, bankruptcy, and foreign exchange regulations mark moderate progress, while key areas like tax, labour, and food safety lack progress.

In order to achieve better progress in 2019 the White Book Task Force project needs a relaunch and increased commitment and energy of the stakeholders - the FIC and the Government.

The acceleration of reforms is becoming even more important at current moment as Serbia is evolving in EU accession process. The accession process has already had, and will continue to have an important positive impact on Serbian economy, changing the market context making it transparent and attractive for investments. Along with structural reforms, including the privatisation and corporatisation of large state-owned enterprises it is important to continue with the reform of the public administration targeting improving efficiencies, thus creating a business climate supported by the rule of law. Serbia also needs to continue modernizing regulations in a transparent way through public consultations and regular (not urgent adoption procedure), in order to capture knowledge and experiences of non-governmental stakeholders and ensure the best quality of the new framework.

The FIC serves as a private sector focal point in the EU integration process as an independent organisation that unites companies from different industries with a solid footprint in the EU. The FIC members have significant expertise in regulatory area, good knowledge of Serbian and EU market and have capacity to provide the assistance when requested. That is why The FIC is uniquely positioned to support EU accession process. Harmonization with the EU acquis is yet another good tool which makes the business environment in the country more predictable and competitive and supports a growth of exports of Serbian products not only to Europe but as well the other neighbouring countries of the region.

Serbia is in good place to further develop regional cooperation and to benefit from CEFTA agreement following the good examples of the FIC member companies.

The FIC members are the driving engine of the Serbian economy. They bring investments and jobs but as well contribute to the development of Serbian economy bringing new technologies and knowhow, investing in people and engaging local SMEs in the value chain.

The Foreign Investors Council will continue to be a credible partner for growth committed to contribute to the long term development of Serbian economy working closely with all stakeholders on improving business environment.

Yana Mikhailova
FIC President

FOREWORD EU

Dear White Book reader,

It is a distinct pleasure to foreword the 2018 White Book edition of the Foreign Investors Council (FIC).

I congratulate the FIC – its Board of Directors, its Executive Office and its entire membership – for building such a strong and reputable business association over the past 16 years in Serbia.

The White Book – as one of the FIC flagship initiatives – has become a rich and authoritative source of business information for both domestic and international investors. You might be surprised to find how many interested readers the White Book enjoys outside Serbia, particularly in Brussels.

The White Book balanced scorecard and the recommendations for each of the areas in focus represent a "sensitive thermometer" to identify issues on the ground that affect the business environment in Serbia, and approaches to tackle them. I would therefore invite all stakeholders, institutions and private investors alike, to examine carefully the findings of this White Book and to consider implementing the FIC's recommendations to deliver stronger economic growth and better quality of life for the citizens of Serbia.

2018 has been an extremely busy year for the European Union and the Western Balkans region. In February, the Commission strategy for the Western Balkans brought the region back to the EU priority agenda, recognising in Serbia the role of frontrunner. The gathering of EU and Western Balkan Leaders in Sofia in May – the first since the Thessaloniki Summit 15 years ago – reconfirmed the European perspective for the whole region. Since the beginning of this year, an unprecedented and sustained flow of high level visits – Presidents Tajani, Juncker and Tusk, together with the High Representative Mogherini and Commissioner Hahn – have indicated the strong commitment of the European Union to work together and make progress in this direction.

Regarding the path of reforms, the European Commission's Annual Report – published in April – provided a "snapshot" of the state of accession and indicated the set of reforms to pursue in the enlargement process. While Serbia is considered to be "moderately-prepared" for accession in the economic area, it is recognised that good progress has been made in the past few years to address long-standing policy weaknesses. For instance, growth fundamentals and prospects for economic growth in the mid-term are sound, macroeconomic stability is well-maintained, while strong fiscal consolidation is boosting confidence in the economy and supporting recovery. Double-digit expansion of export activity and a significant increase in Foreign Direct Investments (FDIs) in tradable sectors are important results. These have led to improved conditions in the labour market, although unemployment remains high.

Comprehensive structural reforms will consolidate and further strengthen these hard-won results, making the economy grow faster and more strongly, while ensuring sustainability of the state budget in the mid-term and avoiding potential fiscal slippages. Finalisation of the public administration reform, the Tax Administration reform, as well as the restructuring and corporatisation of large state-owned enterprises are among the priorities. Completion of the privatisation process is another legacy from the past that remains to be addressed – the more decisive action by the Government in this area in recent months should be maintained. Finally, the area of state aid needs to be addressed to ensure a level playing field for all economic operators.

Similarly, the efforts to progress in the business environment must continue. In particular, strengthening the institutional and regulatory environment with a view to boosting confidence and predictability for economic operators. Legislation pertaining to businesses needs to be scrutinised for consultations more comprehensively. The size of the informal economy remains considerable and it generates negative impact on competition, while parafiscal charges continue to pose an undue burden on economic operators.

The reform process is producing results, and they are making our economic ties stronger than ever. Our trade and economic integration are constantly growing. Looking at the latest annual figures, the EU remains Serbia's number one trading partner, with more than 66% of total exports from Serbia and more than 62% of total imports in 2017. The value of Serbia's exports to the EU has more than tripled in the past nine years, thanks to the Stabilisation and Association Agreement that we have in place. Through the Instrument for Pre-Accession Assistance (IPA) the Commission is granting EUR 200 million per year to support accession reforms, including in the economic area.

While we all agree this trend is highly encouraging, it is important to continue pursuing a robust and determined set of reforms. So far, 14 out of 35 negotiating chapters are

open, while two have been provisionally closed. Consultations are ongoing for opening new chapters before the end of this year, including in the economic area. The current Presidency of the Council, Austria, is strongly committed to achieving this result. The opening of negotiation chapters should also reflect the assessment by all Member States of the European Union of Serbia's overall progress, particularly in the crucial area of the Rule of Law.

In concluding, I would stress that Serbia must make the accession process its top priority in the government, in the Parliament, in local communities, in the business community and in society. The accession process is not just a technical exercise, but also a political one. Accession is a transformational process, certainly ambitious, but absolutely feasible for Serbia. On their side, the EU companies that are by far the most important foreign investors in Serbia – 73% of all FDIs since 2010 – are natural and strong supporters of this process.

My team and I remain strongly committed to help Serbia achieve this goal. We will work closely with partners – such as the Foreign Investors Council – who remain authoritative voices: this White Book confirms the strength of such support. I therefore invite you to look closely into its findings.

Sincerely,

Sem Fabrizi
Ambassador and Head of
Delegation of the European Union
to the Republic of Serbia

FIC INDEX FOR 2018

TABLE 1: RANKING BY PROGRESS IN IMPLEMENTING RECOMMENDATIONS IN 2018

2018	Scores			Number of recommendations			Rating		Years
Recommendations	Average score in 2018	Average score in 2017	Change of scores in 2018	Significant progress in 2018	Certain progress in 2018	No progress in 2018	Rating in 2018	Rating in 2017	Average time of outstanding recommendations
Sectors									
Real estate: Construction land and development	2.14	2.13	0.01	3	2	2	1	1	5.43
Protection of users of financial services	2.00	2.00	0.00	0	5	0	2	2	3.80
Transport	2.00	1.95	0.05	1	19	1	3	3	5.38
Tobacco industry	2.00	1.86	0.14	0	5	0	4	4	3.00
Intellectual property	2.00	1.75	0.25	0	4	0	5	9	8.75
Law on notaries	2.00	1.00	1.00	1	2	1	6	55	2.00
Company law	2.00	1.00	1.00	1	3	1	7	68	4.00
Oil and gas sector	1.90	1.70	0.20	1	7	2	8	14	2.80
Illicit trade prevention and inspection oversight	1.88	1.50	0.38	1	5	2	9	23	2.75
Prevention of money laundering	1.75	1.00	0.75	0	3	1	10	32	6.50
Food & Agriculture: Declarations on food products	1.75	1.25	0.50	1	1	2	11	39	2.50
Protection of competition	1.71	1.63	-0.08	1	3	3	12	10	6.86
Food & Agriculture: Livestock production	1.67	1.40	0.27	0	2	1	13	28	1.00
Real estate: Restitution	1.67	1.00	0.67	0	2	1	14	66	3.00
Law on payment transactions	1.67	1.00	0.67	0	2	1	15	56	2.00
Energy sector	1.64	1.50	0.14	0	7	4	17	24	1.09
Judicial proceedings	1.63	1.63	0.00	2	1	5	18	18	4.38
Real estate: Cadastral procedures	1.63	1.60	0.03	0	5	3	19	19	2.38
Human capital	1.63	1.75	-0.13	0	5	3	20	11	5.13
Consumer protection	1.60	1.83	-0.23	0	3	2	21	5	4.80
Trade	1.57	1.30	0.27	0	4	3	22	25	6.14
Environmental regulations	1.56	1.78	-0.22	0	5	4	24	7	5.33
Telecommunications	1.53	1.58	-0.05	2	6	11	25	22	2.11
Dual education	1.50	1.75	-0.25	0	3	3	26	8	1.67
Capital market trends	1.50	1.67	-0.17	1	1	4	27	17	2.67

2018	Scores			Number of recommendations			Rating		Years
Recommendations	Average score in 2018	Average score in 2017	Change of scores in 2018	Significant progress in 2018	Certain progress in 2018	No progress in 2018	Rating in 2018	Rating in 2017	Average time of outstanding recommendations
Sectors									
Labour legislation: Employment of foreigners	1.50	1.00	0.50	0	2	2	28	62	5.00
Public-private partnerships	1.44	1.60	-0.16	0	4	5	29	20	1.56
Law on personal data protection	1.43	1.50	-0.07	0	3	4	30	27	6.57
Investment and business climate	1.40	1.33	0.07	0	2	3	31	33	3.60
E-commerce and digitalization	1.38	1.33	0.05	0	3	5	32	36	1.00
State aid	1.38	1.57	-0.20	0	3	5	33	13	3.38
Taxes: Parafiscal charges	1.38	1.29	0.09	0	3	5	34	37	3.13
Private security industry	1.36	1.80	-0.44	1	2	8	35	6	2.73
Leasing	1.33	1.13	0.20	1	1	7	36	47	3.22
Arbitration proceedings	1.33	1.67	-0.34	0	1	2	37	15	3.67
Customs	1.33	1.36	-0.03	1	3	11	38	30	4.13
Pharmaceuticals	1.30	1.47	-0.17	1	5	17	39	26	2.96
Law on bankruptcy	1.29	1.00	0.29	0	4	10	40	63	2.00
Non-performing loans	1.22	1.75	-0.53	1	0	8	42	29	1.56
Foreign exchange operations	1.21	1.07	0.14	0	4	15	43	52	3.42
Law on whistleblowers	1.20	1.25	-0.05	0	1	4	44	40	2.60
Real estate: Mortgages and real estate financial leasing	1.20	1.00	0.20	0	1	4	45	64	3.20
Taxes: Personal income tax	1.18	1.00	0.18	0	2	9	46	57	2.55
Taxes: Value added tax	1.14	1.27	-0.13	1	0	13	48	38	3.21
Taxes: Corporate income tax	1.13	1.00	0.13	0	2	13	49	67	3.80
Taxes: Tax procedure	1.12	1.20	-0.08	0	2	15	50	43	2.88
Food & Agriculture: Food safety law	1.09	1.36	-0.27	0	1	10	51	31	3.18
Food & Agriculture: Sanitary and phytosanitary inspections	1.08	1.18	-0.10	0	1	12	52	45	4.08
Labour regulations: Secondment abroad	1.00	1.67	-0.67	0	0	3	54	16	2.00
Public procurement	1.00	1.33	-0.33	0	0	7	55	34	3.57

2018	Scores			Number of recommendations			Rating		Years
Recommendations	Average score in 2018	Average score in 2017	Change of scores in 2018	Significant progress in 2018	Certain progress in 2018	No progress in 2018	Rating in 2018	Rating in 2017	Average time of outstanding recommendations
Sectors									
Labour legislation: Staff leasing	1.00	1.33	-0.33	0	0	3	56	35	8.33
Labour legislation: Employment of disabled persons	1.00	1.20	-0.20	0	0	5	57	42	5.80
Taxes: Property tax	1.00	1.13	-0.13	0	0	10	58	49	2.40
Insurance: Motor third party liability	1.00	1.00	0.00	0	0	6	59	50	4.17
Labour legislation: The Labour Law	1.00	1.12	-0.12	0	0	29	60	51	3.31
Food & Agriculture: Registration of plant protection products	1.00	1.00	0.00	0	0	3	61	54	5.67
Insurance: Natural disasters and shared services	1.00	1.00	0.00	0	0	3	62	58	3.00
Insurance: Corporate governance issues	1.00	1.00	0.00	0	0	4	63	59	2.00
Insurance: Law on Insurance	1.00	1.00	0.00	0	0	5	64	60	3.00
Insurance: Related legislation	1.00	1.00	0.00	0	0	10	65	61	1.90
Law on Central Register of Temporary Restriction of Rights	1.00	1.00	0.00	0	0	2	66	65	2.50
AVERAGE / TOTAL	1.39	1.37	0.02	21	156	336			3.10
Divisions									
Real estate	1.66	1.60	0.06	3	10	10	16	21	3.50
Human capital and dual education	1.57	1.75	-0.18	0	8	6	23	19	3.40
Food & Agriculture	1.24	1.21	0.03	2	6	34	41	41	3.60
Taxes	1.15	1.14	0.00	1	9	65	47	46	2.99
Labour regulations	1.05	1.19	-0.14	0	2	42	53	44	4.89
Insurance	1.00	1.00	0.00	0	0	28	67	53	2.81

RANKING METHODOLOGY

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

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

On the other hand, there are many challenges in making a proper rating assessment. Each member of the FIC is treated equally in the process of evaluation, and each sector has equal chances to influence the final result. It is true that the FIC identified the so called "pillars of development", i.e. the sectors with the strongest influence on the overall economy, but they are given equal weight in the rating process. Another challenge is that we cannot rely on a questionnaire with predefined items subject to evaluation. Problems across sectors are different and they change over time. Therefore, the number of recommendations across sectors cannot be predetermined in advance and remain the same from year to year. The sets of recommendations change in parallel with the legislation and economic policy of the Government of Serbia. The final consequence is that we must deal with a varying number of recommendations with respect to the observed sectors and years. In order to overcome this problem to some extent, the scores are calculated as weighted average scores[1].

As Table 1 shows, the transport sector had one recommendation evaluated as significant progress (1x3), 19 recommendations with certain progress (19x2=38), and one recommendation with no progress (1x1=1), which altogether have 42 points (3+38+1). If this number is divided by the number of recommendations (1+19+1 = 21), we will get 2.0 as the weighted average score for the transport sector. This score can be compared with all other sectors' scores, for instance with the sector of public notaries, which has only four recommendations, but a weighted average score of 2.0 ((1x3+2x2+1x1)/4=2). Without the weighted average scores, comparisons would not be possible due to significant differences in the number of recommendations for each sector.

Of course, average scores tend to conceal some important information, particularly the variability of progress in implementing the recommendations. Being aware of this shortcoming, we approximate in this edition of the *White Book* the underlying variability with the number of recommendations without any progress, which can be easily compared with the total number of recommendations. This information will be used as an auxiliary criterion for identifying the worst performing sectors. However, starting with the next edition of the White Book, we will reduce the total number of recommendations and their variability across the sectors. So the number of recommendations will be reduced to the half, and the standard deviation to the third (2 instead of 6 at the present). For instance, we propose to reduce the number of transport sector's recommendations to 5, and public notaries to 3.

Additionally, the time when each recommendation was first made and the number of years that passed by before it is fully implemented is also relevant information. The shorter, the better. Although this information does not affect the ranking, it is disclosed in the table as a relevant fact.

In addition to the current year's scores, the table also provides the scores for the previous year, to track each sector's

1 Let q_i be the score in sector i (i = 1, 2,...61), p_j is the three-level Likert-type scale measuring progress in implementing recommendations (j = 1, 2 or 3), and $N_{i,j}$ is the number of recommendations in sector i according to the type of progress j. The formula for the weighted average score is: $q_i = \frac{\sum_{j=1}^{3} p_j \cdot N_{i,j}}{\sum_{j=1}^{3} N_{i,j}}$.

progress over the short term. A few sectors topping this year's ranking ranked quite low in 2017. For instance, the public notaries sector ranked 55th last year and is now at a very high 6th place.

The best performers and the worst performers are separated from the other sectors in Table 1. The former sectors have the score higher then 1.75, while the later sectors achieved no more than score of 1.0.

Each heading of the *White Book*, beside the label, has the score size. Additional to individual sectors, there are 6 cross-cutting areas, these are: Human Capital and Vocational Education, Real Estate and Construction, Food Safety, Labour Regulations, Taxes and Insurance. Table 1 clearly shows which sectors are comprised by each area. The six cross-cutting areas are listed in the bottom section of Table 1, in a separate bracket. There are 61 sectors and 6 cross-cutting areas. In 2018, the FIC made 513 recommendations in total. The year before, there were 457 recommendations, which means that the number of recommendations increased by more than 12% in 2018. The average score in 2017 was 1.38, which was slightly lower than in 2018, when it amounted to 1.39. The difference of 0.01 points indicates that some but not significant improvements were made in 2018 relative to 2017. However, the time required to follow up on outstanding recommendations decreased from 3.45 years in 2017 to 3.10 years in 2018, which is a certain improvement.

FIC OVERVIEW

The Foreign Investors Council (FIC) is an independent voluntary business association which gathers foreign investors doing business in Serbia. Sixteen years since establishment, the essence of our mission remains the same: to actively promote and develop a predictable, competitive, and sustainable business environment, through an open dialogue with the Authorities and other relevant stakeholders.

Today, the FIC gathers over 120 members that have invested more than EUR 33 billion[1] and directly employ over 100,000[2] people in Serbia. This data is not only impressive, but it also clearly demonstrates that foreign investors gathered in the FIC have long-term interests and aspirations to help Serbia become economically stronger. This means both helping businesses to become more competitive by creating a business-friendly and level playing field, as well as fostering a higher standard of living and stronger purchasing power for citizens.

Throughout these 16 years, the FIC has come to be known for several of its main characteristics, which are presented below.

INDEPENDENCE

The FIC is a voluntary organization which does not promote individual interests of specific companies or groups, but the wider interests of the business community. To this end, the FIC forms its positions and recommendations through a two-step decision-making process designed to ensure that the majority view is represented, without conflicting with the interests of other member companies. All decisions are taken first at the level of the working committees, with the full inclusion of members, and subsequently confirmed by the FIC's Board of Directors. Each company, regardless of its size, has the same vote power in this process.

The FIC is self-sustainable, as its operations are financed solely by membership fees – no external grants, donations, or sponsorships are accepted. Regardless of their size, all companies pay the same fee, except those elected to the Board of Directors (they pay a higher fee).

EXPERTISE

The FIC is a bottom-up organization, which strongly engages members in its activities. In fact, our expertise comes from our members and their vast pool of knowledge and experience, which we intersect and utilize for the mutual benefit. Our membership base covers over 20 sectors and, in our work, we jointly engage companies which are competitors or come from competitive industries, or are horizontally or vertically intersecting, or simply have opposite views and interests. As a result, the FIC promotes views and recommendations which have been carefully assessed and evaluated, taking into account the interests of various sectors and industries, with a meticulous selection between various possible solutions.

The FIC working committees are the heart of our expertise. They gather experts from member companies who analyse specific regulatory areas and policies, and formulate joint conclusions and proposals. It goes without saying that, apart from their advocacy function, these forums provide an optimal ground for the exchange of knowledge and experience between the members. The FIC currently has 11 committees, both cross-sectoral, like Anti-Illicit Trade, Digital and E-Commerce, Human Resources, Infrastructure and Industrialization, Legal, Real Estate, and Taxation; and sectoral, such as Food and Agriculture, Leasing and Insurance, the Pharma Industry Committee, and Telecommunications and IT. The youngest amongst them is the Pharma Industry Committee, formed in September this year. The FIC forms and dissolves working committees based on members' interest in participating in impacting the improvement of the regulatory framework in a specific area.

The FIC offers its regulatory expertise free of charge to all stakeholders through various projects and activities. The White Book is the best-known FIC project and product, whose preparation and presentation requires almost six months of active work, but it is in no way our only project. Throughout the year we engage in a number of advocacy activities to improve the existing or draft regulations, as well as their implementation. We communicate our views and proposals through the so-called position papers (PPs), which are prepared by the FIC working committees and then discussed with the Government and stakeholders.

EU INTEGRATION

Seventy-two percent of the FIC members come from the European Union, while other members also have an EU footprint. Thus, the FIC has the unique ability to combine knowledge and experience about the European and

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

2 Data for 2018, source: FIC records

Serbian markets and provide advice and concrete suggestions as to how to complete the process of Serbia's economic integration with the EU as efficiently and productively as possible.

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

BEST PRACTICES

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

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

From the association's perspective, the FIC abides by strong ethical rules and corporate governance principles. Over the years, the FIC has adopted a series of statutory acts determining the rights and obligations of FIC members and officials in more detail, promoting competition rules, and defining guidelines for engagement in the FIC. All this makes the FIC an association that ensures a level playing field for all its members and which communicates and cooperates with its stakeholders in a transparent, consistent, and reliable way.

COOPERATION

Since its establishment, the FIC has worked to be a reliable and constructive partner to all institutions and organizations active in the area of business climate reforms. We maintain a regular dialogue both with the Government, as well as with all relevant stakeholders – the EU and diplomatic corps, international financial institutions, development agencies, academia, and, of course, our peers from other business and public-private associations.

We believe in dialogue and the positive impact that synergy can bring, and are always open for project partnerships with those who share our views and goals.

OVERVIEW OF THE FIC'S ACTIVITY IN THE NOVEMBER 2017 – SEPTEMBER 2018 PERIOD

Between two White Book editions, the FIC analysed in detail 26 regulations and submitted 47 written initiatives regarding the existing and new draft laws. We also closely monitored the implementation of the laws, paying extra attention to the level and consistency in the enforcement of laws and regulations adopted in the previous period.

The topics we tackled mostly concerned the six areas we defined as priorities:

1. Improvement and a more consistent implementation of tax laws, including prevention of new para-fiscal charges.
2. Upgrading of labour-related legislation, with focus on the Labour Law and occupational health and safety regulations.
3. Creating a framework for fostering digitalization and e-commerce.
4. Introduction of a coherent overall legal framework, with an emphasis on regulations related to lobbying, competition protection and foreign exchange.
5. Improvement of real estate regulations, in particular the Law on Planning and Construction.
6. Ensuring efficient market surveillance and supporting full implementation of the Law on Inspection Oversight by participation in the Government Working Group on Countering Illicit Trade.

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

- Analysis of the Draft Competition Protection Law, wherein the FIC Legal Committee made 120 reasoned proposals for its improvement, as a member of the Government Working Group tasked with preparing this regulation. A new version of the draft is still not available and, therefore, the results of this advocacy activity are yet to be seen;

- Improvement of tax regulations, where the FIC Taxation Committee conducted detailed analyses of several laws, including the Draft Law on Fees for the Use of Public Resources, Corporate Income Tax Law, Personal Income Tax Lax, and Property Tax Law;

- Advocacy to improve the first draft of the Lobbying Law to enable a continuation of the public-private dialogue and prevent a mandatory engagement of lobbyists for communication with the authorities. Extensive consultations organized between the Ministry of Justice and relevant interested parties bore fruit as, in August 2018, the Government of Serbia adopted the Proposal of the Law on Lobbying which brought significant improvements to the initial draft. The Parliament is yet to discuss the Proposal, so the final outcome remains to be seen.

In addition, the FIC also worked to improve regulations and their implementation related to the Company Law, foreign exchange, personal data protection, enforcement, payment deadlines, alternative investment funds, public-private partnerships, the VAT Law, the Tax Procedure and Tax Administration Law, seconded workers, strike, gender equality, the national qualifications' framework, trade facilitation, non-hazardous waste, as well as to the fields of agriculture (food safety and product labelling, items of general use), the automotive industry (electric vehicles and countering illicit trade), leasing (electronic registration and tax treatment of financial leasing), private security, and telecommunications (electronic communications).

The FIC engaged in a very active dialogue with the Government at all levels – from meetings with the highest Government officials to in-depth discussions with the representatives of the state administration. In addition, our representatives have been taking part in 15 Government working groups focused on various topics, from the modernization of tax administration, trade facilitation and countering illicit trade, changes to laws on competition protection, enforcement, civil procedure, investment funds, and planning and construction, to employment and occupational health and safety.

Over the last year, the FIC continued its active engagement in supporting Serbia's European integration process. In April, the FIC organized a presentation of the new EU Enlargement Strategy by EU Ambassador HE Mr. Sem Fabrizi, where FIC members had the opportunity to hear first-hand about the EU's new plans, share their thoughts and ask questions. In early October, the FIC delegation met the Serbian negotiating team and subsequently travelled to Brussels, where it had a series of meetings with seven directorates-general of the European Commission and the European External Action Service (EEAS), including a meeting with the Director for Western Balkans in the Directorate-General in charge of enlargement (DG NEAR). We firmly believe it is important to continuously and consistently convey that Serbia should remain in the EU's focus and that we are ready to provide active support to both negotiating parties to better understand the particularities of the Serbian market and modalities of its adjustment to European principles and standards.

In 2018, the FIC continued organizing the Dialogue for Change event, but changed its format to a high-level off-the-record talk between a Minister and members' CEOs. In May, the FIC organized the event with Minister of Labour, Employment, Veteran and Social Affairs Mr. Zoran Djordjevic to discuss Government plans and the FIC's recommendations for a more flexible and modern labour regulatory framework.

Throughout the year, the FIC also held an active dialogue with all other relevant stakeholders, international financial institutions, development agencies, embassies and, of course, business and other associations. 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 that willingly invest their resources and share their knowledge for the greater benefit of all. As a result, the FIC could even be seen as a CSR product, one of the many activities that FIC members, CSR champions, implement in Serbia, as part of their commitment to upholding high governance standards and contributing to the societies in which they do business.

To this end, the Foreign Investors Council will continue paying close attention to members' interests, stimulate an active debate, and diligently work on formulating recommendations for improving conditions for doing business 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 the support of the OECD, and the shared commitment to contribute to the improvement of the investment environment in Serbia.
- The FIC's mission today is to actively promote and develop a predictable, competitive, and sustainable business environment, through an open dialogue with the authorities and other relevant stakeholders.

CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

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

Commitment to Sustainable Development – Leaders' Promise to People Everywhere

In the business sector, a great deal attention is being paid to the alignment of business strategies with the SDGs, and to measuring and managing their contribution. While SDGs enable individual companies to easily report on sustainable development performance using common indicators and a shared set of priorities, the monitoring of national progress constitutes a tremendous challenge for all countries, including Serbia. To ensure the systematic monitoring and review of SDG implementation in Serbia, a governmental coordinating body was appointed with a wide scope of responsibilities in mapping, proposing, and tracking national progress. The initial enthusiasm seems to have waned, and currently there are no significant initiatives in this regard, while the challenges remain the same: ensuring compliance of national public policies with the SDGs as well as ensuring the different sectors' contributions to their fulfilment. However, it is still not too late to seize the momentum to rethink sustainability policies and integrate SDGs into the new strategies by providing a functional national action plan.

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

At the EU level, the Directive on Non-financial Information Disclosure made non-financial reporting on environmental matters, social and employee aspects, respect for human rights, and anticorruption issues mandatory for all large public-interest entities with more than 500 employees. By December 2017, all EU Member States transposed these rules into their relevant national legislation. At the same time, some state-specific requirements were also implemented, for example, Greek policy-makers went even one step further, signalling that companies should report, regardless of their size.

Although the Directive is not obligatory for companies operating in Serbia, it stands as a perspective and guidance for improving corporate governance while providing stakeholders with a meaningful, comprehensive view of the company's performance. Following outstanding world practices, a number of companies in Serbia issue annual sustainability reports in line with Global Reporting Initiative (GRI) standards.

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

More than ever, businesses are welcome to support the creation of quality business education partnerships, with the shared target of establishing new and good quality apprenticeships, traineeships, or entry-level jobs. Although companies have shown willingness to engage and contribute to this goal, plenty of work remains to be done in improving the systemic mechanisms of cooperation related to high school and university competences necessary for increasing the employability of young people. In Serbia, further attempts have been made towards improving the policy framework by adopting the Law on Dual Education by the end of 2017.

Venture Philanthropy – A New Trend in Community Giving

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

CSR and the Responsibility of the Government

The new patterns imply the greater responsibility by the state itself, stating the commitment to foster a competitive economy based on sustainable and responsible principles. This should be primarily done by creating an

affirmative environment and, what's more, by incorporating sustainable practices, whenever possible, into state-driven initiatives. The reform and restructuring of public enterprises should take into account sustainable development goals, influencing public initiatives in a greener and more socially responsible manner, as well as sanctioning negative and recognizing good practices - these are only some of the inexhaustible opportunities for state engagement.

CSR Development and Business Leaders' Responsibility

CSR as perceived today, focuses its activities on identifying and tackling the root causes of the present unsustainability and irresponsibility, typically through innovating business models, revolutionizing processes, products, and services, as well as lobbying for progressive national and international policies. Companies in Serbia are in different stages of CSR development and only a minority of the leading companies in Serbia are into strategic and transformative CSR, representing a truly driving force for innovation and a sustainable society. Therefore, a few business leaders have the additional responsibility of taking the lead in disseminating good practices across their supply chains and through their partners, especially focusing on empowering SMEs towards healthy and sustainable growth.

OUR COMMITMENTS

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

- sustaining the adoption of an adequate legal framework, which will enhance and stimulate responsible business practices;
- establishing and fostering multi-stakeholder and cross-sector dialogue in addressing the most acute economic, social, and environmental issues;
- acting as best practice examples of good corporate governance and transparency in all aspects of doing business by promoting and practicing transparent reporting on social and environmental impacts, in line with EU standards.

INVESTMENT AND BUSINESS CLIMATE

1.40

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continue membership negotiations with the EU, as a means for improving the legal and policy conditions of doing business and investment activity	2008		√	
Complete the restructuring or closure of failed enterprises	2015			√
Increase public expenditure on infrastructure, a necessary requirement for a better business environment	2015			√
Keep macroeconomic stabilization and continue to reduce public debt	2017		√	
Streamlining and modernize the Tax Administration, improving its capacity and removing uncertainties in implementing tax provisions	2017			√

CURRENT SITUATION

Macroeconomic stability has been sustained in 2018, both at the internal market and international trade with the rest of the world, while the process of fiscal stabilisation has continued under favourable growth conditions at a rate higher than expected.

The public finance has been already consolidated in 2017 when the fiscal deficit of the general Government turned into surplus of 1.2% of GDP. The fiscal deficit for this year was scheduled to -0.7% of GDP, together with the surplus of the primary fiscal balance of 1.9%. The fiscal balance for the first half of this year achieved a moderate surplus of 0.6% of GDP, which is probably not sustainable since an upward adjustment in public salaries and pension payment was envisaged by the end of the year.

The public debt was reduced from 61.5% of GDP in 2017 to 59.5% of GDP at the second quarter of 2018. However, this positive trend may not continue because bilateral loan arrangements for financing public infrastructure projects will take place in the remaining part of this year. Foreign debt (private and public) has also decreased to 67.5% of the GDP from the level of 69.7% GDP at the last year.

Inflation is low, and decreasing compared to the last year. The average inflation rate in 2017 was 3.0%, while in this year it was 1.85% and 2.3%, respectively, at the end of the first and second quarter. It was anchored in the corridor of the target inflation band that is set to 3% +/- 1.5%. The average expected inflation rate for the next 12 months is 3%, which corresponds to the target inflation rate.

The dinar has slightly strengthened against the euro, since the nominal exchange rate was 118.47 at the end of last year, and it is right now 118.29. On the other hand, the USA dollar rebounded to the both of these currencies increasing from 99.12 RSD at the end of last year to 102.15 RSD today. In real terms, the dinar is overvalued with respect to the euro, which threatens the country's competitiveness in its main international market. Nevertheless, the National Bank of Serbia is determined to keep this monetary policy, since it facilitates low inflation and does not penalize official reserves. The official reserves were at 9.96 bill. EUR at the end of last year, while they increase to 11.1 bill. EUR in the meantime. We must, however, notice that official reserves do not cover 6 months of imports, which is widely considered as the safety level for external liquidity.

As for the international trade, the trends from the last years are present as well in the first half of this year. The nominal volume of export and import rose by 9.5% and 11.7%, respectively. The coverage of import by export continues at a rate of around 85%. This implies that the current account deficit would accumulate this year to 5.5% of GDP.

The share of investments in GDP is still below 20%. The inflow of foreign direct investments so far is higher than in the last year, but its net amount will hardly outpace 2 bill. EUR. Nevertheless, this amount will be sufficient to finance the current account deficit.

As for the business climate, it is hardly different from the last year. According to the assessments of the Foreign Investors Council's members, the general score of implementing

FIC's recommendations in 2018 is higher for a negligible 0.02 point compared to the previous year. However, expectations last year were more optimistic, as demonstrated by the number of new recommendations, which mostly were not implemented.

Finally, as for the perception of the country's investment risks, Serbia renewed BB rating (Standard&Poors) with stable outcome over the next 12 months. We anticipated last year that Serbia might get the first investment grade rating in 2018, but that had not happened. Conditions for such a ratings remain the same as before: persistently high growth rates of GDP, reduction of non-economic risks, fiscal sustainability and structural reforms along the lines proposed by the IMF. The IMF approved in July 2018 a new 30-month Policy Coordination Instrument (PCI) for Serbia.

IMPROVEMENTS

The Government and international financial institutions expected a GDP average growth rate in 2018 in Serbia as of 3.5%, but it can easily be as high as 4%. The driving factors of accelerating growth rates originated in external circumstances (still low interest rates, a modest increase in the price of crude oil, development in the neighbouring countries, increasing import demand from the EU and its price stability) and domestic favourable developments in agriculture, construction, tourism and catering as well as persistent growth in manufacturing.

Good results in the employment promotion continue. It is true that unemployment rate slightly increased from 13.5% (average 2017) to 14.8% (average for the first half of 2018), which might be due to seasonally fluctuations. However, the rate of overall employment increased by 2% compared to the previous year.

The economic development facilitated a higher public revenue, and the fiscal stabilisation under slightly reduced public expenditures. The public debt was accordingly reduced.

In 2018 two more negotiation chapters were opened in the process of the country's accession to the EU (fishery, and financing and budget provisions). However, no more chapters have been closed. There has been a lot of diplomatic activity in the process of accession to the EU of the whole Balkan region, but specific outcomes are still pending.

REMAINING ISSUES

Negotiations on the exit of UK from the EU so far did not have negative effects on the process of Serbia's accession to the EU, albeit this process has been developing slowly and below any expectations. In order to speed up the whole process of integrating the Western Balkans countries into the EU, and improve cooperation in the region, the "Berlin process" was reinvented. Specific outcomes from this initiative are still expected. It seems that the main hurdle was located in unfinished negotiations about the chapter 35.

The high growth of GDP in 2018 was due to an increasing investment activity, which is good, and a rebounding private demand from households' consumption that is not, however, satisfied by domestic production of consumption goods. The contribution of export to the GDP growth is slightly decreasing, which means that the new growth strategy based on investment and export is still not fully materialized.

Public capital expenditures have significant effects on improving business climate in which companies operate. Those expenditures constituted 2.9% GDP u 2017 and 2.8% of GDP in the first half of this year. The Government is eager to finance infrastructure from foreign loans, but this must be complemented with budgetary expenditures. The Government therefore has committed itself to rise capital expenditures to 3.5% of GDP over the middle-term, even if development needs require one additional percentage. If the share on investment in GDP stretches to 22%, it will guarantee an average GDP growth rate of 4% under normal circumstances. That includes not only private investment, but also public investment in infrastructure, improving environmental protection, education and health.

The public debt has been recently reduced, but it is still high enough to mobilize at least 10% of GDP for its regular servicing, which consequently tightens the space for savings and investment. There is a need for structural reforms of state-owned large enterprises in order to reduce their losses and lessen the pressure on fiscal balance. Additionally, there is a serious problem with public financing on the municipality levels, which are not able to properly finance local infrastructure's needs (drinking water, sewages, garbage collection and disposals).

The Tax Administration is one of the key fiscal institutions which activity effects not only collection of public reve-

nue but also quality of the entire business framework. We notice that there is a program for transformation of the Tax administration until 2020, which was adopted by the Government, but we see no effective implementation of it.

The IMF's PCI-supported program will build on the precautionary Stand-By Arrangement successfully completed in February 2018, and aims at maintaining macroeconomic and financial stability. While the PCI involves no use of IMF financial resources, successful implementation of the program will reveal Serbia's commitment to a sound macroeconomic policy and structural reforms, and reduce the country's risk. FIC members encourage the authorities to continue efforts for reducing risks and achieving an investment grade.

FIC RECOMMENDATIONS

FIC has retained the recommendations from the previous year as follows:

- Bring more transparency in the process of adopting new legislation and discontinue with practice of enacting laws under urgent procedure. Ensure timely public consultations during the process of formulation of new legislation in order to have applicable regulations and more sustainable reforms
- Maintaining fiscal stability, and reduce the public debt to the affordable level as soon as possible,
- Completing restructuring of infrastructure enterprises, including closing loss making SOEs,
- Increasing public capital expenditures in infrastructure, and diversified them, in order to closing infrastructure gap and improving the overall business environment,
- Continuing negotiation with the EU on Serbia's accession, and further harmonizing national legislation with the Acquis Communautaire,
- Streamlining and modernize the Tax Administration, improving its capacity and removing uncertainties in implementing tax provisions.

top

PILLARS OF DEVELOPMENT

TRANSPORT

Serbia has a strategic position in the region concerning all modes of transport: road, railway, water and air transport. Consequently, it continues to proper maintain the existing infrastructure, including its modernization and the approximation of the Serbian Law to that of the European Union. The focus was on completing construction of two European road corridors 10 and 11, modernization of the railways, opening new routes in air traffic, concluding a concession agreement for the airport "Nikola Tesla" and restructuring of large infrastructural enterprises. However, water transport still needs considerable financing for improving ports facility, waterways and supporting infrastructure. Activity continues not only in the technical sense of the word, but also with regards to concluding bilateral intergovernmental arrangements and commercial agreements with foreign investors. All of that intensified infrastructure investments that significantly contributed to economic growth.

This pillar registered various progress along majority of the recommendations addressed in the last year edition of the White Book. Notably, one recommendation is assessed as having significant progress, nineteen recommendations had certain progress, and only one had no progress at all. Due to these outcomes, transport as a whole was highly placed on the third position on the rating list of achievements in the White Book for 2018. However, it is interesting to notice that 6 recommendations were proposed even back in 2009, so delayed implementation had increased the average pending time to 5.4 years. If the rating was compiled according to this criterion, the transport sector would fall down the list to 58th place. That indicates persistence of outstanding issues in the sector, but also great opportunities for improvements.

ENERGY

This sector combines generation and transmission of electricity, market for renewable energy resources and market for energy efficiency. Serbia has completed the correct transposition of the European Union's Third Energy Package into the national legislation and fully liberalized the electricity market. That was done last year, but after the White Book was finalized, so the achieved progress is recorded in this year's rating list.

As for Renewable Energy market, the Government of Serbia implemented the novel package of decrees setting out an enhanced incentives scheme, which started to provide first positive results. Some progress was also made in the improvement of Energy Efficiency with regards to the system of streets lighting and involvements of private investors in this private-public partnership across the country's towns, while big cities are still preparing for this initiative.

We notice that free contracting of energy supply for households and small consumers began to function, but at regulated prices, which increased by 2% compared to the previous year. EPS is still the main supplier of electricity, although there are about 60 registered wholesalers. We also notice that SEEPEX as the wholesale market for electricity in the South-East Europe increased the number of members from 9 to 16.

The Energy sector is at the 16th place in the ranking list of the Foreign Investors Council in 2018, improving its position by eight places compared to the previous year. Seven recommendations were assessed to have a certain progress, and four recommendations were without progress. We notice that the White Book changed last year its recommendations in this area, and consequently the average waiting time for their implementation was reduced to 1.1 years.

TELECOMMUNICATIONS

The stability and predictability of the business environment, as well as transparency in the decision-making process by the competent state and regulatory bodies, were the key expectations of the telecommunications industry in 2018. However, these expectations did not materialize. Therefore, it is not surprising that Foreign Investors Council estimates that in the telecommunications sector there has been a downward trend compared to 2017. The key disadvantage was that a year after public debates the Electronic Communications Law was not adopted, along with the accompanying regulations and the change in existing practice.

Telecommunications show contradictory developments. Observed by the number of users, fixed and mobile telephony at the end of 2017 had a downward trend unlike the Internet and the media distribution market that have a growing trend. On the other hand, the trend of reducing wholesale and retail prices continued in 2018. The Regulatory Agency for Electronic Communications and Postal Services conducted a new round of analysis of the electronic communications market and adopted the corresponding Report. By the end of 2018, a decision on obligations of an operator with significant market power is expected to be reached. Despite regulation in certain segments, access to the telecommunications infrastructure is still limited,.

top

There were nineteen recommendations in the last year's edition of the White Book, but only two recommendations made significant progress, and six recommendations made some progress. This worsened the relative position of telecommunications on the ranking list of the Foreign Investors Council for 2018, falling from the 22nd position to the 25th place.

DIGITALIZATION AND E-COMMERCE

This sector comprises electronic commerce, electronic identification and documentation, as well as electronic operations of administrative bodies, including interface between public databases. As for Electronic Commerce, it is not yet sufficiently developed, although it is constantly growing. On-line purchases are typically paid by cash, and rarely by payment cards at the customer's places, instead of through global payment services such as PayPal. The exception is the sale of software over the Internet, which can also be made in dinars and foreign exchange.

In April 2018, the Law on Electronic Administration was adopted with the aim of presenting an umbrella regulation that will regulate the use of information technologies by the public administration, both at state and local self-government levels. It is expected that the Law will encourage electronic communication between citizens and public administration, and allow the administration not to require citizens from the data already in their records.

The Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Commerce was adopted at the end of last year, which made Serbia integrate the EIDAS regulations of the European Union into its legislation. The document written in electronic form is equally treated as its hard copy, which enables the direct conversion of paper documents into electronic form, and vice versa, electronic documents in paper form, if required by the administrative authorities.

Digitalization and e-commerce ranks 32nd in the ranking list of the Foreign Investors Council in 2018, which is only four places better compared to 2017. Three recommendations have made some progress, five were without progress in 2018, and none have made significant progress.

REAL ESTATE AND CONSTRUCTION

As in the last year's White Book, implementation of the Law on Planning and Construction remains in the focus of the Foreign Investors Council, as well as the implementation of a unified procedure for obtaining building permits, the legalization of existing facilities in accordance with the new regulations, the conversion of rights to use on construction land into the ownership right and the application of regulations on cadastre and cadastral procedure.

The sector as a whole has unequivocally advanced in 2018 in the implementation of the recommendations. Particularly, improvements in Construction Land and Construction were the best, which retained the entire area at the first place on the ranking list of the Foreign Investors Council for this year as well. On the other side, Restitution, as well as Mortgages and Financial Leasing of real estate achieved significant improvements compared to last year. Thus, the area of restitution was upgraded to the 14th place from the 66th place, and the mortgage to the 45th place from the 64th place. Somewhere between them, there was progress in the implementation of recommendations in the cadastral procedure, which took the 18th place in the rang list.

All this enabled the whole area to move from the 21st place to the 15th place in the White Book rang list. Three recommendations were assessed as significant progress, ten recommendations had some progress, but ten other recommendations were still without progress.

We particularly highlight progress in implementing procedures regarding conversion of rights to use on construction land into the ownership right and increasing investors' interest in them; progress in the speed of issuing building permits; progress in the work of the cadastre, primarily in the speed of solving outstanding cases and in communication with the parties' requests, as well as the progress in acquiring property on agricultural land by foreigners who are citizens of the European Union.

LABOUR FORCE AND HUMAN CAPITAL

Last year there was no significant progress in the area of labour relations and the labour market. Moreover, the whole area fell from the 44th place to the 53rd place in the ranking list of the Foreign Investors Council for 2018, with the fall of the general index of progress from 1.19 points to 1.05 points. Out of the total number of recommendations, only two recommendations had some progress, while all other recommendations did not make any progress. There was no one recommendation with significant improvement. The average waiting time for implementing recommendations was increased to 4.9 years.

top

Recommendations for implementing regulations on the Employment of Foreigners are the only recommendations in this group that have improved their ranking from the 62nd place to the 27th place (two recommendations had some progress, while the other two had no progress, giving the index of 1.5 points). No recommendations for implementing regulations on Work Abroad have made any progress. That is why this sector fell from the 16th place to the 54th place in the list of Foreign Investors Council with the index of 1.0 points. Recommendations on Rehabilitation and Employment of People with Disabilities are also poorly respected. None of these recommendations were implemented either. The sector dropped from the 42nd place to 57th place, also with index 1.0 points. No recommendations on Labour Relations and Labour Leasing had a different achievement. In all, four out of five areas regarding labour relations had no progress in 2018.

On the other hand, sectors that relate to Human Capital and Dual Education have a better rating, although they are even worse ranked than in the previous year. They are ranked at 11th and 25th places in the ranking list of the Foreign Investors Council in 2018, respectively. We especially emphasize the lag behind in the implementation of recommendations on dual education, which was supposed to significantly improve the quality of the middle-educated workforce. In accordance with the estimates of the Foreign Investors Council, the potential of the labour force was obviously not used as a pillar of development in 2018.

top

INFRASTRUCTURE

TRANSPORT 2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Efficient, quality, reliable and sustainable services contributing to a comprehensive and safe transport system in the Republic of Serbia as an integral part of the Trans-European Transport Network. Increasing the effectiveness of the transport system by strengthening the policy and institutional framework, management capacities and implementation mechanisms.	2014		√	
Improving the capacity and quality of transport infrastructure and services within the Pan-European Transport Corridors and the South East Europe Core Regional Transport Network.	2014		√	
Promoting sustainable urban and suburban transport.	2014		√	
Repair the existing damages, which are a consequence of the floods, with high-quality materials, in order to diminish the frequency of subsequent repairs.	2014	√		
Amendment of legislation and implementation practices to allow for efficient registration of electric vehicles in Serbia and the introduction of specific incentives relating to the purchase and import of these vehicles, as well as the more widespread construction of electric vehicle charging stations.	2017			√
Increase funding of maintenance and rehabilitation of major roads 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 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 to establish the necessary institutional structures.	2014		√	
Increase efforts to minimize public costs of reforms by charging users wherever reasonable, and through increased private sector participation wherever there is sufficient scope for competition.	2009		√	
Set up an efficient road user toll system in Serbia and decrease road tolls in order to bring back transit traffic (passenger and cargo) to Serbian roads.	2009		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Create conditions for the sustainable development of the transport system through stable financing sources.	2013		√	
Increase efforts to improve expropriation proceedings.	2013		√	
Restructure public enterprises in the transport sector, with a focus on railway transportation and introduction of result-oriented management.	2014		√	
Introduction of cost-effective working methods, which should contribute to better quality of transport infrastructure performance based on maintenance principles.	2014		√	
Implementation of measures to improve intermodality features within the Serbian transport system.	2014		√	
Introduction of purposeful infrastructure investment planning, taking into account spatial planning features and, consequently, effective modernization of transport infrastructure.	2014		√	

CURRENT SITUATION

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

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

In terms of legislation, the sector of road transport is certainly the most extensive, having in mind that this is the most common type of transport. Out of 5,000 kilometres of Serbian roads, 1,100 kilometres is highlighted as high-priority in terms of rehabilitation, in accordance with the Transport Strategy and the aforementioned General Master Plan. An improvement in this area has been achieved by adopting regulations regarding dangerous cargo and transport licences, while the regulations regarding the transport of goods have been made compliant with European regulations.

Rail transport is the sector where the need for modernisation is the strongest, something intensively worked on over the past few years. In the rail sector, which has certainly seen some progress, it is necessary to keep opening up the market for private operators and insure the sustainability of the restructured railway companies.

The waterways, and Serbia's international connectedness through them, are underutilised, while another pressing issue in this sector is the financing of the reconstruction and modernisation of water transport, as the funds required for upgrading ports, waterways, and related systems, as well as their maintenance, are extremely large. An innovation in water transport regulation is the Law on Amendments to the Law on Inland Navigation and Ports, passed in November 2016.

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

The three main features of the state of transport in the Republic of Serbia are current maintenance of existing infrastructure, investment in/modernisation of infrastructure, and harmonisation with European standards. Goals to be achieved are investment in infrastructure and investment in and maintenance of the existing transport network.

POSITIVE DEVELOPMENTS

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

Attention is being put on building Corridors 10 and 11. By the end of the 2018, works on Obrenovac – Čačak highway on Corridor 11 are expected to be finished, and works on the Surčin – Obrenovac section are expected to be finished the end of 2019. The tunnel Predejane on Corridor 10 is completely finished, and it is expected that highway through Grdelica canyon is passable by the end of the year. A Memorandum of Understanding and Cooperation is signed with the American company regarding construction of the section "Moravian Corridor" - the road from Pojate to Preljina, which is marked as strategically important. This corridor will connect Ćićevac, Stalać, Kruševac, Trstenik, Vrnjačka Banja, Kraljevo and Čačak, respectively will connect road corridors 10 and 11. The beginning of the works is expected in 2019.

Some of the projects that lie ahead for the competent ministry are building the Belgrade – Budapest railway, building the Niš – Merdare – Priština highway, and reconstructing the Belgrade – Bar railroad, while work is under way on producing project documentation for the Belgrade – Sarajevo highway.

Under a project titled "Implementing an electronic system of marking waterways (AtoN)," which is being carried out by the Ministry of Construction, Transport and Infrastructure with the aim of improving navigation safety as well as implementing modern IT technologies in water transport management, the complete contracted equipment has been delivered and will be installed.

The rail sector cooperation with countries in the region has continued this year. At the beginning of May, in Doboj, Bosnia and Herzegovina a strategic partnership agreement was signed between Željeznice Republike Srpske and Serbia. Another significant improvement in this sector is a new Law on Railways, whose draft was subject to public consultation in September 2017.

In the air transport segment, the most significant development is the signing of the Concession Agreement for Nikola Tesla Airport. The full amount of the concession for Nikola Tesla Airport is EUR 1.46 billion, including EUR 732 million in investments in airport improvements, annual concession fees, as well as a one-time concession fee in the amount of EUR 501 million intended for the state budget and the airport's small shareholders.

Airport Nikola Tesla has had yet another very successful business year. In 2017 Airport Nikola Tesla, as the fastest growing airport in the region, posted a gross profit of 3.26 billion dinars, which was by 74.93 million dinars more than in the previous year. The financial result of the airport rose by 6.67% against the previous year.

Having in mind all current projects, it is evident that investing into the transport infrastructure represents a priority.

REMAINING ISSUES

Traffic safety is the most important issue when it comes to transport problems. The number of fatalities and injuries is growing, which is not in accordance with the Strategy for traffic safety on roads 2015 – 2020.

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

One of the pending issues is the absence of an efficient procedure and practice for the registration of electric vehicles in Serbia and, more importantly, the lack of a suitable incentive scheme for the purchase and import of such vehicles (including tax benefits), as well as for building the infrastructure, which may become a notable obstacle for the country's green energy agenda, jeopardizing the strategic importance of Corridors 10 and 11. On the other hand, it is encouraging that the Ministry of Construction, Traffic and Infrastructure has recognized the need for improvements in this area, and electric charge stations have already been installed on Corridor 10 at certain points.

Modernisation is the biggest issue in the rail sector. There is still a lot of work to be done to improve this form of transport, as a great number of railroads are not even being used, and the speed of trains on certain sections is not satisfactory. Attention should be paid to a longer-term plan for improvements in rail transport and its linkage to road transport, in order to increase intermodality.

Another issue is the public image of rail transport. Public opinion should be actively changed by changing the marketing policy.

The utility of airports other than the Belgrade and Niš airports should be increased, and a long-term strategy of utilization of Serbia's overall air traffic infrastructure should be devised.

When it comes to water transport, the biggest issue is financing – substantial funds are needed to renovate infrastructure dating from the former Yugoslavia. The modernization and maintenance of the water transport system cost a lot. It is encouraging that EUR 66.5 million worth of investment has been announced towards the development of river transport and protection of natural characteristics of the Danube in the coming years. One of the positive examples is the reconstruction of Smederevo Port.

FIC RECOMMENDATIONS

- Amendment of legislation and implementation practices to allow for efficient registration of electric vehicles in Serbia, the introduction of specific incentives (including tax benefits) relating to the purchase and import of these vehicles, as well as building the infrastructure. Also, adequate regulatory framework should be provided, in order to enable development of this sector, which will take in consideration constructive recommendations of relevant interested parties.
- Increase the quality control and inspection of materials when performing works; implement international quality and public sector project management standards.
- Establish public-private partnerships in the vital transport areas not reserved for the state, which the state cannot make fit, restructure, or modernize independently i.e. where doing this in cooperation with the private sector would be more optimal and efficient.
- Invest additional efforts in opening the railway traffic market with the aim of establishing the necessary institutional structures. Application of European standards while implementing technologies on the railway network, in order to ensure interoperability and unimpeded traffic between neighbouring countries, with the aim of increasing transport through Serbia, is the key feature in that sense.
- Implementation of measures to improve intermodality features within the Serbian transport system.

ENERGY SECTOR 1.64

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Electricity				
State-owned electricity companies to be led by a professional management.	2016		√	
New investments in the modernization and revitalization of coal production.	2017		√	
Cancellation of excise tax on electricity.	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Regulation of electricity prices for households and small customers to be abandoned as soon as possible, provided that the increased proceeds are exclusively used for investments in new and revitalization of the existing power infrastructure.	2016			√
Renewables				
Streamlining, simplification and coordination of procedures for authorization, licensing and network connections for new renewables' projects.	2017		√	
The PPA package to be adjusted to address the remaining stakeholders' concerns.	2017		√	
Energy Effciency				
Promoting the ESCO contracts that the Ministry of Mining and Energy has adopted in 2015 (RS Official Gazette No 41/2015; http://www.mre.gov.rs/dokumenta-efikasnost-izvori.php).	2017		√	
Adoption of the functional model contract to govern the energy supply contracting.	2017		√	
Improvement of capacities of the PPP Commission and other notable public stakeholders in respect of both energy performance contracting and energy supply contracting projects involving public and private sector.	2017			√
Considering a streamlined review and approval process for small projects that use contract templates for specific project types (e.g. street lighting).	2017			√
Considering an improved consultation of private stakeholders in order to better include competent Serbian companies as potential contractors in PPP projects as well as in opening the market for energy efficiency measures in the private sector.	2017		√	

CURRENT SITUATION

Electricity

The legal framework for electricity in Serbia is set out under the 2014 Energy Law, which for the most part transposes the European Union's (EU) Third Energy Package.

The main authorities responsible for this sector are: (i) the Serbian Government; (ii) the Ministry of Mining and Energy; and (iii) the Energy Agency.

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

The electricity market is fully liberalized on paper. Households and small consumers remain, for the time being, entitled to opt to be supplied under regulated prices (unlike other consumers which do not have the right to regulated prices). There is an intention to phase out the regulated supply of electricity, but the Energy Agency has taken the position that there is still need for the regulation of the electricity prices. On the other hand, the Energy Agency has allowed an increase of regulated prices - starting from October 2017, prices of electricity were increased by around 2% for households and small consumers.

While there are around 60 wholesale suppliers, the retail market remains dominated by EPS (holding around 95% of the retail market).

The day-ahead market is operated by the joint-stock company South East European Power Exchange (SEEPEX).

SEEPEX membership grew to 16 in 2018 (as of June 1, 2018) from the initial 9 members.

Renewables

After long delays and extensive involvement of key stakeholders, Serbia has finally adopted a bankable framework to promote the production of electricity from renewable sources.

The incentives for renewable energy remain:

- a mandatory offtake of the entire production, under a feed-in tariff (FiT), for the 12-year period after the launch of commercial operations,
- an offtake of electricity during the plant's trial period, at 50% of FiT,
- exemption of the privileged producer from balancing responsibility, and,
- priority and free-of-charge access to the transmission and distribution system.

The current framework is applicable until the end of 2018 – it is not yet clear whether Serbia will extend the validity of the framework to 2019 or switch to market-based incentives.

Either way, the expected improvement of the bankability of the framework has led to a boost in large scale projects – all wind projects within the 500 MW cap are either under construction or already operational.

Energy Efficiency

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

To enable the implementation of these general possibilities, the Rulebook on Model Energy Service Contracts for the Implementation of Energy Efficiency when Users are from the Public Sector (ESCO By-Law) was finally adopted in May 2015, following the completion of the year-long work of the National Working Group under the guidance of the Ministry of Mining and Energy (with the support of the EBRD and external advisors, in a project funded by the EU).

The ESCO By-Law prescribes two models of ESCO agreements, one for public buildings and one for public lighting. It requires public-private partnerships to be established between the relevant public partner (e.g. a municipality, a public company, State) and the relevant private partner (i.e. ESCO company) on a long-term basis.

The energy efficiency market is still in early stages of development. With several energy performance contracting (EnPC) projects awarded to private investors in the area of public lighting and a few bigger ones in preparation phase in large cities (Belgrade and Novi Sad), the market is yet to see a successful cooperation between the public and private sector in the area of public buildings.

The energy supply contracting (ESC) has also started functioning recently, with public sector assets such as schools and hospitals being the main point of interest. However, some of the implementation aspects, such as public budgeting, remain a point of misunderstanding for the public sector.

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

POSITIVE DEVELOPMENTS

Electricity

Some positive developments can be reported.

The Energy Agency has finally allowed an increase of regulated prices by about 2% for households and small consumers. This increase is a step forward, although electricity prices still have not reached levels which allow real competition in the retail market.

Renewables

Following the intensified activity in the improvement of the incentives framework in 2016 and 2017, there have been no significant developments to report in 2018. Yet, several notable projects approved under the said framework have reached financial close and are under construction.

Energy Efficiency

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

Energy supply contracting has also started to function, although it is still of somewhat limited scope. Several PPP contracts in this sub-sector have been awarded to private investors, with the projects typically relating to the heating systems of public utilities. Even then, private-to-private arrangements continued to grow, although existing practices are rather diverse and of different contracting quality.

REMAINING ISSUES

Electricity

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

Coal mines are in relatively poor shape and in need of extensive modernisation in order to meet demand. Some major thermal power facilities will also need to be phased out or refurbished. It is not clear whether Serbia will have enough funds for these investments.

Renewables

Serbia still does not have concrete plans for incentivizing renewables from 2019 – it is still not clear whether FiT will be kept or whether Serbia will switch to a new, market-based mechanism. The lack of predictability has a direct impact on a decrease of investments in the renewables sector, keeping Serbia away from reaching binding targets on renewables in gross energy consumption.

Also, caps for incentivizing wind (500 MW) and solar (10 MW) energy are way below the market demand and Serbia should revisit the idea of raising them.

Energy Efficiency

As to energy performance contracting, apart from the need to have consistent practices in formal preparation of projects fully in line with the ESCO By-Law and the PPP legislation, the challenges ahead also include the need to reduce subsidies, which keep energy prices on an artificially low level, and introduce further sector-specific incentives for energy efficiency projects in the relevant regulations (notably, real estate and tax-related regulations) and the need to gradually raise financiers' awareness of the practical feasibility of ESCO projects.

As to energy supply contracting, the adoption of the model contract by the relevant authority (i.e. the Ministry of Mining and Energy) would be very helpful in addressing projects involving both the public and private sectors and removing the existing ambiguities. At present, the public sector is still overly careful in considering prospective projects while the understanding of this concept and its practical implementation is still lacking on the authorities' side. This specifically relates to an absence of understanding of public budgeting procedures, with some important projects involving hospitals and schools in Serbia still lagging behind as a result thereof. In this regard, it is encouraging that the said Ministry is currently preparing a model ESC contract to allow for a greater transparency and feasibility of projects on the market.

The challenges ahead relating to both EnPC and ESC arrangements include:

- capacities of the PPP Commission to be improved (including better understanding of EnPC and ESC projects' specifics);
- sharing of knowledge and existing know-how among various public entities to be strengthened and supported (especially in case of minor Serbian municipalities);
- practical implementation of rules relevant for determining the project value that are PPP-specific and of the rules of public budgeting needs to be improved and the capacities of public sector strengthened.

FIC RECOMMENDATIONS

Electricity

- Regulation of electricity prices for households and small customers to be abandoned, allowing new investments

in the modernisation and revitalisation of coal and electricity production.

Renewables

- Incentive system from 2019 to be tailored to accelerate investments in the renewables sector.
- Increase of the cap on incentives for wind and solar energy.

Energy Efficiency

- Adoption of the functional model contract to govern the energy supply contracting.
- Improvement of capacities of the PPP Commission and other notable public stakeholders with respect to both energy performance contracting and energy supply contracting projects involving the public and private sectors.

TELECOMMUNICATIONS 1.53

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Enactment of the Law on Electronic Communications in line with the regulatory framework and EU recommendations, which is the basis of the financial independence and autonomy of RATEL, whilst fast-tracking amendments to the by-laws on the number portability process, based on the currently applicable Law on Electronic Communications.	2017			√
Restraining from the implementation of parafiscal charges through the imposition of pre-paid registration, financed by the mobile operators. Bearing in mind that the position of the Government of Serbia is that the parafiscal charges seriously geopardize the predictability of the business environment and new investments, as well as that the obligation of registration of these users is establishing in the public interest, it is very important that this process is not accompanied by the implementation of additional financial burden for the commercial sector.	2017		√	
Abolition of monopoly on cable ducts is an important precondition for a stronger penetration of LTE technology and improving the capacity of operators through the use of fixed infrastructure. In addition, the price of access to this infrastructure is significantly higher than in the region, and a comparative analysis of prices in the region has not been performed in this segment.	2016			√
In order to improve and increase availability of electronic signatures to citizens and businesses, we consider it necessary to: 1) simplify the identification procedure, 2) make electronic signatures available for everybody, and 3) relieve customers of high costs associated with the electronic certificates.	2016	√		

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The precondition for this is to make the Law on Electronic Commerce an umbrella law in the field of electronic signature, while other laws, such as the Law on General Administrative Procedure, should be amended to enable the use of electronic documents and e-signatures in administrative and judicial proceedings.	2016		√	
Given that the use of a qualified electronic signature requires special hardware, software and entails high costs, there should be three types of ordinary electronic signature, putting rules in place to determine the type of signature that can be used for each specific contract/transaction. The key to improving this area is prescribing an electronic identification mechanism instead of the technical means for implementing the electronic signatures. With a registered SIM card and PIN code, known only to the customer, mobile phones could become the ideal means of identification.	2016	√		
It is essential that the electronic payment system be improved, and payments recorded in such a way that citizens are not obliged to submit a paper proof of payment made electronically.	2016		√	
Full independence of the regulatory body, including financial autonomy, is an EU standard and should be fully implemented in Serbia as a major priority for further development of the industry, aimed at preserving and building expertise for further harmonization of the regulatory framework with the framework of the European Union. This statement also applies to other regulatory bodies, primarily to the Commission for Protection of Competition.	2014			√
Taking the decision to relocate the army from the 900 MHz band.	2015			√
Further development of e-government and the option of placing these services on a mobile platform is possible through the integrated management of the e-government system, where a body would be created with the political and legal authority to implement all the necessary steps and coordinate the exchange of data. Our recommendation is that, in addition to representatives of the Government and its agencies, local government and private sector representatives should also be included in this body. E-government should integrate existing data in electronic form, and regarding the system, it is important to create a user-friendly interface adapted to the widest circle of users and a standard data format suitable for sharing. One of the priorities is to establish an integrated electronic government database.	2015		√	
The Electronic Communications Law should be a special law (lex specialis) for the field of electronic communications for the area of customer protection as well, (which would also be aligned with the EU 2009 framework), instead of the current situation where the Consumer Protection Law has that role.	2016			√
In the field of market analysis, that is a need to improve the mobile termination market analysis further, aligning it with EU practices, while access to cable ducts requires additional regulation and competitive conditions for all alternative operators.	2016			√
Amend by-laws and the Decision on Determining Goods Subject to Issuance of Specific Documents on Importation, Exportation and Transit, with regard to the approval of certified radio and telecommunications terminal equipment according to the European Union standards, to eliminate excessive paperwork related to the import and certification of radio and telecommunications terminal equipment.	2017		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Refrain from the introduction of parafiscal charges in the telecommunications sector, which can be avoided primarily by strengthening the financial independence of RATEL.	2015			√
Additional cycle of market regulation, which should be implemented in a transparent and predictable manner. Market regulation should follow market development and should also include the implementation of EU best practices, not just the incorporation of regulations of the developed EU markets. Further alignment with EU legislation should contribute to ensuring equal opportunities for all in the digital environment.	2015			√
Amend regulations on protection from non-ionizing radiation, to eliminate the requirement of preparation of environmental impact assessment studies. Also, it is of the utmost importance that special town planning requirements that are not in accordance with Article 217 of the Law on Planning and Construction be abolished. These requirements are presently defined by detailed regulation plans and hinder the installation of base stations in accordance with the needs of the customers. The Law on Planning and Construction recognized the rapid technological development in the field of telecommunications and consequently simplified the town planning requirements for installation of radio base stations. New detailed regulation plans have introduced new, special requirements for the installation of radio base stations that are contrary to the provisions of the Law on Planning and Construction and directly prevent their installation and new investments.	2017			√
Better coordination between the state institutions, where the Ministry of Trade,Tourism and Telecommunications should take a leading role when it comes to addressing issues of interest to this sector that require the intervention of other state institutions and organs.	2015		√	
Coordinated action of state institutions and electronic communications operators to suppress illegal termination of international traffic and clearly define such conduct as illicit, by amending the Criminal Code and Law on Electronic Communications to sanction such actions as criminal offences and misdemeanours.	2016			√
Reduce paperwork with regard to the personal data protection procedure.	2017			√

CURRENT SITUATION

The situation on the electronic communications market in the Republic of Serbia over the past year has been marked by the proposal of a new Law on Electronic Communications (hereinafter: LEC), which, even after several announcements, has not been adopted yet and there is no reliable information on when this could happen.

Since the passage of the new LEC has to be followed by a number of activities related to the adoption of by-laws which, in accordance with the proposal of the LEC, can have multiple consequences on the operations of electronic communications operators, a transparent approach to this topic and clear predictability of operations is necessary. We would like to emphasize this point, especially considering that the draft LEC envisages the obligatory registration of prepaid customers, that is, a complete change in the concept of assessment and collection of annual fees, whose amount is not legally restricted.

The market aslo characterized the insufficient accessibility of fixed infrastructure although the stated area is regulated in certain segments. Despite the regulation, the access rights and determine free capacity is not implemented sufficiently. In addition, there is still an infrastructure owned

by public enterprises, which is not in commercial use, and represents a serious potential for overall development.

A further liberalization of service provision should give rise to greater openness of the market. The best example is the provision of public electronic communications services at a fixed location through public mobile communications networks using CLL technology. Currently, the provision of this service is limited to communities of up to 3,000 inhabitants. We believe that this restriction is unnecessary and contrary to European principles of service neutrality and that it does not contribute to the development of fixed-line services.

The obligation to provide the universal service has not yet been clearly defined, therefore clear and predictable regulation needs to accompany announcements of changes to these obligations.

An activity that stood outin the work of the Agency for Electronic Communications and Postal Services (RATEL) and attracted the attention of operators in the second half of 2017 was a project to measure, analyse, and publish mobile network quality parameters for the 2G/3G/4G technologies for voice and data services. The results of the measurements were published on the RATEL website in late 2017.

In addition, the electronic communications market in the Republic of Serbia during 2017 and in the first half of 2018 was characterized by the activities of the regulatory agency aimed at harmonization with the recommendations of the European Commission for analysis of markets subject to prior regulation, a reduction of wholesale and retail prices, acquisitions and emergence of new market players, and initiatives launched by telecommunications operators aimed at providing conditions for a further industry development through the implementation of new technological solutions and the improvement of existing processes for services offered on the market.

In this regard, RATEL conducted a new round of analysis of the electronic communications market in the second half of 2017. Reports of conducted market analyses were adopted in the first half of 2018. The Decision on Obligations of the Operators with Significant Market Power (SMP) is expected to be passed by the end of 2018.

In accordance with the 2014 European Commission recommendations, the retail market for access to the public telephone network at a fixed location, the wholesale market for call origination on the public telephone network at a fixed location, the retail market for the distribution of media content and the retail market of telephone services publicly available at a fixed location are not subject to pre-regulation.

The downward trend in wholesale and retail prices continued in 2017 and 2018. When it comes to wholesale prices, the mobile termination rates have dropped. Although the new prices were set based on the benchmark model (by comparing the mobile termination rates of the neighbouring countries), during 2017 RATEL completed the calculation of mobile termination rates using the Long Run Incremental Cost (LRIC) model.

Also, from July 2017, lower wholesale and retail roaming charges have been applied among operators in countries that signed the agreement to reduce roaming charges within the Balkan zone (Bosnia and Herzegovina, Montenegro, Macedonia and Serbia).

Regarding the independence and transparency in the work of RATEL, we would particularly like to emphasize that it is necessary to continue the strengthening of RATEL's capacities, to which we believe active participation in the work of the Body of European Regulators for Electronic Communications (BEREC) can positively contribute. Cooperation with RATEL can be assessed as positive, regular meetings with the Director of RATEL and his associates are held, while the members of RATEL's Managing Board have not been involved and they should take part in these activities.

Strengthening of the capacities of the Ministry of Trade, Tourism and Telecommunications, Telecommunications Sector is also necessary in order to further improve the regulation of the electronic communications market.

When it comes to the figures, the results in 2017 are following. Total revenue generated from the electronic communications services in the Republic of Serbia in 2017 is EUR 1.58 billion which is slightly higher (about 3%) compared to the previous year. The most of the revenue comes from the provision of mobile services (58.5%). Revenue from electronic communications services participated with 4.3% in GDP of the country in 2017.

Total investments in the electronic communication market in 2017 amounted to EUR 270.7 million and it is higher for 3.1% compared to the previous year. The structure of the investments shows that the highest investments were in mobile telephony (EUR 111.3 million) and fixed network

(EUR 66.2 million) that is 65.58% out of total investments in Telecom industry in 2017.

The number of users in fixed telephony is 2.48 million (fixed penetration is 35.25), while in mobile telephony the number of users in 2017 is 8.62 million (mobile penetration is 122.46), which represents a slight decrease in the number of fixed and mobile users compared to the previous year. Markets that have a tendency of growth are the market of fixed broadband internet access and the market distribution of media content.

POSITIVE DEVELOPMENTS

An online service for issuing individual licenses for using radio frequencies via the online counter has been available to operators since September 2017, allowing greater functionality of the complete licensing process. The eLicense system available through RATEL's online counter includes the following online services: submission of requests, submission of technical documentation, payment of fees, and download of licenses for using radio frequencies in electronic form.

Import reliefs for Radio and Telecommunications Terminal Equipment came into force in October 2017 and the goods whose import no longer requires a compliance document among others include mobile and fixed telephones, certain types of monitors etc., which, in addition to financial savings, results in a shortening and simplification of the import process. However, the obligation to obtain a certificate of compliance before placing the goods on the market remains in place, as well as controls by market surveillance in this respect.

The initiative by the operators to regulate the IP interconnection and the joint meeting between the representatives of RATEL and operators was held in June 2018. The common interest of all operators is reflected in the reduction of costs and overcoming the need for continuous expansion of capacity due to increased traffic.

REMAINING ISSUES

The adoption of the new Law on Electronic Communications has been delayed when compared to the deadlines originally set for its adoption (the beginning of 2017). Bearing in mind that the Draft Law was subject to a public hearing in November 2016, as well as the fact that the current text of the Draft Law is not available to the industry or the general public, transparency of the work of the competent Ministry remains a challenge. Additionally, the postponement of the implementation of the new regulatory framework to be introduced by the new Law on Electronic Communications gives rise to uncertainty in the planning of business activities and further investments.

In this regard, one of the developments envisaged by the new Law on Electronic Communications relates to prepaid user registration that is expected to have a major impact on the operations of all mobile operators in the Republic of Serbia, having in mind that, according to the data for the first quarter of 2018, the number of prepaid users is 3.76 million. Meetings of all stakeholders, including the government and the industry, during 2017 were aimed at finding the best solution. There is a common consent that prepaid registration should be done electronically, but the issue of organizing the process itself, which will be regulated by a by-law after the adoption of the new Law on Electronic Communications, remains unresolved. An additional challenge is the deadline by which the implementation of this service is expected, given that the proposal of the Law defines a short deadline that begins after the adoption of the Law itself and not after the adoption of the by-law that defines the process of registration.

Activities related to the further liberalization of the fixed infrastructure market are slow. Although the Database of capacities that can be subject to shared access and use has been established it is necessary to improve the quality of the available information in database. First of all, it is necessary to have all the capacities in the database and to clerly define the parameters in which case there are free capacities for shared use.

The new Decision on the requirements regarding the provision of public electronic communications services at a fixed location via public mobile communications networks using CLL technology (Cellular Local Loop) was enacted in April 2018. The new decision allows operators of public mobile communications networks to provide end-users with electronic services at a fixed location using CLL technology in communities with up to 3,000 inhabitants. Further liberalization is necessary.

Planning of investments in the development and implementation of 5G technology is the next phase in the development of mobile technology in the Republic of Serbia. Although there are indications that 5G networks are planned even before 2020, and that it is then possible to expect the organizing of auctions for the sale of 3.5GHz, DD2 (700MHz) and 2.6GHz frequencies, operators are expecting specific government guidelines on this issue.

The success and speed of the introduction of new technologies is closely related to the assessment of the environmental impact of radio base stations, that is, regulations in the field of protection against non-ionizing radiation. Both the legislation that introduces significantly more rigorous restrictions, and different interpretations of said regulations at the level of local self-government units pose major constraints on the operation of all operators in the construction of base stations. Therefore, the improvement of the regulatory framework, consistency and a uniform approach in determining the fulfillment of requirements for the use of non-ionizing radiation sources would significantly contribute to overcoming this problem.

There is considerable uncertainty regarding further regulation of roaming charges between operators in Bosnia and Herzegovina, Montenegro, Macedonia and Serbia (Balkan zone), but also in the light of the expansion of the Agreement on the Reduction of Roaming Charges with other countries in the region and with European Union member states. Non-transparency of activities and timelines is a significant problem in terms of business planning and financial results of the operators.

The Draft Law on Fees for the Use of Public Goods was subject to the public hearing in early 2018. The Draft Law envisages the same level of fees paid by the operators, primarily for the use of radio frequencies in the part of transport network, which are already several times higher than the same fees in the region. Also, the Law has already multiplied the existing fees, and the Draft provides for the introduction of new fees, especially in the field of environmental protection. The concept of increasing the existing and introducing new fees will lead to significant costs, which will consequently greatly affect investments in protected areas. During the public hearing, operators submitted proposals to reduce and eliminate such fees in accordance with the practice applied in the European Union and the region.

The same law stipulates that revenues derived from these fees belong to RATEL up to the amount of planned expenditures determined by the annual financial plan of RATEL. This formulation brings uncertainty about the financial independence of RATEL and, consequently, raises the question of whether there will be an increase in the amount of fees for the provision of services within the competence of RATEL. The operators' position is that in defining the amount of such fees, costs as a basis for forming the amount of the fees, i.e. the purpose of the fees, should be taken into account.

The issue of illegal termination of international traffic is constantly present. Although the illegal termination of international traffic causes damage to the operators in terms of revenue reduction adversely affects security, and reduces the government's revenue in several ways, there is a lack of support from government authorities for resolving this issue.

It is estimated that around 10,000 public entities use different telecommunications services, making this segment a significant part of the business customer market. Although procurement and provision of services to public entities are regulated by the Public Procurement Law, this segment is characterized by inconsistency between the envisaged legal norms and the application of the law. It is necessary the full implementation of legal provisions. Also as it is currently under public debate the New Law on Public Procurement, this is additional opportunity to eliminate all the anomalies. First of all, the procedures must be transparent, do not favour one side, and there are no exceptions regarding the implementation of the public procurement process.

Also, it is necessary to continue working on development of broadband internet access, electronic administration and digitization of public procurement procedures have been identified, as well as further harmonization with the EU framework in the domain of a single digital market. The Telecommunications Committee of the Foreign Investors Council expresses its belief that the process of implementation of these initiatives will be transparent and predictable, while ensuring the competitiveness of operators on the market. Given that the implementation of the Digital Agenda will be accompanied by the EU's financial support, coordinated effort and action of the government and the commercial sector will be important for the execution of specific measures, in order to ensure the implementation of measures with the support of the respective Projects.

FIC RECOMMENDATIONS

- Adoption of the new Law on Electronic Communications at the earliest possible moment, while complying with the transparent process and involving the industry, especially in the segments that will have serious consequences

on the market and operation of the operators.

- Involvement of the industry (operators) in the process of drafting by-laws after the adoption of the new Law on Electronic Communications, as well as an active dialogue between the industry and the government regarding the upcoming initiatives for reducing roaming charges.
- It is necessary to improve the control mechanisms over the implementation and more efficient application of the regulatory framework in the part of the fixed infrastructure in order to achive a proclaimed liberalization of the fixed market.
- Provision of the universal service should be regulated in a clear, transparent, and predictable manner and under economically justified principles.
- Improving the regulations in the field of electronic communications and implementation of the regulations in the field of environmental protection and protection against non-ionizing radiation in order to ensure smooth implementation of 4G technology and create preconditions for the implementation of 5G technology.
- Ensuring conditions for the provision of public telecommunications services at a fixed location via public mobile communications networks using CLL technology (Cellular Local Loop) throughout the Republic of Serbia.
- Recommendation is introduction of IP interconnection between operators in the Republic of Serbia.
- Strengthening the capacity of RATEL and other relevant state authorities in order to identify the best regulatory solutions and measures for the protection of competition in the field of electronic communications.
- Combating the illegal termination of international traffic through amendments to the Criminal Code.

DIGITALIZATION AND E-COMMERCE 1.38

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to facilitate the use of digital identity/signature so that it may reach the widest possible circle of citizens without high cost and in a simple way. We recommend that the secondary legislation be passed as soon as possible specifying the electronic identification schemes. This legislation also needs to regulate the establishment of a register of schemes by the Ministry of Trade, Tourism, and Telecommunications.	2017		√	
One of the Committee's recommendations is the legal recognition of biometric signature. This is a physical signature on an electronic pad that monitors a large number of parameters, such as the speed of signing, pressure applied on the pad, and other parameters making authentication of the signature much easier.	2017			√
A positive opinion from the National Bank of Serbia that will enable the application of a Direct Carrier Billing payment model for digital content and digital services, one that may have added value for users through monthly bills issued by mobile operators.	2017			√
Improved record-keeping of all payments made to the state in such a manner that would allow that data on payments made arrive to the body in charge of providing the service in real time, so that users do not have to submit evidence of payment. It would be possible to provide for the option available for non-cash payments to generate, at request, an electronic confirmation of the payment locked with the bank's electronic stamp that would serve as evidence of payment, as a transitional solution after the entry of the Law into force.	2017		√	
All options for making payments and posting payments to accounts receivable on the eUprava portal should be made possible, such as credit cards, integration with E/M banking applications, and telecommunication operator billing. Other entities whose services are significant to the economic sector and citizens, and which may be paid through the eUprava portal, need to be identified (e.g. by the Chamber of Commerce of Serbia, court fees, bailiffs, notaries public, etc.)	2017		√	
Electronic government needs to be optimized for mobile phones by modifying the eUprava portal and making it into a responsive site adapted to all devices as a transitional solution. In the second phase, a mobile application for Android and iOS platforms needs to be developed to improve user experience.	2017			√
Introduction of non-cash payment by cards at all counters providing public services by means of POS terminals in the manner that would treat the transaction as a classic transaction by a payment card and not as a means of withdrawing cash from a counter or an ATM by means of a payment card.	2017			√
The relevant regulations referring to postal services need to be amended to allow the receipt of postal packages by placing signature on the courier's screen.	2017			√

CURRENT SITUATION

E-commerce is underdeveloped in Serbia. Nevertheless, according to the Statistical Office of Serbia, the number of citizens who purchased or ordered goods or services online in 2017 increased by 3% compared to 2016. This was the first time that the percentage of the internet population that never used e-commerce fell below 50%.

A year since the Government proclaimed digitalization as one of its key priorities, most regulatory initiatives have recognized the significance of digital operations and e-business. Numerous projects are in the pipeline, including E-Paper, with the aim of simplifying, optimizing, and digitalizing administrative procedures. On the other hand, electronic procedures are not sufficiently present on the ground, and administrative bodies often insist on the use of paper documents. This is evidenced by the fact that the Government is forced to fight against the use of company seals in business.

The Serbian Government has formed IT and e-Government Office, as the central authority for the coordination of e-Gov related activities, managing the public IT infrastructure and providing data protection. Major progress has been achieved in the area of e-payments on e-Government portal, whereas major challenges remain in the area of user identification and interface for mobile devices.

Globally there is no standardized legislation regulating transactions in cryptocurrencies, or defining the status of cryptocurrencies. The legal status of Bitcoin and other cryptocurrencies significantly differs from state to state. Introducing cryptocurrencies into the legal and tax frameworks would pave the way for investors to invest and earn taxable revenues.

POSITIVE DEVELOPMENTS

Over the recent period, the implementation of the Law on e-Document, Electronic Identification, and Trust Services in e-Commerce, which transposed the EU's eIDAS regulation into Serbia's legislation, has produced tangible results. For the first time, the law explicitly states that an electronic document is equivalent to a written document. Althogh most other laws require the written form as a condition of legal validity, now we have a legal basis to interpret written form as always implying electronic form as well. Also, the law directly enables the conversion of paper documents into electronic form, and vice versa. Concerning the administration's resistance, the most frequent complaint is that representatives of the state administration do not recognize e-documents as legally valid and always require paper form, even though this is not necessary. This is why the Law's final provisions, which stipulate that a civil servant challenging the validity of an electronic document or signature is committing a misdemeanour and envisage appropriate penalties, are so important.

Concerning the by-laws, of a total of the envisaged 17, 7 have been passed so far (2 are in the procedure for the adoption) to regulate the common criteria applicable to trust services, and technical standards for qualified electronic signature creation devices. At the same time, work is under way on implementing regulations concerning digital identity and e-archiving The working group should be given credit for making a breakthrough and preparing draft documents on e-archiving, even though these are yet to be passed by the EU.

Amendments to the Law on Foreign Exchange Operations brought some progress in the e-payment segment. Among other, receipt of foreign currency donations for humanitarian purposes was made possible via online payment services, such as PayPal. Some major progress was registered in the online software sale segment, which has now been included in the list of exemptions from the rule that only dinar payments are acceptable, also including mutual transactions between residents. Thus, national IT companies were enabled to post prices in foreign currency and sell their services without the fear of committing a violation if the buyer is a resident of Serbia.

Still, although this exception is limited only to software and digital services, liberalization has yet to be fully implemented. Citizens can make payments with payment cards or with a domestic e-money institution (although several years have passed since the adoption of the Law on Payment Services, there is only one such institution in Serbia), but not with the best-known global services such as PayPal or Skrill.

Online card payments, as a part of electronic banking services offered to individuals, were made possible in the recent period also for services available on the e-Government portal.

The National Bank of Serbia, as of October 22, introduced instant payments, as announced making it possible for payments to reach recipients any time of the day or week. Thus, e-payments would continue to gain importance, because,

apart from flexibility and advantages they already have, they would bring the added benefit of being transferred on weekends, over night and on holidays.

The Law on e-Government was adopted in April 2018, as an umbrella regulation to uniformly regulate the terms and conditions for the use of information technologies by the public administration, both at the state and at local government level. The purpose of the Law is to enable interoperability of all systems used by the public administration, to ensure automatic data exchange between publicly owned databases and make optimum use of IT equipment and infrastructure. It regulates two main areas: use of public ICT infrastructure, including data registers, and administrative procedures conducted in electronic form.

The Law is expected to stimulate electronic communications between citizens and the administration, prevent the practice of individual institutions developing their own systems, incompatible with others, and prevent the administration from requesting citizens to file data it already has in its records.

Law on Protection of Financial Services users at distance contracting was adopted in June 2018. This Law for the first time transparently mentions two factor authentication referring to on-distance contracting for contracts in the value up to 600,000 RSD without the use of the user's qualified electronic signature, if the user has agreed to conclude the contract using at least two elements for confirming the identity.

In the previous period progress has been made in the use of the e-Zup information system by the state and local government authorities for electronic data exchange. From six databases it started with, this system now connects 18 databases and, according to the latest information, 245 different institutions use it in their daily work. It is estimated that, till now, its application saved citizens around 500,000 hours and 20 million paper documents.

At long last, the e-Government portal services can be paid for online with payment cards, owing to the integration of the banks' electronic payment services. In this way, one of the basic premises of electronic government has finally been fulfilled, since in the past, the need to shift to physical payment channels defied the whole purpose of electronic services, stripping them of their benefits and rendering them meaningless.

REMAINING ISSUES

Although a certain progress was made concerning individuals' digital identity in 2018, by adopting the Law on Protection of Financial Services users at distance contracting the initial great expectations concerning the basic, medium, and high-level security electronic schemes, envisaged under the e-business legislation, have yet to be met, and seem to have been lowered in the meantime. This is due to the fact that the EU's regulations and technical standards, on which Serbia's decree on terms for electronic identification schemes with specific security levels is to be modelled, set rigid terms for the high-level scheme, which, therefore, will not be more flexible compared to the qualified electronic signature. On the other hand, we can expect that the basic-level scheme will not require physical presence and producing an ID for user identification at the time the scheme is issued, and that user identification will be performed electronically. It remains to be seen what kind of solution will be selected for the medium-level security scheme.

The Digital Committee proposes that, at the time an electronic identification scheme is issued, user identification be based on the users' links with institutions that already identified them by checking their ID. For example, a user could be asked in the process of user identification to pay a RSD 1 fee to the electronic identification scheme provider. This would enable the scheme provider to check the identity of the person performing the payment, given that banks identify users by checking their IDs when opening accounts.

The Digital Committee proposes user education to demystify digital operations. Users should be certain that digital operations are transparent, that their data is secure, and that they can access their data at any time. Users should be instructed on how data they provide in remote operations will be used, and why, and what benefits they can derive from digital operations.

Educational activities should be simple and use language that can be understood by users with an average level of education. Privacy, security, and simplicity should be at the core of educational activities.

Confrontations between taxi drivers and the CAR:GO app, as well as the ministry's reaction, show there is no single approach to problems that arise as a result of the digital disruption of existing business models. Even though this case

is very similar to what transpired with apps such as Viber and WhatsApp and mobile providers' services, or with hotels and short-term house-sharing platforms such as Airbnb, all these cases are viewed as individual phenomena. It is only a matter of time when other similar case will arise, so a single approach should be developed that will strike a balance between the development of innovative business models and the protection of the state's fiscal interests.

Direct Carrier Billing (DCB) is a mobile payment method which enables users to add the cost of purchased goods or services to their post-paid account, or have the amount deducted from the balance on their prepaid account. DCB is a reality in EU countries and has been in line with EU regulations for the last ten years. Moreover, new EU Payment Directives additionally develop the possibility of payment for an increasing mix of goods and services over DCB. EU regulations clearly define and treat mobile operators as mediators in trade and, consequently, do not hold them liable to pay VAT or withholding tax.

The National Bank of Serbia is persistent in its position that mobile operators in Serbia, having the technical capacities to manage the DCB function, are resellers of goods and services, and as such, are liable to VAT and withholding tax payment. In addition, the NBS insists that mobile operators should be registered with the NBS as hybrid payment institutions or e-money institutions in order to be able to provide DCB services to interested parties, although these notions are not mutually related. Registration of mobile operators with the NBS would additionally and unnecessarily increase the level of regulation for operators. On the other hand, the inability to provide DCB services makes it impossible for mobile users in Serbia to acquire mobile applications in the same manner as users in other countries.

Although the Law on e-Government sets ambitious goals in the electronic administration segment, the specified deadlines testify that this process will take quite a long time. For example, the deadline for establishing the meta Register is one year, and the period in which all authorities should start accepting the citizens' electronic filings is 18 months as of the date of the Law adoption. When it comes to electronic registers and records, as well as software solutions, the final deadline is mid April 2021. The problem that still persists is user identifications, because due to access to personal data or other reasons, many services require more secure insight into user's identification. Since currently only the qualified electronic certificate is in use, owned by a very small number of citizens, individual services remain inaccessible to the majority of users.

Also, the e-Government portal is not optimized for mobile devices yet and there has been no progress in this direction so far.

There is no law or any other regulation in Serbia that regulates cryptocurrencies, nor is any in the procedure. Due to the lack of regulations, payments in cryptocurrencies, as well as their mining, are mostly consigned to the black market. However, tax authorities are treating cryptocurrencies as goods, so that their sale and purchase, as well as the pertaining gains, are liable for taxation.

The European Union did not specifically regulate Bitcoin as a currency, but did not prohibit it either. The first step towards Bitcoin being treated as a currency was made by the European Court of Justice (ECJ). In its ruling of October 2015, the ECJ officially interpretation that transactions between the Bitcoin and fiat currencies are not liable to the value added tax. The mentioned ruling treated Bitcoin as a currency, not as taxable property. However, although the ECJ indirectly proclaimed cryptocurrencies are a payment instrument, the financial regulations of the European Central Bank are not applying that.

As of 2013, in the USA the Bitcoin is a convertible, decentralized currency, but not a legal payment instrument.

FIC RECOMMENDATIONS

- Following a discussion between the state and businesses, formulate a single approach to regulating relations between traditional and digital business models, taking into account the needs of the digital economy development and the state's fiscal interests.

- Rely on entities that have already identified their users, such as banks, insurance companies or mobile operators, when issuing electronic identification schemes to enable remote user identification.
- It is important to facilitate the use of digital identity/signature so that it may reach the widest possible circle of citizens without high cost and in a simple way. We recommend that all state bodies should be harmonized (NBS, Ministries) in order to enable facilitated usage of digital signature (2F authentication) for contract signing (banks, insurance houses). In order to emphasize the reliability and easiness of digital signature usage and with the goal of expanding its use, citizens should be informed through educational campaigns about all the possibilities, rights and benefits from this type of channel.
- Electronic payments should be promoted on three levels: automatic recording of citizens' payments by the public administration, based on taxes and fees, without the need to file hard copy evidence; by enabling direct charging of digital contents from Google Play and Apple Store, through telecommunications operators under the EU model, and by allowing transactions between residents and through foreign services, such as PayPal.
- We propose that Serbia regulate cryptocurrencies, so as to ensure support and legal security to both physical and legal persons mining and trading in cryptocurrencies, on the one hand, and to secure additional revenues for the budget of the Republic of Serbia, on the other.

REAL ESTATE AND CONSTRUCTION

1.66

According to the World Bank's recent Doing Business ranking, Serbia is in 10th place globally in terms of obtaining building permits, which represents an exceptional leap compared to 152nd place only two years ago. Accordingly, obtaining building permits made the most headway on the White Book progress index in 2018, ranking at the top of the list.

Some improvement has been seen with regard to the conversion proceedings, and a growing interest from investors to initiate and finalize these proceedings has been evident. Additionally, the relevant authorities are becoming more and more cooperative in this regard as well. However, 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.

With the adoption of the Law Amending the Law on Mortgage in July 2015, significant improvements were introduced, however, further amendments to the Law are required.

The Law on the Registration Procedure with the Cadastre of Real Estate and Utilities has been recently enacted. Some progress has been made in the activity of the cadastre, mainly in respect of efficiency in resolving client applications and in communication with clients. In principle, the implementation of the law can be assessed as positive, but there is still plenty of room for improvement.

Amendments to the Law on Agricultural Land abolished the ban on the acquisition of ownership of agricultural land for foreign natural persons who are citizens of the EU and who have the right, as of 9 January 2017 to acquire ownership rights to agricultural land up to 2ha, for a fee or free of charge, upon fulfilment of the prescribed conditions.

The Restitution Agency (Agency) has taken a rigid position, especially with respect to foreign citizens. This is reflected in an inadequate application of the principle of discretionary evaluation of evidence, as well as in requests for documentation unnecessary for decision-making and for the most part impossible to obtain.

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Construction land and development				
The authorities must introduce transparency and consistency at all levels, and ensure a high level of control of all relevant institutions. The authorities should publish all opinions and interpretations of regulations provided by them on their websites.	2009		√	
The missing pieces of secondary legislation in the construction area and regarding communication between the real estate cadastre and authorities responsible for the issuance of construction and use permits, should be adopted as soon as possible.	2015	√		
The Implementation of the latest version of the Planning and Construction Law to be monitored by all relevant stakeholders.	2015	√		
The implementation of the new Law on Legalization of Buildings should be monitored by all relevant stakeholders.	2014		√	
The legal framework defining the relationship between the investor and the main contractor should be improved in accordance with internationally recognized best practices (including, especially, the International Federation of Consulting Engineers - FIDIC legacy), by amending the Law on Contracts and Torts.	2010			√
It is essential that the application of Article 11, paragraph 6 of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with majority public or state-owned capital.	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Dialogue, communication, and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other stakeholders dealing with real estate on the other, with respect to strategic issues, with the goal of improving the real estate market in the best interest of everyone.	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			√
It is necessary to explicitly regulate the manner/procedure and consequences of changes of registered mortgages to protect competition between banks, the security of data registered in the real estate cadastre and facilitate access to loans for mortgagors.	2016		√	
It is necessary to explicitly regulate some of the more flexible types of mortgage envisaged by comparative law, such as conditional, credit and continuous mortgages.	2016			√
It is necessary to explicitly allow a mortgage to be registered as collateral for more than one claim, on different legal grounds, and for different creditors' claims, and stipulate general rules for the registration of such mortgages and the settlement of such creditors.	2016			√
It is necessary to regulate the position and rights of the tenant in the case of extrajudicial enforcement.	2017			√
Cadastral Procedures				
More transparent and clearer instructions should be provided for the implementation of the law in order to further accelerate and increase predictability of cadastral procedures.	2016		√	
Online access to cadastral data should be unlimited and free, and the issuing of simple documents, such as title deeds and copies of cadastral plans, should be made possible on the spot, upon submission of a request for issuance.	2012			√
A mechanism should be created for daily updates of online real estate cadastre data.	2016			√
The formation of the utility cadastre should be finalized as soon as possible, along with all remaining procedures related to the formation of the real estate cadastre.	2015		√	
The Republic Geodetic Authority should ensure harmonization of administrative practices among all cadastral offices, increase control over their activity, ensure more availability to clients for consultations, and handle complaints with greater promptness.	2015		√	
The Republic Geodetic Authority should resolve all unresolved second-instance cases as soon as possible and promptly notify the parties involved.	2017		√	
The Republic Geodetic Authority and the Real Estate Cadastral service should be more available to parties for consultations.	2017		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Through change of practices and/or the regulatory framework, there is a need to secure the recognition and adequate treatment of exceptions from the principle of formality, so that diligent investors and mortgage creditors do not suffer any negative consequences due to rigid interpretation of laws.	2017			√
Restitution				
State authorities should lead transparent restitution procedures granting the right to restitution to redress the injustice perpetrated seventy years ago, taking due care to protect basic human rights of the parties to the proceedings.	2015		√	
State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.	2015			√
Enable foreigner nationals to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality.	2015		√	

CONSTRUCTION LAND AND DEVELOPMENT 2.14

CURRENT SITUATION

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

The issue of property rights and mixed forms of private and public property remains a substantial obstacle in the construction sector in Serbia. Until 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.

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 for a fee applies to holders of the right of use 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 the right of use over undeveloped land owned by the state, 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 the Conversion of the Right of Use to Ownership of Construction Land for a Fee ("Law on Conversion for a Fee") was enacted at the end of July 2015. The long-awaited Law on Conversion for a Fee prescribes conditions for the 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 a request for conversion.

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 deducting the market value of land for the regular use of facilities from the market value of the entire cadastral parcel.

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 could 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 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 conversion.

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

Construction

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

The so-called "integrated procedure" encompasses all steps, from the issuance of location conditions to the issuance of construction and occupancy permits and the registration of ownership over the newly built 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.

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.

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. The land development fee is not charged for infrastructural and production facilities, warehouses, underground floors, etc.

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.

It should be noted that further amendments to the Planning and Construction Law are expected in near future.

Legalization

The problem of illegal construction, i.e. construction with-

out 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 adopted in November 2015 stipulates a somewhat radical legalization procedure, envisaging only two options for illegally built facilities –demolition or full legalization.

POSITIVE DEVELOPMENTS

Construction Land and Development

Conversion of the right of use to ownership of construction land

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

Construction

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

As for the number of issued building permits, one may note an increase of number of issued construction permits since the unified procedure has been introduced.

According to the World Bank's recent global Doing Business ranking, Serbia is in 10th place in terms of obtaining building permits, which represents an exceptional leap compared to 152nd place only two years ago.

On October 9, 2018 the Law Proposal in relation to the new amendments of the Law on Planning and Construction entered the Parliament. With regard to this, we welcome the fact that the Law has been endorsed by the Government and hope it will be adopted by the National Assembly as soon as possible. It is expected that the proposed amendments will enable even more efficient conducting of the integrated procedure, accelerate the process of adoption and application of the planning documents and alignment of the Law on Planning and Construction with other pieces of legislation.

Legalization

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

For facilities used without an occupancy permit, the respective permit is to be obtained in a regular procedure, in accordance with the law governing the construction of buildings. Exceptionally, only in cases when a construction permit was issued in a previous legalization procedure, but no occupancy permit has been obtained, 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.

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 legalization procedures initiated under the previously applicable laws is too complicated and expensive procedure. To overcome this obstacle, the law has introduced a fixed legalization fee determined by several criteria, such as the intended use of property (commercial or residential) and surface area, while the procedure has been significantly simplified.

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.

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

In practice, there has been no significant enforcement of demolition orders.

REMAINING ISSUES

Construction Land and Development

Conversion of the right of use to ownership of construction land

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

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

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

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

Construction

The implementation of the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders.

It is necessary to provide better and more precise education of local self-governments and authorities in charge of the law's implementation and issuing the necessary documentation for the development of projects or the start of construction. It is often a case in practice that certain applicable regulations are not applied by local governments in a uniform way.

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

An integrated procedure should be more effective and additional pieces of legislation should be enacted to establish a clearer procedure for supplementing the documentation according to the remarks of the competent institutions, and to prevent the re-rejection of the request if the remarks, which were previously determined, are remedied within the specified deadline.

Additional amendments to the Planning and Construction Law, in whose drafting the FIC took active participation, are expected in 2018.

Legalization

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

FIC RECOMMENDATIONS

- The implementation of the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders.
- It is necessary that all competent authorities are clearly and precisely trained to implement the Planning and Construction Law.
- The implementation of the new Law on the Legalization of Buildings should be monitored by all relevant stakeholders.

- It is essential that the application of Article 11(6) of the Law on Conversion for a Fee be confined to cases where the applicant for conversion is a company with majority public or state-owned capital.
- Dialogue, communication, and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other stakeholders dealing with real estate on the other, in respect of strategic issues, with the goal of improving the real estate market in the best interest of everyone.

MORTGAGES AND REAL ESTATE FINANCIAL LEASING 1.20

CURRENT SITUATION

The Law on Mortgage, adopted at the end of 2005, was substantively amended in 2015, with the primary goal of overcoming the problems identified during the nine years of its implementation.

As in the previous edition of the White Book, by way of a general remark we have to point out that these latest amendments to the Law on Mortgage were not sufficiently far-reaching, the impression being that they lack additional clarifications, which could have been very useful. In addition, they also failed to introduce some new useful concepts.

The financial leasing of real estate, introduced by amendments to the Law on Financial Leasing in May 2011, is not fully operational yet. The main problems in the application of the Law on Financial Leasing are related to the high costs and tax treatment of leasing of real estate and have yet to be resolved.

POSITIVE DEVELOPMENTS

With the adoption of the Law Amending the Law on Mortgage in July 2015, significant improvements were introduced to eliminate the biggest problems in practice including a very important amendment to the provision on the reservation of the rights of lower-ranking mortgage creditors in case of out-of-court mortgage settlement, because of which many mortgage creditors opted for the slower but more secure in-court foreclosure proceedings instead of out-of-court settlement.

The possibility to appoint a third party, as the "security agent" was introduced and is used in practice in cases of syndicated or "parallel" lending by multiple banks although the provision on authorizations of the "security agent" is not sufficiently clear.

The form and content of documents on the basis of which a mortgage may be established and/or transferred are now clearly regulated, and so are the rules on deadlines in which cadastral authorities must decide on requests for registration of relevant annotations, which resulted in increased efficiency of the cadastral authorities in terms of registration.

One of the positive changes is also the resolution of the issue of which procedure is applicable in case foreclosure was filed on the basis of both the Law on Mortgage and the Law on Enforcement and Security.

Finally, we appreciate the technical changes stipulating that the deadlines related to the out-of-court settlement should run from the date of non-appealability of the decision on the registration of the foreclosure sale annotation, which will accelerate the settlement procedure.

REMAINING ISSUES

The proposed amendments failed to explicitly regulate a situation that is not uncommon in practice, i.e., the registration of one mortgage as a collateral securing several claims on different grounds and also by several creditors, and regulate the terms of settlement of the claims of such creditors practically treated as mortgage creditors of the same rank. The issues related to the setting up of a mortgage to secure claims of multiple creditors have appeared as a consequence of the opinion of public notaries that such a mortgage may be set up only in cases when the claims of different creditors have the same legal basis.

The introduction of the institute of "third party" (practically the "the security agent") is a positive step, but the proposed provision does not elaborate 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 special authorizations for undertaking actions on behalf of the mortgage creditors before the competent authorities (primarily the cadastral authorities). The law should regulate the role of the "security agent" in more detail, including who can be elected as "third party", and who may issue such an authorization to "third parties" (this is especially important for the banks and financial institutions)

The opportunity was missed to amend Article 15 of the Law on Mortgage, which over-regulates the content of an enforceable mortgage document. In fact, bearing in mind that amendments stipulate that the enforceable mortgage document must be drawn up in the form of a notary deed (in itself an enforceable document), the legislator's requirement with respect to the exact wording of the mortgage document is unnecessary. Conversely, given 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.

The position of the tenant in the case of an out-of-court settlement is not entirely clear. Specifically, following the 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, which is not always feasible in practice (e.g. in the case when the mortgagee was or could have been familiar with the existence of the lease at the time when the mortgage was created). On the other hand, the Law on Enforcement and Security protects the dutiful tenant who stays in possession of the real estate even following the court foreclosure procedure. The legislator must have clear rules for resolving the conflict between the rights of the mortgagee in a foreclosure procedure (court or out-of-court) and the rights of the tenant. Given that the courts have different practices in respect to this issue, we are of the opinion that trainings of judges should be organized on a regular basis, because the Law on Mortgage and Law on Contracts and Torts are in many cases interpreted incorrectly, which leads to the inconsistent application of these two laws.

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

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

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

FIC RECOMMENDATIONS

- The Law on Financial Leasing must be harmonized with current real estate regulations, in particular in terms of the possibility of registering an existing real estate lease in the real estate cadastre, which must be clearly prescribed by the Law on Cadastre and State Survey. Also, by elaborating the tax legislation, the state should create a more favourable climate for implementing financial leasing in the real estate sector.
- The Law on Mortgage needs to be amended to explicitly regulate the procedure and consequences of amendments to registered mortgages, to regulate some of the more flexible types of mortgage envisaged by comparative law, such as conditional, credit and continuous mortgages, and allow a mortgage to be registered as collateral for multiple claims on different legal grounds, and for different creditors' claims.
- The rights of the tenant in the case of extrajudicial enforcement should be specified.

CADASTRAL PROCEDURES 1.63

CURRENT SITUATION

Some progress has been made in the cadastre authority's operations, mainly in respect to the efficiency of resolving client applications and in communication with clients. In general, the implementation of regulations can be positively assessed, but there is still plenty of room for improvement.

The Law on the Registration Procedure with the Cadastre of Real Estate and Utilities has been recently adopted. The law aims at introducing significant changes, primarily to how applications and documents are filed with the cadastre, the relations between the cadastre and other authorities, and deadlines for rendering decisions. The legislation should further accelerate the procedure at the cadastre by introducing the obligation for public notaries, courts, bailiffs and other authorities to submit their documents to the cadastre electronically, ex officio, within short deadlines. The law is geared towards a gradual transition from paper to electronic operations and generally improving the cadastral procedures. However, a downside of the law is a more rigid behaviour of the cadastre, reflected in diminishing one of the key principles of procedural law - assisting lay clients. The law's efficient implementation is a challenge yet to be tackled.

POSITIVE DEVELOPMENTS

The 2015 amendments to the Law on the Cadastre and State Survey have yielded results in terms of faster, clearer and more efficient cadastral procedures. The newly enacted law is expected to further contribute to this trend. Additionally, the cadastre authority has made evident, though not yet full-scale progress in communications with clients. There has been some progress with the establishment of a utility cadastre and resolving piled-up appeals, but overall, this progress has been rather limited.

REMAINING ISSUES

What continues to be the main issue is the inconsistent interpretation of applicable regulations by different cadastral offices, often in contradiction to other laws and by-laws.

Cadastral offices have taken a prominent formalistic approach to processing applications for the registration of rights to immovables. This approach will certainly help accelerate procedures at cadastral offices, which is one of the main expectations investors have. Yet, an exceedingly formalistic approach can also aggravate the position of clients. In that sense, the power of the cadastre authority to reject an application that it finds non-compliant, without the obligation to inform the client about the deficiencies identified in it, is highly problematic as it results in such client losing priority to register the right and to unpredictable additional delays. It is therefore necessary to consider a possibility for a client whose application was rejected for formal reasons to retain priority in having a decision issued concerning its application, provided that the same party re-files its application within a short deadline.

A persistent problem concerns the transfer of mortgages from buildings under construction to finished buildings in cases when an investor has deviated from parameters set out in the construction permit. This is particularly prominent in cases when separate units of a building under construction are mortgaged. Although the Mortgage Law clearly mandates that a mortgage covers improvements on immovables and prohibits the investor from making any alterations to the building without the creditors' consent, in practice there are deviations from construction permits and investors manage to legalize and register such altered buildings with the cadastre. However, due to its strictly formalistic approach, the cadastre authority refuses to transfer the mortgage from a building under construction to the finished building under the pretext that the mortgaged building no longer exists. Consequently, creditors risk losing the mortgage, and negligent investors are protected. To avert such situations, either the practice of the cadastre authority or laws need to be changed in order to oblige the cadastre authority to transfer mortgages in such cases. Alternatively, regulations on legalization should stipulate that the authority, when approving legalization, orders the transfer of the mortgage from the building under construction to the legalized building.

Also, in view of compliance with the principle of mortgage extension, the cadastre authority ought to register a mortgage to all facilities that were created out of the existing mortgaged one (e.g. a creditor has a mortgage on two apartments, and a debtor/owner splits those apartments into a few smaller ones or demolishes the partition walls and makes them part of the adjacent apartments). The same goes for various "upgrades," e.g. entire floors constructed on top of the existing buildings.

In addition, the legislature should define what is considered the principal thing and what its constituent parts and

accessories given the collision of the mortgage with the pledge on movable items that ceased to be movable once they became incorporated into the immovable (e.g. air conditioning, various installations).

The huge backlog of unresolved applications, some years old, remains a problem. The Republic Geodetic Authority should organize work on second-instance cases in such a way as to ensure timeliness.

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

Data available through the e-cadastre is not always reliable, because it is not updated often enough.

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

Finally, software problems that prevent the implementation of the law have to be addressed and managed swiftly, rather than allowed to linger for a long time.

FIC RECOMMENDATIONS

- More transparent and clearer instructions should be provided for the implementation of the law in order to further accelerate and increase the predictability of cadastral procedures.
- Online access to cadastral data should be unlimited and free, with daily updates, and the issuing of simple documents, such as title deeds, should be made possible on the spot.
- The formation of the utility cadastre should be finalized.
- The Republic Geodetic Authority should ensure harmonization of administrative practices among all cadastral offices, increase control over their operations, ensure more availability to clients for consultations, and handle complaints in a more timely manner.
- The Republic Geodetic Authority should resolve all unresolved second-instance cases as soon as possible.
- Software maintenance and improvement practice must reach a higher level.
- Through change of practices and/or the regulatory framework, there is a need to secure the recognition and adequate treatment of exceptions from the principle of formality, so that diligent investors and mortgage creditors do not suffer any negative consequences due to a rigid interpretation of laws.

RESTITUTION 1.67

CURRENT SITUATION

The urgency of restitution 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 was unjustly expropriated.

The deadline for filing claims has expired, and institutions have started processing individual requests, but still the impression is that this will take time.

The Law on Property Restitution and Compensation (Law) 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. Although the Law prescribes in-kind restitution (i.e. restitution of an unjustly expropriated property) as the primary model, there are numerous exceptions and it is likely that compensation will be the most prevalent form of redress. In-kind restitution is the obligation of the Republic of Serbia (RoS), local governments, public enterprises established by the RoS and socially-owned companies and co-operatives, while the disbursement of compensation is the exclusive obligation of the RoS. Rarely, privatized companies may be obliged to make restitution in kind.

The Restitution Agency (Agency) has taken a rigid position, particularly with respect to foreign nationals. This is reflected in an inadequate application of the principle of discretionary evaluation of evidence, as well as in requests for documentation which is not necessary for decision-making and which is in most cases impossible to obtain.

The Law contains numerous ambiguities, but the administrative and judicial instruction is that there is no place for such a restrictive interpretation of the Law, which enables the Agency to interpret the Law less restrictively, in particular to allow all Applicants the possibility of conducting an evidence procedure even when they are missing documentation which, under the Law, they must provide in order to realise their rights.

Agricultural Land

Amendments to the Law on Agricultural Land abolished the ban on the acquisition of ownership of agricultural land for foreign natural persons who are citizens of the EU, and such persons have the right, as of 9 January 2017, to acquire ownership rights on agricultural land up to 2ha, for a fee or free of charge, upon the fulfillment of the prescribed conditions. Foreign investments in Serbian agriculture are mainly made through the privatization of agricultural companies, whereby investors acquire a majority of shares in companies that own agricultural land. In some cases, companies face problems due to the misinterpretation of provisions of the Law on Agricultural Land.

The Law on Co-operatives adopted 2015 does not contain any of the former provisions on the return of agricultural land to newly founded co-operatives. The abuse of rights by such co-operatives remains an issue since the final provisions of this Law stipulate that existing claims for the return of land filed by new co-operatives, founded with the aim 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

In 2017, the Constitutional Court, the Supreme Court of Cassation, the Administrative Court of Serbia and the Ministry of Finance made decisions which annulled the Agency's decisions made in contravention of the law, which, provided that the Agency complies with these authorities' orders, should significantly contribute to progress.

According to the Constitutional Court's and the Supreme Court's decisions, the Agency is obliged, in each case, to request the missing documents from applicants before dismissing a request as incomplete, thus enabling the applicants to participate in the proceedings.

Under the Administrative Court's decisions, the Agency was ordered to act in accordance with all laws and international agreements, forbidding the Agency to make decisions on issues outside its jurisdiction, especially regarding the existence of reciprocity with foreign countries.

The Ministry of Finance ordered the Agency to comply with court decisions in further processing, in particular court decisions rehabilitating former owners. The Ministry's decision made it clear that in cases where former owners have been rehabilitated by court decisions, the Agency has no authority to deny requests for restitution on the grounds that the former owners were members of foreign occupying forces.

Agricultural Land

The Law from 2015 indicates that the abuse of rights by co-operatives for the purpose of obtaining agricultural land will no longer be possible.

REMAINING ISSUES

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

gent practices by the Agency, which may jeopardize the acquired rights of foreign investors.

In some of the restitution cases, the Agency interprets regulations in a manner that hinders or even denies foreign nationals their right to restitution or compensation. Judicial and administrative authorities of the RoS have made decisions in certain cases to correct irregularities in the Agency's work, but the question remains whether the Agency will adopt and apply instructions from these decisions.

Agricultural Land

State bodies, namely the Ministry of Finance, have not yet taken a clear position that provisions of the former Law on Co-operatives may only be interpreted to mean that the private ownership of agricultural land acquired by private enterprises in the course of privatization or by other means cannot be taken away and given to newly-founded agricultural co-operatives, and, if it is to be taken away, due compensation must be paid. Otherwise, this shall constitute illegal confiscation of private property.

FIC RECOMMENDATIONS

- The Restitution Agency should conduct transparent restitution procedures granting the right to restitution to redress the injustice perpetrated 70 years ago, taking due care to protect basic human rights of the parties to the proceedings and enabling foreign nationals to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality, in accordance with decisions of judicial authorities and the Ministry of Finance.
- State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.
- State bodies, namely the Ministry of Finance, in administrative proceedings as initiated in line with the provisions of the former Law on Co-operatives by newly-founded agricultural co-operatives, should seek to protect the full private property rights of foreign investors.

LABOUR

Amendments to the Labour Law in 2014 led to significant improvements of labour law regulations. At the time, more than 65% of recommendations from previous editions of the White Book were adopted and the labour legislation was significantly adjusted to the needs of the labour market. There is still, however, room for improvement both in respect of the Labour Law in general and separate laws governing this area.

Priority in further reform of the Labour Law should be given to the need to recognize and regulate more flexible forms of work, such as different forms of teleworking, staff leasing arrangements, and internship when it is not part of a mandatory educational program; as well as digitalization and simplifying the very formal manner of communication between the employer and the employee, the complex salary structure, and the calculation of compensation for wages. It is necessary to further simplify and expedite the procedure for the employment of foreigners and labour mobility in general; recognize business activities which, due to their specificities, come with limited options for employing persons with disabilities; adopt subordinate legislation which would enable efficient implementation of the Law on Dual Education in practice; and further improve the education system in general.

The continuation of reforms in the field of labour is a necessary prerequisite for creating a business environment in which the Serbian market will attract foreign investments and bolster the opening of new jobs. The HR Committee, by investing its knowledge and experience in the implementation of regulations, has strived to point out the priorities in the need for further improvement of this area.

LABOUR RELATED REGULATIONS 1.05

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 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, yet still be entitled to unemployment benefits.	2009			√
We propose that concluding a fixed-term employment contract should not be conditioned on any specific reasons (such as work on a specific project, increase in the volume of work,seasonal jobs,etc.), something currently the case. We propose that such limitations be abolished, so that parties can freely enter into fixed-term employment contracts in whatever case they deem appropriate.	2010			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In addition, we propose that the provisions of the Labour Law specify that a fixed-term employment contract be allowed to be concluded up to a legally specified time for performing "the same job", without putting the emphasis on the "same person / same employee" due to the fact that we believe that such a provision is contrary to the Constitution and the Law on the Prohibition of Discrimination. For example, why can't a business secretary who has concluded a fixed-term employment contract by the end of the period for which the contract was concluded work as a law graduate on some other job (the secretary having graduated, meanwhile), concluding a fixed-term employment contract again?	2015			√
We propose to extend the limit for the duration of the suspension measure to one month.	2010			√
The possibilities for the introduction of overtime work should be extended, i.e. not be related to sudden and unexpected occurrences only. The employer and employees should be free to agree on the occasion and purpose of overtime work. Employers should have the right to introduce management compensation that would include compensation for overtime work performed by managers in the company.	2014			√
It is necessary to envisage the possibility that the notice period in case of termination of employment by the employee may exceed 30 days, if the employee and employer so agree, and especially in case of directors and management staff.	2012			√
The obligation of employers to keep employment contracts at an employee's place of work should be changed, so that it does not apply to employers who do not have business premises, or some other adequate place for keep these documents.	2014			√
The threshold for the employer's duty to enact the Rulebook on Internal Organization and Job Classification should increased from the current ten to 50 employess, and only open-end employees should be counted for this treshold.	2017			√
Employers must be able to envisage in the Rulebook on Internal Organization and Job Classification several different levels of professional qualification as a condition for employment for a specific position, and not just two consecutive levels of professional qualification, as the current legal solution provides.	2014			√
Misdemeanour fines should be decreased and cordinated with the actual gravity of the midemeanour, since, for example, the more severe sentence is prescribed for not delivering the calculation of salary than for not paying the salary.	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 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.	2012			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Defining more precisely the obligations of employees with regard to nothing their employer of the temporary inability to work; that is, the obligation of delivering the report on the temporary inability to work, and not only notification of temporary inability to work, and cross-referencing the provisions regulating the responsibility of the employee for abusing the right to temporary inability to work with the provisions of the Health Insurance Law.	2017			√
It is necessary to define that one part of annual leave is to be used continuosly in a two-week period, which does not necessarily have to be the first part of annual leave (as the current legal solution provides).	2017			√
It is necessary to provide the possibility of carrying over unused annual leave to a new employer, upon consent of the employee and new employer.	2017			√
It is necessary to exclude the compensation for unsend annual leave from compensation which is treated like a salary in accordance with Article 105, paragraph 3 of the Labour Law.	2017			√
A more precise definition is required as to what is considered a placement of trade union representatives into an "unfavourable position", as well as redefining the term for the review of union representativeness; that is, to shorten the term of three years for reviewing the representativeness or to determine that, for the purpose of determining the representativeness, a membership longer than 12 consecutive months is required.	2017			√
It is necessary that the Labour Law regulate the redundancy procedure in those cases where there is no legal obligation to adopt a redundancy program.	2015			√
It is necessary to determine that the deadline for payment of severance in case of redundancy is the same as the deadline for payment of earnings arising from employment upon termination of employment.	2017			√
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 empolyer and employee can mutually agree therein.	2017			√
It is necessary to define the term for giving a statement on the change of agreed employment conditions as eight calendar days, rather than work days, as that is often too long because of public holidays and non-working days.	2017			√
It is necessary to define that, in the case of an employee's refusal to receive an act delivered to him in the business premises, it shall be deemed that the act has been delivered, since otherwise the delivery process may last for several weeks.	2017			√
It is necessary to introduce the possibility of the employer unilaterally releasing the employee of the duty of coming to work during the notice period along with the payment of compensation in the amount of the employee' base salary.	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to regulate in more detail the consequences of unlawful termination, specifically whether the employee has the right to compensation of damages in the amount of lost salary in addition to compensation that is a substitution for reinstatement.	2017			√
We propose that the Labour Law define a modality for non-standard employment relationships with students and other individuals for the purposes of gaining practice in a real work environment which can then enhance their careers ("on-the-job training"), without prescribing additional conditions limiting such engagement.	2016			√
We propose extending the maximum term of contracts on temporary and periodical jobs from the current 120 to 180 working days in a calendar year. This is because in certain industries some seasonal jobs last longer than 120 working days per year.	2017			√
Defining the form for the calculation of salary and the obligation to fill in only the elements which are paid to the employee, as well as prescribing the record of salaries' layout.	2017			√
To change labour regulations in order to differently regulate the conduct of formal communications between the employer and employees, employment-based information/receipt/processing/delivery of requests and decisions, archiving documentation, etc.	2016			√
Law on Vocational Rehabilitation and Employment of Persons with Disabilities				
Because the regulations listed herein are considered particularly important and vital for attracting and maintaining foregin investment, and given that the very prupose of this Law in the inclusion of people with disabilities, the FIC has previously provided and is still putting forth a nubmer of suggestions on how to improve the situation. To this end, we will here underline the most important recommendations on how to imporve the existing legal framework and practice:				
Classification of business activities that, due to its own specific nature (eg. private security, manufacturing, construction, etc.) are subject to a limited application of the Law in a way that, in these branches, the number of persons with disabilities that employer must hire, shall be calculated with respect to the number of employees who work on jobs that can be performed by employees with disabilities, and for which special health abilities in accordance with the law and/or with the nature by business activities are not required.	2016			√
Harmonize the Law on Vocational Rehabilitation and Employment of Persons with Disabilities with the Law on private security in respect of the obligations of the Companies from this industry.	2016			√
The working ability assessment and issuing of a decision on assessed working ability should be performed by the same body in order to accelerate the procedure. We suggest that the procedure and decision making should be accelerated and a list of documents required by authorites from the employee 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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Employment of Foreign Nationals				
Obtaining temporary residence permits is an excessively complicated and time-consuming process. Enhance practical application of the Law, e.g. by shortening the period of time for issuing a residence permit; reduce the number of documents required during the procedure for acquiring a residence permit, etc.	2009		√	
A work permit's term of validity should reflect the need of the employer officially confirmed by the term of the Employment Agreement.	2013			√
The labor market test should be excluded in case of employment of high ranking management individuals.	2015		√	
The Central Registry's certificate regarding the fact whether the employer prior to filing the request for the work permit dismissed the employees due to the redundancy should contain the exact job title of the redundant employee.	2015			√
Law on Conditions for Assignment of Employees to Temporary Work Abroad and Their Protection				
Abolish the limitation of the duration of business trips abroad during a year, i.e. defining more closely what is considered to be a business trip, in which case the rules on the posting of workers would not apply.	2016			√
Introduce the possibility of assigning the employees for professional education and development to a foreign company not affiliated be equity with domestic employer.	2016			√
Introduce the possibility of posting the employees under the age of 18 to pursue professional education and development abroad.	2016			√
Staff leasing				
The concept of staff leasing should be regulated by a separate regulation, 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			√

THE LABOUR LAW 1.00

CURRENT SITUATION

The labour legislation underwent significant structural reforms during the pre-2014 cycle, as presented in the White Book edition for 2014, but in the period that followed no extensive amendments were made to the Labour Law (RS Official Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 and 113/2017; hereinafter: Labour Law or Law).

The Law Amending the Labour Law from 2014 incorpo-

rated practically 65% of the recommendations from the White Book 2013.

In November 2016, the Constitutional Court render a decision on the unconstitutionality of the Labour Law provision which enabled termination of employment if the employee's conduct constituted a criminal offence committed at work or in relation to work, regardless of whether criminal proceedings were filed against him. As a consequence, this provision was repealed and has not been in force since 24 February 2017. This means that an employer cannot terminate an employee's employment contract prior to the final court verdict on criminal conduct, which may take years.

The amendments to the Labour Law adopted at the end of 2017 prescribe that the employer must register the employee with the national social insurance prior to starting work.The sanction for non-compliance is prescribed by a new penal provision which refers to a special law in this area, the Law on the Central Register of Compulsory Social Insurance. However, the latter still envisages sanctions only for violating the three workdays registration deadline. Moreover, an obligation has been introduced for employers to keep records on overtime work, which is already prescribed by the Law on Records in the Labour Area. Here the question arises as to the conflict between the penalty provisions of these two laws regarding this obligation. Moreover, by amending the penalty provisions of the Labour Law and by prescribing a fine within a specified band instead of a fixed amount, no longer provides for the possibility to have a penalty charge notice issued and pay half the fine.

POSITIVE DEVELOPMENTS

Amendments to the Labour Law from 2014 have certainly contributed to the creation of a more favourable business environment. However, in the previous year we have not seen the expected improvements in this area, especially in court proceedings, i.e. decision-making in labour disputes, because amendments to the law allow the court to adjudicate the equivalent amount of six salaries to the employee even when the grounds for termination of employment are met, if it determines that the employer violated the procedure for employment termination prescribed by the Labour Law.

For the further development and implementation of the law, special attention will be focused on the jurisprudence, and it will take courts' official opinions and authentic interpretations to achieve full compliance in interpretations of certain concepts.

REMAINING ISSUES

Certain provisions of the Labour Law still remain a potential problem for employers, primarily related to:

- The structure and calculation of salary and salary compensation for sick leave, national holidays, annual leave, paid leave, etc. – International companies, which calculate salaries in the same way as elsewhere in the world where they operate, are forced to apply the complicated structure and calculation of salaries in Serbia. The method of calculating salary compensation (an amount equivalent to the average salary in the previous 12-month period) can lead to an absurd situation where the salary compensation is higher than the salary itself if the employee had not been absent. This is especially likely in the case of high one-off payments, such as annual bonuses. Additionally, this results in employers' inability to plan their budgets.

- On-the-job Training – The Labour Law limits the possibilities for the recruitment individuals in "non-employment" relationships so that they can gain practical knowledge and skills relevant to their future employment. This is particularly important for students and fresh graduates without sufficient or appropriate work experience. The Labour Law expressly defines two types of agreements for training purposes, but neither is suitable for certain important types of engagement. The first such agreement is the internship agreement, which assumes that the intern already holds an academic degree, required for the job, but lacks the work experience required by the employer (or in rare instances, by a statute)needed for the position. These conditions make the internship agreement unsuitable for student training, because students do not yet hold a degree in the field in which they need training. In addition, this agreement is unsuitable for engaging graduates who want to acquire practical work experience in fields other than the one in which they hold a degree. The second type of agreement is the agreement on vocational development the use of which is limited to the cases when vocational development is prescribed by a piece of legislation. Since for most professions there is no legislation prescribing vocational development, this type of agreement is practically inoperative.

- Flexible work organization – is constantly evolving in practice and taking an increasingly important place in the development of companies and their relations with employees. However, for the time being, legal solutions are not keeping abreast of developments so that inadequate provisions of the law regulating work outside an employer's premises have contributed not only to the challenges employers are facing in practice, but also to the unnecessary risks they have to take. This risk can be eliminated by defining in detail these categories of work, i.e. work from home, remote work, etc. - and by relativizing the "workplace", as a compulsory element of employment contracts, as well as by amending the Occupational Health and Safety Law, by defining the obligations of both the employer and employees for such types of work. Furthermore, irrespective of the type of employees' engagement, provisions which regulate overtime are rather restrictive and should be changed to allow employers greater flexibility when deciding to introduce overtime and compensation for overtime (through increased salaries or days off). This particularly relates to employees in management positions.

- Trade union rights – Article 210 of the Labour Law requires the employer to provide the trade union with space and technical conditions, in accordance with available space and financial resources, and tenable access to the data and information necessary for performing trade union activities. The legislator should grant this right only to representative trade unions.

- Suspension from work, disciplinary proceedings and termination of employment – The Labour Law does not clearly provide for: (a) the rules for the temporary suspension of an employee from work in the event of breach of work duty and discipline, and (b) the procedure for determining the employee's responsibility for breach of work duty/ discipline, i.e. a procedure in the case of unsatisfactory performance by an employee. As regards the termination of employment, the impossibility to stipulate a notice period exceeding 30 days in the case of termination of employment by an employee poses a particular problem in practice. This is especially evident in the case of termination of employment of directors and other management staff when it is extremely difficult to find an adequate replacement in such a short period of time.

- Digitalization of labour legislation – Having in mind that there is a law in place that regulates electronic documents, and the major breakthrough in the Law on General Administrative Procedure, changes in labour legislation to define an alternative form of official communication between employer and employee, electronically and by using electronic documents, is of great importance for all companies ready to invest in business digitalization. Along with changes to the relevant provisions of the Labour Law, we consider it necessary to also amend the Law on Labour-Related Records and align this outdated regulation with modern digitalization processes, by introducing the possibility of archiving documents in electronic form and adapting statutory document retention periods. We particularly emphasize that amendments to the Labour Law from December 2017, prescribing the obligation for the employer to keep records on overtime, complicate administration, contrary to the principles and aspirations of digitalization. If genuine efforts were invested in digitalization, the positive effects on business would be multiple, primarily through the increase of business efficiency, cost savings, but also significant environmental impacts (minimized use of paper).

- Provisions on internal organization and job classification – 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 a certain positions is a problem in practice, as employees with different educational levels can perform the work required for such a position equally well.

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 Serbia creates an additional barrier to foreign investment and increases investment costs. The possibility of a free agreement between employees and employers on the structure of the salary and additional benefits, and the establishment of a salary system that will stimulate

employees' work, is the basis for the functioning of the labour market. We therefore propose that employee performance be excluded as a mandatory element of the salary and be envisaged as a possibility. We also suggest that the base for salary compensation during leave from work be equal to the base salary increased for seniority.

- The Labour Law should define a modality of recruiting students and other individuals for internships, so that they can gain experience in a real work environment and enhance their careers. This type of engagement should be allowed wherever practical knowledge is important for the individual's employment prospects and future career, regardless of whether or not the individual possesses the degree required for the job for which he is being trained (e.g. students). Also, this type of engagement should be allowed regardless of the industry. To that end, the limitations imposed by the current provisions regulating internships and vocational development should be removed.

- Introducing the option for employees to partially work outside the employer's premises (not only from home). The difference between work from home and remote work should be precisely defined (by workplace or work tools) and relativize the need to define the "workplace" as a compulsory element of employment contracts. The Occupational Health and Safety Law should define obligations of both the employer and employees for work outside employer's premises. Work organization flexibility needs to be expanded to include the possibility of introducing overtime, not only in connection with unexpected circumstances and emergencies. The employer and employees should have the freedom to agree on the reason and purpose of overtime, while employers should be entitled to contract a management fee that would also include compensation for managers' overtime.

- The employer's obligation to provide the trade union with space and technical conditions in accordance with available space and financial resources, and enable access to the data and information necessary for performing trade union activities should be limited only to representative trade unions. Article 210 should be amended accordingly.

- It is necessary to regulate in more detail the procedure for determining the employee's liability for breach of work duty and/or non-compliance with work discipline, i.e. the procedure in case of unsatisfactory performance, in such a manner as to provide that: (a) the employer is only obliged to state the reasons for termination, without having to deliver physical evidence to an employee, (b) if the employee is underperforming, the employer should merely notify the employee about this (without a written warning) and give him a reasonable deadline to improve his performance, (c) the statute of limitations should be extended (the subjective deadline of six months should be extended to at least one year and the objective deadline should be extended to three years), (d) the employer has the right to pass decisions imposing measures on the employee (termination of employment or milder measures) or releasing the employee from liability in electronic form and deliver such decisions electronically, (e) in the case the employee refuses to accept the decision served to him in the workplace, the decision should be deemed as served, and (f) the employer has the right to unilaterally release the employee from the duty of coming to work during the notice period (in cases when the notice deadline is prescribed/agreed), and pay him salary compensation in the amount of the employee's base salary.

- Changes are also required to the Labour Law to define an alternative way of conducting formal communications between employer and employee, electronically and by using electronic documents. We also consider it necessary to amend three key items of the Law on Labour-Related Records: setting the document retention period at a maximum of five years from the date of employment termination, making it possible to keep electronic records and use different IT tools for this purpose and regulating the proper way of disposing of the hard copy employee records.

- The threshold for the employer's duty to enact the Rules on Internal Organization and Job Classification should be increased from the current ten to 50 open-end employees, to reduce the administrative burden on the employer.

Also, the modern way of doing business and the frequent changes in the internal organization of work require that provisions of the Labour Law be amended to regulate: (a) the right of the employer to publish the Rules and all amendments thereto in electronic form, (b) that the Rules and all amendments thereto may enter into force on the date of publication, (c) the discretion of the employer to regulate in its Rules whether it is necessary for the employee to possess a certain type and level of professional qualification , or fulfil other special conditions to perform a specific job, (d) that, in the event of a partial modification of the job description and/or name of the job titles in the Rules, the employer is not obliged to offer an annex to the employment agreement.

LAW ON VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES 1.00

CURRENT SITATION

Since the adoption of the Law in 2009, the goal of the legislature has been to raise awareness and increase employment of persons with disabilities (PwD) in all industries, by applying the same rules to all industries, regardless of their key differences. In that respect, the legislature's disregard of the fact that some industries require full working ability, caused significant challenges for employers which will be difficult for them to overcome.

POSITIVE DEVELOPMENTS

There were no changes in the field of employment and inclusion of PwD in relation to the previous period. The impression is that neither the legislature, nor the implementing institutions have made this legislative area a focus of their attention.

REMAINING ISSUES

Problems remain the same and are reflected in the following:

- The problem for employers is the lack of staff that would apply for jobs appropriate for PwD.
- Working in some industry sectors (such as construction, private security, manufacturing, etc.) requires specific medical fitness and it is therefore practically impossible to employ PwD.
- Failure to carry out the classification of business activities of employers that, due to their nature, cannot be subject to the application of the Law in the same way as business activities not requiring special medical fitness or special mental or physical abilities of employees for certain jobs. Furthermore, companies selling services rather than products, where employees with special mental and physical characteristics are a key factor in performing core business activities, are unable to meet the requirements set by this Law.
- The Law on Vocational Rehabilitation and Employment of Persons with Disabilities is in conflict with the Law on Private Security. The latter stipulates that, starting from 1 January 2017, private security activities can only be carried out by persons with an appropriate license the acquisition and maintenance of which requires appropriate mental and physical abilities. This especially applies to employees handling weapons, who are required to undergo annual health check-ups. Thus, 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.
- Although there is a possibility for current employees to undergo an assessment of their working ability to be recognized as PWD, in practice such a procedure is very complex and administratively cumbersome, as it includes the submission of numerous documents by the employee and the involvement of different state authorities with somewhat overlapping powers within just one procedure (the National Employment Service [NES] and the National Pension and Disability Insurance Fund [NPDIF].

FIC RECOMMENDATIONS

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

- Classify business activities subject to a limited application of the Law, due to their specific nature (e.g. private security, manufacturing, construction, etc.), meaning that, in these activities, the number of PwD that the employer must hire should be calculated relative to the number of employees in jobs that do not require special medical fitness pursuant to the law and/or nature of the business activity and that can be performed by employees with disabilities.
- The assessment of and the issuing of a decision on working ability should be performed by the same body to accelerate the procedure. We suggest that the procedure and decision-making should be accelerated and the list of documents required by the authorities from the employee be reasonably decreased.
- We believe that a more efficient manner for increasing the employment rate of PwD would be to incentivize employers with subsidies for their employment.

EMPLOYMENT OF FOREIGN NATIONALS 1.50

CURRENT SITUATION

The Law on the Employment of Foreigners that entered into force on December 4, 2014, followed by amendments to the Law, which came into force on December 27, 2017 and July 7,2018. Law and bylaw envisage two types of work permits: (i) a personal work permit, enabling foreign citizens who have a permanent residence permit, as well as refugees and other special categories of foreign citizens, to work, be self-employed, and exercise unemployment rights in Serbia; and (ii) a work permit for employment for self-employment and special cases of employment. A personal work permit is issued at the personal request of a foreign citizen, whilst a work permit (except for the work permit for self-employment) is granted at the request of the employer.

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

The requirement for obtaining a work permit is holding a temporary residence permit in Serbia, and a work permit is issued for the period of validity of the temporary residence, not to exceed one year. All stated permits also have specific requirements with regard to the necessary documentation and conditions that have to be fulfilled for their issuance.

Restrictions on employment of foreign citizens are regulated in accordance with the EU legislation through the so-called quota system, i.e. by limiting the number of work permits that can be issued to foreign citizens. However, the Law on Employment of Foreigners stipulates that such restrictions are not applicable to all foreign citizens. 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.

In relation to previous laws, the Law on Employment of Foreigners regulates the materia of employment of foreigners in a more comprehensive and precise precisely manner,

enabling not only employment, but also self-employment of foreigners, as well as realization of rights related to unemployment, and harmonization of domestic regulations in this field with regulations European Union.

POSITIVE DEVELOPMENTS

Amendments and supplements to the Law on Employment of Foreigners from 2017, and amendments which came into force on July 2018 have contributed to the creation of more favorable conditions for the employment of foreign citizens. Among other things, one of the main goals is better positioning of the Republic of Serbia in terms of increased volume of investments and creating a more favorable business environment. Certain improvements determined by the amendments and supplements to the Law on Employment of Foreigners are:

- exemption from the application of the law towards members of the families of the diplomatic-consular representation, bearing in mind their specific position and the provisions of the Vienna Convention on Diplomatic Relations from 1961;
- defining a work permit for vocational training and specialization and specifying the conditions for obtaining a work permit for foreigners which perform training course, traineeship, professional practice, vocational training, or specialization, whether with or without earnings;
- prescribing a longer deadline for the extension of a work permit, respectively prescribing the possibility to submit a request for the extension of the work permit no later than the expiration of the previous permit.

Significant change is shortening of the period for which Labor Market Test must be conducted. Employer must receive a response from the National Employment Service 10 days before applying for a work permit for employment that citizens of the Republic, persons with free access to the labor market or foreigners with a personal work permit have not been found, with appropriate qualifications within records of the organization responsible for employment. Amendments allow more efficient treatment of the National Employment Service and, as a result, there should be a faster issuance of a work permit for employment.

REMAINING ISSUES

Despite the benefits provided by the amendments and supplements to the Law on Employment of Foreigners, restrictions for employers introduced by the Law on Employment of Foreigners, that previous law did not recognize, continue to make problems in practice. This particularly refers to the provisions prescribing that a work permit will only be issued to the employer if that employer has not dismissed any employee as redundant prior to filing the request for the work permit. Labor Market Test is still required for all situations of obtaining a work permit for employment, which creates problems in practice when it comes to employment of senior management. Also, the issue of the maximum period of validity of the residence and work permit (up to one year) is still outstanding, and the provision of the Law on Employment of Foreigners which stipulates that a work permit may be issued on the basis of an approved temporary residence significantly aggravates the procedure for obtaining a work permit, bearing in mind that the obtaining temporary residence permits is an excessively complicated and time-consuming process. The new Rulebook on Work Permits from August 2018 further complicates the procedure for obtaining a work permit, as the complete documentation must be submitted in the original or certified copy, which affects the duration of the procedure for obtaining work permits as well as the costs.

FIC RECOMMENDATIONS

- Enhance the practical application of the Law, e.g. by shortening the period of time for issuing a residence permit, reducing the number of documents required during the procedure for acquiring a residence permit, etc.
- The labor market test should be excluded in case of employment of high ranking management individuals.
- The Central Registry's certificate regarding whether the employer, prior to filing the request for the work permit, dismissed the employees due to redundancy should contain the exact job titles of the redundant employee.

SECONDMENT OF EMPLOYEES ABROAD 1.00

CURRENT SITUATION

The Secondment Law has been in effect since 13 January 2016, regulating the secondment of employees abroad by a Serbian employer for the purpose of temporary work or vocational training abroad. The Secondment Law defines the following types of secondment: (i) performance of investment and other works and provision of services, pursuant to a business cooperation agreement concluded with a foreign partner; (ii) work or professional training at the employer's business units established abroad; and (iii) work or professional training in the context of inter-company movement (which includes secondment to a foreign employer that has a significant equity interest in the Serbian employer or exerts controlling influence over the Serbian employer, or to such foreign company which is, together with the Serbian employer, under control of a third foreign company).

An employer can second abroad only its employees, and not persons engaged outside employment. The employer and the employee are to conclude an annex to the employment agreement regulating the terms of secondment (the mandatory elements of the annex are prescribed by the Secondment Act). The employee must be employed at that employer for at least three months prior to secondment (this condition does not apply if the secondment assumes work which falls within the employer's prevailing business activity, and if the number of employees to be seconded does not exceed 20% of the total number of employees at the employer; furthermore, this condition does also not apply in certain cases of secondment to Germany).

An employee may be seconded abroad only with his written consent. When the possibility of secondment abroad is stipulated in the employment agreement, no additional consent is required, but the employee may refuse secondment due to justified reasons provided by the Secondment Act (such as during pregnancy). The initial duration of secondment is limited to 12 months, with the possibility of extension. In case of secondment of definite-term employees, the duration of secondment may not exceed the term of their employment, and the time spent on secondment does not count toward the maximum statutory duration of definite-term employment.

Employer is obliged to register the change of the seconded employee's social insurance grounds in the Central Registry of Mandatory Social Insurance. At such registration, the employer is obliged to state the host country, as well as any subsequent changes of the host country.

POSITIVE DEVELOPMENTS

With amendments to the Secondment Act in force from 7 July 2018, employers are no longer obliged to report a secondment to the Ministry of Labour, nor to submit to the Ministry of Labour the certificate issued by the Central Registry of Mandatory Social Insurance.

REMAINING ISSUES

Limiting secondment abroad for the purpose of vocational training only to the business units of the employer abroad, and only to a group of entities affiliated with the employer on the basis of equity share or control, has been disputed in practice. By not allowing secondment for the purpose of vocational training at companies abroad that are not related to the domestic employer on the basis of equity or control, but on some other basis (e.g. contractual relationship), the movement of employees seeking training abroad is unnecessarily limited.

The Secondment Law does not apply in the case of assigning employees to a business trip abroad, provided that such business trip does not last more than 30 days in continuity, or more than 90 days in total within a calendar year. Although this provision was prescribed in order to differentiate between a secondment and a business trip, limiting the duration of business trips may trigger the application of rules on secondment abroad even in situations where the employee's stay is, by its very nature, a business trip. The limitation of the duration of business trips seems especially inadequate when it comes to managerial positions requiring frequent business trips.

The Secondment Law does not allow seconding abroad employees under the age of 18 (unless there is a statute which regulates otherwise). This limitation is unnecessary, having in mind that secondment for the purpose of vocational training can be useful for employees between the age of 15 (the statutory age for employment) and 18.

FIC RECOMMENDATIONS

- Abolish the limitation of the duration of business trips abroad within a year, and instead leave to the employer to define the regime of a business trip, which excludes the application of the rules under the Secondment Law.
- Allow secondment abroad for the purpose of vocational training also to entities which are not necessarily related to the employer by equity or control.
- Allow the secondment abroad of employees who are younger than 18 years.

STAFF LEASING 1.00

CURRENT SITUATION

In early 2013 the Republic of Serbia ratified the International Labour Organization's (ILO) Private Employment Agencies Convention (No. 181), committing itself to regulating staff leasing in the following 12-month period, as well as enabling the work of private employment agencies (which, inter alia, offer services of staff leasing). Although a couple of years have passed since then, and despite statements that this issue would be resolved and that the drafting of the law began in 2017, Serbia still does not have a law on staff leasing.

POSITIVE DEVELOPMENTS

A working group for the preparation of the draft law regulating staff leasing was formed at the beginning of 2016 and, according to the available information, the working group started drafting the law in 2017. However, the working group has not yet come up with any official draft, so there have been no positive developments in this area.

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

REMAINING ISSUES

Although staff leasing has been tolerated in practice for several years by the relevant authorities owing to a lack of legal framework, it may ultimately lead to problems for employers using this concept. In fact, formally employers could be sanctioned for misdemeanour because leased employees do not have an employment contract with the company by which they were leased. Also, there is a risk (some cases were evidenced in practice) that leased workers will claim to be employed with the company where they work, although they do not have any kind of contract with this company – this mostly happens in cases when their work engagement ceases due to the termination of business cooperation between the agency for hiring labour and the company that used their services.

Bearing in mind the above, the unregulated issue of renting workforce remains a potential source of great legal uncertainty and a problem for employers who have the need to hire people in this way.

FIC RECOMMENDATIONS

- The concept of staff leasing should be regulated by a separate regulation, which would govern all important

issues with respect thereto (such as the relationship of employer and individual, employer and service user, employee and service user, occupational health and safety, etc.).

- The concept of staff leasing should be regulated in such a manner that the relationship between leased staff and the users of staff leasing services should not result in the creation of an employment relationship.
- The conditions for the issue of operating licences and general business conditions for staff leasing agencies (including the fee for issuing operating licences to staff leasing agencies) should also be regulated by law. The law would thus create legal certainty, thereby removing the possibility of discretionary decisions being handed down (e.g. by ministries) with regard to these important issues.

HUMAN CAPITAL 1.63

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Human Capital				
Positive measures that stimulate job creation should be continued.	2009		√	
The education system should be improved. Regular contact between the FIC and the Government, the ministries of education and youth, as well as universities, is crucial. The business community and FIC members are ready to provide support and expertise.	2008		√	
Based on the analysis of the needs of the economy and the real sector, create and establish a new educational profile and regularly adjusted enrolment quotas at all universities in accordance with market needs.	2017		√	
Define the legal framework between emloyer and student in order to simplify the application of the professional practice of students during reglar school.	2017			√
Define the legal framework for the training of persons of higher educational backgrounds to work independently in the field, regardless of the conditions for obtaining the professional exam or apprenticesip.	2017			√
An Employment Action Plan by the National Employment Service to closer define, redefine, and expand the range of educational profiles that will be included in the action plan and employment policy.	2017			√
Continue joint proactive engagement of the FIC and the Government to coax highly skilled and educated workforce currently abroad back home 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		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Dual Vocational Education				
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.	2016		√	
Amend currently applicable regulations by adding provisions on the dual education system and/or pass new systemic regulation(s) governing this model of education. Members of Foreign Investors Council are ready to support state authorities and institutions and provide their expertise for this purpose, as well as for all the other aspects of the education system implementation.	2016		√	
A model of sustainable funding for dual education and possible incentives that will attract companies in Serbia to join this system should be defined.	2016			√
Define the legal framework for the dual system of education in institutions of higher education.	2017			√
The multiple benefits of this education model for both vocational school students and the economy should be promoted in every possible way, so that both students and companies may express their interest in taking part in its realization.	2016		√	
Define the legal framework to enable implementation of vocational practice for secondary school students during regular studies not coverd by the dual vocational education system.	2017			√

CURRENT SITUATION

The condition of the labour market has remained virtually unchanged in comparison to the previous year. The unemployment rate in Serbia is 14,7% according to the data of the Statistical Office of Serbia, which is an insignificant increase relative to the last year's 14,6%. The unemployment rate varies across Serbia, to a great extent reflecting the economic conditions in different parts of the country. The lowest unemployment rate was registered in Vojvodina, which poses a great challenge to employers in terms of recruitment and selection of adequate staff.

By amending the law in the sphere of labour relations and employment, the state is trying to strike a balance between budget revenues, economy's needs, creating an environment conducive to new investments and employees' rights. To decrease the unemployment rate, the Government launched a set of measures, including the extension of the employers' right to use tax incentives for hiring new workers.

The educational structure and the labour market indicate that finding the candidates who meet the requirements of high-level, expert and strategic positions is challenging. Retention of high-skilled workers and development of own resources are still very popular trends, having in mind market conditions.

There are visible changes in the educational system. The introduction of dual education is expected to yield qualified staff capable of working independently in their profession immediately upon completing their formal education. Moreover, with the introduction of the National Qualifications Framework, the educational system has proved its readiness to adapt to market conditions and clearly enable market players to formalize the education of certain specialist profiles that are in demand. The real effects of these new legal solutions will be seen in the upcoming period. However, not many colleges are capable of providing their students with practical knowledge. As a consequence, companies are forced to invest significant resources in training new employees.

POSITIVE DEVELOPMENTS

The recently adopted National Qualifications Framework provides the possibility for the economy to shape the educational system through formal and informal education. This solution might largely contribute to the modernization of old syllabuses and study programmes while creating a competitive workforce in the market that satisfies needs of the economy and keep abreast of its development. Today, the education sector in Serbia faces various challenges, such as new technologies, globalization, increased mobility and global trends leading to the creation of new qualifications and vocations. With regard to this, we expect that new legal solutions will help the education sector keep abreast of global trends and thus significantly influence the quality of human capital in Serbia.

With the adoption of the Law on Dual Education, students of vocational (trade) high schools have been given the opportunity to spend part of the total number of classes at schools, and the other part of their classes at the employer's, i.e. at companies in a special employment and training arrangement. In this manner, students of vocational schools are going to "learn while working" and acquire not only theoretical knowledge but also the necessary practical skills in a relevant economy branch. This is useful at several levels – both for accelerating and facilitating youth employment and from the aspect of company competitiveness, as companies have the opportunity to hire young workforce that already has the qualifications for working in the relevant economic sector.

REMAINING ISSUES

Despite the many efforts of the Government and legislation to put a stop to the harmful phenomena of the grey economy and unregistered employment, they are still present. The number, age structure and qualification of labour inspectors are among the key challenges the state has to confront. Unfair competition, unequal playing field in the market in various, especially low-profit industries and a large number of companies that fail to comply with basic legal and fiscal obligations toward employees and the state, as well as unforeseeable labour costs are a major obstacle to the development of the market and human capital.

The educational system needs to be improved and better connected with the business community. This would lessen the gap between education and employees' needs, at the same time contributing to improve Serbia's image as a desirable investment location.

The population age structure should be rejuvenated and internal migrations of human capital in Serbia should be stimulated to evenly develop underdeveloped regions, reducing the gap in the economic needs in different parts of the country. The decision of foreign investors to enter a certain market is conditioned by the quality and structure of the workforce as well as clearly defined labour costs.

FIC RECOMMENDATIONS

- Improvements of the educational system should be continued. To this end, regular contact between the FIC and the Government, the ministers of education, youth and sport, as well as the universities. The FIC and business community in Serbia are ready to provide support and put their experts at disposal. Based on an analysis of needs of the economy and the real sector, new educational profiles should be created and implemented and the university enrolment quotas should be adjusted in line with the market needs.
- Define the legal framework for the employer-student relation to simplify implementation of vocational internships in parallel with regular education.
- Define the legal framework for preparing persons with high education profiles to work independently in their profession, regardless of whether they fulfil the requirements for taking an expert exam that is conducting internship program.
- The National Employment Action Plan should clearly define, redefine and widen the range of educational profiles

that are going to be included into the action plan and employment policy, i.e. be attuned to the needs of the market and employers.

- Design a human capital internal migration plan for Serbia to equally develop underdeveloped regions and lessen the gap in economic needs in different parts of the country, prevent migration from Serbia and stimulate citizens to search for a better place for life and work in the country and not abroad .

DUAL VOCATIONAL EDUCATION 1.50

CURRENT SITUATION

In November 2017 the Law on Dual Education was adopted in Serbia, regulating the content and implementation of dual education, as well as mutual rights and obligations of all participants, material and financial security of students, and other issues relevant for the dual education system. It is envisaged that the Law be applied starting with the 2019/2020 school year.

Pursuant to the provisions of the Law:

- Dual education will be performed on the basis of a curriculum to be adopted by the ministry responsible for education.
- Mutual rights and obligations of employers and schools will be regulated by a special agreement on dual education, to be stipulated for a minimum period of three to four years, in accordance with the curriculum. The school may enter into such an agreement with one or more companies, and the company may also conclude such an agreement with one or more schools.
- Mutual rights and obligations of employers and students will be regulated by a special on-the-job training agreement to be stipulated between the employer on the one side, and the student's parent or the legal guardian of a minor student (or adult student) on the other;
- Both the dual education agreement and on-the-job training agreement may be terminated under the terms stipulated by the Law. Inter alia, the employer may terminate the agreement on dual education in case of unforeseen technological, economic or organizational changes preventing, aggravating or substantially changing the performance of the employer's activity.
- For the purpose of dual education, the employer is obliged to provide an instructor with experience of no less than three years in the relevant profession, one who has passed the appropriate training and has acquired a relevant licence issued by the Chamber of Commerce. In addition, there are other conditions the employer has to fulfil to take part in the on-the-job training system, such as: performance of a business activity enabling the implementation of on-the-job training, availability of work space, equipment, and other means of work; implementation of measures for safety and health at work; no bankruptcy or liquidation proceedings against the employer, etc.
- The employer will provide the students with personal protective equipment at work, compensation of actual costs of transportation from school to work and back, meal allowance, and insurance against injury while attending on-the-job training.
- Students' rights in dual education are protected in accordance with the laws regulating the education system, secondary education, employment and safety at work, the regulations prohibiting children from performing dangerous work, and this Law. While attending on-the-job training with the employer, students will not be discriminated against, or subjected to physical, psychological, social, sexual, digital, nor any other form of violence, abuse and neglect.
- The share of on-the-job training in the total number of hours of vocational subjects attended by the student ranges from a minimum of 20% to a maximum of 80%.
- On-the-job training at a company can be performed throughout the entire school year, from 8 a.m. to 8 p.m.,

up to six hours per day, i.e. up to 30 hours per week.
- For each hour of on-the-job training, the employer will pay the student compensation in the amount of no less than 70% of the minimum wage.
- The by-laws for the implementation of the Law on Dual Education will be passed within six months of the day of entry into force of the Law on Dual Education, and the Chamber of Commerce will pass its general acts envisaged by this Law within three months of the date of entry into force of the Law on Dual Education.

POSITIVE DEVELOPMENTS

The adoption of the Law on Dual Education led to some progress relative to the previous situation, setting the general legal framework for the future implementation of this kind of education system in Serbia.

Thanks to the support of and cooperation with European countries that have developed a successful dual education practice, a large number of vocational schools in Serbia introduced this model of education into their programmes through various projects over the past years, and an increasing number of large companies are taking part in such projects. Over the last year, the list of profiles in dual education has been increased to 34, including the following: locksmith-welder, industrial mechanic, electrician, fashion tailor, furniture maker, metalworker, merchant, motor vehicle mechanic, logistics and freight forwarding technician, information technology electrician, etc.

In addition, the Serbian Chamber of Commerce initiated and organized the training and licensing of trainers.

REMAINING ISSUES

The effects of the practical implementation of the Law on Dual Education remain to be seen as the law will only apply starting from the school year 2019/2020.

The by-laws envisaged by the Law that should regulate certain aspects of the Law in more detail have yet to be adopted. It is necessary to determine how the law on Dual Education is to apply in relation to the Labour Law, the Law on Occupational Health and Safety, and the Law on the Prevention of Workplace Harassment and other laws regulating different aspects of employment. The Law provides for the protection of the students in accordance with the foregoing laws in general terms, but the by-laws should regulate these and many other practical issues in more detail.

The successful functioning of the dual education system requires the continuous assessment of labour market demand and the implementation of dual education programmes for vocational profiles in demand by companies doing business in Serbia.

The law provides for the payment of students attending on-the-job training programmes amounting to EUR 100 per month, on average. This gives students an unfair competitive advantage over currently employed workers or persons outside the dual education system applying for the same job vacancies.

The performance of students will differ in quality, which raises the question of whether all students hired for the same jobs should be paid equally or whether their performance should be evaluated in some way.

FIC RECOMMENDATIONS

- By-laws should be adopted to regulate certain aspects of the Law in more detail and enable a more efficient implementation of the Law in practice.
- A sustainable dual education funding model and possible incentives to attract companies in Serbia to join this system should be defined.
- Provisions on payment of students by the employer should be regulated in more detail, especially in terms of evaluating the performance of the engaged students and the possibility of introducing a pay for performance compensation system.

LEGAL FRAMEWORK

Compared with 2017, when a small number of regulations were adopted in different areas of importance for the general legal framework, the main characteristic of 2018 is a broader scope of legislative activity and the introduction of adopted amendments to the legal system of the Republic of Serbia.

As examples of the most important legislative changes in 2018, we highlight the following:

- **Law on Centralized Records of Beneficial Owners** – This law regulates the establishment, content, basis of recording, and the manner of keeping the Centralized Records of beneficial owners of legal entities and other entities registered in the Republic of Serbia. The purpose of the adoption of this law is to improve the current system of the detection and prevention of money laundering and terrorism financing and harmonize domestic regulations with all international standards in this area.

- **Law on Prevention of Money Laundering and Financing of Terrorism** – The main objectives of the adoption of this law are improvements to the existing system and harmonization with the international standards in this area. New features in relation to the previous law are the risk assessment requirement, the introduction of the term "trust," and the obligation to disclose any decision which imposes a fine or other measure.

- **Law on Amendments to the Law on Foreign Exchange Operations** – With the latest amendments to this law, the Republic of Serbia has fulfilled the obligation to harmonize national legislation with international standards in the area of the prevention and detection of money laundering and terrorism financing. The most important change is that the jurisdiction over the control of foreign exchange operations and currency exchange transactions is to be transferred from the Tax Administration to the National Bank of Serbia starting from January 1, 2019.

- **Law on Amendments to Law on Payment Services** – The purpose of the amendments to this law is to enable the transparency of fees and comparability of costs and fees charged by payment service providers in connection with payment accounts. An important change introduced by the amendments is the definition of the concept of switching payment accounts, i.e. replacing one provider with another payment service provider. Also, a payment account with basic services has been defined, which has not been regulated so far in the country's payment system.

- **Law on Amendments to Company Law** – The main goals of the adoption of amendments to the Company Law are improvements to the existing system and harmonization with the international standards in this area. In order to harmonize the system with the EU legislation, the amendments introduce new company types – the European public limited-liability company (Societas Europea - SE) and the European Economic Interest Grouping (EEIG). The most significant changes relate to the following provisions: (i) Rights of minority shareholders in a limited liability company; (ii) Transactions involving personal interest; (iii) Business name; (iv) Registration of e-mail address; (v) Distribution of dividends; (vi) Registration of branches of domestic companies.

- **Law on Amendments to Law on Bankruptcy** – In addition to the introduction of new institutes in accordance with comparative legal solutions, a number of existing provisions have been further elaborated, with the aim of enabling more efficient bankruptcy proceedings and improving the settlement of creditors, as well as improving the position of secured creditors.

The intensified legislative activity in these areas has led to certain progress in key aspects of the legal framework of the Republic of Serbia, as well as in harmonization with the legal standards of the European Union.

top

LAW ON BUSINESS COMPANIES

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Limited liability partnerships (LLPs) should be prescribed by the Company Law	2013			√
The provisions in the Company Law that deal with limitations to the authority of a company's representatives should be harmonised with the provisions of the Law on Contracts and Torts.	2011		√	
Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies and provide clear procedures and competencies.	2013		√	
It is necessary to precisely regulate increasing share capital through debt-to-equity swap (conversion).	2016		√	
Providing the possibility of establishing and operating the European Company (Societas Europaea) and the European Economic Interest Grouping (EEIG).	2017	√		

CURRENT SITUATION

The Law on Companies (RS Official Gazette No 36/2011, 99/2011, 83/2014, 5/2015 and 44/2018) (hereinafter: the Company Law) came into force on 4 June 2011 and is applicable as of 1 February 2012.

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. According to a Screening Report of the EU Enlargement Working Group at the beginning of 2015, the Republic of Serbia achieved a good level of alignment with EU acquis in the area of the Company Law.

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

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

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

The latest amendments to the Company Law were adopted on 8 June this year, as a follow up of the process of incorporating the EU acquis into the Serbian legal system. The implementation of most of these amendments will begin on 1 October this year. New provisions on the elimination of the need to use a stamp, company's email registration within one year of the effective date of these amendments, and these as well as other provisions will certainly have a positive effect on business practices in Serbia.

POSITIVE DEVELOPMENTS

The Company Law introduced a number of important developments in Serbia's legal system, among other, changes in the regulation of the corporate governance system. Both limited liability companies (LLCs) and joint stock companies (JSCs) may now choose to have either a single-tier (shareholders' assembly and directors) or two-tier (shareholders' assembly, supervisory board, and directors) corporate governance structure. Also, the provisions on the initial capital were amended, so that the initial capital may now be denominated only in RSD. The minimum initial capital requirement is now set at RSD 100 (instead of EUR 500 in RSD equivalent, as prescribed by the previous Company Law). A limited liability company (LLC) may now be registered with the Serbian Business Registers Agency (SBRA) even before the initial capital has been paid in. The possibility has been introduced for shareholders to make

additional payments without raising their stakes in the company. Parties are free to stipulate the jurisdictions of other courts, as well as arbitration bodies. A new set of rules has been introduced for squeeze-out and buy-out procedures. The total value of a company's own shares, which a company can keep after the expiration of three years from the date of acquisition, may not exceed 20% of its core capital. These are just some of the changes which significantly affected the functioning of Serbia's economy.

Banks and the SBRA have eased requirements, thus facilitating a smoother company registration process.

There have been some positive developments in the practice of the SBRA as well, which can now be described as stable, and in particular the positive practice of publishing guidelines in dealing with certain situations which are not sufficiently clearly regulated under the Company Law.

These recent amendments to the Company Law should solve some of the problems pointed out in the previous year, in particular issues related to the institute of enforced liquidation, the situation when the company is without a director, as well as the situation when the procurator's authority is limited by requesting a co-signature. Also, the latest amendments enabled the establishment and operation of the European Company (Societas Europaea) and the European Economic Interest Grouping (EEIG), in accordance with the Statutes of the European Economic and European Economic Interest Groupings, and also envisage cross-border acquisitions and mergers.

We would also like to point out improvements concerning decision-making procedures by a limited liability company's (LLC) general assembly, i.e. concerning the number of voting general assembly members, as well as the adoption of a decision at a repeated session of two-member LLC when one member is absent, in which case the other member has the right to sign the decision.

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. Certain general provisions contained in the first section of the law titled "Initial Provisions" are not fully aligned with the more specific provisions contained in the section of the law dealing with the particular form of a company. As a result, in some cases the corporate bodies' authorities and the procedures they must follow still remain somewhat unclear.

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. Also, the FIC pointed out the need for changing the Company Law, Article 150 in particular, in order to avoid interpretations of the Law according to which the value of a share cannot be reduced, so an explicit prescription of this possibility would be a significant improvement.

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.

Another issue to be underlined is the increase in a company's share capital through a debt-for-equity swap, provided by Article 146, paragraph 1, item 3 and Article 295. Specifically, the Company Law does not provide a precise explanation in terms of the procedures and conditions of such a swap, and this should certainly be regulated.

Article 295 prohibits debt-for-equity swaps in public joint-stock companies, which is contrary to Article 67, paragraph 4, item 3) of the Law on Tax Procedure and Tax Administration, for which reason it is necessary to harmonize these two laws. Furthermore, practice of the SBRA on this matter is not unified.

An issue that still remains unresolved is the situation when a shareholder leaves a company and the additional payments he made are not paid back to him, when this issue is not regulated in the share transfer agreement.

Also, provisions governing the obligation to repay payments to members of a limited liability company, regulated by Articles 185 and 275 of the Company Law are inconsistent. In fact, Article 185(2) envisages that a bona fide company member may only claim the return of payments if this

is necessary to settle the claims of the company's creditors, while Article 275(4) allows for this possibility only if a shareholder knew or ought to have known that such a payment was made in violation of the provisions of this Article, which clearly reveals the need for harmonizing these 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.

Another disadvantage of the Company Law 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 currently applicable Company Law can be considered as a big step forward because it introduces several new concepts and regulates certain matters differently, however, issues still exist, imposing the need for change. The effects of new Law Amending the Company Law are yet to be seen in the forthcoming period. Also, endeavour are still necessary to eliminate inconsistencies 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.
- Common practical issues should be resolved, such as regulating members' additional payments, the reduction of the value of the share, etc.
- Clearly defining reasons for lifting the corporate veil.
- Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies and provide clear procedures and competencies, harmonizing provisions within the Law itself.
- The increase in the share capital through debt-to-equity swap (conversion) should be clearly regulated.

CAPITAL MARKET TRENDS

1.50

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Announced IPOs of large public (or formerly public) companies should finally be organised.	2015			√
The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects should be stimulated.	2015			√
The working group 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.	2014			√
A thorough public debate, which would result in a high-quality proposal of the Law on Financial Security, should be organized.	2016	√		
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		√	
It is necessary to further liberalize the law in the part that incorporates the possibility for natural persons resident in Serbia to invest in securities in foreign markets, including bonds, structural products, structural deposits, ETFs and investment funds, all in accordance with European standards and ESMA guidelines.	2017			√

CURRENT SITUATION

The last fundamental capital market regulatory framework reform in the Republic of Serbia was implemented more than five years ago. Since then, there have been some further changes to the regulatory framework, with the most recent noteworthy ones made in December 2016.

In June 2018 the Law on Financial Collaterals was adopted with the aim of creating a legal framework for the establishment and enforcement / realisation of collaterals for securing the performance of financial obligations, and the implementation of this long-awaited piece of legislation should start in 2019.

The existing regulatory framework is partly harmonized with European Union legislation and IOSCO principles, but the Serbian capital market is still underdeveloped and therefore the regulatory framework has not yet been tested in practice so all the potential insufficiencies of the reform performed back in 2011 cannot not be duly assessed.

Despite the emergence of interesting new products on the debt instruments market, we need to note once again that the capital market in Serbia is still developing and that it will require more than just a regulatory reform to stimulate its growth.

POSITIVE DEVELOPMENTS

As the most important new development we highlight the adoption of the Law on Financial Collaterals and changes and amendments to the Law on Bankruptcy aimed at harmonising the insolvency regulations with the regulatory framework for financial collaterals. In addition to regulating the establishment and realisation of collaterals for the performance of financial obligations of financial market participants, another very good feature of the law is that it explicitly allows close-out netting not only within financial collateral agreements but also within other financial agreements, including agreements on financial derivatives. Although the law allows only certain types of parties to enter agreements on financial collaterals, we commend the fact that this piece of legislation has been finally adopted and we hope that its implementation in practice will not be problematic.

A very significant event, and one we hope will spur the further development of the capital market in Serbia, was the issuing of RSD 2.5 billion worth of dinar bonds by the European Bank for Reconstruction and Development (EBRD) in December 2016. We expect that the issuance of these bonds will significantly boost investors' confidence in Serbia's capital market and facilitate the further "dinarisation" of the domestic economy.

We also commend a listing support initiative called "IPO Go! Programme" – a project of the Belgrade Stock Exchange financed by the EBRD Shareholder Special Fund (EBRD SSF). The aim of this project is the development of the capital market in Serbia through the education of Serbian companies about opportunities to raise additional capital by listing on stock exchange, as well as support to companies for listing on the stock exchange.

Finally, in July 2018, the first prospectus for initial public offering and listing of shares of a Serbian private company was published at the Belgrade Stock Exchange.

We commend formation of the working group for preparation of the proposals of the Law on Alternative Investment Funds and amendments to the Law on Investment Funds formed by the Ministry of Finance.

The legal framework for trade in financial derivatives is beginning to take a clearer shape. The National Bank of Serbia (NBS) has issued, and already amended, its Decision on Performing Activities with Financial Derivatives, in line with its mandate set out in the Law on Foreign Exchange Operations. Thus, legal rules are now in place that should enable transactions with financial derivatives. However the current legislative framework and practices are still insufficiently developed, which makes investors very cautious.

In March 2012, the Association of Serbian Banks (UBS) set up a working group for the development of standardised bank agreements for performing financial transactions. It is expected that the working group will, after preparing the Frame Agreement on the Repurchase of Securities, develop a standardised agreement for financial derivative operations.

We note the readiness of competent authorities, especially the Securities Commission, the Central Securities Depository and Clearing House (CRHoV) and the NBS, to enable the further growth of the capital market in Serbia by adopting required by-laws and issuing relevant opinions.

REMAINING ISSUES

The same as in past few years, we have to note that identifying all the remaining legislative issues in the field of the capital market is still very difficult as the capital market in Serbia is rather underdeveloped, i.e. it is 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).

Unfortunately, the working group formed in March 2013 with the aim of amending regulations on securities to ensure the harmonisation of regulations in the field and eliminate identified problems in practice seems to have stopped its work, given that the Foreign Investors Council (FIC) has not been informed of any activities of this working group since autumn 2013.

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

Non-residents are still not allowed to perform transactions with financial derivatives (traded and/or concluded on the over-the-counter market or the multilateral trading facility (MTF)) with non-bank residents which involve payment/collection in dinars. This rule prevents non-residents from hedging the currency risk for non-bank Serbian borrowers in the local currency.

FIC RECOMMENDATIONS

- The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects should be stimulated, while IPOs in the private sector should be encouraged.
- The general legal framework for performing operations with financial derivatives should be improved, first and foremost by enabling the full implementation of standardized ISDA master agreements.
- Further liberalization of the law is necessary in the part that incorporates the possibility for natural persons resident in Serbia to invest in securities on foreign markets, including bonds, structural products, structural deposits, ETFs and investment funds, all in accordance with European standards and ESMA guidelines.

JUDICIAL PROCEEDINGS

1.63

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.	2012			√
Improve and justify the allocation of cases among courts and judges.	2011		√	
Establish online databases in the remaining courts as well as to increase its functionality, an update and accuracy and to (re)enable the search based on the names of the parties in the proceedings before the commercial courts.	2011	√		
Enactment of new amendments to the Law on Civil Procedure in order to assure flexibility of the timeframe and deadlines for certain actions.	2011			√
Increase the number of employees in second instance courts who work on the enforcement procedures.	2016			√
Concepts that allow for delay of procedure, such as postponement and restitution in integrum, have to be restrictively interpreted and implemented.	2016			√
Expand the concept of transfer of right, if needed by the new initiative for authentic interpretation for Article 48 of the Law on Enforcement and Security submitted by the Ministry of Justic, 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.	2016	√		
When it comes to counter-enforcement, introduce the provision by which it is possible for the enforcement debtor in the counter-enforcement of the pecuniary claim to claim the statutory default interest as of the day the enforcement creditor received the amount of the claim.	2016			√

CURRENT SITUATION

During 2017 and in the first quarter of 2018 the legal framework for judicial proceedings was not significantly changed, nor there were important legislative reforms that would affect judicial proceedings in the Republic of Serbia.

Important institutions and changes in the legal system, such as public bailiffs, notaries public, a new organisational scheme of courts, regulation of the right to a trial within a reasonable time, have already been legally established and functioning on a stable basis.

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, so there is not a significant number of active judicial proceedings to which the previous Law applies.

The Law on Enforcement and Security (RS Official Gazette No 106/2015 and 106/2016 - authentic interpretation and 113/2017- authentic interpretation) has not been significantly changed, but the new authentic interpretation of the Serbian Parliament was issued at the end of 2017, clarifying the application of the disputable Article 48 of the Law and explaining the meaning and purpose of the concept of "transfer" of claims

The number of courts established by the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices (RS Official Gazette No 101/2013) from 1 January 2014 remains unchanged, so there are 66 first-instance courts, 44 higher courts, 25 second-instance courts, 16 commercial courts and 4 appellate courts.

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, is increasingly applied in practice, having in mind the fact that the courts are still overburdened with cases, especially in civil litigation, which often leads to breaches of ruling deadlines.

Dispute Resolution

Certain provisions of the Law on Civil Procedure, such as simplified rules on the service of court documents, the shortening of the evidence-producing procedure, the equal treatment of the parties (i.e. setting the same deadline for the submission of and response to the legal remedy), the expansion of the circle of representatives of parties in proceedings, and the reduction of the census for the submission of a revision, were all met with positive reactions from courts and parties, and their application in practice is widespread. On the other hand, some of the legally allowed solutions have not been applied in practice even after several years of the implementation of this Law. Thus, subpoenas and other information are still not delivered via email, and the use of audio and video equipment in hearings is rare because courts are not adequately equipped.

Appellate courts do not comply with the deadlines for making decisions on appeals. The new law requires setting a deadline to complete the main hearing (a concept aimed at ensuring that evidence is produced in a time-efficient manner), but in practice judges do not comply with the set timeframes or they set unreasonably long timeframes, of two or more years.

In accordance with the Legal Practitioners Law, the Bar Academy has been introduced as a special body established by the Bar Association of Serbia, responsible for the professional education and specialization of attorneys and graduate lawyers, but its work so far has not been noteworthy. Since its establishment, the Bar Academy has only organized seminars, but in the past year it has intensified its activities especially by organizing lectures and professional training for lawyers and law graduates, so it could be said that the current situation is significantly better.

POSITIVE DEVELOPMENTS

All courts in the Republic of Serbia have established online databases showing the status of ongoing cases, which has facilitated access to information on the status of cases. The databases are regularly updated, so in most situations it is possible to promptly obtain information on the status of a case. From 2014, when the Commissioner for Information of Public Interest and Personal Data Protection banned any processing of data contrary to the Law on Personal Data Protection, database search by personal names of parties is no longer possible, and there are no signs that it would be introduced again.

Dispute Resolution

The Law on Civil Procedure was last amended in 2014, when significant developments were introduced, such as the expansion of 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 (NBS) on the filing date of the lawsuit).

Regarding court proceedings, a quite significant development is the Law on amendments of the Civil Procedure Law, which entered the parliamentary procedure on October 5, 2018. Amendments to the Law if adopted will greatly contribute to the development of the market for the purchase of non-performing loans (NPLs), as the proposed wording no longer requires the respondent's consent for change of plaintiff in the proceedings, which used to be quite problematic for entities acquiring NPL portfolios.

Enforcement

The new authentic interpretation of Article 48 of the Law on Enforcement and Security, issued by the Serbian Parliament at the end of 2017, represents a significant development in the application of this Law. According to the interpretation of the Parliament, the provisions of the Article 48 should be understood in a way that the term "transfer" of a claim or obligation also encompasses the assignment of a claim or obligation. The "transfer" of a claim or obligation has a general meaning and includes all sorts of successions of claims or obligations, irrespective of the fact when this succession took place, during the existence of a legal entity or after it has ceased to exist. Therefore, the evidence of the "transfer" of a claim or obligation is a public or certified document, or, if this is not possible, a binding or final decision rendered in civil, misdemeanour or administrative proceedings.

In this way, the problem in practice has been finally resolved. Specifically, entities which used to buy claims and initiate enforced collection proceedings afterwards, were facing problems when courts denied their enforcement motions because of the misinterpretation of the provisions of the Article 48 and because there was no uniform understanding of the concept of the "transfer" of claims.

REMAINING ISSUES

1. The specialization of the portfolio of judges should be introduced in an efficient and definitive manner. Also, case files should be made more accessible to all interested parties and the use of electronic means for recording or photographing the case file should be facilitated to save the courts' and parties' resources, respectively. The hearings should be set in shorter time periods, and the duration of appellate proceedings in practice should be synchronized with legal provisions.

2. 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 an 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 unreasonably long timeframes, of two or even more years, which again contributes to the prolongation of proceedings and defeats the purpose of the concept of procedural timeframes. Some of the deadlines are unrealistically short, and the deadline for providing evidence is too strict, which may lead to abuse by parties.

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

4. The concept of restitutio in integrum has been restored to the enforcement procedure system. The legislature has foreseen that restitutio in integrum is allowed only in the case of a failure to comply with the deadline for submitting an objection or appeal in the procedure of contesting the decision on enforcement based on a directly enforceable title. Although the scope of the application of this concept has been 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 a directly enforceable title.

5. The Law on Enforcement and Security does not prescribe what happens with the paid advance costs in a situation where the enforcement creditor who initiated the enforcement based on an invoice or a promissory note has triggered litigation and lost. The solution where the public bailiff keeps the entire amount of advance, which in some cases may be extremely high, seems unsustainable.

6. Although the new Law explicitly stipulates that extraordinary legal remedies may not be used in the enforcement procedure, the Law itself has in fact introduced an extraordinary remedy in the enforcement procedure. In a situation where the decision dismissing an 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.

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

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.
- Enactment of new amendments to the Law on Civil Procedure in order to assure flexibility of the timeframe and deadlines for certain actions.
- Concepts that allow for delay of procedure, such as postponement and restitutio in integrum, have to be restrictively interpreted and implemented.
- Consensus on the cases arising under Article 204 of the Law on Civil Procedure.

ARBITRATION PROCEEDINGS 1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Promote the possibilities and advantages of dispute resolution through arbitration by providing institutional support to the relevant governmental and non-governmental bodies as well as by instructing professional organizations and companies to accept the jurisdiction of local arbitration institutions.	2010		√	
Develop a supportive legal framework for the activity of arbitration institutions in Serbia to ensure conditions for regional companies to accept its jurisdiction, subsequently creating a regional arbitration centre in Serbia.	2016			√
Consider amending the Law on Arbitration to further improve the legislative framework for arbitration.	2017			√

CURRENT SITUATION

The regulatory framework for arbitration proceedings in Serbia is comprised of the Law on Arbitration and the rules of two arbitral institutions, the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia (CCIS) (effective from 30 June 2016) and the Belgrade Arbitration Centre (effective from 1 January 2014). Both arbitral institutions have the jurisdiction to settle any dispute eligible for arbitration, regardless of whether it is an international dispute or a domestic one.

The general impression is that arbitration is increasingly popular as a way of resolving commercial disputes. However, it is still mostly present in international business relations, where there is a traditional mistrust among foreign companies in the competence of domestic courts. On the other hand, domestic companies still believe that arbitration is rather expensive compared with courts. However, it is often disregarded that the lengthy court proceedings can be significantly more expensive than arbitration, where decisions are made faster in comparison to courts.

The Law on Arbitration, in force from 10 June 2006 in its original text, was drafted in accordance with international standards, based on the Model Law on the Arbitration of the UN Commission on International Trade Law from 1986. Given the implementation of the law so far, and the fact that Serbian courts rarely annul arbitration decisions, Serbia should be perceived as an attractive arbitration destination.

POSITIVE DEVELOPMENTS

Recently, the advance of arbitration in Serbia and other countries has been focused on the extension of the jurisdiction of arbitration, rather than the improvement of arbitration rules. In general, arbitration laws, as well as the rules of arbitration institutions, today have a satisfactory legal

framework, and the professional community is primarily focused on a broader and more frequent use of arbitration as a dispute resolution mechanism.

Serbia has been following these trends, and in 2017 a positive step forward in regulating the relationship between bankruptcy and arbitration was made through amendments to the Bankruptcy Law. In particular, since 2009, it was unclear whether a creditor whose claim (the subject of an arbitration agreement) in bankruptcy proceedings is disputed can initiate or resume arbitration proceedings in order to determine the merits of the disputed claim. The Bankruptcy Law regulates the relation between arbitration and bankruptcy proceedings in Art. 117, which stipulates that the creditor whose claim is disputed shall initiate court proceedings, or resume suspended litigation or arbitration proceedings in order to determine the merits of the disputed claim, and Art. 118, which stipulates that the bankruptcy administrator shall take over civil or arbitration proceedings in the state in which they are at the time of opening the bankruptcy proceedings.

It is necessary to emphasise that the entire legal system that regulates the application of arbitration in the Republic of Serbia is modern and satisfactory.

REMAINING ISSUES

Amendments to the Bankruptcy Law in 2017, although representing a positive step forward in resolving the relationship between arbitration and bankruptcy proceedings, are still not sufficiently clear in the present form, and there are many controversial issues which will cause certain problems in practice.

Firstly, based on the provisions of Art. 117 and Art. 118 of the Law on Bankruptcy, it remains unclear whether creditors who did not initiate an arbitration before the opening of bankruptcy proceedings, in case of a disputed bankruptcy claim, can determine the merits of the claim through arbitration, or whether arbitration proceedings are available only to the creditor who initiated arbitration proceedings against the debtor prior to the initiation of bankruptcy proceedings. Also, there are interpretations according to which the creditor in this situation can choose between litigation and arbitration proceedings.

Also, the Bankruptcy Law does not regulate the following important issues for the relationship between arbitral and bankruptcy proceedings:

- there is no explicit requirement that the claimant in arbitration proceedings is obliged to change the claim, that is, to request declaratory claim instead of establishing a condemnatory claim (this requirement exists for litigation),
- the consequences of opening bankruptcy proceedings while there is an ongoing arbitration in which the bankruptcy debtor is the claimant are not regulated,
- it is not explicitly regulated that the opening of bankruptcy proceedings results in the termination of arbitration proceedings,
- it is not prescribed whether a bankruptcy administrator can conclude an arbitration agreement, and whether the board of creditors' consent would be required for concluding such an arbitration agreement.

Also, the efficiency of the current framework of the court procedure for the annulment of arbitral awards is questionable, as it is based on a two-step ruling process, first before the first instance court and then before the appellate court.

FIC RECOMMENDATIONS

- It is necessary to clarify the relationship between bankruptcy and arbitration proceedings in the Bankruptcy Law.
- Promote the possibilities and advantages of dispute resolution through arbitration by providing institutional support to the relevant governmental and non-governmental bodies as well as by instructing professional organizations and companies to accept the jurisdiction of local arbitration institutions.
- Develop a supportive legal framework for the activity of arbitration institutions in Serbia to ensure conditions for regional companies to accept its jurisdiction, subsequently creating a regional arbitration centre in Serbia.

LAW ON BANKRUPTCY

1.29

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2012			√
It is necessary to additionally restrict possibilities for banning enforcement against the bankruptcy debtor's property during the procedure of adoption of the pre-drafted 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 bankruptcy fiings.	2016		√	
It is necessary to restrict the possibilities of postponing decision and voting hearings on a pre-drafted reorganisation plan and submitting a revised text of a reorganisation plan, as well as to determine clear criteria for determining the debtor's / plan submitter's abuse of rights so the court can penalise such acts of the plan submitter and accelerate the procedure.	2016		√	
It is necessary to regulate precisely situations in which a (pre-drafted) reorganization plan is not either entirely or predominantly implemented regarding the settlement of included creditors, and the (new) bankruptcy proceedings are opened over the debtor, and to determine whether the creditors in these cases are entitled to report only the amounts of claims listed in the (pre-drafted) reorganization plan, increased for the statutory default interest calculated up to the date of the opening of bankruptcy proceedings, or whether they are entitled to report the entire claim that they have against the debtor.	2016			√
Regulate the procedure of personal insolvency either by the amendments of the current Law on Bankruptcy or the adoption of a separate law.	2016			√
Regulate additionally the position of the secured and pledged creditors in a way that provides the two instance procedures with respect to their settlement from the sale of pledged property.	2016			√
Stipulate the possibility of pledging a bankruptcy debtor's property to enable potential buyers without other property which could be pledged for the providing of funds necessary for the purchase price. Due to the fact that this issue includes other laws besides the Law on Bankruptcy, the necessity for wider reform, including laws regulating mortgages, pledging movable property, and other laws, would appear.	2016			√
Regulate competence of the bodies of the bankruptcy proceedings in situations where it is not clear who is entitled to decide on certain matter. Otherwise, it should be regulated that if it is not clear who is entitled to decide on certain matter it is in charge of bankruptcy judge.	2017			√
Stipulate that the opening of the bankruptcy proceedings produces effects as of the date of publishing the notice of the opening of bankruptcy proceedings in the Official Gazette.	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Stipulate that the opening of the bankruptcy proceedings does not result in termination of the ongoing enforcement proceedings against the bankruptcy debtor until a decision on opening of the bankruptcy proceedings becomes final and binding.	2017		√	
Stipulate the obligation of bankruptcy debtors to provide written consent of the majority creditors of each class separately when submitting the reorganisation plan during regular bankruptcy proceedings.	2016			√
Stipulate the possibility and procedure for amending the adopted reorganisation plan.	2016			√
Regulate the issue of delivery in bankruptcy proceedings in a way to make it faster and more efcient 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.	2016		√	
Regulate the consequences of the opening of a bankruptcy procedure (Article 99) in a situation when the bankruptcy debtor is a lessor, including the obligation of the lessee (tenant) to move out after the sale of the property of the bankruptcy debtor (bankruptcy estate), or the sale of the bankruptcy debtor when the latter is a legal entity. This should be regulated in same manner as it is in Enforcement Law, having in mind that otherwise the buyer will have to deal with a long-lasting litigation procedure against the former lessee to be able to take over the property, which could affect the decision of potential buyers to invest in assets or legal entities in bankruptcy.	2017			√

CURRENT SITUATION

In December 2017, the Serbian National Assembly adopted amendments to the Law on Bankruptcy, originally proposed by the Ministry of Economy in 2016. The amendments entered into force on 25 December 2017 (RS Official Gazette No 113/2017 and 44/2018) .

The main goal of the amendments to the Law on Bankruptcy was to improve the position of secured creditors and clarify certain provisions that had caused conflicting interpretations in practice, as well as to accelerate bankruptcy proceedings and enable a more transparent way of settling creditors.

According to data available on the website of the Bankruptcy Supervision Agency (ALSU), there were a total of 2,093 bankruptcy proceedings under way in the Republic of Serbia on 5 June 2018, not including 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 fall under the remit of the Deposit Insurance Agency.

In the first five months of 2018, a total of 166 bankruptcy proceedings were initiated, which means that 33 bankruptcy proceedings were initiated per month. Compared to 2017, when the monthly average was 25 bankruptcy proceedings per month, there is a slight increase in initiated bankruptcy proceedings. That number is still significantly below 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 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 initiate 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 still has a negative impact on economic flows and is unsustainable in the long term.

Most of the latest amendments are expected to have positive effects, but true results of the amendments will be seen in court practice in the coming period.

POSITIVE DEVELOPMENTS

Given that the latest Amendments to the Law came into force in December 2017, we are able to point out certain positive regulatory developments which were not mentioned in previous editions of the White Book and which have yet to be confirmed in practice, but could be recognized as a potential solution for issues from previous editions of the White Book.

Examples of positive regulatory developments worth mentioning are as follows:

Improved position of the secured creditor

The latest amendments are supposed to improve position of secured creditors by introducing new roles of secured creditors within bankruptcy proceedings (secured creditors must have one member on the board of creditors, a secured asset cannot be put under lease without the approval of the secured creditor, a secured creditor interested in buying the secured asset is allowed to offset its claim against the price reached in the public sale, secured creditors are given pre-emptive rights in a direct sale of the secured asset).

Change of the bankruptcy manager

The board of creditors is allowed to remove the current bankruptcy manager and appoint a new one with a ¾ majority decision, at any stage of the proceedings, without an explanation;

Lowered threshold for liquidation vote

At the first creditors hearing, the votes of creditors with 50% of the claims are sufficient to pass a decision on liquidation, instead of 70%;

Reduced possibilities for abuse of reorganization proceedings:

The option of prolonging deadlines to submit a reorganization plan has now been revoked, and only one amendment to the reorganization plan is allowed. Also, the Law on Bankruptcy now contains a provision stipulating that proceedings based on a pre-packed reorganization plan submitted by the debtor take priority over the proposal for opening bankruptcy proceedings submitted by creditors. If the pre-packed reorganization plan is finally rejected or dismissed, then the court will decide on the proposal for opening bankruptcy proceedings submitted by the creditor. Therefore, the debtor cannot abuse pre-packed proceedings in order to avoid opening bankruptcy proceedings by filing pre-packed reorganization plans over and over again.

Other relevant amendments

Pending enforcement proceedings are now suspended as of the day of opening of bankruptcy proceedings and terminated only after the rendering of a decision on the conclusion of the bankruptcy proceedings. Suspended arbitral proceedings can now be resumed and there is no time limit for the transfer of claims against bankruptcy debtor.

REMAINING ISSUES

As mentioned in previous editions of the White Book, it seems that the scope of the latest amendments related to revoking the ban on enforcement proceedings on secured assets and amendments related to the reorganization procedure, and especially the reorganization procedure based on a pre-packed reorganization plan, where the abuse of loopholes by bankruptcy debtors is commonplace, will still not be sufficient to avoid such abuses entirely.

The Law on Bankruptcy contains a provision that bankruptcy judge shall not render a decision on revoking the ban on enforcement if the bankruptcy administrator proves that secured assets are crucial for the reorganization of the debtor or for the sale of bankruptcy debtor as a legal entity. This wording provides the bankruptcy administrator with an option to avoid revoking the ban on enforcement because it seems that the bankruptcy administrator can easily prove that some assets are necessary for the reorganization or for the sale of a legal entity, while a secured creditor could hardly prove the opposite.

The Law on Bankruptcy contains provisions aimed at preventing potential abuses of the reorganization procedure that prescribe limiting the length of the ban on enforcement against a bankruptcy debtor's assets, and determine the period within which the bankruptcy debtor has to file a new extraordinary report of the auditor, as well as the lat-

est amendments, such as revoking the possibility to prolong deadlines for the submission of a reorganization plan and reducing the number of allowed amendments to the reorganization plan to only one. The aim of these provisions is to prevent the use of pre-packed reorganization plans as a means to postpone bankruptcy in order to avoid an appropriate settlement of creditors' claims. However, it seems that there are still certain loopholes related to these provisions, and despite the facts mentioned herein, the bankruptcy creditors do not enjoy adequate protection, and it is not possible to achieve the purposes and aims of the Law on Bankruptcy, related to the pre-packed reorganization plan.

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 circumvent such restrictions by withdrawing their bankruptcy application based on a pre-packed reorganization plan and then almost simultaneously submitting a new bankruptcy petition based on a virtually unchanged pre-packed reorganization plan. The Law does not prohibit the filing of a new bankruptcy petition, along with a fresh request for a stay of enforcement against the bankruptcy debtor's property, immediately after withdrawing the previous one. Even though ordering such a measure depends on the bankruptcy judge's decision, the practice has shown that judges, as a rule, issue such a measure, thereby removing the only barrier against abuse of the Law. In practice, there are cases in which bankruptcy debtors avoid enforcement of their property for years, in this or similar ways. The latest amendments have limited the options to abuse reorganization proceedings, but if there is no creditor interested in filing for the opening of bankruptcy proceedings, the abovementioned possibilities for abuse still remain.

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

In practice it is often necessary to change a reorganization plan which has already been confirmed by the court, but this is not allowed under the existing legislation. This poses a serious problem, because it may happen that a bankruptcy debtor's business activity is not on the expected level after the adoption of the plan and therefore the debtor cannot comply with the payment dynamic envisaged in the adopted plan, while a majority of the creditors are willing to accept an amendment to the plan, which formally cannot be made.

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

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

The huge number of long-term insolvent companies hinders economic development, and for this reason, although the Constitutional Court of the Republic of Serbia declared automatic bankruptcy unconstitutional per its decision in 2012, we consider it reasonable to find an appropriate solution which would allow for a kind of automatic bankruptcy proceedings in the case of a long-term insolvency.

One of the outstanding issues where there has been no progress is that of personal insolvency. Specifically, we believe that the regulation of this issue would be in favour of both creditors and insolvent debtors. The current options for

creditors regarding insolvent debtors who are natural persons do not lead to the most favourable collective settlement. On the contrary, they result in the settlement of the claims of some creditors through some kind of enforcement procedure, while other creditors, in most cases, do not have any possibility to settle their claims against over-indebted natural persons. In that sense, we believe that instituting personal insolvency would enable higher collection rates for creditors, while at the same time protecting the integrity and basic needs of over-indebted individuals.

Finally, a number of other questions arise with regard to improving and clarifying relevant regulatory provisions in practice, such as the possibilities and ways for secured creditors to exercise their rights based on a pledge on claims; insufficiently precise definitions of entities to which Article 123, paragraph 2 of the Law refers, the possibility of disposing with the subject of an extraction request during a dispute regarding such a request; and others.

Some of the expectations put forward in previous editions of the White Book about comprehensive amendments to the Law on Bankruptcy have been met, but many other insufficiencies of legal solutions have not been removed. We sincerely hope to see at least concrete proposals of the necessary amendments this year.

FIC RECOMMENDATIONS

- The provisions on automatic bankruptcy in the case of a debtor's permanent insolvency should be incorporated into the bankruptcy regulatory framework, but in a form that would be in accordance with the Constitution of the Republic of Serbia.
- It is necessary to additionally restrict possibilities for banning enforcement against the bankruptcy debtor's property during the procedure of adoption of the pre-packed reorganization plan, in order to prevent bankruptcy debtors from averting an enforcement settlement over an indefinite period of time and without the support of the majority creditors through multiple consecutive bankruptcy filings.
- Regulate the procedure of personal insolvency either through amendments to the current Law on Bankruptcy or the adoption of a separate law.
- Regulate additionally the position of secured and pledge creditors in a way that provides two-instance procedures with respect to their settlement from the sale of pledged property.
- Stipulate that the opening of bankruptcy proceedings produces effects as of the date of publishing the notice of the opening of bankruptcy proceedings in the Official Gazette.
- Stipulate the possibility and procedure for amending an adopted reorganization plan.
- Regulate the issue of delivery in bankruptcy proceedings in a manner that will make it faster and more efficient and to specify the provisions related to the finality date and starting date for the implementation of the reorganization plan so that all participants can know with certainty when the adopted plan starts with the implementation.

INTELLECTUAL PROPERTY

2.00

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 intensified, especially by a 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 with 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, 2012 and 2016);
- 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, amended in 2017);
- 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 regulates 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 publishers' 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 capable of 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, 2014 and 2016);
- The Customs Law (2010, amended in 2012, 2015, 2016 and 2017); and
- The Law on Optical Discs (2011).

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

POSITIVE DEVELOPMENTS

The most recent positive development is the opening of Chapter 7 of the EU membership negotiations, pertaining to Intellectual Property. The closing of the aforementioned chapter is planned for the end of 2018, thereby marking the end of aligning of the local legislation with the EU acquis communautaire. The impact of such amendments will certainly reflect in a more efficient and faster prosecution, and ultimately protection and enforcement of IP rights. Improvements regarding the length and quality of court proceedings through the creation of special court panels for intellectual property within the Commercial Court and the Higher Court in Belgrade are now clearly visible, with first-instance proceedings lasting to up to a year on average.

The court specialization will also facilitate the standardization of judicial practice in the field of intellectual property rights.

REMAINING ISSUES

Despite the fact that the relevant intellectual property legislation has already been in place in Serbia for several years, 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 which ought to be established in a more formal manner, based on the example of an almost decade-long co-operation between the Tax Administration and the Market Inspection with the Business Software Alliance. This type of co-operation would allow for the raising of awareness amongst the consumers regarding the rights holders' efforts to protect their rights, as well as result in noticeable decrease in different forms of piracy.

FIC RECOMMENDATIONS

- State authorities should enhance their efforts to combat online copyright infringement, with respect to the software, music, and film industries.
- Adoption of a new Copyright Law introducing a more effective enforcement of collective rights.
- Amendments to the Criminal proceedings law and related legislation with regards to cybercrime.

PROTECTION OF COMPETITION

1.71

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 EU cases should be mentioned and explained in the Commission's decision, i.e., the Commission should state the reasons for applying a certain interpretation of the practice.	2008		√	
In order to enhance transparency and legal certainty, clear guidelines and instructions containing the manner of application of certain provisions of the Law. The FIC and other interested stakeholders should have the opportunity to participate in the process of drafting such documents. Also, the publishing of the Commission's statistics and reports on a monthly level would surely contribute to increasing transparency.	2010		√	
For the purposes of legal certainty, aside from the Guidelines, the Commission needs to adopt by-laws defining in more detail certain core categories of the anti-trust framework, e.g. dominant position, minor violations, the leniency procedure, etc.	2011			√
Judges of the Serbian Administrative Court should complete advanced training in both competition law and economics. All rulings of the said court should be made publically available, and explained in detail in terms of the substantive issues of the decisions of the Commission. Non-confidential versions of all decisions and official opinions of the Commission, as well as rulings of the Administrative Court in relation to the issues of competition should also be made publicly available.	2010			√
The Commission should apply its practice consistently with respect to all undertakings, including state and private entities. Considering the penal-legal nature of the decisions in the area of competition protection and the significant powers of the competent authority, predictability as well as consistency and legal certainty are of crucial importance for all market participants.	2017		√	
The Fee Schedule must decrease fees to a reasonable level, in line with comparable jurisdictions in Central and South East Europe, especially in the field of merger control.	2009			√
The right balance must be found between the Commission's role to sanctioning illegal behaviour and promoting competition rules, i.e. competition advocacy should not be overlooked and the Commission should promote competition law principles more effectively, particularly in the private sector.	2013	√		

CURRENT SITUATION

The harmonization with EU competition rules in Serbia began with the adoption of the currently applicable Competition Law in 2009 (the "Law"). The Law set material and technical preconditions in place for the independent work of the Commission for the Protection of Competition (the "Commission"). The Law was amended in 2013, whereas the corresponding by-laws were adopted back in 2009 and 2010 and the new Regulation on the Content and Manner

of the Submission of Merger Notifications ("Merger Control Regulation") in 2016.

During 2017 the Ministry of Trade, Tourism and Telecommunications, as the authorised proposer, and the Commission for the Protection of Competition began drafting the new competition law. We greatly appreciate the decision of the Ministry and the Commission to invite representatives of the business community in Serbia, including the FIC, to take part in the preparation of comments to the draft law.

Based on the annual report of the Commission for 2017, a vast majority of the Commission's decisions on merger control were adopted in summary proceedings. Short form merger notifications are primarily convenient for those mergers taking place abroad which have no impact or have insignificant impact on competition on the Serbian market, but which have historically taken up a significant portion of the Commission's activities. However, even though the Merger Control Regulation has introduced this form of merger notification, the Commission is also entitled to request submission of a full merger notification when the circumstances indicate that the conditions for allowing the merger have not been fulfilled, granting the Commission a considerable amount of discretion in this regard.

According to its Annual Report for 2017, the Commission decided 148 cases and transferred 15 cases to the period that followed (2018). The Commission issued 93 opinions concerning the interpretation of competition regulations and their application. In the previous period, the Commission used to a greater extent the more complex authorizations at its disposal under the Law, which included significantly relying on dawn raids for the purpose of collecting evidence and the termination of the merger control process upon accepting the proposed obligations of a party to the proceedings. The Commission stopped certain merger control procedures in cases where it determined that there is no significant violation of competition in the market, but also imposed penalties in other cases in which a violation was established. In cases of merger control that were subject to investigation, the Commission imposed both structural and behavioural measures as conditions for carrying out transactions.

Finally, the Commission, for the first time, imposed a fine in 2017 on an undertaking for carrying out concentration without merger clearance.

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

POSITIVE DEVELOPMENTS

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

In the area of the harmonization of competition regulations with the EU standards and rules (alignment with the acquis), there has been certain progress given the fact that in 2017 the adoption of several other by-laws was announced, which should regulate in more detail the exemption of restrictive agreements in sectors such as the sale of spare parts for motor vehicles, insurance, transfer of technologies, and road, rail and inland waterway transport. Additionally, the work on the new competition law is ongoing, with the FIC actively participating by providing extensive comments on the proposed draft.

In 2017, the results of sector inquiries in the insurance and post-sale services sectors were published, and a comprehensive analysis of the retail market was continued, which shows significant progress in the development of the competition protection policy.

In 2017, the Commission continued making progress in competition advocacy and public relations. The Commission regularly informs the public on its activities, and publishes a great majority of its decisions on its official website. The Commission published on its website the Guidelines on Rights and Obligations of the Parties during Dawn Raids, as well as the Leniency Policy Leaflet. This positive development concerning competition advocacy is important as it contributes to the overall improvement of the current legal framework and to better understanding on the part of the general public and the media of competition rules and activities and the importance of the Commission's role.

Finally, it is commendable that the Commission increasingly implements economic analyses in inquiries into competition infringements and complex mergers.

REMAINING ISSUES

The Commission publishes a majority of its decisions, in large part or to an extent, on its website (especially merger clearances), which is seen as progress. However, relevant court decisions issued in the process of control of the Commission's decisions are not publicly available. The noticeable decrease of the number of opinions and individual

exemptions published represents a step back given that this poses a significant obstacle to transparency and free access to information on key decisions of the Commission. Another shortcoming is the fact that the database of the Commission's decisions does not allow for advanced search (with more detailed criteria).

The proceedings before the Commission still do not sufficiently guarantee all procedural rights of the parties, such as the rights of the parties to have access to the case file and powers of the Commission in terms of the treatment of privileged communication. As for dawn raids, it seems that the Commission's decisions on dawn raids lack explanations of reasonable suspicion that evidence will be removed or altered, which is a statutory condition for carrying out dawn raids. Although the Commission has made serious efforts to improve the quality of economic analyses, it is necessary to consistently apply economic analyses in all proceedings before the Commission, taking into account the specifics of a particular case.

On the other hand, judges of the Administrative Court still lack comprehensive knowledge in the areas of competition law and economics to be able to interpret the Commission's arguments and decisions properly. Decisions of the Administrative Court often lack a detailed reasoning and consideration of the merits of the case, limiting their scope to repeating the Commission's findings and consideration of the basic procedural issues, without analysing the arguments of the parties in dispute. This is a serious shortcoming, as it prevents a confrontation of opinions, a comprehensive and adequate control of the Commission's decisions, and the development of practices, while it also jeopardizes proceedings in cases when an extraordinary legal remedy is lodged. A detailed reasoning of the decisions of the Commission and the court, with a particular consideration of arguments and evidence presented by the parties to the proceedings, is of considerable importance for establishing judiciary oversight of the Commission's work. Otherwise, the Commission would be in the position to misuse its powers and independence.

As for the leniency programme, the Commission made efforts concerning the promotion and development of this institute with a leaflet available on its website. However, the use of this institute is hardly noticeable in practice.

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

It is noticeable that the Commission has been applying a more complex methodology in analysing the individual exemption of restrictive agreements. While the need for a detailed examination of complex cases is clear, the speed of business developments and the fact that parties to proceedings cannot implement a restrictive agreement without the Commission's decision, it is essential that this practice should not adversely affect the efficiency of the Commission's decision-making process, in terms of avoiding any unjustified delay. It is necessary, in the context of preparations for the new competition law, to examine the acceptability of the concept of individual exemption, which the European Union abolished several years ago.

Finally, the method of determining penalties is characterized by inconsistency and unpredictability in the application of the Law. For example, a substantial part of the existing guidelines is not in compliance with the law, the methodology for determining coefficients for individual factors in meting out the penalty is unclear, the Commission's decisions often do not include an overview of the established coefficients for individual factors, and total revenues of the party to proceedings is taken as a basis for the calculation of the fine, instead of calculating the fine based on revenues derived from only the relevant market where competition was infringed.

FIC RECOMMENDATIONS

- In order to enhance transparency and legal certainty, the Commission should issue clear guidelines and instructions containing the manner of application of certain provisions of the Law, with the involvement of interested parties in commenting proposed documents.

- The fees in the Tariff Rules should be decreased to a reasonable sum, especially in the merger control area.
- The Commission should publish issued opinions and decisions on individual exemptions.
- The Commission should issue publications of the relevant definitions of product markets grouped by industries every six months, with the aim of harmonizing practice.
- Judges of the Administrative Court should complete advanced training in both competition law and economics. All rulings of said court should be made publicly available, and explained in detail in terms of the substantive issues of the Commission's decisions.
- The Commission's practice should be consistent with respect to all market players. Considering the penal nature of decisions in the area of competition protection and the significant powers of the Commission, predictability as well as consistency and legal certainty are of crucial importance for all market players.

STATE AID 1.38

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Consistent and effective application of regulations with respect to state aid, i.e. practical application of standards and practices of the European Commission in state aid control, (also to companies in restructuring and privatization).	2011		√	
Strengthening of independency and personnel capacities of the CSAC.	2009			√
Further reduction of sector and regional aid relative to horizontal aid should be encouraged (in particular aid for small and medium enterprises and research and development).	2016		√	
Regular publishing of CSAC's statistics and reports, on an annual and (preferably) monthly level to reduce lack of transparency.	2016			√
Pressure by the CSAC (and the professional community) on public authorities to file notifications timely, so that the Commission is able to promptly commence with the reviewing process.	2016		√	
Effective state aid control – utilizing different mechanisms in order to monitor state aid allocation, and also impose sanctions for non-compliant state aid.	2016			√
Harmonization of the fiscal policy with the EU acquis.	2016			√
Preparation of regional state aid maps.	2017			√

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 2016 and 2017 there were no changes in these regulations.

The latest publicly available edition of the Annual Report of the Commission for State Aid Control (CSAC) is for 2016. In 2016, the total amount of state aid in Serbia was EUR 750 million, a 13% decrease compared with 2015. In 2016, Serbia's state aid expenditure as a percentage of GDP was 2.20%, which was a decrease against 2015, when this percentage was 2.58%. By comparison, in 2016 EU Member States spent 0.69% of GDP on state aid.

In 2016, 25% of the total state aid went to the agricultural sector and the remaining 75% to industry and services, a decrease compared with 2015, when this percentage was 78.6%. The largest chunk of the total aid in industry and services was horizontal aid (33.2%), followed by sectoral and regional aid, with 12.8% and 29.1%, respectively.

The share of subsidies in the total state aid increased significantly in 2016, to 60.6%, while tax incentives accounted for 26.9%, guarantees, 0.3%, and soft loans, 0.5%.

POSITIVE DEVELOPMENTS

According to the European Commission's Progress Report for Serbia for 2018 ("EC Progress Report"), there has been no progress in the harmonization of laws and enforcement rules on state aid.

In the last year for which official data is available, the amount of horizontal state aid saw a decrease compared to 2015, while sectoral and regional aid remained unchanged when compared with previous years. Furthermore, compared with 2015, de minimis aid was increased by 6% due to the state aid granted for public information projects.

Although the CSAC launched a new website in 2015, information on activities of the CSAC is not regularly updated (whether or not the CSAC has published its entire decisional practice in the said year will only be verified once the CSAC's annual report for 2017 is published).

REMAINING ISSUES

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 EU acquis. The European Commission reiterated the remarks from previous reports regarding non-compliance with the Stabilization and Association Agreement (SAA), particularly highlighting the harmful practice of exempting companies in restructuring from the rules for granting state aid (in order for aid to such companies to be compatible with state aid rules, it must meet the conditions laid down in the Regulation on the Rules for Granting State Aid). In addition, at the normative level, Serbia has not yet adopted regional state aid maps.

Although the total amount of horizontal aid increased in 2016 compared to 2015, it remains noticeable that in 2016 no aid was granted for research and development and that the state aid in environmental protection is negligible, which leaves plenty of room for improvement.

Vertical state aid (direct granting of state aid to individual enterprises) is a significant challenge for the Serbian budget and market competition, in particular in the case of companies that cannot successfully compete on the market, even with such aid. Such allocation of state aid not only puts other market participants in an unequal position, but also leads to imprudent spending of limited budgetary resources (i.e., taxpayers' contributions).

In 2016, the CSAC adopted 49 decisions on permissibility of state aid – in 30 cases CSAC found that the aid was compatible with state aid regulations, while in 19 cases it launched a subsequent control, which is a visible improvement compared to previous years, when the proportion of subsequent controls was negligible. However, the CSAC has not yet ordered anyone to return granted state aid, which brings the independence and integrity of the CSAC itself into question. From the institutional point of view, the CSAC's status as a governmental body primarily composed of 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.

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. Invest-

ments 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.

On its website, 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 for 2016, even though the deadline for the publication of annual reports is 30 June of the current year for the previous year. Publishing the CSAC's decisions on its website regularly is necessary in order to establish transparency and strengthen legal certainty. Specifically, the lack of transparency regarding contracts and negotiation procedures in relation to capital infrastructure investments enables potential misallocation of budgetary funds and possible distortion of market competition, and produces legal uncertainty regarding the role and responsibility of the state on the Serbian market.

The inclusion of both state aid beneficiaries and the general public in drafting state aid policy is of great importance, so as to be able to jointly reach specific, predictable, and effective solutions. Certainly, the most important issue in building an efficient state aid system is the control of state aid granting, in order to prevent abuse and increase transparency. An independent CSAC is the key for realization of these goals.

FIC RECOMMENDATIONS

- Strengthening independence and personnel capacities of the Commission for State Aid Control.
- Effective state aid control – utilizing different mechanisms in order to monitor state aid allocation, and also impose sanctions for non-compliant state aid.
- Consistent application of state aid rules (especially with regards to companies in restructuring and privatization), as well as EU standards and practice in state aid control regime and harmonization of the fiscal policy with the EU acquis.

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION 1.60

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further efforts towards harmonization with international and EU principles.	2011			√
Building the capacity, expertise and role of consumer NGOs.	2014		√	
Continuing work on consumer education and the implementation of the provisions of the Law concerning the inclusion of topics related to consumer protection in the curriculum of primary and secondary schools.	2014			√
Promoting consumer protection rights and interests through local level institutions with the aim of educating, informing, consulting and involving consumers in the decision-making process.	2013		√	
Continuation of professional staff training within the ministries and inspections,judicial and non-judicial bodies, and consumer associations and other market participants.	2014		√	

CURRENT SITUATION

In June 2014 the Serbian Parliament adopted the currently applicable Law on Consumer Protection (hereafter: the Law), effective from September 2014. This is the third piece of consumer protection legislation aimed at further improving the protection/position of consumers comparing to the previous legislative solutions.

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

One of the most important concepts introduced by the Law is the protection of the collective interests of consumers, which aims to sanction unfair business practices and unfair contract terms. Under the Law, if consumer protection associations duly registered with the Ministry of Trade, Tourism, and Telecommunications (hereafter: the Ministry) establish that a trader has breached the collective interests of consumers, by means of unfair business practices or by contracting unfair terms, they are entitled to approach the Ministry with a request to initiate proceedings to protect such interests. On the basis of such a request, or by virtue of its office, the Ministry may initiate administrative proceedings or require the trader to cease violating the collective interest of consumers. This seems to be a significant improvement in comparison to the previous law.

In accordance with EU guidelines on active consumer protection policy, the Law devotes significant attention to the effective resolution of consumer disputes. Court fees are waived for consumer disputes with a value not exceeding RSD 500,000 to encourage consumers to "fight for their rights" in court (previously the court fees were in most cases disproportionate to the value of the claim). As for the out-of-court settlement procedure for consumer disputes, the Law stipulates that the Ministry must publish the list of bodies meeting the requirements for such a procedure (the currently applicable list is available on http://mtt.gov.rs/download/lista_tela_vansudsko_resavanje_sporova_9.pdf).

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.

Traders are required to keep records of received complaints, and the inability of consumers to deliver the packaging of goods to the trader cannot be an obstacle for resolving a complaint or a reason for refusing to remedy the lack of conformity. The deadline for responding to a complaint is eight days, whereas the 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 created the basis for a higher level of consumer protection in certain fields, e.g. contracts for the sale of goods and services of general economic interest. Providers of services of general economic interest are required to form a committee for resolving complaints, consisting partly of representatives of consumer organizations registered with the Ministry.

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

Additionally, the 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 capacities were insufficient for the effective resolution of consumer complaints at that point.

POSITIVE DEVELOPMENTS

Comparing to the previous year, there have been certain improvements in the expansion of the scope of activities undertaken by consumer protection associations, including: education of consumers about their rights, organization of roundtables to discuss important issues in this area, performing tests for a large number of consumer products and providing information to 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, which (together with the above described activities) enables a better fulfilment of their main role.

Positive developments are also visible in relation to educational activities on consumer-related topics organised by both the local self-government units and the competent state authorities (including primarily ministries, inspections and courts), such as staff trainings, conferences and roundtables, aimed at raising their competences and implementation of EU standards.

REMAINING ISSUES

Although the Law formally established a deeper balance in the relationship between traders and consumers, the results in practice demonstrate that this is still far from real equality. According to the 2017 Report on the Activity of the National Consumer Complaints' Registry, the Consumer Protection Sector within the Ministry received 2,366 consumer complaints in 2017 over a toll-free phone number, while the regional consumer councils received a total of 16,928 consumer complaints. A large majority of complaints received (80%) concerned the supply of goods (mostly footwear, mobile phones, IT equipment and appliances), while the remaining 20% were connected with the supply of services (most often public utilities and telecommunication services). Comparing to the report from 2016, there are no major oscillations, either in the number of complaints or their structure.

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

FIC RECOMMENDATIONS

- Building the capacity, expertise, and role of consumer NGOs.

- Continue work on consumer education and the implementation of topics related to consumer protection in the primary and secondary schools curricula.
- Promotion of consumer protection rights and interests on the local government level.

PROTECTION OF USERS OF FINANCIAL SERVICES 2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further harmonization of regulations of the protection of consumers of financial services with international and EU principles.	2012		√	
Timely adoption of the remaining by-laws required under the Law.	2012		√	
Inclusion of financial education in regular school activities, as well as the adoption of a national strategy in the field of financial education.	2017		√	
Further education of users of financial services regarding their rights.	2014		√	
Harmonization of the announced legislation with the existing legislation already in force.	2016		√	

CURRENT SITUATION

The rights of users of financial services provided by banks, financial leasing providers and traders, 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 with the latest implemented changes from 2015 (hereinafter: the Law). Since the entry into force the latest changes of the Law, entrepreneurs and farmers (holders or members of an agricultural household) have also been defined as financial service users and these entities now have the same status, rights, and level of protection as natural persons. The Law on Amendments to the Law improved transparency in the relationship between banks and users of financial services, averting hidden costs for users and providing better information on the various elements of the business relationship between banks and users of their services.

In order to properly protect the rights of users of financial services, the National Bank of Serbia (hereinafter: the NBS) has adopted a set of decisions, in particular the Decision Specifying the Manner of Handling Financial Services Consumer Complaints by Financial Services 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 to 31 March 2017 (hereinafter: the Quarterly Report), the number of educational debates increased 18% compared to the same period of the previous year, making it the largest number of educational debates held since 2011, when the NBS started activities to educate users of financial services through educational debates. In order to achieve significant results in the field of financial education, the Ministry of Education, Science and Technological Development has launched a pilot project which aims to include financial literacy in educational work and teaching.

General technological development and the increasing importance of e-business in modern life have contributed to the development of new ways to offer and advertise financial services, which has led to the need to further regulate the provision of financial services, primarily distance ser-

vices. Recognizing this need, as well as the need for the harmonization of the domestic legislation with the EU acquis, the NBS (in May 2018) submitted the Proposal of the Law on the Protection of Consumers of Financial Services with Respect to Distance Contracts and the National Assembly of the Republic of Serbia adopted the Law on June 8. The Law regulates matters such as properly informing users of financial services in the pre-contract phase as well as after the conclusion of the contract, withdrawal from a distance contract, contract termination, protection from the provisions and charging of services that users did not request, etc.

If the law stipulates that a certain type of financial services contract is to be concluded only in writing, the distance contract may be concluded using a qualified electronic signature. Considering that an extremely small or insufficient part of the population uses a qualified electronic signature, it is possible for the user to approve a value of up to RSD 600,000 using the existing methods of dual-factor authentication or an electronic identification scheme with a high level of reliability, in accordance with the law regulating the electronic document, electronic identification and trust services in electronic commerce. The expected benefits of this regulation include strengthening the confidence of users of financial services when concluding distance contracts, greater comfort for users to help them effectively consider the offer and make a selection of services, the reduction of expenses for financial services providers, and the use of more modern means of communication, as well as the establishment of a single legal framework for protecting users when contracting distance financial services.

The recently enacted Law on Interchange Fees and Special Operating Rules for Card-Based Payment Transactions, among other matters, defines the obligation for banks to issue to users, free of charge with each account, a card for which the processing of netting and the settlement of all transactions is conducted in the payment system of the Republic of Serbia. In this way, payment card users are protected from situations where possible problems in the operation of foreign payment systems, over which the competent institutions in the Republic of Serbia do not currently have effective supervision, lead to inability to conduct daily payment by payment cards in the Republic of Serbia.

REMAINING ISSUES

The Quarterly Report of the NBS reveals that early complaints still account for a significant share of the total number of complaints in 2017 (27%), which indicates that many users of financial services are still not familiar with the objections and complaints procedure. In this respect, continuously educating consumers of financial services about their rights and the way to exercise those rights is still needed. Despite the possibility of out-of-court settlement of disputes with financial institutions in mediation procedures, as well as the fact that the mediation procedure is voluntary and free for both contracting parties, a large number of rejected mediation proposals is a consequence of the fact that financial institutions still do not recognize the advantages of this type of resolution of disputable relationship, which is faster, cheaper and more efficient than litigation.

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

FIC RECOMMENDATIONS

- Further harmonization of regulations on the protection of consumers of financial services with international and EU principles.
- Further education of users of financial services regarding their rights.
- Harmonization of the announced legislation with the existing legislation already in force.

PUBLIC PROCUREMENT

1.00

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 the Law regulating the unusually low bids.	2014			√
Amending the provisions of the Law to oblige contracting authorities to deliver anti-corruption internal plans and acts to the Public Procurement Department.	2015			√
Amending the Law in relation to the Public Procurement Office's and the Commissions' competence in cases of suspected "bid rigging", (the ability to implement special procedures to control the implementation of awarded contracts and submit proposals for the annulment of a public procurement contract).	2014			√
Active cooperation of the Public Procurement Office, the Ministry of Finance and Economy, Anti-Corruption Agency, the Budget Inspection, the State Audit Institution and the Government of the Republic of Serbia on the implementation of Law on Public Procurement and the implementation of the Memordandum of Cooperation of April 15, 2014.	2015			√
Clarification of ambiguities in implementing the Public Procurement Law in the context of energy servicesbased projects through an "official opinion" published by the Ministry of Finance accompanied by appropriated explanatory materials and training made available to Public Procurement Departments at local level.	2017			√

CURRENT SITUATION

The general impression is that the new Public Procurement Law (RS Official Gazette No 124/2012, hereinafter: the Law), which has been in application since 1 April 2013, improved the legal framework for reforms in this area. The systematic application of the new Law's favourable solutions 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 adopted the Law Amendments, which apply as of 12 August 2015. These amendments introduced novelties in respect of reducing formalities, and increasing the number of documents published on the Public Procurement Portal.

Unfortunately, neither the Law of 2012, nor the amendments of 2015 improved the implementation of anti-corruption measures. There are still no clear indications that the anti-corruption measures will be implemented.

When it come to the fulfilment of its statutory obligation to provide an opinion on the interpretation and application of the Law, envisaged under Article 136(1)(4) of the Law, the Public Procurement Office (PPO) has been seemingly inert and inefficient in 2018. There have been cases where the PPO failed to issue an opinion on the interpretation and application of regulations requested by interested legal entities, which contributes to legal uncertainty in this area.

According to the report of the PPO in the Republic of Serbia for 2017, the share of public procurements conducted in an open procedure is identical to that of the previous year – 93%. The share of negotiated procurements, with and without invitation to bid, in the structure of public procurement value amounted to 4% in 2017. No general report of the Republic Commission for the Protection of Rights is

available for 2017. The average number of bids submitted in a public procurement procedure is almost the same as in 2017 – 3.

POSITIVE DEVELOPMENTS

In 2017, the PPO adopted three model tender documents with framework agreement, one for the procurement of foods, one for the procurement of medical devices, specifically surgical needles and suture, and one for vehicle servicing and maintenance services.

REMAINING ISSUES

How the Law will be implemented in preventing corruption still remains to be seen. There is no evidence of implementation of the numerous information-sharing agreements concluded between anti-corruption state bodies, with the aim of prosecuting the perpetrators in cases of corruption, bid rigging, restrictive agreements and unusually low bids.

A remaining issue is the application of the rules on "unusually low bid". The contracting authority has the discretionary right to assess whether the bid is unusually low, i.e., whether the bid differs from the comparable market prices and raises doubts as to the ability of the bidder to execute the procurement in accordance with the offered terms. The lack of clear criteria that would oblige the contracting authority to demand a detailed explanation of all the elements of the bid brings uncertainty in public procurement procedures. In most cases, the contracting authorities accept low bids, 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 the bidder with the unusually low bid, they may submit a request for review to the Commission for the Protection of Rights in Public Procurement Procedures. The position of the Commission is that the contracting authority has discretionary rights to assess whether the bid is unusually low and, consequently, it rejects requests for the review of public procurement procedures on these grounds. The Commission is not authorized to question the merits of such requests since the parties to the review procedure are the Commission, the contracting authority and the applicant, and not the bidder to whom the contract was awarded. The rendering of a decision to annul the contract award decision on grounds of an unusually low bid 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 fact-finding analyses. The PPO and the Commission are not authorized to initiate the procedures for the annulment of the decision on awarding the contract, thus, bidders have no legal remedies to protect their interests, except for filing criminal charges. Based on the content of the reports submitted to the PPO 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 awarding framework agreements of significant importance for the state. 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.

In 2017, there was an increase in the exemption from the application of the Law on exemption grounds under Article 7, paragraph 1, items 2) and 2a) of the Law, i.e., in the case of procurements paid for with foreign loans received from international organizations and international financial institutions, or under international agreements, whose share increased from 14% in 2016 to 22% in 2017. The increase in the number of exemptions from the application of the Law on these grounds leaves room for non-transparency and prevents competition in this area. There are cases of interstate agreements whose content remains unknown to the public, excluding the possibility of controlling the conditions under which the contracts based on interstate agreements are concluded and executed.

The monitoring of the execution of contracts awarded in public procurement procedures is completely neglected. The Foreign Investors Council is not aware of any cases

where the Commission for the Protection of the Rights of Bidders in Public Procurement Procedures (the Commission) has exercised the power envisaged in Article 163 of the Law, to file a lawsuit for the annulment of the contract on grounds set forth in this Article. The Law should expand the number of cases in which public contracts can be annulled, and envisage specific procedures in which the Commission and the PPO could investigate abuses in the public contract award and execution procedures.

The Law is selectively applied in the part regulating the centralized public procurement of medicines. It is not clear 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 PPO, it is questionable whether it will be able to control public procurement plans and amendments to such plans. In accordance with the Law, the contracting authority may initiate the public procurement procedure if procurement is foreseen in the annual plan of public procurement. However, amendments to the Law introduce a novelty that allows the possibility of misuse, in the event that exceptional cases where public procurement cannot be planned in advance or for urgent reasons, the contracting authority may initiate the public procurement procedure and if the procurement is not foreseen in the public procurement plan.

The Government's Action Plan for the implementation of the Public Procurement Development Strategy for 2017 envisages the Government's obligation to deliver a Draft Public Procurement Law to the National Assembly for adoption. The new Public Procurement Law should comply with Directive EU 2014/24/. At the time of publishing of the White Book, the FIC did not receive a copy the Draft Law.

In the period October 3 – October 22, 2018 the Ministry of Finance organized public debate on Draft Public Procurement Law. The new Public Procurement Law is expected to create a favourable regulatory basis to begin eliminating the discrepancies mentioned in this edition of the White Book.

FIC RECOMMENDATIONS

- Urgent adoption of the new Law, harmonized with the directive with EU Directive 2014/24
- Active cooperation between the PPO, Ministry of Finance and Economy, Anti-Corruption Agency, budget inspectorate and State Auditing Institution and the Government of Serbia in the implementation of the Public Procurement Law and the Memorandum on Cooperation of 15 April 2014.
- Expansion of the administrative and expert capacities of the Public Procurement Office and State Audit Institution to effectively oversee the planning and execution of public procurements by contracting authorities and combat corruption.
- Amending the Law in relation to the Public Procurement Office's and the Commissions' authorities 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).

PUBLIC - PRIVATE PARTNERSHIP

1.44

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
To assure an efficient implementation of public investments, irrespective of the model of provision, systematic and organizational changes in the management of capital investments are necessary. This issue has been recognized and certain efforts have been made by the MoF, although with delays in the implementation. Through the way they are structured, PPPs could resolve a number of issues raised, including the more efficient provision of public service and a higher level of transparency in the procurement process.	2017		√	
In particular:				
The institutional capacities of the PPP Commission have to be further improved and strengthened for more consistent project reviews. It is critical that the PPP Commission draw knowledge from the projects that are currently going through implementation and tender process;	2012			√
Promote available and officially approved contract templates, e.g. ESCO street lighting contract templates. Promote related manuals for public partners to prepare ESCO projects;	2017		√	
Streamline the review and approval process for low investment projects using officialy approved contract templates for specific project types (e.g. street lighting, parking garages);	2017			√
Increasing the transparency of the public contracts and providing a better overview of the existing contracts in the Register of Public Contracts are important for knowledge sharing among various public entities, and need to be strengthened and supported (this is particularly the case with small Serbian municipalities).	2017			√
Amending the rules of the LGAP so as to exclude or limit the applicability of its provisions relating to 'administrative contracts' to PPP contracts.	2017			√
Practical implementation of the rules relevant for determining the project value that are PPP-specific needs to be improved and the capacities of the public sector strengthened to fully delineate such projects from purely public procurement projects.	2017			√
New rules on subsequently adapting PPP contracts at the request of funders are yet to be fully tested in practice and, in this respect, knowledge-sharing and capacity-building on the basis of best international practices would be highly welcome.	2017		√	
Take advantage of the IFI's support for project preparation and body of knowledge on PPPs. Resources from EIB's European PPP Expertise Centre (EPEC), the IFC's advisory services in public-private partnerships or EBRD's Infrastructure Project Preparation Facility (IPPF) can be used for project preparation.	2017		√	

CURRENT SITUATION

Serbia needs a better public infrastructure to support international, regional, and domestic connectivity and take advantage of its positive impact on macroeconomic competitiveness and economic growth. The growing need to build new public infrastructure and update existing infrastructure, invest in projects of general interest and provide services of public interest in Serbia, has required the creation of a legal and institutional framework for attracting private investment. The Law on Public-Private Partnership and Concessions (hereinafter: the "PPP Law") was adopted in 2011, introducing the concept of public-private partnerships into the Serbian legal system for the first time. Since then, several public-private partnership ("PPP") projects have been initiated and implemented in Serbia, mostly on

a small to medium scale, with the sectors involved varying from public transport, public lighting, energy and water, to the maintenance of roads and other infrastructure.

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

Recent improvements in PPP's status within the legal system, discussed in detail in the White Book 2017, are important prerequisites for an increase of investments through PPPs. Almost five years after PPP legislation was enacted for the first time, more than 50 projects have been positively assessed by the PPP Commission. However, according to the available information in the Register of Public Contracts, so far only a limited number of public contracts have been executed. In addition, the biggest infrastructure projects so far have mostly been executed in the traditional way, through bilateral arrangements and the "finance & build" model. The Register of Public Contracts does not contain bilateral arrangements.

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

POSITIVE DEVELOPMENTS

To tackle the above challenges and foster further development of PPP projects on the Serbian market, the PPP Law has recently been subject to amendments, which were described in detail in the White Book 2017. In addition, the By-Law on Granting Concession in Phases was adopted by the Government in January 2017 to further regulate in sufficient detail the procedure of granting a concession.

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

REMAINING ISSUES

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

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

However, in order to increase the share of PPPs in the development of infrastructure, the role of the PPP Commission should be more comprehensive and value adding, while, in parallel, the transparency of information about the implemented PPPs should be increased to ensure the sharing of know-how. Therefore, strengthening the capacities and capabilities of the PPP Commission to guide and be accountable for PPPs is a must. The PPP Commission's structure is not at the level required for the early phase of PPP implementation and it should be equipped with adequate resources and know-how

to be in a position to serve as an expert centre and promote and encourage PPP implementation. It is critical that at least some members of the PPP Commission have experience on PPPs that have gone through the implementation and construction phases. Only with actual experience could the PPP Commission screen projects and advise different levels of governments on the liabilities and responsibilities that PPPs entail.

In particular, strengthening the PPP Commission institutionally, expanding its competences (to include project preparation and monitoring) and capacities (to have more people with sector-specific expertise) as well as introducing a standardized, fast-track review and approval process for standardized, smaller PPP projects is particularly necessary in order to leverage the market potential of PPPs.

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

Interaction with the new Law on General Administrative Procedure: The new Law on General Administrative Procedure (LGAP) became applicable in June 2017, and it introduced the concept of "administrative contracts"; that is, contracts concluded between an administrative authority and a private partner within the administrative procedure. According to prominent experts and the applicable interpretation, PPP contracts may fall into this new category under the LGAP. The problem with this approach is that the relevant provisions of the LGAP significantly limit certain rights of private parties regarding such contracts, including, notably, the very right to terminate the contract (instead, a vaguely regulated concept of "objection" is at a private party's disposal in such specific cases). It needs to be mentioned that – if applied to PPP contracts eventually – this may become a significant obstacle for the PPP market going forward, since it will likely affect the financing of PPP projects and generally increase the costs and risks of the private partner.

FIC RECOMMENDATIONS

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

In particular:

- The institutional capacities of the PPP Commission have to be further improved and strengthened for more consistent project reviews, including an increase of its competences (to include project preparation and monitoring) and capacities (to have more people with sector-specific expertise).
- Promote available and officially approved contract templates, e.g. ESCO street lighting contract templates. Promote related manuals for public partners to prepare ESCO projects.
- Amending the rules of the LGAP so as to exclude or limit the applicability of its provisions relating to "administrative contracts" to PPP contracts.
- Practical implementation of the rules relevant for determining the project value that are PPP-specific needs to be improved and the capacities of the public sector strengthened to fully delineate such projects from purely public procurement projects.
- Take advantage of the International Financial Institutions' (IFI) support for project preparation and their know-how on PPPs. Resources from the European Investment Bank's (EIB) European PPP Expertise Centre (EPEC), the International Finance Corporation's (IFC) advisory services in PPPs or the European Bank for Reconstruction and Development's (EBRD) Infrastructure Project Preparation Facility (IPPF) can be used for project preparation.

TRADE

1.57

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		√	
Harmonization with EU regulations and standards is needed.	2012		√	
Simplification of the importation procedure.	2012			√
Providing clear guidelines on the contents of documents accompanying goods.	2012			√
Providing special regulation for private label products.	2012		√	
Enabling harmonisation through policies, standards and guidelines.	2012			√
Taking a uniform position on the interpretation of regulations.	2012		√	

CURRENT SITUATION

The Law on Trade occupies a central place among the rules governing trade in goods and services. From the beginning of 2013 there were no significant improvements in this area.

In relation to imports of food of animal origin, in the phase of importation we are still facing the problem of certificates issued in most countries of the European Union, not corresponding to certificates required for certain groups of products in Serbia. In addition, veterinary certificates are harmonized for certain product categories; however, a practical problem is the unavailability of an online form of these certificates for download.

Serbian regulations stipulate that 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 problem would not exist if Serbian regulations were harmonized with the EU acquis, as the latter does not require that this data appear on the product or its packaging. The same issue applies to other areas of trade as well.

The import procedure itself is complicated and burdened with formalities. This procedure lasts too long (usually from 10 to 15 days). This period is problematic when it comes to perishable items. The procedure is the same even if the same importer imports, at short intervals (e.g. every week), the same products, manufactured in the same way by the same manufacturer. Enabling a risk analysis of a smaller number of imports, or issuing a marketing authorization before obtaining an analysis result is a solution that would offer a certain degree of flexibility and would be a significant step forward.

In the field of exports of domestic products, 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. 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. Also contributing to the difficulties in the export of these types of products (especially meat and dairy products) to EU member states is the fact that Serbian food sector regulations and standards are still not harmonized with the corresponding regulations and standards applicable in the EU, meaning that the food produced in Serbia which does not meet the quality standards prescribed in the EU cannot be exported to EU countries.

POSITIVE DEVELOPMENTS

The currently applicable Law on Trade introduced the category of Private Label products into Serbian legislation.

This law improved the business environment by providing the possibility of transporting goods accompanied only by the documents related to the transportation of goods, something which certainly contributed to the simplification of this business segment and also significant cost savings.

Some improvements were made in the area of sales incentives. Specifically, it is no longer necessary to state the period of validity of the previous price of items on sale. Also, the terminology used in relation to sale incentives, i.e. the advertising thereof, has been harmonized with the Law on Advertising.

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, 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.

The adoption of the Law on Inspection Oversight, marked the beginning of the process of systematic coordination of inspection oversight in the Republic of Serbia, the establishment of cooperation among the inspectorates, as well as improved cooperation between inspectorates and other government bodies and private sector entities, thus significantly diminishing arbitrariness, inconsistencies, corruption, and other possible abuses.

In December 2016, the Government of the Republic of Serbia adopted the new Trade Development Strategy for the period from 2016 to 2020. This strategy envisages the development of a modern trade network, trade internationalization and competition, as well as support to the small and medium enterprises and entrepreneurs sector in the forthcoming period.

REMAINING ISSUES

The elimination of shortcomings related to the import of products would enable the efficiency and speed needed, saving time and money both to businesspeople and the government. Also, when importing goods, the question of the justification of the number of collected samples arises, where it would be useful to define the sampling frequency in relation to a specific product over a defined period of time. Then again, if the pallet is opened/unstrapped for sampling, the goods recipient will have it declared as "damaged upon receipt", causing further negative impact.

One of the incentives prescribed by the regulation is the "recognition of documents" (foreign laboratories, test reports and certificates, declarations of conformity), but the problem is that there are too few laboratories in Serbia cooperating with their counterparts in the EU to cover such a vast business area as trade certainly is.

Finding simple solutions for overcoming possible differences in practice between Serbia and its neighbouring countries may be achieved through the conclusion of bilateral agreements or through the issuance of appropriate instructions by the state authorities.

Not enough has been done in the field of secondary legislation. This leads to a situation where inspection services in different parts of the country apply different criteria in controlling and disciplining traders, due to the lack of uniformity in their interpretation of regulations. In addition, a significant shortcoming of the Law on Inspection Oversight and the Law on Trade is that they do not establish the principle of independence of inspectors in relation to the supervised entities. For example, the relationship between an inspector and supervised entity, whether indirect or direct, may pose a risk of the inspector's permissiveness in supervision, or the risk of his ill will toward the supervised entity. It would be advisable to introduce specific reasons for disqualification of inspectors into the Law on Inspection Oversight, to reflect the specific nature of this relationship.

FIC RECOMMENDATIONS

- Devote more attention to by-laws because the lack of by-laws makes the trade law largely inapplicable in practice.
- Harmonization with EU regulations and standards is needed.
- Simplification of the importation procedure.

ILLICIT TRADE PREVENTION AND INSPECTION OVERSIGHT

1.88

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
A consistent implementation of the National Programme for Countering the Shadow Economy.	2017	√		
Preparation and timely enforcement of changes in sector laws towards their harmonization with the framework envisaged by the Law on Inspection Oversight.	2015		√	
Allocation of adequate resources and funds to law enforcement bodies.	2014		√	
Regulating the system of performance assessment and incentives for officials engaged in fighting illicit trade.	2014		√	
Adaptation of the plan of rationalization of public administration in the part related to the reduction in the number of staff for control in order to prevent further reduction of resources to combat the grey economy. We believe that this rationalization should primarily relate to the administrative staff, and that the number of employees in control needs to be increased.	2015		√	
Implementation of integrated control of border crossings by all the involved departments, in order to prevent the illegal transit of goods across the border into Serbian territory and its further distribution through grey trade flows.	2017		√	
Enhancing the efficiency in processing cases associated with illicit trade before judicial bodies and pronouncing statutory fines for entities involved in illicit trade, thus achieving the purpose of preventative actions on other entities on the market.	2015			√
Coordinate methods of maintaining databases between applicants and courts and prosecutors, so as to monitor the efficiency of application processing in an adequate manner.	2015			√

CURRENT SITUATION

Progress made in countering the grey economy, and consequently also illicit trade in the previous period was apparent.

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 deferred prosecution ("principle of opportunity"), but this has been done largely at the expense of an adequate penal policy. An inadequately efficient penal policy discourages authorities from combating illicit trade on the ground, while at the same time failing to deter perpetrators due to the inappropriate level of risk associated with this type of illegal activity.

POSITIVE DEVELOPMENTS

A generally consistent implementation of the National Programme for Countering the Shadow Economy over the past period represents an important step towards a systematic combat against illicit trade. An Action Plan for implementation of the programs in 2017 and 2018 was adopted, which is a confirmation of the Government's commitment to fully implementing the program. In addition, the government officially declared 2017 and 2018 as years of fight against the grey economy, thus emphasizing the high priority that this topic carries for Serbia.

Illicit trade on a larger scale is regarded as felony, according to the Law on Organization and Jurisdiction of State Authorities in the Suppression of Organized Crime, Terrorism and Corruption, which enables the appropriate specialization of the relevant authorities in the field of illicit trade.

The Ministry of Finance has formulated measures in the area of taxation of excise products, primarily tobacco and coffee, through consultations with representatives of these industries. This has ensured that the adopted measures do not jeopardize the stability of the legal market, and in the case of tobacco, it has also led to a significant increase in tax revenues.

It is extremely important to emphasize the implementation of Serbia's Integrated Border Management Strategy, adopted for the 2017-2020 period.

The Coordination Commission for the Improvement of Inspection Oversight has established a Working Group for the Prevention of Illegal Trade, and both attach great importance to the adoption of the action plans (flowchart) for the enhanced control of trade in certain areas or certain products. It is important to note that the flowcharts are prepared and adopted in consultation with and taking into account the views of the representatives of the businesses operating in the areas in which enhanced control is envisaged.

An internal organizational unit responsible for supporting the Coordination Commission was also formed within the ministry responsible for the state administration for expert, administrative, and technical affairs in accordance with the Law on Inspection Oversight. Also, a tender for the e-inspector platform was completed, to connect four inspectorates by the end of this year, and all other inspectorates by mid-2019. It is very important that these deadlines be met, and that the integrated system enable improved risk analysis and coordination of inspection activities. In October 2018, Draft of Changes and Supplements of the Law on Inspection Oversight were delivered to public debate and the Foreign Investors Council supports expressed willingness to include general public.

REMAINING ISSUES

The Law on Inspection Oversight has not yet been fully implemented because the sector laws have not been harmonized with the umbrella law, although the deadlines for accomplishing this have been missed long ago. This prevents the use of the full potential of the law to suppress the grey economy.

The relevant law enforcement bodies have insufficient resources to systematically fight illicit trade, although their engagement is aimed at protecting budget revenues. This particularly refers to the lack of sufficient number of enforcers for control tasks, but also to the level of technical equipment and issues of salary levels and incentives for highly demanding work and results expected from inspection services. Given the rationalization of the state administration and the fact that a special status of the mentioned staff has not been defined in relation to administrative workers, it is expected that their number will be reduced further, which would certainly have a very negative impact on the capacity of the state apparatus to combat the grey economy. In addition, inspection authorities have insufficient capacities for the storage of seized goods, which is a factor that limits their performance. The existing regulations also prevent, to a great extent, a further stimulation of employees working with bodies responsible for control of the implementation of regulations to achieve desired results in the fight against illicit trade and protection of public revenues.

The risk levels for those engaged in the grey economy, and especially illicit trade, is still perceived as low compared to potential earnings. This is due to inefficient processing and an overly lenient penal policy. A disproportionately small number of cases of illicit trade are currently being prosecuted before the relevant courts, and in most cases the perpetrators are handed minimum sentences. Such cases are usually characterized as minor offenses, although there are grounds for criminal charges. Consequently, this sends the wrong message to potential perpetrators and additionally incentivizes illicit trade. Furthermore, no database coordination exists among applicants, prosecutors, and courts; and therefore, the efficiency of prosecution cannot be adequately tracked.

FIC RECOMMENDATIONS

The FIC supports the decisive and thorough implementation of the provisions of the Action Plan, which are at the same time the most important areas and activities expected in the upcoming period. These are:

- Comprehensive improvement of the inspection oversight system, which includes: Harmonizing the number of inspectors in accordance with the needs identified; Establishment of coordination of the work of inspectorates and other state bodies responsible for filing misdemeanour charges in the field of the grey economy with misdemeanour courts; Implementation of an integrated information system in the field of inspection oversight; Conducting professional training of inspectors in the field of inspection oversight in relation to sectoral regulations; Providing the missing equipment and funds for the operations of inspectorates; Improving the coordination of the work of the Customs Administration and inspection bodies through the exchange of data and harmonization of procedures for monitoring the grey economy flows; Standardization of the risk assessment process in the planning and implementation of inspection oversight in accordance with the guidelines; Conducting professional training of inspectors for the use of IT systems in planning inspection oversight and the continuation of the adoption and implementation of action plans (flowcharts) for areas and products significantly affected by illicit trade.

- Enhancing the efficiency in processing illicit trade-related cases before judicial authorities and adjudicating statutory fines for offenders, thus serving the purpose of preventative action, as a deterrent for other entities on the market. This also entails the harmonization of the practices of prosecutors' offices in dealing with criminal offenses with elements of the grey economy, as well as improving coordination of the activities of inspectorates and prosecutors' offices in combating crimes in the field of the grey economy.

- Amendments to the Law on Inspection Oversight and full alignment of other laws with the Law on Inspection Oversight.

- Control of persons performing unregistered activity by all competent bodies involved in the work of the Coordination Body for combating the grey economy.

- Improvement of the fiscal system, which entails the reduction of the number of parafiscal charges, enabling legal businesses to make savings relative to the existing system, and exchange of information on single sales with summary of data for risk analysis in inspection oversight.

- Implementation of integrated control of border crossings by all the involved departments, to prevent the illegal transit of goods across the border into Serbian territory and its further distribution through grey trade flows.

- Alignment of database management systems between applicants and courts and prosecutors, so as to adequately monitor the application processing efficiency.

CUSTOMS

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Faster and more efficient harmonization of the Customs Regulations of the Republic of Serbia with the customs regulations of the European Community.	2017	√		
Increase efficiency on all levels of administration, especially in terms of resolving customs payers' appeals.	2011			√
Amendments to Article 260 of the Customs Law - the proposal is that the payment period of the customs account should be no later than 30 days from the date of the invoice.	2017			√
Passing by-laws in order to enable the proper implementation of laws and avoid ambiguities in interpretation; in particular by-laws that are harmonized with the VAT Law of the Republic of Serbia, as well as a uniform application of the VAT Law in all customs units.	2009			√
The issuance by the Customs Administration, in cooperation with the Fiscal System Department, instructions and additional clarifications in terms of handling the customs procedrue in which the foreign entity occurs as a participant.	2016			√
Improvement or replacement of the IT system (ISCS) od the Customs Administration.	2011		√	
No further trade liberalization should be pursued without the industries' consent and a positive impact assessment of relevant sectors.	2012			√
Continuous education and training of customs officers.	2010		√	
Better online information system and introduction of online services within the customs procedure, with possibility of companies to have access to all relevant information.	2011			√
Eliminate paper documentation and switch to available electronic solutions.	2017		√	
Increaseing the efficiency of resloving requests that are in the 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 aceptance of a declaration.	2013			√
Introduce a check and official confirmation by the customs body concerning the tariff code when importing or exporting goods considered to be predominant for a legal entity. Also, in the case of subsequent control and establishing a different tariff classification, not to declare such a customs offense, as the customs declaration has been accepted (approved) by customs authorities.	2017			√
Introduction of a simplified correction of a customs document based on correction of the quantity of goods cleared.	2017			√
Consider simplifying the sampling process, as well as accepting the analysis of accredited foreign laboratories that are necessary for the export process, referring to conventional products that are imported.	2017			√

CURRENT SITUATION

Customs Law is based on EU legislation, which includes the processes of simplified customs procedures and declarations, customs brokers as intermediary agents etc.

On 18 July 2018, Proposal on Customs Law entered the Parliament. The amendments in the Proposal significantly improve the customs procedure for legal entities that are authorized for the simplified customs procedure. Within the proposed changes, the customs legislation shall be aligned with the EU customs laws that link the simplified customs procedure exclusively to the process of an Authorized Economic Operator ("AEO"), which requires that a legal entity which decides to apply for the simplified customs procedure must first obtain an AEO approval. In the Republic of Serbia there are 14 legal entities with an AEO license. Based on the experience, the process of obtaining AEO authorizations requires an additional effort from the legal entity to establish various controls, and its implementation shall be planned timely. The instructions are publicly available on the Customs Administration's website.

Besides the above mentioned amendments in the Proposal on Customs Law, it is expected a further harmonization of the customs legislation with secondary legislation, along with the specifying of legislative provisions through by-laws as well as the harmonization with EU regulations.

The Customs Tariff is harmonized with the EU nomenclature on an annual basis, the latest in November which shall be applicable for the following year.

The following Free Trade Agreements (FTA) are available in Serbia: CEFTA, EFTA, the Stabilization and Association Agreement (SAA) between the Republic of Serbia and the European Community, the PEM Convention, the Russian Federation, the Republic of Kazakhstan, the Republic of Turkey and the Republic of Belarus.

By concluding the free trade agreements, the Republic of Serbia enabled legal entities in Serbia to increase the volume of production and thus increase competitiveness in the regional market.

A revision of the CEFTA agreement is planned for 2018.

POSITIVE DEVELOPMENTS

The following positive developments have been identified that affect day-to-day business operations:

- The convention on the common transit procedure - the NCTS ("New Computerized Transit System")
- The Proposal on Customs Law (initiated by Customs tax authority of Republic of Serbia) introduces AEO authorization in line with EU practice which is a precondition for the simplified customs procedure. The AEO procedure for obtaining authorization is without significant costs for a legal entity, but also without significant financial or customs privileges, while it essentially encourages the legal entity to establish good control mechanisms for monitoring the flow of goods, which results in reliable reports that the Customs Administration can use. The ultimate outcome of the AEO is simplified and more efficient communication and exchange of documents with the Customs Administration.
- Introduction of digital exchange of documents for which we hope to have equal application in all customs offices.

REMAINING ISSUES

Customs Law

- Liberalization of customs preferences for import significantly affects existing operations of legal entities in terms of planning and making future business decisions. In order to ensure business continuity of existing legal entities, it is very important that planned preferences are timely and transparently communicated, as well as to ensure an agreement with the affected industry regarding the abolishment or reduction of import duties
- In 2015, in Article 218 of the Law, a significant tax relief was abolished for the import of new equipment, not produced in the country, which has a purpose to expand and modernize the existing production. We believe that reliefs of this type significantly stimulate the development and investments in the existing production and that it is necessary to consider reintroducing the same or similar exemptions to customs duty.
- In Customs procedure, it is unclear the participation of foreign entities, especially by taking into consideration the amendments of Value added tax law which has introduced a tax proxy for foreign entities.
- Article 260 of the Customs Law stipulates that the maturity of a customs debt shall be no later than 8 days, which is too short a period for a taxpayer who submits a large number of customs documents on a daily basis. Consequently, it results in data entry errors of customs documents and delays in settling the customs debt. Incorrectly processed customs declarations as well as

delays in the payment of a customs debt trigger forced collection or the activation of bank guarantees by the Customs Administration, which results in negative credit bank ranking of the legal entity. We suggest amending the Customs Law by extending the maturity period beyond eight days. We believe that such changes would allow flexibility in customs clearance, which would result in a reduced number of errors and reduced administration by both legal entities and customs offices.

- The Customs Law excludes the possibility of rectifying customs documents if, following customs clearance, based on the inventory stock count of goods at the receiving dock, the receiver identifies a discrepancy in inventory vs quantity reflected in customs documents. Such omissions are mainly due to unintentional errors occurring during the loading or delivery of goods, but they result in legal violations on the part of the legal entity even when the taxpayer self-declares the omission.
- Quality control inspections are regular at each importation of goods but are slowing down the customs clearance process even for the regularly imported goods that have been inspected by foreign accredited laboratories. Overall, the quality control tests are without deficiencies.
- In 2018, in the process of customs clearance, some technical obstacles are being encountered on a daily basis which slow down and complicate customs clearance, and their application varies considerably from one customs office to another. The most common examples are the following: (1) insisting on the seal of a foreign vendor on a commercial document, even though this is not a requirement abroad, (2) insisting on a written contract, even though a written contract is not mandatory; (3) an invoice in electronic form is not accepted as an original, i.e. valid document, and it is insisted on a paper document, even though that an "Electronic financial document" has been introduced.
- There are no clear guidelines for dealing with incomplete declarations, and there is no possibility to simultaneously use a simplified procedure based on a bookkeeping document and an incomplete declaration.
- Separate the time of calculation from the time of occurrence of a customs debt when issuing certificates of origin, in connection with the application of Article 253 of the Customs Law, or the so-called "no-draw-back" rule.

Free Trade Agreements

Free trade agreements are applied without major difficulties, but it is necessary to issue and process documents of origin more efficiently. The most common remarks by business entities:

- for goods with preferential origin, it is necessary to shorten the time necessary for the issuance of binding information on the origin of goods and the classification of goods;
- preparing for the electronic filing of a request for the issuance of a binding notification of the origin of goods and a request for verification of origin knowledge, as one of the steps in acquiring the status of an approved exporter;
- although an electronic document has been introduced, and seal and signature are not required, very often the EUR1 certificate is rejected if there is no seal in box no.12, even though all the other evidence certifies with certainty the origin of the goods.

FIC RECOMMENDATIONS

In order to improve efficiency and transparency in customs clearance, the Foreign Investors Council proposes the following improvements:

- It is necessary to transparently communicate the planned liberalization of customs preferences with the interested industry and to ensure the industry's consent based on an assessment of the positive impact on the relevant sector at least 12 months prior to the commencement of the preference.
- We propose the following changes to customs declarations: (1) to extend the period of payment of a customs duty of 30 days from the date of issuing a customs liability; (2) the date of issue of the customs invoice - it is recommended that this be the final date of clearance of goods and not the date of the acceptance of a declaration.

- A significant number of legal provisions require a further specification through by-laws as well as compliance with other relevant laws, such as: (1) alignment with VAT Law, regarding the treatment of a foreign legal entity or a tax proxy in a customs procedure; (2) The quality control of goods is significantly slowed down by sampling at each importation, even at the importation of goods within the core business activity. We suggest that, based on risk assessment, authorities should decrease the frequency of sample taking and start accepting analyses of accredited overseas laboratories relating to products that are normally imported.

- Increasing efficiency at all levels of administration: issuing resolutions on taxpayers' complaints; a more efficient handling of requests that are in the administrative procedure; a better on-line information system and the introduction of on-line services within customs procedures, allowing a legal entity to access information relevant to it; introducing a simplified correction of a customs document based on the correction of the quantity of goods cleared.

- Based on the product specification issued by producer, introduce a simplified verification and official confirmation of a tariff code by the Customs Administration when importing or exporting goods considered to be predominant for a legal entity. Also, in the case of conducting a subsequent control and establishing a different tariff classification, this shall not be considered a customs offence, as the customs declaration has been initially accepted (approved) by the customs authorities.

PAYMENT SERVICES

1.67

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Analysis of reasons why investments in the market have been modest since the PSL began to apply, and the identification of potential barriers to market entry. In this regard, the legislator should consider adopting the waiver option under Article 26 of the Payment Services Directive and amending the PSL to allow the establishment of so-called "small payment institutions". These institutions are subject to a special regime of less stringent authorization requirements, but also face in return limitations in the scale of business and other specific conditions and restrictions.	2016			√
Further harmonization with the European Union's acquis.	2013		√	
Publications and explanations by the National Bank of Serbia further detailng the scope of the PSL and the supervisory and enforcement approach of the regulator in order to improve legal certainty for companies entering or continuing in the market.	2016		√	

CURRENT SITUATION

After almost three years since the beginning of application of the Payment Services Law (hereinafter: the Law), the National Assembly approved, on 8 June 2018, the Law on amendments and supplements to the Law with the aim of improving the legal framework in the area of payment services.

These amendments provide a greater transparency and better comparability of charges for payment services related to payment accounts, regulate a change of a payment account, and establish the right to a payment account with basic services. The amendments especially take into account payment service users' access to information and provide a greater protection of their rights, which has led to a greater transparency of charges for payment services. The Law has removed administrative barriers for a change of a payment account for payment service users. Imposing an obligation on a bank to enable a consumer, a resident of the Republic of Serbia, at his/her request, to open and use a payment account with basic services, has created conditions for stimulating the development of modern payment methods as well as for making payment services available to a larger number of people. These amendments and supplements shall enter into force on the eighth day from its publication and will be applied upon the expiry of the ninth month from the day of its entry into force.

In order to encourage the growth and efficiency of non-cash payments with credit cards and protect the interests of users of these payment services, Serbia adopted the Law on multilateral interchange fees and special operating rules for card-based payment transactions in June 2018. Modelled after EU regulations, the Law regulates in more detail the concepts that will help improve transparency on the market, increase competition among card brands, and provide a better protection of consumers and traders. Additionally, this Law regulates the level of charges and establishes a surveillance over the compliance with the rules relating to payment cards. The Law limits the multilateral interchange fees by prescribing that this fee for debit card-based payment transactions may not exceed 0.2% of the value of the performed transaction, while multilateral interchange fees for credit card-based transactions may not exceed 0.3% of the value of the performed transaction. In order to mitigate the effects of this change, in the first six months of application, interchange fees may be charged in the amount of up to 0.5% for debit cards and 0.6% for credit cards.

It is expected that the regulation of this specific area may help bring down the costs of accepting payment cards, increase transparency and competitiveness on the market, facilitate modern payment methods, and reduce the amount of cash on the market and the shadow economy.

POSITIVE DEVELOPMENTS

Amendments to the Decision on detailed conditions and methods for opening, maintenance and closing of current accounts, applied since 1 October 2017, specify the provisions relating to unbounded use of the seal of a company and clearly emphasize that banks may not refuse to provide payment services only due to the fact that a client does not want to use the seal in performing transactions with the bank.

The amendments and supplements to the Law reduce the

liability of the payer for losses due to unauthorized payment transactions with stolen or misused payment instruments, from RSD 15,000.00 to RSD 3,000.00, which, in turn, increases the liability of the bank. Additionally, banks are required to invest in additional security measures in order to reduce the number of abuses.

The position of a payment service user shall be further improved by prescribing that in a pre-contracting phase, apart form other information determined by the Law, the bank must provide the user with a document containing a list of services from the List of representative services and data on the specific fee for each such service. The user shall be provided with a complete overview of services on the market for the purpose of choosing an appropriate payment services provider and shall be in a position to submit a request for a change of a payment account, or the transfer of certain payment services, with or without canceling a payment account opened with a previous payment service provider, quickly and easily and without any administrative requirements from the payment service provider. This increases the confidence of citizens in the financial system, which will lead to a greater financial inclusion and availability of modern services that enable cashless payments.

FIC welcomes the fact that on October 22, 2018 the National Bank of Serbia instant payment system operated by the NBS (Instant Payments Serbia) started working, while the full effects of said system will be seen in the upcoming period. period.

REMAINING ISSUES

According to data published by the National Bank of Serbia (NBS), there are 11 companies in the Payment Institutions Register, and only one electronic money institution. This is a decrease compared with the previous report, so the impact of the Law on the development of this segment of business transactions still has not given satisfactory results. Since the conditions and the minimum capital requirement for the performance of payment services have been additionally tightened, the intent of the regulator is obviously no longer to increase the number of "players" on the market, but to achieve a higher degree of protection against general business risk.

With the new legal solutions, payment service providers are expected to provide a list of systemic solutions so that the new obligations imposed in relation to payment services can be fulfilled, which will consequently lead to an increase in operating costs.

The position of banks as payment service providers in card-based payment transactions was additionally complicated under Articles 9 and 14 of the Law on multilateral interchange fees and special operating rules for card-based payment transactions. This provision imposes an obligation on banks to issue free of charge to each client with a payment card tied to a current account a domestic payment card (i.e. a card for which the processing, netting and settlement of transfer orders in domestic payment transactions is performed in Serbia). A bank may issue other payment cards as well, but only at the request of a client and only if it has previously issued a payment card for domestic payment transactions. Besides the additional costs for banks – payment service providers arising from the issuing of such a card, the said provision also violates competition rules on the payment card services market.

FIC RECOMMENDATIONS

- Establishing a common platform for the exchange of information in the process of changing the account and opening and maintaining accounts with basic services
- Asking the opinion of the Commission for Protection of Competition whether Article 9 of the Law on multilateral interchange fees and special operating rules for card-based payment transactions violates competition rules
- Amending the Law on multilateral interchange fees and special operating rules for card-based payment transactions, in a manner that the issuance of cards with domestic payment transactions not processed in the Republic of Serbia would not be conditioned on the previous issuance of a payment card for the execution of domestic payment transactions

NON-PERFORMING LOANS

1.22

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Acceleration of the enforcement procedure in practice and harmonization with the situation in practice with the newly adopted Law on Enforcement.	2016			√
Promoting out-of-court corporate debt restructuring in practice in accordance with the legislative framework and motivating investors to provide fresh money with super-seniority ranking over existing creditors under out-of-court voluntary debt restructuring.	2016			√
Enabling assignment of NPLs between a Serbian bank and Serbian borrower to non-residents.	2017			√
Enabling NPL acquirer to become party to on-going dispute without consent of the counterparty.	2017			√
Adoption of authentic interpretation of Article 48 of the Enforcement Law by the National Assembly of the Republic of Serbia in regard to collection of receivables from NPL transactions bearing in mind the nature of NPL transactions.	2017	√		
Clarify by the regulator the application of the definition of banking secrecy with regard to NPL transactions in order to facilitate NPL transactions either through changes to the Law on Banks or an authentic interpretation by the National Assembly of the Republic of Serbia of Article 47 of the Law on Banks.	2017			√
Eliminating the impediments to loan write-offs by banks.	2016			√
Providing legislative framework for the recognition of synthetic sale arrangements (in order to avoid any misunderstanding whether such a concept is feasible under Serbian legislation).	2016			√
Strengthening of the institutional framework in order to accelerate the re-registration procedure for collaterals before the relevant authorities (i e real estate cadastres and pledge registries).	2016			√

CURRENT SITUATION

Non-performing loans (NPLs) have continued to accumulate since the financial crisis of 2008, which has had a strong impact on the balances and liquidity of banks. NPLs in Serbia have already reached levels which are high enough to negatively influence the capital adequacy ratio of banks and the stability of the financial market. However, the banking sector in Serbia continues to remain relatively highly capitalized.

The NBS amended the Decision on Risk Management by Banks (hereinafter: Risk Management Decision). These amendments allowed for the possibility for banks to assign to any legal entity due receivables from NPLs disbursed to legal entities, entrepreneurs, and agricultural producers as well as undue loans disbursed to said entities if such loans are classified as problematic under the relevant NBS decision. It is mandatory that the NBS be notified on each assignment at least 30 days prior to the conclusion of the relevant assignment agreement.

Since amendments to the Risk Management Decision were adopted, banks have not been required to attempt collection of their NPL receivables, and the assignee does not have to be primarily engaged in financial activity. The NPL can be assigned to any legal entity if the borrower is a legal entity/entrepreneur or agricultural producer, or solely to another bank if the borrower is an individual.

According to the latest publicly disclosed information the NPL rate is approximately 9%.

POSITIVE DEVELOPMENTS

Recently, the Government adopted the Strategy for Resolving NPLs (hereinafter: Strategy). This is an obligation Serbia undertook upon signing 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 for the further transfer and assignment of NPLs. The Serbian Government also issued an Action Plan the implementation of which will be monitored in the on-going harmonization of the financial sector legislation with EU standards.

In addition, the shortcomings that were present in the Mortgage Law, which affected the enforceability of mortgages for several years, were finally addressed by the amendments adopted. These amendments are aimed at improving out-of-court foreclosure and better aligning incentives for debt restructuring.

The Law on Real Estate Valuers sets out basic guidelines for the conduct of licensed valuers and prescribes eligibility requirements for licensed real estate valuers. Its enactment is a step forward in the field of collateral valuation, which is important for mortgaged loan agreements and other operations of financial institutions.

On the FAQ page of its official website, the NBS published its interpretation of the provision of the Law on Banks on banking secrecy exclusions. The NBS made it clear that the formulation "other persons who, due to the nature of the activities they perform, have access to data which are classified as bank secrecy", should be interpreted as to include investors in NPLs as well as their legal and financial advisors in the transactions. This interpretation provides a new impetus for the NPL market, still, the issue of banking secrecy exclusions should be resolved either by an authentic interpretation of the National Assembly of the Republic of Serbia, or through amendments to the Law on Banks.

REMAINING ISSUES

The new Law on Enforcement became applicable in July 2016, nevertheless, lengthy enforcement procedures still remain an issue in receivables collection practice.

The Litigation Law potentially prevents an NPL acquirer from becoming party to an on-going dispute, prescribing prior explicit consent of the counterparty. However, the proposal of the Law on amendments of the Litigation Law entered the parliamentary procedure on 5 October 2018, which, if adopted, will contribute to the development of the market for the purchase of NPLs, as the proposed wording no longer requires the respondent's consent for change of plaintiff in the proceedings.

Pursuant to the Law on Foreign Exchange Operations (FOREX Law) an NPL deriving from a loan agreement between a Serbian bank and a Serbian borrower may not be assigned to a non-resident entity. In addition, a resident borrower is required to inform the NBS about any executed cross-border loan agreement, as well as about every change of a cross-border creditor, which may lead to problems in practice, such as obstruction of cross-border NPL assignment by resident borrower.

Despite the existing legal framework for voluntary corporate debt restructuring, this mechanism remains profoundly underutilized in practice. The lack of new funding remains a major obstacle in the implementation of out-of-court voluntary restructuring plans as fresh money providers are currently protected only in the event of insolvency. Another potential obstacle to resolving distressed situations is the non-assignability of performing corporate loans outside the banking sector, which may prevent the effective resolution of large distressed borrower groups under restructuring.

The rules for tax deductibility of bad debt provisions/write-off for banks are often ambiguously interpreted in practice, which may affect banks' intention to dispose of such loans. In that regard, eliminating the impediments to loan write-offs by banks should be clearly legislated.

The Commercial Appellate Court passed a few decisions with an interpretation of Article 48 of the Law on Enforcement and Security (the "Enforcement Law") that may negatively impact the position of NPL creditors in enforcement collection of receivables acquired in NPL transactions. According to the above-mentioned interpretation and the ensuing case law made on the basis of it, a receivable acquired on the basis of an assignment agreement cannot be collected by an entity which is not designated as the enforcement creditor in the enforcement title in the enforcement procedure, as Article 48 of the Enforcement Law does not recognize the transfer of a receivable on the basis of an assignment agreement as valid grounds for the implementation of the enforcement procedure. However, the National Assembly of the Republic

of Serbia adopted the Authentic Interpretation of said Article explaining that the assignment to an entity not designated as a creditor in the enforcement title/credible document is a valid ground for initiating the enforcement procedure.

The currently applicable legislation does not explicitly recognize the synthetic sale arrangement and also the synthetic sale of NPLs is not specifically recognised by the relevant tax laws.

Finally, the 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

- Promoting out-of-court corporate debt restructuring in practice in accordance with the legislative framework and motivating investors to provide fresh money with super-seniority ranking over existing creditors under out-of-court voluntary debt restructuring.
- Enabling assignment of NPLs between a Serbian bank and Serbian borrower to non-residents.
- Eliminating the impediments to loan write-offs by banks.

FOREIGN EXCHANGE OPERATIONS

1.21

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adapt wording of the Law and interpretation in practice (by the NBS and the Ministry of Finance in particular) to approach upon which all the prohibited operations are explicitly prescribed as such, whereas other activities should be considered permitted.	2017			√
Adopt the remaining by-laws for the full implementation of the Law.	2017			√
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			√
Enable resident-legal entities to provide warranties and other security instruments under credit transactions of the parent companies abroad.	2017		√	
Expand the framework for guarantee transactions provided for by Article 26 of the Law, esspecilly in the area of foreign trade transactions (e.g. a good performance guarantee should be freely obtained by a resident (user) for investment works performed by a non-resident or branch office-resident founded in Serbia by a non-resident).	2017		√	
Simplify the setting-off rules for all types of curent and capital transactions, especially when set-off participants are affiliated, 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			√
Reconsider Articles 7,20 and 33 so that the issues of transfer, payment and collection of receivables and debts be resolved adequately for all types of current and capital transactions, as explained above. Regulate the provisions on the transfer of debts from carried out foreign trade of goods and services of residents under Article 7 of the Law, by prescribing the requirement of the creditor's consent in the debt transfer, in order to protect the interests of creditors in the underlying transaction.	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 on Foreign Exchange Operations and the Law on Capital Markets) in order to avoid ambiguity in the application and interpretation thereof.	2014			√
Make better public availability of official interpretations and opinions of state authorities in the field of forex operations, especially the NBS, which is particularly important for application consistency by all the participants (e.g. create announcement of official opinions on the regulator's website, create section answers to the questions on the website etc).	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Create mechanisms enabling the conduct of some operations that are not controversial from the aspect of forex regulations, with only precise by-laws in that field still missing (e.g. foreign transactions impossible due to the lack of a specified payment code or when the specific purpose of the cross-border loans is missing in by-laws, etc.).	2016			√
Enable securitization of domestic receivables from certain categories of non-residents.	2016			√
Enable cross-border direct debiting in general (not just for electricity trading).	2016			√
To liberalize the law in the part concerning the possibility of resident individuals to freely trade in securities abroad, including a complete liberalization of bond trading, structural pproducts, structural deposits, ETFs, as well as investments in investment funds in foreign markets.	2017		√	
Consider the possibilities of liberalization of deposit transactions of residents abroad, especially for companies subject to project financing by foreign banks and international financial institutions.	2017			√

CURRENT SITUATION

On 28 April 2018, amendments to the Law on Foreign Exchange Operations (Official Gazette of RS nos. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) (hereinafter: "Law") entered into force. Exceptionally, the application of certain provisions concerning the takeover of foreign exchange control by the National Bank of Serbia (NBS) was postponed until 1 January 2019. Additionally, since the last edition of the White Book, several by-laws have been adopted and amended.

The main reasons for the adoption of the said amendments are the harmonisation of the obligations that Serbia undertook under the Stabilisation and Association Agreement (SAA) and the alignment with international standards in the prevention of money laundering and terrorism financing. Additionally, these amendments contribute to the further development of the digital and IT sector in Serbia - in accordance with the Serbian Government's activities aimed at improving this area.

Certain recommendations from previous White Book editions have been adopted, such as enabling (under certain conditions) residents - legal entities to provide guarantees and other types of security for credit operations of parent companies abroad, introducing the creditor's consent for the transfer of debt arising from realized foreign trade in goods and services, enabling residents to obtain guarantees from non-residents for the performance of investment works of non-residents in Serbia, and liberalising rules concerning the possibility for residents - natural persons to trade in securities abroad.

For the purposes of efficiency and integrated supervision, the NBS shall take over the responsibilities of the Ministry of Finance - Tax Administration for the issuance and withdrawal of authorizations and certificates for performing currency exchange operations and the supervision over currency exchange operations and foreign exchange operations of residents and non-residents.

In conclusion, although there are certain improvements in the field of foreign exchange operations, there is still room for further liberalisation of the Law in order to increase the attractiveness of investing in Serbia.

POSITIVE DEVELOPMENTS

The main amendments to the Law and the by-laws are as follows:

- The circle of issuers of long-term debt securities in which residents may freely invest has been expanded - residents may now also invest in long-term debt securities issued by the European Union ("EU") and legal entities within the EU territory, while long-term securities whose issuers are from the member states of the Organization for Econom-

ic Co-operation and Development (OECD) are still subject to restrictions in the form of a minimum credit rating;
- Capital flow based on short-term portfolio investments has been liberalised - residents and banks may purchase and sell short-term securities of certain issuers while non-residents from the EU may buy and sell short-term securities in Serbia in accordance with the law governing the capital market;
- The creditor's consent is required in cases of allowed debt assignments - this rectification of the Law has been made in order to comply with the general rules on contractual relations;
- Executing certain cross-border credit transactions in electronic form has been enabled;
- Short-term borrowing by natural persons and branches has been enabled - residents - natural persons may take a credit or loan with a repayment period of up to one year from non-residents from the EU, whereas branches may take a credit or loan from a non-resident - founder from the EU under the same conditions;
- The approval of financial loans to non-residents by resident legal entities, as well as the issuance of guarantees and other types of security for credit operations between non-residents, has been liberalized – a resident - legal entity may grant a financial loan to a non-resident - debtor from an EU member state. However, for the granting of financial loans to non-residents - non-EU debtors, it is still required that the non-resident - borrower is majority owned by a resident. In any case, the resident is required to contract for and obtain from the non-resident the instruments for securing the collection of receivables. Also, under certain conditions, residents ¬- legal entities, may provide guarantees and other types of security for credit transactions between non-residents;
- The scope of operations for which a resident legal entity may obtain guarantees and sureties from a non-resident has been expanded – residents - legal entities may now obtain guarantees and sureties from non-residents in connection with operations of import of goods and services, as well as operations of carrying out investment works by non-residents in Serbia;
- Cross-border payment transactions may now be performed through a payment institution and the public postal operator by all residents (not only natural persons);
- Humanitarian organizations may receive humanitarian donations from abroad through electronic money issuers;
- The sale and purchase of digital products in foreign currencies in Serbia is permitted under certain conditions - (i) that the payment is made using a payment card or electronic money through a local payment service provider, and (ii) that these products are delivered exclusively through telecommunication, digital or IT devices;
- The obligation to transfer foreign currency from a foreign account to an account in Serbia has been abolished in certain cases – a resident that has been granted approval to keep foreign currency in a foreign bank account for collection based on: (i) tax refunds realised in a foreign country, (ii) sales and income from securities abroad and (iii) a foreign court order; is not obliged to transfer foreign currency to its account in Serbia after the expiration of the prescribed deadline if it has obtained approval to keep foreign currency abroad on another basis.
- Repayment periods and grace periods for financial credits / loans have been abolished in certain cases - credits taken from a non-resident from an EU member state may be repaid, or their repayment may commence, before the expiration of the prescribed deadlines.

REMAINING ISSUES

Despite the partial liberalisation in the field of forex operations, the current legislation remains restrictive, with the aim of protecting and preserving the macroeconomic stability.

We believe it is necessary to adapt the wording of the Law and the interpretation in practice to the approach in which prohibited operations are explicitly prescribed as such, while all other activities should be considered permitted. This principle has already been set out in Articles 3 (1) and 10 (1) of the Law, however, due to the legislative approach prescribing, in other parts of the Law, which transactions residents and non-residents may perform, the predominant interpretation in practice remains that all other unregulated activities are not in accordance with the Law. Legal transactions and the market continuously evolve, and it is neither possible nor expedient to apply a legislative technique that lists the allowed operations, while regarding the others as unpermitted. In practice, this perennial approach results in situations where certain operations, which the legislator does not seem to intend to exclude, cannot be performed due to the lack of governing norms. In addition, it is noticeable that, in certain matters, the competent authorities' interpretation narrows down the scope of

application of certain rules, thereby constraining the operations of participants in the field of forex operations.

However, if a list of permitted transactions is retained, we believe that it needs to be expanded wherever justified and feasible, especially when it comes to groups of affiliates, which seek to simplify financial relations within the group. Therefore, the issue of liberalisation of foreign credit and deposit operations remains open, and such liberalization is necessary to enable the provision of more sophisticated banking services, such as cash management, cash pooling and similar packages.

We emphasize that the issues of transfer, payment and collection of receivables based on current and capital transactions are not adequately regulated, since only Article 33 sets the rule for all types of permitted current and capital operations, but only in transfers between two non-residents. Articles 7 and 20 regulate transfers in 'realised' foreign trade and credit transactions, while similar rules are missing for all other types of transactions - for example, for receivables arising out of direct investment, guarantees, real estate, etc. The very concept of realised foreign trade is not clear, and brings into question the possibility of transfer under Article 7 when it comes to claiming an advance payment refund before the performance of the transaction. Also, the provisions on obtaining the approval of the Government for certain operations, in particular Articles 7, 20 and 33, need to be re-examined as they appear to be unnecessarily broad and restrictive, especially when it comes to the assignment of non-resident's receivables. In addition, the term "state-owned company" used in these articles is not clear and should be specified so as not to include companies with minority state capital (in which cases it appears inappropriate to be required to obtain approval from the Government).

Moreover, it remains necessary to liberalize the cross-border set-off of mutual receivables and debts, in accordance with the general rules of contract law. The current set-off rules are defined only for certain types of operations, while there remains a gap when it comes to other operations (e.g. real estate operations) and the interpretation in practice that these are unpermitted. Also, there is a need in practice to liberalise foreign deposit operations of residents, especially for companies that are the subject of project financing by foreign banks and international financial institutions.

Furthermore, the by-laws regarding foreign cash inflows do not fully allow the automation of international payment transactions. In order for a resident to realise foreign cash inflow, it must first provide the bank with information regarding the basis for collection and other data necessary for the execution of the collection. In its attempt at liberalisation, the NBS excluded the application of the aforementioned procedure for certain types of inflows on a single basis in the amount of up to EUR 1,000, but only within the IT sector. Given the modern business dynamics, it is necessary to also abolish these administrative requirements for non-IT businesses, as well as for inflows with different legal bases and exceeding EUR 1,000.

Moreover, only the conditions for granting financial loans to non-residents - debtors from the EU member states have been liberalised. However, the restriction on residents to approve a financial loan to a non-resident only if it is majority owned by a resident is still applicable to non-residents outside of the EU member states. It is unclear how this change will affect entities such as international financial organizations, whose formal registered seat is neither in the EU nor outside the EU. Additionally, the newly-introduced discretion of the NBS to restrict individual residents from providing guarantees and other types of security for foreign loans or from granting loans to non-residents creates significant legal uncertainty. The restriction procedure itself and the moment at which the NBS may render the decision on restriction are not further defined. Furthermore, the wide scope of this discretion of the NBS' applies not only to foreign loans granted by a resident to a non-resident and guarantees/securities for foreign loans, but also to guarantees/securities provided by residents for foreign loans taken by residents (which tightens the legal regime for such loans).

Finally, the Law now allows legal entities and entrepreneurs to perform cross-border payment transactions through a payment institution and the public postal operator. At the same time, however, the Law on Payment Transactions of Legal Entities, Entrepreneurs and Individuals Not Engaged in Business Activity ("Official Gazette of RS" no. 68/2015) prescribes the obligation for legal entities and entrepreneurs to make payments through a current account opened with a bank or the Treasury Department (which indirectly indicates that payment institutions and the public postal operator are not authorised to conduct international payment operations). For this reason, it is necessary to harmonise the aforementioned law and the law regulating payment services with the amendments to the Law

in order to fully enable legal entities and entrepreneurs to perform cross-border payment transactions through a payment institution and the public postal operator.

Therefore, the policy in the area of forex operations should be directed towards the further liberalisation of current and capital transactions in order to harmonise the applicable Serbian legislation with EU regulations and international standards in this area. It should also be ensured that the application and interpretation of the regulations by the competent authorities is accompanied by adequate amendments.

FIC RECOMMENDATIONS

- Adapt the wording of the Law and interpretation in practice so that prohibited operations are explicitly prescribed as such, whereas all other activities are considered permitted.
- Ensure better public availability of opinions of state authorities in charge of forex operations, in particular NBS, for the consistency in application of regulations by all participants (e.g., to introduce the publication of official opinions on the regulator's website, introduce a section of responses to questions on the website, etc.).
- Reconsider the wide scope of NBS' discretion to restrict a resident from granting securities or guarantees in relation to foreign loans, especially in relation to regular foreign loans and further regulate the procedure thereof.
- Simplify the set-off rules for all types of current and capital transactions and allow cash pooling between affiliated parties.
- Reconsider Articles 7, 20 and 33 of the Law so that the transfer, payment and collection of receivables and debts are resolved adequately for all types of current and capital transactions.
- Enable foreign inflows without prior notification to the bank, subject to condition (if necessary) for such notification to be made subsequently and electronically at certain time intervals (e.g. monthly, quarterly, etc.).
- Further liberalisation of foreign deposit transactions of residents, especially for companies subject to project financing by foreign banks and international financial institutions.

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

1.75

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		√	
Consider Comments delivered by the Foreign Investors Council on 27 February 2017 to the available text of the Draft Law on the Prevention of Money Laundering and Financing of Terrorism.	2017			√

CURRENT SITUATION

The new Law on the Prevention of Money Laundering and Financing of Terrorism (RS Official Gazette No 113/2017; hereinafter: "the Law"), as the previously applicable law in this area, 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 entered into force on 25 December 2017, and its application started on 1 April 2018. The liable parties have been given a period of one year from the date of entry into force, to implement the actions and measures envisaged by this Law, also to the existing clients.

The new Law has brought many changes compared to the previous law, with the most significant one concerning different definitions of certain terms or definitions of completely new concepts (such as cash transactions, legal person under foreign law, business relationships, top management). It also introduces terms and obligations in relation to domestic public officials (so far only foreign officials have been defined), new liable parties and a more accurate definition of their obligations, (lawyers, notaries, virtual currency operators). It extends the mandatory risk analysis (risk assessment at several levels – state level, liable party level, at the level of the client, business relationship or transaction). In addition, it clarifies the obligation to identify the ultimate beneficial owner, collect data on the origin of assets in case high-risk clients, it extends the circle of third persons who may be entrusted with the performance of individual actions, the handling of situations when a party is not physically present, and authorized persons (besides the authorized person and deputy, the liable party should also appoint a member of the top management responsible for the implementation of the Law).

State authorities were under the obligation to adopt relevant by-laws within four months of the date of entry into force of the Law. In this respect, the line minister has already adopted the Rulebook on the methodology for performing activities in accordance with the Law on the Prevention of Money Laundering and Financing of Terrorism (RS Official Gazette No. 19/2018). Other relevant authorities have adopted risk assessment guidelines and indicators to identify suspected money laundering, amendments to the Decision on the establishment of a Standing Coordination Group for the supervision of the implementation of the National Strategy for Countering Money Laundering and Financing Terrorism, while the drafting of the new National Strategy in the field with the accompanying implementing Action Plan is under way.

In addition, amendments were made to the Law on Restrictions on Disposal of Property with the Aim of Preventing Terrorism (RS Official Gazette Nos. 29/2015, 113/2017, 41/2018), which, like the previous law, defines actions and measures to limit the disposal of assets of listed persons, the authorities of the state bodies to implement these measures, as well as the rights and obligations of natural and legal persons in the implementation of the law. The amendments primarily concern the procedure regarding the persons subject to sanctions.

Besides the aforementioned regulations, following a recommendation by the Manival Committee, the Law on the Central Register of Beneficial Owners entered into force on 8 June 2018, introducing the obligation of legal entities and other entities registered in the Republic of Serbia to determine the beneficial owners, to provide the required documentation and to register the data and documents with the Central Register of Beneficial Owners with the Serbian Business Registers Agency (SBRA), once the Central Register has been formed.

In February, as well as in October 2018, despite the adoption of the new Law and other accompanying regulations, the Financial Action Task Force (FATF) identified Serbia as a jurisdiction with a flawed anti-money laundering and terrorist financing system, primarily due to poor enforcement of regulations in this area. In the meantime, Serbia has undertaken to continue its cooperation with international bodies in this area in order to strengthen the application and effectiveness of its regulations in this area.

POSITIVE DEVELOPMENTS

In 2017 and 2018, the competent authorities intensified the adoption of all the necessary regulations, and to some extent they also took into account the comments made by the liable parties and the interested public on the previous draft law.

The new Law, as well as other regulations in the field of prevention of money laundering and financing of terrorism, are almost completely harmonized with the relevant EU directives and international standards and conventions in this area, which is of particular interest to foreign investors.

The Foreign Investors Council supports the initiative to continue not only improving the legal framework, but also intensely monitoring the implementation of all adopted regulations and cooperation with all competent state authorities, with the hope that the new statutory provisions will bring the much needed legal certainty, taking into account the specificities of Serbia's legal framework.

REMAINING ISSUES

Although the Law has already been adopted with practically no public consultations and without a substantive debate in the National Parliament, the Foreign Investors Council emphasizes the need for good cooperation between all competent authorities and investors, companies, professional associations and business organizations, if the Law is to be successful implemented, to increase the level of legal certainty in the implementation of all regulations in this field, and for all liable parties to be able to plan their activities in a timely manner.

The application of the Law primarily depends on the actions of the Administration for the Prevention of Money Laundering (APML) 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 define mechanisms for their implementation. The APML stepped up its activities and demands toward entities subject to the Law in 2017, 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.
- Ensure high-quality public consultations in the adoption of new regulations in the field of combating money laundering and terrorist financing, and invest additional efforts to apply existing regulations in this area more effectively.
- Continue organizing adequate seminars and workshops to train entities subject to the Law, with a view to increasing effectiveness of its implementation.

LAW ON THE CENTRAL REGISTER OF BENEFICIAL OWNERS

CURRENT SITUATION

The Law on the Central Register of Beneficial Owners, (hereinafter referred to as: Law), was adopted on 25 May 2018, and published in the Official Gazette of the Republic of Serbia, No. 41/2018, on 31 May 2018 . The Law was passed in a summary process, without a public debate. The Law came into force on 8 June 2018.

The Law regulates the establishment, content, basis of recording and the manner of keeping the Central Register of Beneficial Owners of legal entities and other entities registered in Serbia in accordance with the law.

The Law sets forth the obligation of registering all individuals who ultimately own or control a registered legal entity.

The Law applies to the following registered entities: (i) legal entities, other than public joint stock companies; (ii) cooperatives; (iii) branches of foreign companies; (iv) business associations and associations, other than political parties, trade unions, sport organizations and associations, churches and religious communities; (v) foundations and endowments; (vi) institutions; (vii) representative offices of foreign companies, associations, foundations and endowments.

The Law does not apply to business entities and institutions in which the Republic of Serbia, autonomous province or a local government unit is the only member, or founder.

The Central Register is a public, unique, electronic and centralized database of natural persons who are beneficial owners of a legal entity or another entity registered in the Republic of Serbia (hereinafter referred to as: registered entity). The Central Register is kept by the Serbian Business Registers Agency (SBRA) in electronic form, through the registrar.

There are two ways to register data. By the registrar based on the data taken from the competent state authorities on the registered entity; the deadline for downloading the data is within two business days of the date on which the change occurred, i.e. date on which the relevant state authority received information on the change. The other way is by the authorized representative of the registered entity is obliged to record the data in the Central Register no later than 15 days from the date of occurrence of the basis of recording.

At the request of the interested person, the Agency is required to issue the following documents, within two business days of the date of receipt of such a request, at the latest: (i) excerpt from the Central Register with data on beneficial owners of the registered entity; (ii) certificate from the Central Register of historical data on beneficial owners of the registered entity; (iii) certificate from the Central Register that certain natural person is registered or has been registered as the beneficial owner of the Registered Entity.

Depending on the legal form or form of organization, the Central Register contains the following information about the registered entity: (i) business name or title; (ii) corporate address; (iii) date of entry, change or deletion of data; (iv) identification number assigned by the Statistical Office of Serbia; (v) tax Identification number (TIN); (vi) status of the registered entity (active, bankruptcy, liquidation, forced liquidation, deleted); (vi) legal form, or form of organization; (vii) code of prevailing activity, or area of achievement of objectives; (viii) data about the representative; (ix) natural person registered as a member of a governing body; (x) share (registered) capital; (xi) data on shareholders and founders and their respective shares, i.e. number and percentage of their shares; (xii) abbreviated business name; (xiii) foreign language business name; (xiv) abbreviated foreign language business name; (xv) mail address; (xvi) e-mail address; (xvi) bank account numbers.

The data on the beneficial owner of the registered entity has legal effect regarding third parties starting on the first day following the date of publication of such information on the website of the Serbian Business Registers Agency (SBRA).

The basis for filing these records are: (i) establishment of the registered entity; (ii) change of ownership structure and membership of the registered entities' bodies, as well as (iii) other changes on the basis of which compliance with the conditions for acquiring the capacity of beneficial owner can be assessed.

The Central Register contains data on the beneficial owner of the registered entity, specifically: (i) for a domestic natural person – personal name, unique identification number and country of residence; (ii) for a foreign natural person - personal name, passport number and country of issuance and/

or personal number of a foreign natural person and/or ID number of a foreign natural person and country of issuance in accordance with the regulations that regulate the conditions for entry, movement and stay of foreigners on the territory of the Republic of Serbia, day, month, year and place of birth, country of residence and citizenship; (iii) for refugees or exiles - personal name, number of ID card, day, month, year and place of birth and country of residence and (iv) the basis for acquiring the capacity of beneficial owner.

The beneficial owner of a registered entity is: (i) a natural person who directly or indirectly holds 25% or more of interest, shares, voting or other rights, based on which it participates in managing the registered entity and/or has a 25% or more equity interest in the registered entity; (ii) a natural person who has a direct or indirect dominant influence in doing business or making decisions; (iii) a natural person who indirectly has provided or is providing the funds for the registered entity and on that basis has an important influence on decisions made by the registered entity's managing bodies regarding financing and doing business; (iv) a natural person who is a founder, a trustee, a data protection officer, a beneficiary if designated, or a person who has a dominant position in managing the trust and/or in another foreign legal entity; (v) a natural person who is registered to represent cooperatives, associations, foundations, endowments and institutions, if the authorized representative has not registered any other natural person as a beneficial owner. If it is not possible to determine the natural person based on the previously listed criteria, the authorized representative and/or the natural person registered as a governing body member of such an entity will be deemed to be the beneficial owner of the registered entity.

The SBRA keeps data permanently, while the registered entity has and maintains adequate, accurate and up-to-date data and documents on the basis of which the beneficial owner of the registered entity can be determined, for 10 years from the filing date of the records on the beneficial owner.

Failure to comply with this Law is a criminal offense punishable by a prison sentence ranging from 3 months to 5 years and a misdemeanour for which the registered legal entity will be punished with a fine ranging from RSD 500,000 to RSD 2,000,000, and the responsible person in the legal entity with a fine ranging from RSD 50,000 to RSD 150,000.

POSITIVE DEVELOPMENTS

The filing and keeping records on the beneficial owner is closely linked to the functioning and efficiency of the system assessed by the Manival Committee as rather poor. By adopting this law, the state will demonstrate its political readiness to change a system that shows serious shortcomings and exposes the financial system to the risk of abuse. The Law contributed to the improvement of the current system of detection and prevention of money laundering and financing of terrorism and the harmonization of domestic regulations with international standards in this area, and in particular with the Financial Action Task Force (FATF) recommendations.

REMAINING ISSUES

One of the current problems related to this Law is that the Central Register is yet to be established. The SBRA is required to establish the Central Register no later than 31 December 2018.

Another current problem is that already registered entities are obliged to designate the beneficial owner no later than 8 July 2018, and to provide data and documentation on their ownership structure, even though there is still no information as to what type of documentation is required. According to the Law, the by-laws that are expected to clarify this issue will be passed no later than 8 September 2018. According to the latest information, in October 2018, the Ministry of Economy prepared draft by-laws, but until the publishing of this text, they were not adopted.

FIC RECOMMENDATIONS

- Significant changes should be made to specify in more detail and streamline the procedures to minimize the possibility that the filing of records, which is a difficult and time-consuming process for complex business entities, will slow down incorporation of new business companies in Serbia and turn away some prospective investors.
- The sanctions prescribed by the Law should be reduced.

LAW ON PERSONAL DATA PROTECTION

1.43

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Enact as soon as possible a new data protection law complited with the GDPR.	2017		√	
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 by-laws or issue precise instructions and standardized forms necessary to enable effective implementation of the data protection law, especially with regards to the procedure for obtaining data transfer approvals and processing of sensitive data.	2009			√
Establish better communication between the Commissioner and other state authorities, non-governmental organisations (NGOs), and international organisations.	2010		√	
Conduct workshops and seminars in order to educate citizens and raise their awareness of the protection of their rights.	2009		√	
The Commissioner shall issue an instruction for acting of data controllers and/or processors with a registered seat in Serbia when controllers and/or processors registered on the territory of the Republic of Serbia are addressees of the GDPR.	2017			√

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 with the consent of the data subject, given either in writing or as an oral statement entered into the data controller's records. A written consent must be given 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 personal data processing, 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 stored, 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. According to statistics published on the website of the Commissioner for Information of Public Importance and Personal Data Protection ("the Commissioner"), 494 inspection controls were performed by 31 May 2018. In the first five months of 2017, the Commissioner had carried out 408 inspections, which indicates that the Commissioner's activity in 2018 slightly intensified compared to 2017, in terms of the number of inspections carried out.

The Law's requirement that the consent to the processing of personal data must be provided in writing, makes the application of the Law impossible in certain instances. For example, ticking a box (which does not amount to a written consent) is in reality the only option available to a website visitor to give consent to the processing of his personal data. To obviate this statutory hurdle, the Commissioner tends to accept notifications of data processing online if the processing has, as its ultimate purpose, the conclusion of contracts with website visitors. The position of the Commissioner is based on a provision in the Law stipulating that consent of the data subject is not required when personal data is processed for the ultimate purpose of concluding a contract. The issue of the form of the consent thus becomes legally irrelevant. However, when the ultimate purpose is not the conclusion of contracts with website visitors, the data controller is effectively unable to obtain a valid consent. In an era of ubiquitous Internet interaction, the statutory requirement of an exclusively written consent form is absurd and forces data controllers to knowingly break the law. The Commissioner tolerates this violation by not performing inspections with website owners.

It is unclear whether a data controller has the 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 to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. Almost all European member states are also members of the Council of Europe. The DP Law further prescribes that personal data may be transferred to non-European countries (i.e., to countries not parties to the Council of Europe Convention), provided that they have the same level of personal data protection in place 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.

Ambiguities related to transferring data outside of Serbia frequently occur 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 to the Convention, but are considered to provide an adequate level of personal data protection, according to the criteria set forth in Article 44(1)(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 standardized rules, known to the data controllers and the general public, which the Commissioner follows in data transfer proceedings, the applicants for the transfer do not know how to prepare their request and which evidence to submit. In the Commissioner's Report on the implementation of the DP Law in 2017, as well as in the monthly reports on the activities of the Commissioner's Office, there is no mention of the activity of the Commissioner in relation to the completed procedures upon data controllers' requests for the transfer of data abroad. This might indicate that the number of procedures for transferring the data abroad in 2017 and in the first half of 2018 was insignificant, i.e. legal interactions concerning the transfer of data between Serbia and the rest of the world do not occur. The long duration of the procedure and the absence of clear rules have dissuaded data controllers from submitting requests for transfer.

The Commissioner published a new Model Law on Personal Data Protection ("Model") in March 2017. The Model is an endeavour by the Commissioner to offer a document to the public which brings the field of data protection closer to the General Data Protection Regulation 2016/679 (GDPR). In the course of 2017, the government abandoned the idea of using the Model as the basis for the adoption of a new law on personal data protection.

In November 2017, the Ministry of Justice drafted a Law on Data Protection. Public consultations on the draft were conducted from 1 December 2017 to 15 January 2018, and certain suggestions by the sectors with expertise in the matter were accepted and included in the draft which entered the Parliament on September 25, 2018 ("Proposal"). The Foreign Investors Council welcomes the fact that the Proposal has been endorsed by the Government and hopes it will be adopted by the National Assembly as soon as possible.

The Proposal contains almost identical solutions as the GDPR, with the exception of the provisions which reflect the fact that Serbia is not a member of the EU. The Commissioner and some participants in the public consultations process assessed the draft and the subsequent Proposal as a non-functional document that does not take into account the specific features of Serbia's legal system. The Foreign Investors Council does not share this view and believes that the Proposal is a good basis for improving personal data

protection in Serbia. However, the Proposal fails to regulate specific forms of personal data processing, and that omission, unless corrected, will diminish the overall effectiveness the laws and regulations in this area (please see below - REMAINING ISSUES).

At the beginning of 2018, the Ministry of Justice brought into question the meaningfulness of the other provisions of the draft Law by replacing the initial concept of "legitimate interest" with that of an "interest based on law". The "legitimate interest" (justified interest) of the data controller or a third party, as the basis for lawful processing, has been introduced in European laws to prevent a legal vacuum arising in those situations in which no specific law provides the basis for processing and there are no legitimate reasons to require the data controller to obtain consent from the data subject. An example of personal data processing based on the legitimate interest of the data controller is the processing of certain data from the criminal records of employees or job candidates, when this is justified given the nature of the specific position at work. On the other hand, an "interest based on law" would effectively reduce the basis for lawful processing to the already existing, distinct basis for personal data processing – respecting the legal obligations of the data controller. In this way, the legitimate interest of the data controller or a third person as a basis for personal data processing would be effectively absent from the future law, as has been the case with current and previous iterations of the Law. This would continue to hinder data processing to a significant extent, bearing in mind that in the European Union legitimate interest is the legal basis for the processing of personal data in some 70% of cases. In a positive last-minute development, the Government included the concept of "legitimate interest" in the Proposal, in response to the criticism from the European Commission concerning the utilization of the concept of an "interest based on law".

POSITIVE DEVELOPMENTS

In 2018, the Commissioner undertook numerous activities to inform citizens about the importance of personal data protection. On its website, the Commissioner published a List of Frequently Asked Questions about GDPR with Answers, a Manual on the Personal Data Protection and Competence of the European Union Institutions, as well as other publications expressing the positions and opinion of the Commissioner on the application of the DP Law.

REMAINING ISSUES

According to the Commissioner's data, the number of cases related to the personal data protection for the year 2017 amounted to 4,607. According to the Commissioner's report for May 2018, no less than 3,592 cases were passed on from the previous period. A major issue is that the state does not allocate sufficient funds for the activities of the Commissioner, contrary to commitments outlined in the Action Plan for Chapter 23 (on Judiciary and Fundamental Rights) of the EU acquis communautaire, released by the Government of Serbia in September 2015, proclaiming the strengthening of the Commissioner's resources as its goal.

According to the current version of the Action Plan for Chapter 23, a new law on personal data protection should have been enacted in the third quarter of 2015. Based on announcements from the Ministry of Justice and representatives of the Working Group for drafting the law, Serbia was supposed to pass a new law on personal data protection in 2018, and the law was supposed to enter into force on the same date as the GDPR. However, the deadline has expired and other than the information provided in the First Report on the Implementation of the Action Plan for Chapter 23 of May 2018, that the draft law has been submitted to the European Commission and that the law will be enacted after obtaining its opinion, there is no official information on when the law might be passed.

The proposed Law on Data Protection, as submitted to the Parliament, provides a good basis for improving the social relations in the field of personal data protection. However, the proposed l aw does not regulate specific forms of personal data processing, such as video surveillance, processing of employees' personal data, and processing for the purpose of scientific and historical research and for statistical purposes. Unless the law regulates these types of processing, data controllers will face legal uncertainty that will significantly hamper their ability to conduct a business.

FIC RECOMMENDATIONS

- Enact a new data protection law as soon as possible, and regulate specific forms of data processing in the law.
- Provide the Commissioner with better working conditions, equipment and staff to ensure the effective implementation of the new law.
- Determine the supervisory bodies that will monitor the implementation of the data protection law in co-operation with the Commissioner.
- Issue precise instructions and standardized forms necessary to enable effective implementation of the existing DP Law until the adoption of a new one, especially with regard to the procedure for obtaining data transfer approvals and processing sensitive data.
- Establish better communication between the Commissioner and other state institutions, especially with the Ministry of Justice, NGOs and international organizations.
- Conduct workshops and seminars to educate citizens and raise their awareness of the protection of their rights.

LAW ON THE CENTRAL REGISTER OF TEMPORARY RESTRICTION OF RIGHTS

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Significant changes should be made and certain provisions should be more precise (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the possibility that the Law is applied to business entities and their members/bodies acting bona fide.	2015			√
It is necessary to regulate liability for entering incorrect data into Central Register.	2016			√

CURRENT SITUATION

On 30 December 2015, the National Assembly of the Republic of Serbia adopted the Law on the Central Register of Temporary Restriction of Rights of Entities Registered in the Serbian 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, misdemeanor, or administrative sanctions (hereinafter: Central Register).

From 1 June 2016, which is the start date of the implementation of the Law, founders, management, directors, legal representatives, and other bodies of a company may be temporarily disqualified from conducting a business activity, starting a business, taking any steps concerning shares in the company, etc.

A temporary restriction of rights is imposed on the basis of and is the legal consequence of acts of the state or other relevant authority containing legal facts or actions required by law in the form of a legally binding or enforceable judgment, decision, or other formal act submitted to the Serbian Business Registers Agency (SBRA) for filing in the Central Register.

The introduction of stricter discipline in the operations of business entities in the Republic of Serbia to minimize the possibility of malpractices and damages to third parties, that is, the introduction of sanctions for those who abuse their position in business entities - is a highly positive goal and is fully supported by the FIC, which has been advocating that same goal ever since its establishment.

The coordination of various authorities (such as, for example, the Ministry of Interior and the National Bank of Serbia) takes place ex officio, in the sense of a timely exchange of data on business entities and their shareholders and bodies, resulting in an increased in the number of entities registered in the Central Register.

There were only several dozens of these entities when the Central Register was established, but in time this number grew to several tens of thousands.

We remind that, according to Article 20 of the Law, the data from the central records pertaining to individuals to whom bans and security measures in judicial proceedings were imposed may not be made public and may be disclosed only in accordance with the rules governing criminal records. The SBRA website has a special procedure for access to certain data, requesting users to submit a qualified digital certificate.

Registered data provide a complete overview of the business reliability of an individual business entity, including details of any restrictions imposed on the business entity and is shareholders, members of its governing bodies and authorized representatives, which should eliminate the possibility of any business entity acting in violation of the restrictions imposed on them, while at the same time increasing business transparency and security of legal transactions.

There are 30,000 new measures registered with the Central Register, in accordance with the Law on Tax Procedure and Tax Administration.

In accordance with Article 29 of the aforesaid Law, the SBRA cannot approve and register any requests for strike off or corporate changes before the Tax Administration has sent notification on the completion of the tax control procedure

or the return of the Tax Identification Number to a company that was registered in the Central Register on any of the aforementioned grounds.

Since January of the previous year, the Central Register also contains information on enforced collection provided by the National Bank of Serbia.

According to SBRA's data, there are over 400,000 registered measures against almost 80,000 entities in the Central Register, currently.

POSITIVE DEVELOPMENTS

There was no improvement in the previous year, as there were no relevant normative changes in this period.

REMAINING ISSUES

Article 3 of the Law prescribes grounds for temporary restriction, listing specified measures. Consequently, no other grounds for temporary restriction, except those listed, may be the ground for a temporary restriction.

The aforesaid grounds are not always necessarily a consequence of abuse of rights by the party/person whose rights would be restricted. In fact, there are numerous cases of business entities having their accounts blocked, or undergoing bankruptcy proceedings, where such account blockade or bankruptcy are not the consequence of any fraudulent activity; i.e. both members and bodies of business entities have acted bona fide. As an example, we point out the case of business entities that are in such a situation because the state or local authorities have failed to pay their debt to these entities, as well as the case of a supplier chain (notably in the construction industry) where account blockade or bankruptcy over one of the entities in the chain triggered a domino effect for other members in the chain below.

Some provisions of the Law are too general and imprecise and, as such, can produce a variety of negative consequences in practice.

In addition, we are of the view that the number of persons encompassed by the Law is too wide, and that only persons who undertook actions or supported actions that led to abuse should be made subject to 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 Law.

The Law should contain appropriate solutions regarding the liability for entering incorrect data, especially in a situation where there was no fraudulent intent. We emphasize this, keeping in mind the automated registration process, the public registry, and the weight of potential consequences resulting from the application of the provisions stipulated by the Law.

One of the issues, which existed during the drafting and adoption of the Law, is a situation where an over-indebted business entity opens a new company to which business is transferred, without discharging obligations of the previous company. The idea was to submit those companies to the Central Register as well, but it was withdrawn, so the topic of these fraudulent situations still remains open.

FIC RECOMMENDATIONS

- Significant changes should be made and certain provisions should be more precise (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the possibility that the Law is applied to business entities and their members/bodies acting bona fide.
- It is necessary to regulate liability for entering incorrect data into the Central Register.

LAW ON WHISTLEBLOWERS

1.20

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to implement the Law, it is necessary to take educational measures (especially targeting citizens and employers), as well as the necessary administrative/technical measures.	2015		√	
It is necessary to specify the concept of an authorized body and the relationship of internal and external whistleblowing.	2015			√
It is necessary to appropriately predict criminal offenses in connection with whistleblowing, as well as any special penal responsibility for the grave violations of the rights of whistleblowers.	2015			√
It is necessary to regulate cases of retaliation for whistleblowing made by a third party who is not the employer, to adequately protect the whistleblower in such a situation.	2015			√
Introducing rules on remuneration.	2017			√

CURRENT SITUATION

The Law on the Protection of Whistleblowers (hereinafter: the Law) entered into force on 4 December 2014 and has been in application since 5 June 2015.

The Law regulates whistleblowing, the whistleblowing procedure, the rights of whistleblowers, the obligations of the state and other bodies and organizations, and legal entities and individuals in connection with whistleblowing, as well as other issues of importance for whistleblowing and the protection of whistleblowers.

The Law prohibits retaliation against whistleblowing and protects all persons in work engagement. Besides whistleblowers, under certain conditions, the Law also protects persons connected to the whistleblower, as well as any person wrongly labeled as a whistleblower, holders of public office, and persons seeking information regarding a specific whistleblowing case. The Law also envisages protection of the whistleblowers' personal data. Abuse of whistleblowing is prohibited.

Whistleblowing can be internal (disclosure to the employer), external (disclosure to an authorized body) or 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.

The Law requires employers to provide all employees with written information about their rights under the Law, and to appoint a person authorized to receive the information and conduct the proceedings in connection with whistleblowing. On the other hand, employers with more than ten employees are required to regulate an internal whistleblowing procedure by means of a general act and to display it in a visible location, as well as on the employer's website, if technically possible.

The Law regulates the general procedure for internal whistleblowing initiated by disclosing the information to the employer. Employers are obliged to act upon the information without delay and no later than 15 days of receipt of the information. They are obliged to inform the whistleblower about the outcome thereof, within 15 days after completion of the procedure.

External whistleblowing starts with disclosing information to an authorized body, but the Law does not specify which body.

The Law envisages judicial protection of whistleblowers. The claim must be filed within six months of the date of learning of the undertaken adverse action (subjective term), and within three years from the date when the adverse action toward the whistleblower was taken (objective term).

The Ministry of Justice adopted two by-laws in this field. The By-law on the Programme for the Acquisition of Specialized Knowledge Concerning the Protection of Whistleblowers to ensure that judges receive additional theoretical and practical knowledge in the area of whistleblowing and protection of whistleblowers, and acquire the skills required for professional and efficient proceedings relating to the protection of whistleblowers. The other one is the By-Law on the method

of internal whistleblowing, the method of determining the employer's authorized person, and on other issues of importance for internal whistleblowing in the workplace when the employer has more than ten employees.

POSITIVE DEVELOPMENTS

The National Strategy for Countering 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.

Since the enactment of the Law, there has been an increase in the number of filed lawsuits and reports, while courts issue interim measures significantly faster than the prescribed legal limit. Also, the first final verdicts in this field were delivered, including the first verdict of the Supreme Court of Cassation, as an extraordinary legal remedy. The foregoing shows that judges and other responsible persons understand the importance of enforcing the Law and of the urgency of the action. It is obvious that progress has been made in the education of both judges and individuals to whom the Law is applied and that they are familiar with their rights and obligations.

REMAINING ISSUES

While the adoption of this Law was an important step for Serbia, the assessment so far is that some of its provisions are contradictory, incomprehensible, so that the Law should be more specific in some segments.

The Law does not specify in more detail the nature and function of the authorized body, and fails to define the relationship between internal and external whistleblowing. The Law remains powerless in cases of reprisals against whistleblowers by a third party who is not the employer. In addition, the Law does not envisage criminal offenses in connection with whistleblowing, or specific offenses in cases of serious violations of the rights of whistleblowers and other persons entitled to the same protection. Furthermore, the Criminal Code was not amended, as an alternative to the aforementioned option, to include the prescription of such criminal offenses. We believe that this can be extremely important, especially in whistleblowing related to corruption and threats to the environment and human health.

The Law does not provide any rules on the remuneration of or the express right of whistleblowers to claim fair compensation instead of the annulment of the act constituting adverse action. The right of whistleblowers to fair compensation, coupled with the already incriminated abuse of whistleblowing, would yield far better results in the implementation of this Law.

FIC RECOMMENDATIONS

- The concept of "authorized body" and the relationship between internal and external whistleblowing should be specified.
- Criminal offenses in connection with whistleblowing, as well as any special penal responsibility for the grave violations of the rights of whistleblowers should be appropriately envisaged.
- Introduce rules on remuneration of whistleblowers to effectuate the purposes of this Law.

LAW ON NOTARIES

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further amendment of legal provisions governing the number of notaries and an increase of number of appointed notaries.	2015		√	
A further decrease of fees for services provided by notaries, and harmonization with financial means of companies and citizens.	2017			√
Hiring a larger number of employees by notaries.	2017		√	
Further implementation of regulations regarding notaries public and comprehensive education of all participants in the process.	2015	√		

CURRENT SITUATION

Law on Public Notaries (Official Gazette of RS No 31/2011, 85/2012, 19/2013, 55/2014 – as amended, 93/2014 – as amended, 121/2014 and 6/2015) (hereinafter: "the Law"), in application since 1 September 2014, introduced public notaries as a legal profession within the Serbian legal system.

Public notaries provide the following services:

- Drafting and notarization of documents important for legal transactions performed by natural persons and corporate clients, such as notarization of various types of contracts in the area of corporate law, torts and obligations, inheritance and family law, notarization of lien mortgage statements and other statements establishing, changing or terminating a certain legal relationship. Depending on the type of document, the form varies from signature notarization to the strictest forms of notarial records. Since 1 March 2017, notarization of signatures, transcripts and writs has become a part of the services provided by public notaries. It means that there are no more overlapping responsibilities in this area between courts, municipalities and public notaries, as these may only be performed by public notaries now.
- Transactions and procedures assigned to public notaries by the courts. These are primarily probate proceedings, the assignment of which significantly unburdened courts, out-of-court proceedings for determining boundaries, proceedings regulating the management and use of, or the division of a common asset or property.
- Deposit-related transactions. Parties may entrust a public notary not only with court deposits, but also with cash, securities, writs, documents, artistic objects, jewellery, and other valuables except those forbidden by the Law. When receiving a valuable to be kept in the safe, a valuable is required to issue a notarial deposit certificate.

POSITIVE DEVELOPMENTS

Approving the Law on the procedure of registration in the real property and public utility infrastructure cadastres (RS Official Gazette No. 41/18) and Law on electronic documents, electronic identification and confidential services in electronic transactions (RS Official Gazette No. 94/2017), public notaries has been faced with new challenges. In fact, from 1 July 2018, notaries have become so called "reporting entities", meaning that, for the notarization of any document the content of which is subject to registration in the cadastre of real property or cadastre of public utility infrastructure, public notaries are required to send a copy of that document to the cadastre, within 24 hours from the time of notarization, so that it can be registered, and to issue a confirmation thereof to the client. Should a document not be subject to registration, and is related to the transfer of title to a building under construction or an unregistered property, the public notary is obliged to deliver such a contract to the cadastre as well, for the purpose of filing it in the records. This also applies in the case not all of the requirements for the transfer of titles have been met, but the requirements for the registration of a caution have. Additionally, a public notary is also required to deliver copies of tax returns to the cadastre, for the purpose of determining the tax on transfer of absolute titles, and taxes on inheritance and gifts and copies of tax returns, for the purpose of determining a property transfer tax, except in cases when a tax payer does not agree to have the tax return sent through the public notary's office, in which case the public notary is required to deliver a record he/she drafted in this regard. Subsequently, the cadastre officially forwards the tax returns to the tax authorities. Additionally, starting from 31 December 2020, interested persons may obtain an extract from the List of Immovable Property from a public notary. This will be a major step forward in

establishing legal security of real estate-related rights and aligning the factual situation with the situation in public real estate registers. The idea is, in the long term, after 31 December 2020, to send these documents to the cadastre in electronic form, through the so-called "electronic counter". Electronic documents will reduce the use of paper documents, electronic signature will be equivalent to a handwritten signature, and electronic delivery will be legally valid. Instead of having to go to a counter three-four times, the aforementioned laws stipulate that one visit to a public notary will suffice to complete both the notarization and registration of a document in the cadastre.

REMAINING ISSUES

The prices of public notary services still remains an acute problem in this area. We notice that the public notary fees are somewhat higher than those once paid for the same services at courts and municipalities, especially for the notarization of lien statements whose price goes up to a few thousand Euro. The fee for the notarization of a signature for legal entities is also higher than it used to be.

Finally, we regret to say that the queues in notary public offices are similar to those we had once in courts, so it is now up to public notaries to hire more staff to facilitate legal transactions for natural persons and companies. Also, notaries should be appointed in eight underdeveloped cities in Serbia, where the courts are still performing the functions of public notaries.

The implementation of regulations on public notaries, by now an established legal institution within our legal system, is an extremely important, comprehensive process, so it is necessary to continue with the further implementation and harmonization of this function, so important in everyday life.

FIC RECOMMENDATIONS

- Appointment of public notaries in eight underdeveloped cities in Serbia.
- Further reducing charges for services provided by public notaries, and their harmonization with the purchasing power of companies and natural persons.
- Public notaries should engaging more staff, and rent more spacious offices to reduce queues.

TAX

1.15

There was no significant improvement in the past period in relation to the Foreign Investors Council's recommendations in the area of taxation. As positive developments, one could mention the reduction of the scope of services subject to withholding tax on payments to non-residents as of 1 April this year, corporate income tax deductibility of the write-off of bad debts in accordance with NBS regulations, and changes to the tax depreciation rules for intangible assets. The impact of these changes is very limited, with most of problems related to tax laws and their application remaining unresolved.

One of the remaining important problems is the lack of clarity and detailed rules in the tax law in relation to certain situations and transactions, which leads to differing interpretations and consequently problems for taxpayers in practice. The rules on tax depreciation have remained virtually unchanged since they were introduced in 2004, and their application in current conditions causes numerous problems and difficulties – it is unclear in which depreciation groups certain specific types of property should be classified (oil wells, hotels, shopping malls), while the depreciation period is often not aligned with its economic and useful life. It is necessary to reform tax depreciation rules to resolve these issues. Also, the issue of the tax treatment of property measured at fair value remains unresolved. It is necessary to improve the VAT treatment of supplies of goods and services in the area of construction, as there have been various problems and issues in this area for years. With regard to property tax, the key problems still relate to the uneven application of the fair value concept for the taxation of real estate, the administrative burden, and issues related to completing various tax returns, specifications, and detailed breakdowns for each municipality and each cadastre parcel.

A. CORPORATE INCOME TAX (CIT)

1.13

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Many of the existing problems in corporate taxation are related to the practical implementation of the CIT Law provisions. These problems should be dealt with in the by-laws of the Ministry of Finance, as well as to better define provisions of the CIT Law, in order to introduce greater flexibility in this area.				
Primarily, by-laws should provide guidelines with respect to taxation of permanent establishments.	2010			√
Aligning domestic practices with respect to the definition of royalties for withholding tax purposes with the best international practices, and definitions applied in the relevant tax treaties (especially related to the treatment of proprietary software licensing).	2012			√
However, some of the problems require amendments to the CIT Law:				
Make provisions of the CIT Law more precise in order to allow taxpayers a proper application of withholding tax on services in practice, as well as to amend other relevant provisions of the CIT Law in order to reduce the administrative and financial costs of the application of this tax for domestic and foreign legal entities by introducing monthly or quarterly tax filings (instead of for each transaction separately).	2016		√	
Provisions of the CIT Law regulating deductibility of advertising and marketing expenses should be amended in a way to allow a full deductibility of such expenses.	2010			√
Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose a payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account.	2010			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Taxation of corporate reorganization, as currently applicable legislation completely lacks provisions for the taxation of such reorganization. Provisions regulating this area should be introduced in the CIT Law.	2011			√
Introducing a system of new tax incentives for investments in fixed assets amounting to less than RSD 1 billion in the form of a tax credit or reduced corporate income tax rate for a certain period, and in proportion to the investment made.	2014			√
Revise the CIT Law and Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes. It is necessary to reform the current tax depreciation regime per groups of assets: to adjust the despreciation rates to types of assets, manner and intensity of their use, and their useful life; review the grouping of assets in depreciation gruops; and supplement the lists of assets in groups, as well as define rules for specific business activities, such as concessions and public-private partnerships. Tax depreciation rules should not cause permanetly non-deductible costs. Change the rules regarding tax deductibility of impairment expenses, so that it is clear that a decrease of fair value of assets does not represent an impairment expense. In this way, increases and decreases of fair value of assets would be treated in a fair way.	2017		√	
Tax recognized depreciation expense should be allowed for fixed assets acquired before 2013 (present in the accounting records on 1 January 2013) and whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in Serbia. We suggest this change should be implemented in the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.	2015			√
Further clarify the method of calculation and recognition of tax depreciation cost for the first group of fixed assets on 31 December 2003, which caused numerous dilemmas and controversial interpretations in practice;	2016			√
In case of acquiring a bankruptcy debtor as a legal entity, tax depreciation should be calculated based on a proportionate share of purchase price allocated to relevant assets.	2017			√
The historical cost model should apply to taxation purposes for non-current assets, for which IFRS provides the possibility to choose between historical cost or fair value model, irrespective of the choice made, in order to have uniform and equitable tax treatment of taxpayers.	2017			√
Amend the rules relating to tax deductibility of impairment expenses, so that it is clear that decreases of fair value of assets accounted for under the fair value model do not represent non-deductible impairment, so that increases and decreases of fair value are treated in an equitable way.	2017			√
Introduce provisions in the CIT Law which would clearly regulate the treatment of liquidation remainder below the level of invested capital.	2015			√
Amend the provisions of the CIT Law in order to recognize a resident tax credit for capital gains tax paid abroad, up to the amount of corporate income tax which would be payable on such capital gains.	2016			√

CURRENT SITUATION

The taxation of companies in Serbia is governed by the Law on Corporate Income Tax (hereinafter: the CIT Law) and ratified international agreements. The implementation of certain provisions of the CIT Law is regulated by several by-laws.

The CIT Law was last amended in late 2017 (RS Official Gazette No 113/2017). As for international treaties, in April 2018, Serbia ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Base Erosion and Profit Shifting (BEPS). In February 2018 Serbia joined the Inclusive Framework for BEPS, and in May 2018 the Global Forum on Transparency and Exchange of Information for Tax Purposes.

POSITIVE DEVELOPMENTS

The most significant improvement is the change in the scope of services that are, starting from 1 April 2018, subject to withholding tax on income of non-resident legal persons realised from the performance of services, and the simplification of application of this tax, as it is no longer necessary to determine whether the service was provided or used in Serbia. Specifically, the scope of services subject to taxation is limited to market research services, accounting and auditing services and other legal and business consulting services, irrespective of the place where they were or will be provided or used. In addition, the deadline for filing tax return for withholding tax has been extended to 3 days from the date of income payment.

Other significant improvements relate to: recognizing the bank's expenditures on account of write-offs of loans declared as non-collectable (NPLs) in accordance with NBS regulations as tax deductible; introduction of special rules for depreciation of fixed assets consisting of immovable and movable parts, as well as changes of the rules for amortization of intangible assets.

REMAINING ISSUES

- Lack of regulations or their vagueness with respect to certain situations and issues lead to different interpretations and consequently cause problems for taxpayers in practice. Specifically, the provisions governing the taxation of a permanent establishment are still incomplete and insufficiently clear; the CIT Law does not contain provisions regulating the taxation of company restructuring and taxation of investment funds, or provisions recognizing capital gains tax paid by a resident abroad, or provisions governing the treatment of losses arising from the liquidation or bankruptcy estate surplus. Consistent interpretation and application of the domestic tax law on transactions with foreign element and of double tax treaties is increasingly important considering the ratification of the Multilateral Convention.
- The deductibility of marketing expenses is limited to 10% of a taxpayer's total revenues, which is discriminatory towards taxpayers who belong to industries that by their very nature require significant investments in advertising and marketing for the purpose of performing business activities and generating profits.
- Occasionally, interpretations by the Ministry of Finance pertaining to withholding tax differ from provisions of the relevant double tax treaties and best international practices, especially in cases of proprietary software licensing, which results in legal uncertainty and a higher tax burden for taxpayers, contrary to the rights provided in the relevant double tax treaties. Also, filing separate tax returns for withholding tax on services for each taxable payment of service fees is an administrative burden for the businesses.
- The rules on tax depreciation of non-current assets were not substantially amended since they were introduced in 2004 and their application in the contemporary business environment causes numerous difficulties and issues. It is unclear in which tax depreciation groups to classify specific assets and the depreciation periods are often inappropriate considering the economic and useful life of assets (oil rigs, hotels, shopping malls, hangars, warehouses, etc.; leasehold improvements, etc.). All immovable property is depreciated at an annual rate of 2.5% (i.e. over 40 years) while actual useful lives vary depending on their type and use.
- Provisions of the law pertaining to the method for calculating tax depreciation create continuing discrepancies and permanently unrecognized expenses in the tax balance sheet in cases where, at the moment of disposal of an asset, the current accounting value is lower than the current tax value of said asset, as well as in cases where a fixed asset is being disposed of, where that asset was not previously depreciated for tax purposes, as its cost value at the moment of purchase was lower than the average salary in Serbia. The Ministry of Finance issued an opinion in 2017 which gave rise to additional dilemmas about the cessation of tax depreciation for written-off assets.
- Tax depreciation is not calculated on fixed assets purchased before changes to the CIT Law from the begin-

ning of 2013, and whose individual value was below the average gross salary at that time.
- During 2015 and the first half of 2016, the Ministry of Finance published opinions regarding the method of calculation of the cost and recognition of tax depreciation for the first group of fixed assets on 31 December 2003, causing numerous dilemmas and controversial interpretations in practice.
- The Ministry of Finance issued an opinion in 2017 regarding the method of calculation of tax depreciation of assets in case of acquiring a bankruptcy debtor as a legal entity, and took the position that tax depreciation should be calculated in the same way as before opening the bankruptcy. We are of the view that this is a debatable interpretation and that it would be more appropriate to calculate tax depreciation on the basis of a proportionate share of the purchase price allocated to relevant assets.
- Accounting regulations, i.e. International Financial Reporting Standards (IFRS), provide for the possibility to either opt for the cost model or the fair value model for certain types of assets (investment property, biological assets, and financial assets). The CIT Law does not have clear rules regarding assets measured at fair value. Unrealized gains from the increase of fair value of assets are taxed before the asset is disposed of, i.e. before the gain is realised.
- The CIT Law does clearly distinguish between impairment of assets and decrease of fair value of assets (e.g. investment property), for which the 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.

FIC RECOMMENDATIONS

- Supplement the CIT Law with provisions to regulate taxation of company restructuring, investment funds, treatment of liquidation or bankruptcy remainder that is below the threshold of invested capital, as well as recognition of tax credit for capital gains tax paid abroad, and through by-laws, provide guidelines on taxation of permanent establishments. It is necessary to ensure consistent interpretation and application of the domestic tax law and provisions of the international tax treaties on transactions with a foreign element.

- Amend the provisions of the CIT Law regulating deductibility of advertising and marketing expenses to allow full deductibility of such expenses.

- Aligning domestic practices with respect to withholding tax with the best international practices and definitions applied in the relevant international treaties (especially with respect to the treatment of proprietary software licensing). Introduce monthly, quarterly or annual filing of tax returns for withholding tax on services, in accordance with customary international practices, instead of filing a tax return for each taxable transaction separately.

- 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 and Loss Account.

- Introduce 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 over a certain period, and in proportion to the amount invested.

- Revise the CIT Law and Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes. The current tax depreciation regime per groups of assets should be reformed to adjust the depreciation rates to the types of assets, the manner and intensity of their use, and their useful life; review the grouping of assets in depreciation groups; and supplement the lists of assets in

groups, defining rules for specific business activities, such as concessions and public-private partnerships. Tax depreciation rules should not cause permanently non-deductible costs. In addition:

- Tax depreciation expense should be recognized 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 that this change be implemented in the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.
- Further clarify the method of calculation and recognition of tax depreciation cost for the first group of fixed assets on 31 December 2003, which caused numerous dilemmas and controversial interpretations in practice.
- In case of acquiring a bankruptcy debtor as a legal entity, tax depreciation should be calculated based on a proportionate share of purchase price allocated to relevant assets.

- The historical cost model should apply to taxation purposes for non-current assets, for which IFRS provides the possibility to choose between historical cost and fair value model, irrespective of the choice made, in order to have uniform and equitable tax treatment of taxpayers. However, if the intention is to allow application of the fair value model for taxation purposes, amend the rules relating to tax deductibility of impairment expenses, so that it is clear that decreases of fair value of assets accounted for under the fair value model do not represent a non-deductible impairment, so that increases and decreases of fair value are treated in an equitable way.

B. PERSONAL INCOME TAX 1.18

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Ministry of Finance and Ministry of Labour, Employment, and Veteran and Social Affairs should work with each other towards the same goal that would eventually lead to the opinion that the compensation for unused annual leave days by an employee is treated in the manner defined by the Labour Law; i.e. damage compensation.	2017			√
Take a clear position with respect to the tax treatment of no-interest loans (or loans with interest lower than market ones) granted to an employee by an employer. The opinion issued by the Ministry of Finance on this subject did not contribute to its clarification at all.	2017			√
The Personal Income Tax Law should be amended in order to establish clear rules and procedures on taxation of expatriates paid by foreign entities. It is very important to determine whether it is the individual or the local entity that will report the income and when it should be done.	2017		√	
The application of the schedular system of taxation of personal income remains a problem in the Serbian system, to which there is no adequate solution. This system was abandoned as unclear and 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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Provisions that introduce subsidiary guarantees of adult members of the household with their own property in case sole proprietors do not fulfil their tax liabilities.	2013			√
Reconsider the position of the Ministry of Finance with respect to the tax treatment of "team building" expense and adjust it to its economic nature.	2017			√
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			√
It is strongly recommended to pass the appropriate by-law that will regulate in detail the calculation of per diems during business trips and reimbursement of costs and the calculation of costs for the use of a private vehicle for business purposes.	2017			√
Amend the PIT Law while observing the IAS rules, all with the aim to eliminating taxation of income not yet received i.e. to ensure that the tax liability corresponds with the moment of acquisition of the right to dispose of the securities by an employee.	2015		√	
The concept of "assignment" must be clearly defined in the sense of the Personal Income Tax Law, to which persons the special rule for calculating the salary base relates to, and it must be clearly specified that certain costs of the employer that are related to the assignment are not part of personal income and are therefore not subject to personal income tax (e.g. moving costs, accommodation, etc.), and in accordance with the best practices in other states and with what is already prescribed for state officials who are posted abroad for work, given that the substance of the cost is completely identical and there is no basis for making a difference between these two categories of employees.	2017			√
The process of social insurance registration, above all software for registration, given that this is done electronically, must be harmonized with regulations and must permit foreign individuals assigned to work in Serbia to register for mandatory social insurance, without having concluded an employment contract in Serbia, including Serbian citizens employed with foreign entities. Also, it is necessary for Serbia to expand its network of social security conventions, as this is closely linked to this issue, and in order to avoid the risk of double payment of contributions, which has negative ramifications for labour force movements.	2017			√

CURRENT SITUATION

Taxation of personal income in Serbia is based on the schedular income taxation system which has been abandoned by many advanced tax jurisdictions as unclear and unfair.

The Law on Personal Income Tax (PIT Law) as the main regulatory instrument recognizes several categories of taxable income. The personal income tax is, depending on individual case, paid: (i) as withholding tax, (ii) upon decision of competent tax authority or (iii) via self-taxation.

The most recent amendments to the Law came into force on 1 January 2018. In addition to a number of technical amendments, the Law: (i) extends the validity of existing tax incentives for both the newly employed and employers – micro and small legal entities and entrepreneurs, and introduces additional exemptions, (ii) increases the non-taxable amount of salaries, (iii) introduces changes in the obligation of keeping of business books for entrepreneurs, (iv) allows taxation on a flat-rate basis for entrepreneurs who produce and sell exclusively their own products.

POSITIVE DEVELOPMENTS

The amendments to the Law have brought about some positive developments.

There has been a change in the definition of non-resident natural persons' income generated in Serbia that is subject to personal income tax. According to the amendments, the income generated by a non-resident natural person from their activities in Serbia is subject to personal income tax. The legislature made an effort to better define the taxable income in Serbia, but in our view this provision still lacks sufficient clarity. While certain improvements have been made in this respect, we believe there is still room for additional clarifications (possibly through an official opinion of the Ministry of Finance) which would secure a higher degree of certainty with respect to taxation of personal income of non-resident natural persons.

Starting from 1 October 2018, newly incorporated legal entities (including sole proprietors) registered by 31 December 2020 will be fully exempted from personal income tax on the salary of founders/personal income of a sole trader as well as on account of the salaries of new hires and of the founders (up to 9 in total) provided that they have an employment contract with the company. The general eligibility requirement for the exemption is that all the newly hired employees must have been previously registered as unemployed with the National Employment Service for a minimum of 6 months or must have completed secondary or university level education no more than 12 months before employment. Sole proprietors who are taxed at a flat rate, sole proprietors in the agricultural sector and entrepreneur – other person are not allowed to use this exemption.

Documented reimbursements of expenses for business trips of members of management bodies of legal entities are now exempted from personal income tax up to the amount of the documented costs.

The Law now specifically provides that expatriates posted to Serbia by a foreign entity to perform work for the needs of local entity (without taking up employment in the local entity) are obliged to report their income within 30 days of the date of receiving the income. The intention of the legislator was to remove the legal uncertainty as to the person who has the obligation to report and pay personal income tax, but the terminology used in the Law (foreigner as opposed to non-resident), in our view leaves room for different interpretations so the Ministry of Finance will have to issue an official opinion with respect to the reach of this provision.

REMAINING ISSUES

The Law has yet to define the rules on reimbursement of expenses to employees for business trips abroad as no adequate rulebook that has been passed yet to regulate this area. Instead, the legislator introduced a provision prescribing that the per-diems are to be determined in the manner specified by and in line with the decision of the relevant authority. This amendment does not clearly define whether this applies on the implementation the Regulation on the reimbursement of costs and severance pays of state officials and employees. Consequently, tax inspectors conducting tax audits often apply this Regulation, despite the fact that it is only mandatory for the public sector. Hence, the insufficient clarity of the Law regarding the applicable by-law, as well as the fact that the new by-law has not yet been passed, allows tax officers too broad discretionary powers in tax audits. We are of the opinion that such a standing is in collision with the Law.

There were no improvements regarding the clarification of the tax treatment of no-interest loans (i.e. loans with lower interest rates than market ones) granted by the employer to the employee. The Ministry of Finance issued an opinion, but failed to resolve the doubts regarding the tax treatment of such a loan, i.e. it is still unclear whether such a loan should be considered as a benefit or not.

Having in mind that the Ministry of Finance took the stand that "team building" expenses should be considered as a fringe benefit of employees, which has remained unchanged, it is clear that the Ministry did not understand the economic nature of such an investment/expense. Specifically, we are of the opinion that "team building" is an investment made by the employer with the purpose of increasing productivity by means of joint activities. Therefore, the current stand of the Ministry regarding the tax treatment of team building does not follow its economic purpose – productivity increase.

Currently, in line with the official opinion of the Ministry of Finance, compensation for unused annual leaves paid out to an employee is treated as salary. On the other hand, the Labour Law defines it as a compensation for damages and leaves no space for a different interpretation or tax treatment. This example shows that there is a lack of coordination

between the relevant ministries, not only when adopting or amending laws, but also when interpreting them, as well.

It is not possible in practice for Serbian citizens to register for mandatory social insurance if they are on the payroll of a foreign employer and working in Serbia. Such a form of employment is recognized by the Labour Law, which specifies that this law applies to employees working in Serbia, with a domestic or foreign legal entity or private individual. Also, such a type of engagement is also recognized in the Law on Pension and Disability Insurance and the Health Insurance Law, given that the definition of insured persons includes Serbian citizens employed in Serbia with foreign or international organizations and institutions, foreign diplomatic and consular offices, or with foreign legal entities or private individuals, unless otherwise specified by an international agreement.

Such a practice leads to great legal uncertainty, on the one hand it could be interpreted that the insurance is mandatory, while on the other hand registering for insurance is not possible. Without the status of an insured person, an individual is not entitled to any rights stemming from social insurance, nor can s/he make any social contribution payments. Owing to such a practice, the social insurance fund receives less money, while private individuals and legal entities are exposed to legal uncertainty, with private individuals being at an even greater disadvantage as they cannot access the mandatory insurance system and exercise their rights arising from this type of insurance.

FIC RECOMMENDATIONS

- The application of schedular personal income taxation remains a problem in the Serbian system, to which there is no adequate solution. The Serbian government should consider the introduction of a synthetic system and thus enable the Serbian tax legislation to keep up with the advanced tax systems.
- It is strongly recommended to pass a by-law to regulate in detail the calculation of per diems and reimbursement of business travel costs.
- We strongly advise that the Ministry of Finance take a clear position regarding the tax treatment of no-interest loans (i.e. loans with lower interest rates lower than market ones) to be expressed through an official opinion. It would increase the level of legal certainty in this respect.
- We strongly advise revising the stand regarding "team building" and adjusting it to its economic purpose.
- The Ministry of Finance and Ministry of Labour, Employment, and Veteran and Social Affairs should coordinate joint activities on the proper interpretation or regulations and the treatment of the compensation for unused annual leave by an employee as defined by the Labour Law; i.e. as damage compensation, not as a salary.
- The social insurance registration process, primarily the registration software, given that this is done electronically, must be harmonized with regulations and must permit foreign workers posted to Serbia to register for mandatory social insurance, without concluding an employment contract in Serbia, and this should apply to Serbian citizens employed with foreign entities as well. Also, it is necessary for Serbia to expand its network of social security conventions, as this is closely linked to this issue, also to avoid the risk of double payment of contributions, which has negative ramifications for labour force mobility.

C. VALUE ADDED TAX 1.14

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks treating only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.	2007			√
VAT Law amendments should specify that, in the case of financial leasing, the base for VAT assessment should not include interest (interest should be VAT exempt), in the manner in which this has been applied in the Member States of the European Union.	2013			√
With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity, the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.	2013			√
VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of a mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or a credit note. This practice also corresponds to a usual business practice. Insisting on exclusively one approach represents an imposition of additional costs, whereby from the VAT collection point of view, there is no reason why both approaches cannot be applicable.	2014			√
The provision of the VAT Law dealing with the correction of output VAT needs to be amended and adapted to suit present economic conditions. The recommendation is that a correction be allowed when there is proof that liquidation or bankruptcy proceedings (including reorganization in line with the bankruptcy legislation) were opened, or in the event of an out-of-court settlement.	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The rulebook regulating the provision of small value gifts, advertising materials, and samples needs to be reviewed. The limits specified for small value gifts and advertising materials are unrealistically low, especially in view of the fact that the limit in terms of the market value of individual goods provided as advertising material or a small value gift was set at RSD 2,000 in 2004. The application of the rule with respect to the provision of samples for analysis purposes, as required by regulations, needs to be further clarified.	2014			√
The rules on VAT refunds to foreign entities need to be harmonized with the latest amendments on VAT registration of foreign entities, as well as with European Union rules with respect to VAT refunds to entities outside of the European Union. Namely, it is necessary to prescribe that an entity performing supply for which VAT registration is not mandatory should be entitled to a VAT refund, where such supply is taxable in Serbia and where its recipient has the obligation of VAT calculation, as the tax debtor. The Ministry of Finance and the Tax Administration should take the initiative in establishing reciprocity with all European countries with respect to VAT refunds for all foreign entities, and the Ministry of Finance should clarify required treatment for foreign entities from countries in which there is no legislative requirement of reciprocity for VAT refunds.	2017	√		
The Law should specify that the obligation to account for VAT lies with the transferee of goods and services in the following instances: 1) in the case of in-kind contributions, when the supply of goods and services as an in-kind contribution is subject to VAT; and 2) in the case of a change in status, when the supply of goods and services in such is subject to VAT.	2015			√
It should be specified that, in case of the return of goods, regardless of the expiration date, the supplier of goods may issue a credit note or the purchaser may issue an invoice, depending on their mutual agreement. This approach cannot jeopardize collection of VAT because, regardless of who issues the credit note, the same VAT rate is applicable.	2016			√
It is necessary to specify that in the case of supplies in the field of construction, parties may choose taxation in line with the general principle – that is, VAT charged by supplier. Also, in the case when a supplier calculated and paid VAT, and the tax authority considers that the recipient should have calculated VAT, as the tax debtor, the recommendation is for the supplier's invoice to be considered the correct invoice, and that administrative proceedings should not be initiated against either the supplier or the recipient. Namely, in the Member States of the EU, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment, where the subject, special rules apply when the supply is performed by a construction subcontractor, but not when the supply is performed by the main contractor to the investor. We emphasize that the biggest problem in practice occurs precisely with respect to supplies between main contractors and investors, given that in this case the investor can be an entity that purchases services of the current maintenance of facilities and similar services (i.e. the investor does not have to be active in construction). Bearing in mind this motive for designating the recipient as tax debtor, there is no reason to prevent the supplier from assessing and paying VAT, or to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor.	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to decrease administrative burden, correcting an error made in a VAT return for the previous tax period through a VAT return for the current tax period (without the submission of an amended VAT return) within a certain time period (e.g. within 6 months from the submission of the VAT return in which an error has been made, which would be separately disclosed in the VAT return for the current tax period) should be enabled, with payment of penalty interest.	2016			√
With respect to the transfer of a portion of assets, the by-law should be harmonized with the VAT Law, and with comparative provisions that can be found in EU member state regulations, and which are based on the practice of the European Union's Court of Justice, whereby the requirement would be deleted for the transferor to be prevented from performing the specified commercial activity at the moment of transfer, in order for the transfer of assets to be a VAT exempt transaction. Also, the by-law should specify that the transfer of a portion of assets should constitute a transfer of a set of tangible and intangible assets (and not only tangible assets, which is often the case in practice), which would accomplish harmonization with the practices and regulations that are applicable in the European Union.	2017			√
With respect to VAT records and the preparation of the summary of VAT calculation, which will be effective starting on 1 January 2018, we believe that it is necessary to reconsider the adopted Rulebook and requirements that relate to the keeping of records, above all in terms of effectiveness of categorization of transactions, as has been the case so far, and reduction of the number of categories in which invoices are recorded. We believe that it is completely unfair for a tax return to be considered not to have been filed if unaccompanied by a summary calculation, especially in a situation in which the taxpayer filed the tax return and paid the calculated VAT in a timely fashion.	2017			√
The processing of requests for refunds reported in VAT returns should be harmonized with the VAT Law and the Law on Tax Procedure and Tax Administration, which means that the fact that a tax audit has been initiated or because there is an outstanding debt on other grounds cannot delay a VAT refund. The Ministry of Finance needs to issue a binding explanation in line with the VAT Law and the Law on Tax Procedure and Tax Administration, and for the Tax Administration to act in line with it.	2017			√

CURRENT SITUATION

The value added tax is governed by the Law on Value Added Tax (RS Official Gazette No 84/2004, 86/04 – correction, 61/05, 61/07, 93/12 and 108/13, 142/2014, 83/2015, 108/2016, 7/2017, 113/2017, 13/2018 and 30/2018; hereinafter: the "VAT Law").

The VAT Law was amended two times in the last year and a half.

The amendments to the VAT Law regulate the taxation of investment gold, while the obligation to submit summary of VAT calculation together with VAT return was deferred to 1 July 2018.

POSITIVE DEVELOPMENTS

The amendments to the VAT Law regulated the taxation of investment gold and harmonized provisions related to the VAT refund to foreign entities.

REMAINING ISSUES

The relevant rules for applying the VAT Law are still scattered throughout various by-laws, which are frequently not sufficiently detailed and do not provide adequate explanations for the application of specific provisions of the law, instead of being integrated into a single piece of legislation

(currently there are 29 rulebooks and 3 by-laws). Although there were several announcements related to the adoption of a uniform rulebook in 2016, it is still uncertain when it will be published.

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 containing certain obligatory items. VAT legislation does not provide the possibility for the recipient of goods/services to issue this document, as is the business practice in other countries. Because of this, additional costs are imposed on companies since they have to change their business practices due to Serbian VAT rules.

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 so-called reverse charge rule).

The VAT Law defines new rules regarding the 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 regulations by taxpayers and by tax authorities alike. Due to diverging interpretations, taxpayers face the risk that tax authorities will hold the supplier accountable for output VAT, although the recipient as the taxpayer accounted for the VAT, or that the recipient who accounted for the output VAT is denied his right to input VAT deduction because tax authorities deem that the obligation to assess VAT is on the side of the supplier, even though none of these two approaches is to the detriment of the state budget.

The VAT Law specifies that a taxpayer is required to keep records that allow for the control of proper VAT calculation and payment, and is required to prepare a summary of VAT calculation for each tax period. If the taxpayer fails to submit a summary of VAT calculation with his tax return, it shall be deemed that the return had never been filed. The Rulebook on the Form, Content, and Method of Keeping VAT Records and Form and Content of the Summary of VAT Calculation (RS Official Gazette No 90/2017 and 119/2017), which goes into effect on 1 July 2018, specifies significantly greater requirements in terms of mandatory elements that records must include and methods for keeping them. New rules require mandatory VAT records to encompass information on VAT invoices segregated into specific taxable and exempt supplies according to the type of supply and VAT treatment. The summary of VAT calculation is prepared based on such records. It must be noted that in practice VAT records are not kept manually, but are generated from accounting records, except in the case of small entrepreneurs and legal entities that have a small number of invoices during a tax period. The keeping of accounting records and posting to journals according to accounting rules, which includes mandatory application of the chart of accounts prescribed by special rulebooks, is never performed according to requirements of the Rulebook, and invoices are never classified by categories specified by the Rulebook. As a result, implementation of new rules on VAT records requires changes in accounting programs and imposes new costs on taxpayers. Due to the large number of categories, there is a high risk of error in classifying individual invoices, but with the correct application of VAT treatment, so that it is questionable of what value such information is to the Tax Administration. Moreover, the preparation of the summary VAT calculation will provide the Tax Administration with higher level information, but such information will not allow for control to be carried out from Tax Administration offices. Rather, it will require an infield control of invoices. Also, the fact that someone conducts certain transactions does not mean that they are a high-risk taxpayer. Thus, we believe that such record keeping and summary of calculations provides limited informative value for the purpose of risk analysis by

the Tax Administration. In view of the aforementioned, the question is raised about the effectiveness of the new rules in terms of keeping VAT records, both from the perspective of the taxpayer and from that of the Tax Administration. We emphasize that such a method of keeping records and of submitting summaries of VAT calculations, in the form prescribed in Serbia, is unknown in comparative practice. Even though the requirements prescribed by the Rulebook are very complex to apply in practice, the user manual published on the website of the Tax Administration in January 2018 prescribes additional requirements hard to apply in practice: 1) disclose the estimated purchase value for the supply of goods and services for which the invoice is not yet received, and 2) disclose the final invoice that was issued after the invoice for advance payments, showing in the final invoice the full amount of the tax base and difference between VAT calculated in the final invoice and in the invoice for advance payments. The requirement to disclose the estimated purchase value has no basis in the VAT legislation and has no use value since the taxpayer cannot disclose input VAT if he has no invoice. Usually, in practice, it is not possible to fulfil this requirement since the accounting and VAT records are based on documents – accounting records (invoice, etc.), and therefore the accounting and tax departments do not have the necessary information to fulfil this requirement. With respect to disclosing the final invoices, the requirement contradicts the basic logic of bookkeeping and imposes additional costs, since it is unclear what kind of value this information has for the Tax Administration when it is not possible to link the final invoice with the invoice for advance payment in the POPDV form.

The Law specifies that a VAT refund shall be made within 45 days of the deadline for filing the tax return, or within 15 days for predominant exporters. It has been noted that in practice the Tax Administration is late in making VAT refunds. Also, it has been noted that VAT is not refunded because a tax audit has been initiated. Neither does the VAT Law, nor the Law on Tax Procedure and Tax Administration specify that VAT shall not be refunded for the duration of the tax control. In addition, VAT refund audit is not prescribed as precondition for VAT refund, the Tax Administration has a right to audit VAT regardless on executed VAT refund until expiration of period of limitation. . Moreover, the Law on Tax Procedure and Tax Administration specifies that if no refund is made to the VAT payer within the deadline specified by the VAT Law, interest shall be accrued as of the next day after the expiry of such a deadline. We emphasize that a VAT refund is not the result of error or oversight on the part of the taxpayer, but a key mechanism for the functioning of this form of taxation. All delays in VAT refunds directly impact the liquidity of companies that are required to make payments that include VAT to their suppliers by statutory deadlines, and on which depends the ability of their suppliers to regularly settle their tax liabilities.

FIC RECOMMENDATIONS

- The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks treating only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.

- With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity, the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.

- VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/

services. This practice is in line with VAT rules in other countries and a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or credit note. This practice also corresponds to a customary business practice. Insisting on exclusively one approach imposes additional costs, whereas from the VAT collection point of view, there is no reason why both approaches cannot be applied. With respect to above, in case of return of goods, it is also necessary to define that irrespective of the expiration date, the supplier can issue a credit note or the buyer can issue an invoice/debit note in accordance with their mutual agreement. This approach can not jeopardize VAT collection since the same VAT rate is applied irrespective of who issues the credit note.

- 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 is subject to VAT.

- It is necessary to specify that in the case of supplies in the field of construction, parties may choose taxation in line with the general principle – that is, VAT charged by supplier. Also, in the case when a supplier calculated and paid VAT, and the tax authority considers that the recipient should have calculated VAT, as the tax debtor, the recommendation is for the supplier's invoice to be considered the correct invoice, and that administrative proceedings should not be initiated against either the supplier or the recipient. Namely, in the Member States of the EU, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment, where the subject, special rules apply when the supply is performed by a construction subcontractor, but not when the supply is performed by the main contractor to the investor. We emphasize that the biggest problem in practice occurs precisely with respect to supplies between main contractors and investors, given that in this case the investor can be an entity that purchases services of the current maintenance of facilities and similar services (i.e. the investor does not have to be active in construction). Bearing in mind this motive for designating the recipient as tax debtor, there is no reason to prevent the supplier from assessing and paying VAT, or to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor.

- With respect to VAT records and the preparation of the summary VAT calculation, which will be effective starting on 1 July 2018, we believe that it is necessary to reconsider the adopted Rulebook and user manual, and especially the requirements that relate to the keeping of records, in terms of effectiveness of categorization of transactions, as has been the case so far, showing the estimated value of the purchase and prescribing how the final invoices should be disclosed in VAT records and the POPDV form. We believe that the goal should be reduction of the number of categories in which invoices are recorded.

- The processing of requests for refunds reported in VAT returns should be harmonized with the VAT Law and the Law on Tax Procedure and Tax Administration, which means that the fact that a tax audit has been initiated cannot delay a VAT refund. The Ministry of Finance needs to issue a binding explanation in line with the VAT Law and the Law on Tax Procedure and Tax Administration, and the Tax Administration should act in line with it.

D. PROPERTY TAX 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The provisions of Article 7 of the Law should be harmonized with the provisions of the Law on Accounting.	2015			√
Provisions of the Property Tax Law which determine the method of the calculation of property tax base using the zoning method should be revised in order to avoid the negative consequences of the current regulations in the next fiscal years. It is necessary to establish solid criteria on which the utility development of the zone will be determined to avoid legal uncertainty of the taxpayers.	2014			√
In particular, it is recommended that the implementation of corrective factors in the determination of the market value of real estate be advised. Corrective measures should be conditioned with the purpose and the surface of the object, as well as the quality and age of the property. It is advisable to institute a greater level of monitoring in the zoning of each municipality (be it at the level of the ministry or through a separate body) and organize the training of personnel in order to avoid situations in which neighbouring properties that are territorially spread out in different municipalities are taxed differently.	2017			√
It is recommended that local tax authorities be obliged, by the Law, to publish data on all real estate sales per zone, as well as data used for the calculation of average market prices.	2015			√
Prescribe in the Law the method of calculation of the property tax base of real estate classified as held for sale, or inventories, according to IFRS 5 and IAS 2, respectively. It is recommended that the property tax base of such real estate be calculated based on their fair value as assessed by a certified appraiser on the last day of the year preceding the year for which the property tax is calculated, regardless of whether the fair value is stated in the business records of the taxpayer or not. In case the fair value of real estate is not assessed by a certified appraiser, the tax base would be calculated using the average prices published by the local tax authorities.	2015			√
It is recommended that data by which the tax authorities determine property transfer tax be made available to the public, to ensure the transparency of work of tax authorities.	2015			√
The usable area of the property should be equal to the area declared in the land cadastre (where the property has been registered in cadastral books), which will then be adjusted for certain parts of the property. Such an approach would relax the process of the tax determination and audit.	2017			√
To enhance understanding of the tax authorities in the area of the accounting standards in case when the fair value of the property is being used as the property tax base. In addition, to insist on greater consistency of the tax authorities in the application of the Law and rulings issued by the Ministry of Finance in case of taxation of specific property components such as storage and depot facilities.	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is advisable to simplify the form of the property tax return and accompanying documents in order to reduce the number of items declared in the return, considering the fact that such a reporting requires additional administrative efforts by the taxpayers and also adds no value to the tax authorities in case of an office audit. To introduce the electronic submission of the property tax return in order to speed up the process of the tax return filing as well as the process of auditing of the tax returns. It is recommended that the filing of the tax returns for all local tax governments is facilitated via a single portal; i.e. to introduce a unified software solution in all local tax authorities.	2017			√
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 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 in the method of determining a real estate property's tax base and by the introduction of the property tax self-assessment principle. Specifically, companies required to 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; or 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. The introduction of the concept of market value as the property tax base prompted different interpretations over the years in relation to the taxpayers that can apply this concept.

Taxpayers active in the processing industry still face significant administrative costs and practical difficulties in categorizing different buildings in the factory compound – processing plants, administrative buildings, warehouses, other real property for specific purposes –for the purpose of determining the property tax base, especially in determining the usable area of each unit (processing, administrative, storage etc.) of a single facility.

The statutory deadlines for reporting the acquisition of a new immovable property during the year for the purpose of determining and paying property tax have put taxpayers in a precarious position. In other words, due to the lack of harmonization between deadlines, tax authorities have discretionary rights to decide which of the prescribed deadlines should be applied in each particular situation.

The latest amendments to the Law on Tax Procedure and Tax Administration prescribe the electronic submission of tax returns beginning from 1 January 2019, which should be facilitate administration for taxpayers.

POSITIVE DEVELOPMENTS

Due to the fact that the Law has not been amended in the previous year, there were no improvements in terms of defining more clearly certain provisions of the Law, which may cause and/or are already causing different interpretations in their application. Generally, we are of the opinion that there were no improvements compared to the previous year and that the key uncertainties are still present.

REMAINING ISSUES

We would like to point to the inconsistent implementation of the concept of market value as the property tax base in practice and to certain gaps related to the determination of the tax

base for entities that do not apply IAS/IFRS fair value measurement for real estate assets for accounting purposes but fair value measurement in accordance with IFRS for SMEs. Bearing in mind that the amendments to the Law on Accounting prescribe that IFRS for small and medium-sized enterprises (hereinafter: IFRS for SME) must be applied by small enterprises, while medium-sized enterprises and micro businesses may opt to apply IFRS for SME, and that Article 7 of the Law does not explicitly specify whether this article refers to the companies that apply IFRS for SME, it remains unclear whether the property tax base for these companies is equal 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. The lack of harmonization of this Law with the Law on Accounting has resulted in different interpretations by taxpayers and tax authorities in practice. It would therefore be recommendable to additionally clarify provisions of Article 7 to reduce legal uncertainties for taxpayers.

As for determining the property tax base by applying the average prices published by local municipalities, we would like to point out that one of the main parameters for the calculation of the value of property is the zoning category to which the property belongs, which is determined by local municipalities. The latter have discretionary zoning powers in the process of assessing the property's market value. Also, zoning is not mutually coordinated between the municipalities and each municipality enacts a decision on zoning for their territory on the basis of public utility availability in the area but the procedure of assessing utility availability is not sufficiently transparent. It should also be noted that no criteria for value adjustments are envisaged regarding the quality/age and/or purpose and size of the 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, and that the price per square meter of office space may be the same for a property ranging in size from tens to thousands square meters, contrary to economic logic. In many municipalities there were oscillations in the published prices of development land over a relatively short period, so it is questionable whether the sample used to determine average prices can be treated as adequate.

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, 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.

Particular administrative difficulties and accompanying costs are caused by the Rulebook on property tax return forms. In line with this Rulebook, taxpayer fills a tax return PPI – 1 form for each municipality in which it has assets subject to property tax. Tax return PPI – 1 includes annexes for each cadastral parcel and sub-annexes for each property on a parcel, as well as one sub annex for the land itself. We consider it recommendable to simplify the preparation and filing of property tax returns, especially having in mind that they are going to be submitted electronically from 1 January 2019.

The tax authorities have been given exclusive rights to determine the property transfer tax base. The tax base is determined in accordance with internally determined market prices, unknown to taxpayers, so it remains unclear whether or not the contractual price is equal to the market price.

We would also like to briefly comment on" the provision of the Law which defines exemptions from the absolute rights transfer tax. The wording of this provision, which states that the absolute rights transfers on which VAT is paid are exempt from the payment of the transfer tax, could cause certain practical problems even though, we believe, the intention of the legislator in this regard was unambiguous. The term ''paid'' is not appropriate in this case due to the fact that VAT is calculated and reported in the VAT return. Moreover, certain transactions subject to VAT under the VAT Law may be exempted from VAT for reasons prescribed by this Law. To avoid different interpretations in this regard, it would be recommendable to clarify this provision and to state that this exemption is related to transfers of absolute rights subject to VAT under the VAT Law. Also, we would like to mention an issue that arises in the case of lease of property for a period exceeding 183 days in a 12-month period. In this case, Article 12 of the Law on Property Tax does not grant the lessor the right to tax exemption for the land plot under a building subject to property tax. On the basis of these provisions, the land plot under a leased building may be taxed twice, which is unjustified.

FIC RECOMMENDATIONS

- The provisions of Article 7 of the Law should specify that the fair value is the property tax base for entities applying the fair value measurement according to the IFRS for SMEs and accounting policies.
- The provisions of the Law prescribing the method of calculation of the property tax base by zone should be reconsidered to avoid the negative consequences of the current rules on the forthcoming fiscal years. It is especially advisable to apply corrective factors in determining the market value of property.
- It is advisable to simplify the property tax return form and supporting documents. It should be possible to list more than one cadastral parcel in a single municipality in Annex 1, and summarize all facilities of the same type in a single sub-annex (e.g. warehouses of taxpayer in the territory of a particular local government, irrespective of their number).
- Rephrase the provision prescribing exemptions from the absolute rights transfer tax, so that it is understood that the exemption applies to the transfer and acquisition of absolute rights that are subject to VAT, not to those for which VAT is paid.
- Enable interested parties (taxpayers) to access data used by the authorities in determining whether the contractual price of an absolute rights transfer is in line with the market price.

E. TAX PROCEDURE 1.12

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amending Article 80 of the Law on State Administration to eliminate legal uncertainty with regard to whether the opinions of the ministries are legally binding if so prescribed by a separate law. In addition, introducing an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance; i.e. oblige the Tax Administration to provide answers to questions. Amending the PTA Law in a way that the opinions of the Tax Administration sent by email are binding for the Tax Administration.	2014			√
Amending Article 147, para 1 of the PTA Law, so as to read that an appeal suspends the tax collection;	2016			√
Introducing provisions via a rulebook or similar by-law, providing for clear conditions for the deferral of the payment of the tax liabilities.	2017		√	
Amendments to the LTPTA are required to clearly define procedures for acting on requests for refunds when the payment of a tax liability is deferred or disputed.	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
When the refund is declared in the VAT return, it is necessary to harmonize procedure with the VAT Law and the LTPTA, which means that the fact that a tax audit has been initiated or because there is an outstanding debt on other grounds cannot delay a VAT refund. The Ministry of Finance needs to issue a binding explanation in line with the VAT Law and the LTPTA, and for the Tax Authority to act in line with it.	2017			√
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.	2017			√
Defining the responsibility of persons in the Tax Administration who do not comply with the laws in their work , i.e. decisions of the second instance authorities and courts.	2016			√
Amending the PTA Law to allow taxpayers to file amended tax returns an unlimited number of times.	2014			√
Abolishing the provision of the PTA Law which prohibits the Business Registers Agency from erasing a taxpayer from the register, registering status changes or amending information for the duration of a tax audit.	2014			√
Regulating the provisions of the Criminal Code concerning tax crimes in more detail to allow taking into account the size of the legal entity and the volume of taxable activities.	2014			√
The introduction of a statutory deadline for tax audit duration, and presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the deadline, both for the Tax Administration and the Ministry of Finance.	2011			√
Provisions that regulate preventive tax audits and advisory activities of tax inspectors should be introduced into the PTA Law in order to align the provisions of PTA Law with the IS Law.	2016		√	
Special tax departments should be established within the Administrative Court with judges exposed to more training to gain better understanding of tax issues.	2011			√
Before full transition to electronic filing of tax returns, enable taxpayers who wish to file tax returns electronically to do so.	2014			√
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, concerning the application of tax laws, should be made availabe publicly.	2016			√
The Serbian Ministry of Finance and the Tax Administration should intensify their activities in implementing the FATCA agreement and cooperate more closely with Serbian financial institutions in this process.	2016			√
As a general remark, the laws should be adopted and/or amended in the regular procedure and not in a urgent procedure, as to enable the very important public debate.	2013			√

CURRENT SITUATION

The regulatory framework for tax procedure in Serbia is governed by four principal laws:

- The Law on Tax Procedure and Tax Administration, RS Official Gazette No 80/2002, last amended in April 2018, (PTA Law);
- The Law on General Administrative Procedure (RS Official Gazette No 18/2016);
- The Law on Administrative Disputes, RS Official Gazette No 111/2009, (AD Law);
- The Law on Inspection Supervision, RS Official Gazette No 36/2015, (IS Law).

The tax procedure is a special type of administrative procedure governed primarily by the PTA Law, which regulates in detail the organization and functioning of the Tax Administration, as well as the procedures for the assessment, control, and collection of tax. The PTA Law comprehensively regulates all tax misdemeanours. The general rules of the GAP Law apply to the tax procedure where a certain issue is not regulated by the PTA Law, while the rules of the IS Law further specify the activities of the Tax Administration regarding inspections. The AD Law regulates the judicial review of administrative decisions issued by the Tax Administration as an additional taxpayer protection system (e.g. deciding on actions against second-instance decisions of the Ministry of Finance).

The PTA Law was amended once since the last issue of the White Book in mid-2018. The most important amendments by far relate to: the transfer of the competencies to the National Bank of Serbia in foreign exchange and foreign currency transactions; prohibition of any deletions of business entities or registration of other business data changes prohibited by the law by the Serbian Business Registers Agency at the time of when the Tax Police is undertaking certain actions; the obligation to report data on business premises; the continuation of the digitization of the tax procedure; the introduction of new measures for securing tax collection and amending provisions related to tax offenses and new offenses envisaged for banks.

These amendments also envisage the possibility for the Tax Administration to compile an appendix to the minutes, after the submission of the minutes and the supplementary minutes, as well as the impossibility of changing the VAT refund chosen option by submitting the amended tax return.

POSITIVE DEVELOPMENTS

In parallel with further digitization, the tax administration continued the implementation of the previous year's plan. The tax procedure was potentially accelerated by enabling the electronic submission of a tax administrative act to the taxpayer's e-mail. Additionally, property tax returns will be submitted electronically as well, starting from 1 January 2019.

Amendments that already apply also regulate in slightly more detail deferral of the payment of tax liabilities and the possibility to submit the request for deferral electronically. Taxpayers may now be granted a 12 months (exceptionally 24 months) grace period before they start repaying the deferred tax liability. However, the detailed regulation of the conditions for deferral is still missing.

Additionally, the concept of "tax services" was introduced with intent to improve the advisory function of the Tax Administration. Tax services are defined as one of the Tax Administration's competences that involve the provision of legal support to taxpayers, assistance with filling tax returns, drafting submissions and other assistance to facilitate taxpayers' compliance with tax regulations. These amendments already started to apply.

Due to the short implementation time in practice, the effect of the changes on the acceleration of the tax procedure is yet to be seen.

REMAINING ISSUES

The existing regulatory framework governing tax procedure still does not provide sufficient protection for taxpayers against the discretionary decisions of tax authorities.

Rules on tax-related criminal offences still do not take into consideration the size and volume of taxable activities of taxpayers and apply the same threshold to both small-sized and the largest companies in the Republic of Serbia.

More often than not, tax inspectors do not apply the substance over form principle in good faith. This regularly leads to highly unfavourable decisions for taxpayers, which are practically impossible to change.

Tax authorities routinely fail to comply with the deadlines for the issuance of decisions on appeals filed by taxpayers.

The existing rules regarding delayed execution of tax administrative acts via requests submitted to the second-instance authority do not provide for clear conditions for delaying execution, providing the second-instance authority with a very broad-set discretionary right.

Rules that relate to the possibility of a tax refund in the event of existence of matured tax liabilities in another respect are unclear and do not take into account whether such tax liabilities are deferred or disputed (e.g. an appeal of tax assessment issued by the Tax Authority). As a result of the foregoing, taxpayers are in a situation wherein uncollectible tax liabilities result in a complete discontinuation of the tax refund.

The statutory 30-day deadline for issuing and publishing binding opinions upon request of taxpayers is not observed, so in practice taxpayers wait on said opinions for more than a year. Such uncertainties are additionally induced by binding opinions that are applied by the Tax Administration but are not publicly disclosed anywhere and are therefore unavailable to the taxpayers.

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.

During a tax audit, as well as during the period in which a taxpayer's TIN was temporarily withdrawn, and until such a TIN is reinstated, the Serbian Business Registers Agency cannot erase a taxpayer from the register, register status changes, or amend information. In addition, considering that certain tax liabilities become due regardless of whether or not a company is actually doing business (e.g. mandatory social security contributions, municipal taxes). Due to the vagueness of this provision, the initiation of a tax audit may preclude the company from closing down business, which will lead to additional tax liabilities for the company, regardless of the outcome of the audit, thus de facto arbitrarily punishing the taxpayer for no reason.

The PTA Law should be further aligned with provisions of the Law on Inspection Oversight (LIO). The LIO provides that inspectors are required to act not only to detect illegal activities and penalize entities violating the law, but also to prevent irregularities and provide advice to controlled entities to minimize risks from illegal acts.

The Serbian Administrative Court, as the final instance for tax disputes, does not have a sufficient level of specialization and expertise to adjudicate on tax matters. A court decision will typically take more than one year. Considering that the procedure before the court does not postpone tax liability, i.e. the taxpayer still has to settle the previously disputed tax, even if he eventually does win the case, incurred costs for the taxpayer usually result in taxpayers receiving a refund of the disputed tax of a realistically lower value. In addition, the court almost never decides on the merits of the case.

Serbia has not yet signed an Intergovernmental Agreement with the U.S. related to the Foreign Account Tax Compliance Act (FATCA), and there is no publicly available information about the intentions of the Serbian Ministry of Finance concerning current compliance with FATCA reporting requirements by Serbian financial institutions.

FIC RECOMMENDATIONS

- Amending Article 80 of the Law on State Administration to eliminate legal uncertainty with regard to whether the opinions of the ministries are legally binding if so prescribed by a separate law. In addition, introducing an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance. Amending the PTA Law in such a way that the opinions of the Tax Administration sent by email are binding for the Tax Administration. The PTA Law should specify the accountability of the Tax Administration staff members who do not comply with the laws (or higher instance decisions) in their work.
- Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the tax collection.

- Introducing provisions to the PTA Law to govern the liability of authorized officers and adequate penalties for failure to issue a binding opinion within the 30-day deadline prescribed by Article 80 of the Law on State Administration.
- Defining the responsibility of the Tax Administration employees who do not comply with the laws in their work, i.e., fail to act on the orders of second instance authorities and courts.
- Abolishing the provision of the PTA Law which prohibits the Serbian 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 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 a tacit acceptance procedure 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.

F. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM (PARAFISCAL CHARGES)

1.38

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 a consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues.	2017			√
The FIC holds that the draft Law on Fees for the Use of Public Resources should be completed with a comprehensive analysis and alignment with solutions and tendencies of sectorial laws. The original concept of integrating all fees, and introducing new ones only under this law, proposed and implemented by the Ministry of Finance, should not be abandoned.	2013		√	
Continuation of the reform of parafiscal levies by reviewing all other parafiscal levies which place a financial burden on legal entities, and for which they do not get any corresponding benefits in return, in terms of specific rights, services, or resources.	2015		√	
Adoption of the Law on Fees for the Use of Public Goods and the Law on the Financing of Local Governments.	2014			√
Apply the business signage tax ceiling to the obligation of one taxpayer, regardless of the number of facilities with displayed business signs that they have in the territory of any one municipality or whether they have more business facilities on other municipality territories in the territory of Serbia (banks, insurance companies, telecom companies, etc.)	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The FIC believes that any new tax burden, or increase to the existing one, to businesses and individuals in Serbia should be pre-announced to taxpayers, and should be introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies, or other ministries.	2013		√	
The FIC is of the opinion that the Administrative Court should be specialised for tax matters, or that at least a special department within the Administrative Court with sole jurisdiction over tax disputes should be established, to the great benefit of all parties.	2016			√
To abolish obligatory membership in the Serbian Chamber of Commerce and thus obligation of paying a membership fee as parafiscal charge.	2017			√

CURRENT SITUATION

The World Bank's Doing Business 2018 report ranks Serbia 43rd out of 190 economies. In the area of tax payment Serbia's position slightly worsened compared to the 2017 report, and is now ranked 82nd. Tax payment and dealing with electricity access are still the two worst-ranked areas.

The FIC is of the view that Serbia's tax system is getting significant negative reviews among other because of the many parafiscal charges existing in parallel with taxes, increasing the effective burden on the economy under conditions that are often non-transparent and unfair. As a kind of public levy, parafiscal charges actually impose an obligation that 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 by-laws.

The authorities recognize this fact, which is why a parafiscal reform was carried out in late 2012, abolishing 138 parafiscal levies. The reform continued in 2013, with a first draft of the Law on Fees for the Use of Public Resources. However, the final version of the draft law was never adopted and, although the process is still on-going, up to 2018 the process was marked by stagnation and the introduction of new parafiscal levies (e.g. introduction of the mandatory membership fee for the Serbian Chamber of Commerce).

POSITIVE DEVELOPMENTS

In 2016, the Law on Tax Procedure and Tax Administration was amended, designating the Ministry of Finance as the second instance authority deciding on appeals against the decisions of the Tax Administration. The same applies to all parafiscal charges collected by authorities that apply the Law on Tax Procedure and Tax Administration. This provision became effective as of 1 July 2017.

The process of modernization of the Tax Administration and shift towards e-governance has continued throughout 2017 and 2018, which is of benefit to all taxpayers.

In early 2018, a new draft version of the Law on Fees for the Use of Public Resources was made available for public debate. The draft law showed some progress in dealing with public and parafiscal charges, which would reduce the financial burden for taxpayers. After receiving feedback from the public, the relevant ministries started to work on a revised draft version of the law.

The practice of introducing new tax burdens or increasing existing ones, with no prior announcement, was slightly curbed in 2018, allowing for increased transparency and taxpayer compliance.

REMAINING ISSUES

In practice, we continue to witness the introduction of new parafiscal charges through various non-tax regulations, while existing parafiscal levies have not yet been abolished.

According to NALED and USAID, businesses in 2018 are paying 591 non-tax levies. Bearing this in mind, the adoption of the Law on Fees is a priority for the reform of parafiscal charges.

A particular problem that we deem should be emphasized concerns the local utility tax for displaying business

signs (business signage tax). Business signage tax costs for remaining taxpayers has significantly increased since the regime for the payment of the business signage tax changed. The overall liability of a business entity for business signage reached significant amounts, inter alia, due to diverse practices amongst local governments.

Furthermore, the FIC has warned of the growing issue of the unequal implementation of tax regulations and inconsistency of tax laws and by-laws (e.g. the Tax Administration does not recognize documented operating expenses incurred in relation to a business activity not listed in the Articles of Association or other relevant acts of a company, despite the fact that such an obligation is not envisaged under the Company Law and that the respective practice is not in line with tax regulations). Additionally, issues also occur where tax authorities act in accordance with mandatory acts pertaining to the implementation of tax regulations (explanations, opinions, instructions, guidelines, etc.), issued by the minister responsible for finance or other body authorized by the minister. In relation to the aforementioned, it remains 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 indeed mandatory.

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.

The judicial protection of taxpayers' rights is ineffective. The proceedings before the Administrative Court are very lengthy and the Court usually simply confirms the decision of the Tax Administration, without providing an adequate statement of reasons for such a ruling. Alternatively, in exceptional cases, the disputed decision is annulled and the case remanded back to the second instance Tax Authority, without going into the merits of the case, which further protracts the entire process of protection of taxpayers' rights. The court almost never schedules any hearing where a taxpayer could explain its arguments before the Court, or present its objections to the findings of the Tax Administration.

FIC RECOMMENDATIONS

- Continuation of the reform of parafiscal charges, by eliminating all parafiscal charges that do not provide corresponding benefits in return, in terms of specific rights, services, or resources, while at the same time ensuring a consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues.
- Adoption of the Law on Fees for the Use of Public Goods and a new Law on the Financing of Local Governments, preceded by a comprehensive analysis of and alignment with solutions and tendencies of sectoral laws .
- Any new tax burden, or increase to the existing one, should be pre-announced to taxpayers and introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies, or other ministries.
- Apply the business signage tax ceiling to the obligation of a single taxpayer, regardless of the number of facilities with displayed business signs that they have in the territory of any one municipality or whether they have more business facilities in other municipalities in Serbia (banks, insurance companies, telecom companies, etc.)
- Judicial protection of taxpayers' rights should be significantly improved through a reform of the Administrative Court, specialization of judges in tax matters, or the establishment of a special department within the Administrative Court with sole jurisdiction to handle tax disputes.

ENVIRONMENTAL REGULATIONS

1.56

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Support the establishment of new and development of existing companies engaged in production and/or services in the field of environmental protection, and in the production of energy from alternative sources.	2009			√
The introduction of economic incentives for investment in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, eco-innovation, etc.).	2010			√
Encourage the establishment of partnerships between public and private stakeholders, together with local authorities to help the implementation of the Government's waste management policy, which is a necessary precondition for the establishment of an appropriate program that will provide a framework for further investments and growth in the private sector.	2010		√	
Reinforce cooperation with operators licensed for thermal treatment of waste to solve the issue of permanent waste disposal, thereby significantly reducing quantities deposited in landfills.	2014		√	
Stimulate investments into the treatment of animal waste and ensure adequate solutions for such waste.	2015			√
Stimulate local communities to provide conditions for the collection and selection of communal waste from households.	2016		√	
Permanent education of the population in the field of waste selection and environmental protection.	2015		√	
Continue developing local and regional waste management plans.	2009		√	
Continue introducing laws and by-laws in order to secure a proper implementation of changes to regulations in the field of environmental protection.	2016			√

CURRENT SITUATION

Compared to 2017, this year did not bring significant changes in the field of environmental protection. The procedure of the announced amendments for the legal and by-law documents in this field is not yet complete, although amendments and changes to certain laws are being processed and waiting for adoption by the National Assembly of the Republic of Serbia since 2015. The necessary legal basis for issuing permits for the management of mining waste was established.

The Green Fund of the Republic of Serbia, as a budget financed fund, established for the purpose of keeping records of resources allocated to finance the preparation, implementation and development of programmes, projects, and other activities in the field of preservation, sustainable use, protection, and improvement of the environment, as well as to boost and improve the efficiency of collection of environmental fees, but it is not operational yet. The specific activities and operations of this Fund have not been presented yet, and one of the reasons is the lack of experts in the relevant ministry and local government administrations, especially in highly demanding areas, including engineers and management in the field of water and waste.

Packaging waste is collected pursuant to the Waste Management Law and the Law on Packaging and Packaging Waste. However, there is no system-wide solution for the disposal of pesticide packaging waste in Serbia.

The Rulebook on Methods and Procedures for Scrap Tire Disposal Management stipulates the recycling of at least 80%, and the use for energy purpose of not more than 20%, of the total quantity of collected scrap tires over the previous year. This puts users of this type of waste in an unequal position. Operators do not have any information, nor are they allowed to have any information according to com-

petition rules, about the quantity of waste tires used for energy purposes by another operator. This also means that none of them know if the target stipulated by the Rulebook has been or will be reached during the year.

Additionally, the current incentives for the re-use of waste as an alternative raw material (EUR 160/t), or for generating energy (EUR 30/t), are not based on the actual costs of processing these products once they become waste, which is the primary purpose of these incentives. The unjustifiably big difference between incentives for the different types of waste treatment has led to disruption in the waste oil and waste tire market, depriving operators licensed for thermal treatment of waste oil and waste tires for energy purposes of permanent and stable sources of alternative fuels.

A new regulation is in the pipeline that is expected to define financing of the recycling industry, according to the principle of predictability and clear control criteria, however, this year there were no changes in the by-laws for the implementation of the Law on Waste Management and/or the Law on Environmental Protection.

Also, no by-laws have been adopted in the field of "end of waste" and "by-product".

The existing legislation on end-of-life vehicles is not being applied and has some shortcomings, since it does not require the handing over of the vehicle to the hazardous waste operator to carry out the de-registration in the Ministry of interior.

An "extended producer responsibility" should be introduced for WEEE (waste from electronics and electrical equipment), a special waste stream. The same principle already showed good results in the packaging waste stream.

The adoption of EU regulations 1013/2006 on shipments of waste should be accelerated in the import and export of non-hazardous waste, to simplify cross-border waste exchange.

The treatment and permanent disposal of hazardous waste is still a problem. New facilities for hazardous waste treatment are necessary, as the EU directive stipulates that, starting from 2020, the export of semi-treated hazardous substances will no longer be possible. This means that Serbia will have to build facilities within the next three years for the full treatment of hazardous waste. In addition, it is necessary to encourage and develop the use of alternative fuels as an energy source for companies that have facilities for the preparation and use of these materials and integrated permit for the operation of these plants. In this manner, synergy would be achieved and the problem of permanent disposal of waste will be solved while reducing the consumption of non-renewable energy sources in parallel, and the companies that use this type of fuel would provide better competitiveness in the market.

The growing problems created by urban waste landfill (fire, emissions, etc.) require a systematic resolution of this field and development of public-private partnerships where the cities, in cooperation with world-renowned companies in this field, would create conditions to invest through this partnership in solving problems at landfills, permanent waste management, and construction of recycling centres. The share of recycled waste in total waste management remains small. Illegal waste landfills are still a problem and the process of closing them down is slow. No progress was seen in the field of medical waste.

As regards climate change, Serbia has achieved a certain level of preparedness, but implementation is at an early stage and a national climate strategy is currently under development. Activities are underway to solve the problem of greenhouse gas emissions in the land use, change of land use allocation and the forestry sector.

The public awareness campaign to educate citizens on waste sorting in the household should be continued, whilst at the same time local governments should be creating conditions for the disposal of specific types of waste (municipal, solid waste, etc.), which would directly contribute to improving the waste management system in the later stages of permanent disposal.

According to the European Commission's (EC)Serbia Report 2018, the country has some level of preparation in the area of environment and climate change and has made some progress in further aligning the with the EU acquis. The EC provides some recommendations on the steps to be taken, such as enhancing administrative and financial capacity by operationalizing the Green Fund; intensifying implementation and enforcement work, such as closing non-compliant landfill, reinforcing air quality monitoring, etc.

POSITIVE DEVELOPMENTS

Procedures are underway for establishing public-private partnerships in the field of municipal waste management and its permanent disposal.

In some cities, the separation of household waste has been introduced, and local governments have created conditions for collecting and disposing of such waste.

The Twinning Project "Improving the Hazardous Waste Management System in the Republic of Serbia – Integrated Hazardous Waste Management Plan" is expected to help Serbia better prepare for the EU accession negotiations on Chapter 27, relating to the environment and climate change, yet to be opened.

On October 12, 2018, the Parliament adopted Amendments of the Environmental Protection Law. These changes concern the projects related to the protection and improvement of the environment and their financing from the pre-accession assistance of the European Union, inter-national development assistance and co-financing. With regard to this, we welcome the fact that said Law's amendments has been adopted by the Parliament while the effects of the adopted changes will be visible in the upcoming period.

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.

The system of incentives for investing in environmental protection is still underdeveloped (clean production, pollution reduction, energy efficiency, waste reduction, environmental investments, recycling, etc.), due to the fact that the Green Fund is not operational yet.

No thermal treatment of hazardous waste is being done and such waste is not being collected for reasons including a lack of permits and a lack of appropriate preparation lines for this type of waste.

A lack of adequate means for the treatment and proper disposal of animal waste is a huge problem throughout Serbia.

There is a lack of trained experts in the field of environmental protection.

New facilities for hazardous waste treatment are required.

There are still many illegal landfills in Serbia, and investment in waste sorting and recycling is still not at a satisfactory level, which could be significantly improved with the operationalization of the Green Fund. Funding based on the "polluter pays" principle is needed to increase investment in this sector.

The high level of air pollution is still a problem in some of the major cities in Serbia. Currently, there are only three air quality plans for Bor, Belgrade and Pancevo.

FIC RECOMMENDATIONS

- Introduction of economic incentives for investment in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, eco-innovation, etc.) and operationalization of the Green Fund;
- Reinforce cooperation with operators licensed for the thermal treatment of waste to solve the issue of permanent waste disposal, thereby significantly reducing quantities deposited in landfills;
- Stimulate investments into the treatment of animal waste and ensure adequate solutions for such waste;
- Continue developing local and regional waste management plans.
- Accelerate the adoption of laws and by-laws to secure the proper implementation of changes in environmental protection legislation.

SECTOR SPECIFIC

top

FOOD AND AGRICULTURE

1.24

Over the past year, new agricultural policy measures have been introduced and Serbia tapped into the European funds and EU grants for agriculture. A set of rules on the use of incentives in livestock production, a very important but neglected agricultural branch, has been adopted. However, the Law on Food Safety and the Law on Plant Protection Products have not been amended yet. It is crucial to harmonise these two very important laws, directly related to the food safety and quality, with EU regulations in order to ensure consumer rights and safety, as well as to create conditions for strengthening the agricultural sector.

Harmonization with the EU has not progressed at the expected pace, and enforcement seems to be even more challenging. The Rulebook on Food Labelling and Advertising, harmonised with the EU regulation, entered into force recently, and the guidance to facilitate its implementation has been published by the Ministry of Agriculture, while application is also expected to be harmonized with the EU. The Ministry of Health has published regulations relating to nutritional and health claims, additives, flavourings, enzymes, and we expect proper and consistent application. The National Reference Laboratory still does not perform all the tasks envisaged by the law. The Expert Council for Risk Assessment has been established, but its activities are not yet known to the public.

There is still room for progress, both in terms of improving the regulatory framework to ensure high standards of food quality control and applying uniform control to all market participants – importers and domestic producers alike. Heftier investment in agriculture and livestock development is needed and should be provided through funds for subsidies and state incentives for the agricultural sector. Equally important is the strengthening of capacities of the veterinary and phytosanitary directorates, national reference laboratories, and consistent application and improvement of the risk based approach.

A. FOOD SAFETY

1. FOOD SAFETY LAW 1.09

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Fully harmonize the Food Safety Law with EU regulations.	2017			√
Equalize the status of importers and domestic producers in terms of costs of analysis.	2017			√
Base the food safety strategy on risk analysis. Classify importers based on risk analysis.	2015		√	
Enable the work of all departments of the National Reference Laboratory and create the conditions under which the Laboratory can carry out all its statutory activities.	2015			√
Facilitate the acceptance of certificates of foreign accredited laboratories.	2015			√
Clearly define the difference between the costs of analysis and super-analysis of samples referred to in Article 70 and the fee for laboratory analyses referred to in Article 71; or, if there is no relevant difference, amend those parts which created the confusion in the first place.	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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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			√
Pass the Rulebook on Criteria for General Food Safety at the Level of Food Retailers.	2014			√

CURRENT SITUATION

The Food Safety Law (hereinafter: Law) was adopted in 2009, but has not been fully implemented so far, nor have the related by-laws been adopted. Despite repeated announcements, the harmonization of the Law with EU legislation (178/2002/EC) and further improvements in the food sector did not take place at the time of writing, June 2018.

The Law introduced the separation of jurisdiction between the Ministry of Agriculture (phytosanitary, veterinary and agricultural inspection) and the Ministry of Health (sanitary inspection), but clear procedures in the activity of individual inspectorates are still lacking, as well as a clear overview of the obligations of the industry in case of overlapping competencies (e.g. dietary products of animal origin).

The National Reference Laboratory (NRL), opened in 2015, still does not perform all the tasks envisaged by the Law. This, among other things, is a limiting factor for the risk analysis envisaged by the Law.

Although the Ministry of Agriculture established the Milk Working Group in 2015, by mid-2018 there was still no harmonization of the current legislation on milk safety. According to the last amendment to the legislation, enacted in September 2017, maximum the permitted aflatoxin M1 content in raw milk was increased again to 0.25 µg/kg (from 0.05 µg/kg) and this provision will apply until 30 November 2018. A possible extension of the validity of the provision will be in favour of milk producers in the Serbian market, since they will be able to produce and distribute milk with a slightly higher content of aflatoxin M1. On the other hand they are limited in relation to export, since the maximum limit of aflatoxin M1 in raw milk in the EU, as well as in countries in the region, is set at 0,05 µg/kg. At the same time, these measures allow the import of milk with aflatoxin levels exceeding the 0,05 µg/kg limit, from countries in the region and the EU. Due to all of the above, and primarily because of food safety, it is the current legislation should be harmonized with the EU acquis, and activities should be focused on the application of measures to reduce the presence of aflatoxin in animal feed.

The Expert Council for Risk Assessment was officially established in April 2017.

Problems were detected in the import of raw materials for food products exceeding maximum permitted levels of heavy metals. The new Regulation from March 2018 defines the maximum permitted levels of contaminants in certain types of foods (Annex V), but it is not yet fully harmonized with the current EU regulations (1881/2006 / EC). An additional problem is that some metals identified as contaminants in the Regulation are not treated as contaminants in the EU.

POSITIVE DEVELOPMENTS

In 2017 and 2018 some improvements were detected in areas that are under the competence of the agricultural inspectorate at the Ministry of Agriculture, Forestry and Water Management. One of such improvements is the establishment of the Expert Council for Risk Assessment, as a national reference point for risk assessment in the field of food safety and an active participant in the national notification and alerting system.

REMAINING ISSUES

The unfavourable position of food and food industry raw material importers relative to domestic producers:

- Sampling costs - According to the Article 70 of the Law, the costs of analysis and super-analysis of samples are

borne by the party from which the sample was taken if it is found in the final procedure that it does not correspond to the prescribed properties. Although the state has committed itself to refunding food analysis costs to importers if the results are in order, this does not happen in practice, as there is no designated institution to which companies would be able to submit cost reimbursement requests.

- Criteria for laboratory analysis of imported goods – There are no uniform rules in the procedures of inspection services in terms of costs, deadlines, fieldwork mechanisms, number of samples, the type and number of analyses. In 2017, the FIC submitted its comments on the proposed amendment to the Law regarding costs which was not accepted by the Ministry, with the justification that a fee will be determined for each import (regardless of the analyses) that will include all import costs and will be lower than the current total cost, as no additional analysis carried out according to the risk analysis will be charged.
- Importers report imported goods to two inspection services instead of one – e.g. dietary products are within the jurisdiction of the sanitary inspection (Article 12 of the Law), and in case of animal origin, the veterinary inspection also requires import licence of such a product. Opposite to this, there are areas for which no jurisdiction is defined at all, such as retail.

No improvement and coordination in the application of risk assessment and analysis methods was noted:

- The positive developments in the field of risk analysis envisaged by the Law that the establishment of the Expert Council was expected to bring, failed to reach their target.
- The risk analysis would enable the classification of food business operators into low- and high-risk operators, which would speed up the customs clearance and marketing of low-risk goods. Importers rated as low-risk would be able to save money and time by speeding up the issuance of documents.
- Risk analysis would reduce the inspection workload, saving their limited resources, because the resources would be directed mainly to high-risk products inspection.

There is no official report on the work of the Expert Council for Risk Assessment, and the interested public is not informed about the Council's activities.

FIC RECOMMENDATIONS

- Align the Food Safety Law and all its by-laws with the EU acquis (178/2002/EC and all its by-laws)
- Clearly define responsibilities and separation of jurisdictions of inspectorates and their operating procedures.
- Establish a National Food Safety Agency, like the ones widely established in the EU Member States and neighbouring countries, and create conditions for the National Reference Laboratory to perform all the activities envisaged by the Law, to further improve overall food safety.
- Equate the status of importers with that of domestic producers regarding costs of sample analysis, while defining the criteria for analysis costs for Food and Feed Business Operators.
- Establish a system of risk analysis in all inspection services.
- Accept the results of product tests performed by foreign accredited laboratories.
- Educate farmers; promote proactive access to primary milk producers; take action to increase the number of farms and define subsidies based on milk quality.

2. SANITARY AND PHYTOSANITARY INSPECTIONS 1.08

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The consistent application of standard operating procedures by the inspection services in terms of costs, timeframes, 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 when there is no fixed timeframe for completing the 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 the 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.	2012			√
Importers should be protected since they bear the financial burden of possible loss or destruction, as samples taken from original packages often damage the goods and its packaging.	2014			√
Barriers to trade should be removed and the principle of free movement of goods should be respected. Currently it is impossible to predict which goods are going to be held up for quality inspection, and consequently importers cannot plan the time of release of the goods, which in turn affects their plans for monthly volumes, promo activities, etc.	2013			√
It is necessary to clearly separate the fee for import from laboratory analysis, and instead providea a fixed fee, not variable and dependent on the choice of inspectors.	2015			√
To adopt new Law on Food Safety.	2013			√
Adopt enforcement regulations under the Food Safety Law wthin a reasonable time and harmonize them to the greatest possible extent with EU regulations.	2017			√
To harmonize inspections regulations with the Law on Inspection Oversight.	2015			√
Inspection oversight, meanwhile, should be carried out in accordance with risk analysis.	2015		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Equalize the status of importers and domestic producers in terms of cost analysis.	2017			√
Modify the Decisions of line inspectorates so that the use of raw materials in production is permitted without the right to put the finished product into free circulation until the raw material analysis results are obtained.	2017			√

CURRENT SITUATION

The Phytosanitary Inspectorate of the Ministry of Agriculture, Forestry and Water Management is responsible for food of plant origin at the primary phases of production; in the import, transit, and export phases; and for food of mixed origin during the phases of import and transit, along with the Border Veterinary Inspectorate. The Sanitary Inspectorate of the Ministry of Health is responsible for the control of new foods, dietary products, and food for children - infant milk substitutes, dietary supplements, and salt for human consumption, as well as for the production of additives, flavourings, non-animal enzyme products, and drinking water of all kinds.

The work of inspection services is regulated by the Law on Inspection Oversight, which entered into force in April 2015; in application since April 2016. Some inspection services are developing the models of application of this law; however, full harmonization of sectoral regulations with this Law has yet to be completed.

The Ministry of Health has been in the process of preparing the Law on Sanitary Inspection since 2016, which would regulate in more detail the tasks of sanitary inspection.

POSITIVE DEVELOPMENTS

The Phytosanitary Inspectorate has reduced sampling frequency.

REMAINING ISSUES

Inspectors still have wide authority, and insufficiently clear guidelines.

Competent inspectorates do not allow the use of raw materials in production, before the Decision that the raw materials may be released into free circulation is issued, which leads to the loss of time and money.

There are no deadlines for the adoption of some very important executive regulations, for example: the Regulation on the rates for performed official controls, the Regulation on the manner and methods for: conducting an official control, approval, and certification system; cooperation protocols with both the customs authorities and relevant authorities of EU Member States and third countries; the procedures for examination, and sampling; the criteria for determining deadlines for conducting official controls; and reporting on official controls and the Regulation on the methods of food sampling and testing in the official control procedure, etc.

FIC RECOMMENDATIONS

- Adopt a new Law on Sanitary Oversight.
- Adopt enforcement regulations on sanitary and phytosanitary inspection in line with the Law on Inspection Oversight and the EU acquis.
- Recast the Decisions of the line inspectorates to allow the use of raw materials in production without the right to release the finished product into free circulation until the raw material analysis results are obtained.

- Ensure implementation of uniform rules in the procedures of inspection services, in terms of costs, deadlines, fieldwork mechanisms, number of samples, and the type and number of analyses.
- Clearly define the time limits for the completion of import procedures for all types of food.

3. QUALITY ASSURANCE, DECLARATIONS ON FOOD PRODUCTS, NUTRITION AND HEALTH CLAIMS 1.75

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adopt the Guidelines for the Implementation of the Rulebook on Labelling, providing necessary guidance and examples modelled to EU regulations, to avoid different interpretations and inconsistent application.	2016	√		
Adopt amendments to the Law on Food Safety pursuant to the relevant EU legislation.	2013			√
Adopt enforcement regulations under the Food Safety Law within a reasonable time and harmonize them to the greatest extent possible with EU regulations.	2017		√	
Define the responsibilities of the institutions for the interpretation of regulations on food safety and make the official position of the ministry binding for all stakeholders in the chain.	2016			√

CURRENT SITUATION

The Regulation on Food Declaration, Labelling, and Advertizing (RS Official Gazette No 19/2017; 16/2018) (hereinafter: Regulation), adopted on 16 March 2017 and enforced since 15 June 2018 is mostly harmonized with the relevant EU regulation, and the most significant changes relate to the mandatory nutrition declaration, harmonization of rules for the country of origin labelling and for distance selling.

A large number of regulations that prescribe the quality of certain food categories is incompatible with the EU, out of date or there are no regulations defining the quality of such food categories in the EU. Such vertical legislation puts food business operators in an unfavourable position compared to the producers in the region and the European Union. The procurement of raw materials for production is narrowed, and raw materials that are free to use in these countries often cannot be placed on the market in Serbia because they do not correspond to the regulations, although they meet health safety requirements. Often, due to obsolescence of regulations, the appropriate raw material is difficult to find and has a higher price. A similar situation exists with finished products, which do not fit into the categorization of these regulations.

POSITIVE DEVELOPMENTS

In June 2018, The Ministry of Agriculture published the A Guide to the Implementation of the Regulation on Food Declaration, Labelling, and Advertizing, which will enable single approach and a uniform interpretation of the provisions of the Regulation for both business entities and control bodies, along with high protection of consumers' interests and their better information.

In July 2018, the Regulation on Nutrition and Health Claims was published and manufacturers were given an 18-month deadline to comply. After January 2019, all incorrectly declared products, with inaccurate and unauthorized claims, should be removed from the market, which further protects consumers' interests and right to be informed.

REMAINING ISSUES

The Law on Food Safety does not define jurisdiction for the interpretation of regulations in the area of food safety, resulting in the market practice of laboratories interpreting regulations. This is preventing inspectors, as the designated authority, from making decisions in line with the official position of the Ministry as a regulator. Legal assessment and determination of non-compliance is the exclusive responsibility of inspectors, pursuant to Article 37 of the Law on Inspection Oversight, whereas the official position of the relevant ministry is not binding for inspection services. All of the above-mentioned creates difficulties for food business operators and major constraints in long-term business planning.

Drafted amendments to the Law on Food Safety define the overview of executive regulations for the implementation of the Law on Amendments to the Food Safety Law, but not the deadlines for their adoption. The most important regulations that need to be adopted to accompany this Law are:

- The Rulebook on food quality requirements;
- The Rulebook on conditions and methods of production and marketing of food for which quality requirements are not prescribed;
- Rules on food with altered nutritional composition.

Even though Article 3 of the Regulation on Food Declaration, Labelling, and Advertizing defines that the Regulation applies to foods intended for the final consumer and mass caterers, the relevant inspectorate requires that even raw materials and semi-finished products intended for further processing must be marked according to the Regulation, although that food is not intended for the final consumer and mass caterers.

Since the Regulation is fully harmonized with the EU regulation in terms of the scope of application, the Guide for the implementation of the Regulation should resolve the issues related to the scope of application. The Guide itself, although it relies heavily on questions and answers published by the European Commission: "Questions and Answers on the application of the Regulation (EU) N ° 1169/2011 on the provision of food information to consumers," did not transpose all the questions and the answers from the mentioned document.

FIC RECOMMENDATIONS

- Adopt enforcement regulations under the Food Safety Law and harmonize them with EU regulations, such as the Rulebook on food with altered nutritional composition and the Rulebook on novel food.
- Adopt the rulebooks on food quality requirements and the rulebook on conditions and methods of production and marketing of food for which quality requirements are not prescribed.
- Define institutional responsibilities for the interpretation of food safety regulations and ensure mandatory implementation of the official Ministry positioning for all stakeholders.

4. REGISTRATION PROCESS FOR PLANT PROTECTION PRODUCTS (PPPS) 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adoption of the Draft Law Amending the Law on PPPs and its application.	2010			√
Fully align with EU standards and implement a harmonized system for the registration of new plant protection products, as well as a re-evaluation of already registered plant ptotection products in the Republic of Serbia.	2010			√
Establish the same conditions for registration of plant protection products for all companies registering PPPs to ensure food safety for consumers (in Serbia, as well as for purpose of exporting food products to other countries).	2017			√

CURENT SITUATION

The anticipated adoption of the Draft Law Amending the Law on PPPs which should put an end to the long-term parallel application of two conflicting laws currently in force – the old one from 1998, and the more recent one from 2009, did not take place.

Until the adoption of the proposed amendments, the registration of new PPPs in Serbia need to proceed according to the 1998 Law, which is not in line with the harmonized process of registration of plant protection products in the European Union. Unfortunately, currently there are no official announcements concerning the timeline for the adoption of the draft amendments to the Law on PPPs.

Consequently, according to announcements, the majority of existing authorizations, already administratively prolonged until 2019, will need to be administratively prolonged once again until the end of 2025. Foreign investors are highly concerned because of such a decision and the ineluctable delay in the implementation of EU food quality standards with unavoidable consequences for Serbia's agriculture and its position on the global scale.

REMAINING ISSUES

The problem of shortage of staff in the Ministry of Agriculture, specifically in the Plant Protection Directorate has not been solved. To ensure efficacy and continuity, as well to avoid long delays in issuing decisions on product registration, it needs to be solved as soon as possible. Delays in this area not only significantly affect the foreign investors' business, but also prevent Serbia's agricultural producers from reaping the benefits of new technologies, which foreign investors could bring to the country.

Once again, we would like to emphasize the importance of harmonizing Serbian legislation with the EU acquis, which will not only help increase the safety of consumers in Serbia, but also contribute to developing new business opportunities and lead to increasing food export to the European Union member states.

FIC RECOMMENDATIONS

- Adopt the Draft Law Amending the Law on PPPs and ensure its application.
- Fully align with EU standards and implement a harmonized system for the registration of new plant protection products, as well as a re-evaluation of already registered plant protection products in the Republic of Serbia.

B. LIVESTOCK PRODUCTION 1.67

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Elimination of the balance deficit of certain products of animal origin, increasing consumption per capita, and export growth.	2017			√
Ensuring the requirement of a safe animal health system, the compliance and quality oof food of animal origin, adequate veterinary control of animals intended for the production of milk, meat, and eggs - everything from a food chain to the identification of animals, and on that basis, a long-term, systematic incentive for livestock production.	2017		√	
Technology modernization of total cattle breeding, improvement of the genetic characteristics of cattle, improving milk and meat types of cattle, improving nutrition conditions, and increasing the share of high quality fodder in nutrirtion, as well as care and health care.	2017		√	

CURRENT CONDITION

The estimated value of livestock breeding in Serbia in 2017 is USD 1.71 billion, its share in the estimated value of agricultural production being 40.7%.

Of the total gross value of agricultural production in 2017 (4.233 billion USD), around 1,309 million was generated by three livestock-related products. This indicates that livestock breeding generates the greatest value-added income in agricultural production.

The share of livestock breeding in Serbia's total agricultural production significantly lags behind other countries of the European Union, in every respect, its share in agriculture's GDP, livestock units per square kilometre of agricultural land, product yields per square kilometre, milk yields per dairy cow, etc.

Agriculture and food industry contribute 17% of the country's GDP.

POSITIVE DEVELOPMENTS

In the 2018 budget, RSD 44.2 billion are allocated to agriculture, five billion more than in 2017.

New agricultural policies were introduced in Serbia's agricultural sector last year prohibiting the sale of tillable land to foreigners, producers started tapping into EU funds, and the construction of 14 large-scale irrigation systems is finally underway, with a three-decade delay.

With an eight-year delay, Serbia finally started using EU pre-accession assistance in rural development – IPARD, amounting to EUR 175 million, intended for small and medium agricultural producers.

In late December of 2017, a scientific paper was published, titled "Development Perspectives of Agriculture and Rural Areas in Serbia until 2040". In it, an important part is devoted to livestock breeding as a very important, albeit neglected agricultural branch.

Also, a set of rules on incentives for livestock breeding were passed in 2018, which helped improve this field:

- Rules on incentives in livestock breeding for quality breeding cattle (amendment to the rules, Official Gazette of the Republic of Serbia No. 34/18);
- Rules on the use of incentives for organic livestock breeding (Official Gazette of the Republic of Serbia No. 31/18);
- Rules amending the Rules on incentives for investment in the farm's physical assets, for the procurement of new machines, equipment and quality breeding cattle for the improvement of primary agricultural production (Official Gazette of the Republic of Serbia No. 26/18);
- Rules on incentives in livestock breeding for suckler cows (amendment to rules, Official Gazette of the Republic of Serbia No. 26/18);

- Rules on livestock breeding incentives terms and conditions for cows for breeding calves for fattening (Official Gazette of the Republic of Serbia No. 25/18)

REMAINING ISSUES

- National Reference Laboratory Directorate (NRLD) is expecting to get accredited for the testing and quality control of milk by the end of 2018. As a result, starting in 2019, the cost of a litre of milk will be calculated according to quality class.
- Harmonization of regulations with the European Union acquis.
- The current condition of livestock by species shows that total livestock breeding is, on average, disorganized, fragmented and not market-oriented. The production is mainly focused on the needs of the household that runs the farm, and to a smaller degree on the market.

FIC RECOMMENDATIONS

- Ensure sustainable development of farm livestock breeding in rural areas, thereby ensuring the fastest and most secure rural development. At the same time this is the least costly state investment in overall economic development as it addresses economic, environmental, production, social, as well as long-term security interests , for the future generations.
- Subsidies and state aid – budget resources should be allocated to boosting current production, export-oriented production, production of items that are scarce, traditional production; and to the implementation of structural changes in the agricultural sector as a whole.

TOBACCO INDUSTRY

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary for all the relevant public institutions, led by the working group for combating tobacco smuggling, to continue to focus on efficient implementation of the Law in order to combat the illegal tobacco market, which has a significant negative effect on all of society. The Foreign Investors Council also supports efforts of the Serbian Government in combating the illicit trade in tobacco and tobacco products and proposes the formation of a special department within the Prosecutor's Office which would be responsible for excise goods.	2013		√	
Continue with the practice of open dialogue between the Government of the Republic of Serbia and the tobacco industry in all important matters concerning business conditions in the market of tobacco products. The Foreign Investors Council strongly supports this kind of dialogue, per the principles of participation, transparency, accountability, effectiveness, and coherence.	2017		√	
Efficient implementation of the Law on Advertising. The Council believes that the regulator must ensure efficient implementation of the rules in the field of advertising of tobacco products that would create a level playing field for all market participants.	2016		√	
The existing Tobacco Law, although satisfactory, requires certain adjustments that may be efficiently achieved through amendments and additions to the existing Law rather than through the creation of a new Tobacco Law. Additionally, it is necessary to work on the elimination of certain problems in the practical application of the Law. Given that these changes are not essential to demand a change of the entire legal framework, the Foreign Investors Council supports limited changes to the amendments of the Tobacco Law, in the interest of improving the text itself, while harmonization with Directive 2014/40/EU should be postponed, due to its complexity, until Serbia's accession to the European Union.	2014		√	
The Foreign Investors Council strongly supports European integration process of the Republic of Serbia and the harmonization of domestic legislation with EU acquis. The Council also believes that, taking into account the current state of the tobacco product market in the Republic of Serbia, a number of substantial changes to the regulations and the additional obligations imposed by the Directive to legitimate market participants, as well as a significant period of adjustment for the member states themselves, which is due to the complexity thereof, the process of alignment with the Directive should be postponed until the accession of the Republic of Serbia to the EU, and in any case for the period after 2018. In addition, such an approach would put Serbia in a position, until its own entry into the EU, to have access to all positive and negative experiences which have resulted from the implementation of the Directive in other member states (which are still under way) and to make a timely decision regarding decisions it deems most appropriate.	2015		√	

CURRENT SITUATION

The tobacco industry is consistently one of the strongest and most vibrant sectors of the Serbian economy, despite high regulation and economic crises. The tobacco and tobacco products export revenues are at a constantly high level, reaching almost EUR 260 million in 2017. At the same time, fiscal revenues from the sale of tobacco products contributed more than 11% of total budget revenues in Serbia in the previous year (more than EUR 1.06 billion). The three

leading global tobacco companies continued to invest in further development of their manufacturing facilities in Serbia, with the level of foreign investment in the tobacco industry exceeded the amount of EUR 1.2 billion, which is a clear indicator of long-term business commitments in Serbia. At the same time, the tobacco industry in Serbia has a wide range of donor-funded programmes, whose value has reached EUR 18 million, so far.

Considering Serbia's aspirations toward EU membership and the economic value of the tobacco industry, the importance of having a predictable fiscal and regulatory environment, one that is gradually being harmonized with EU directives in this field, is crucial for ensuring the sustainability and further development of the industry.

The tobacco products market dropped by around 5% in the previous year. On the illegal market there is still a more or less constant share of illegal cut tobacco and an increasing share of illegal cigarettes.

POSITIVE DEVELOPMENTS

The adoption of a multi-year excise tax plan for cigarettes and tobacco products (the current excise calendar entered into force on 1 January 2017 and will be valid until the end of 2020). This plan was envisaged by the Law on Excise Taxes and is one of the most significant legislative achievements in the tobacco field and a further step in the direction of the gradual harmonization with relevant EU directives (2011/64/EU). Open dialogue with all stakeholders is of crucial in view of the significance of the tax policy in the field of tobacco and its predictability for both sides, both for state and tobacco industry revenues.

The current Law on Advertising, in force since May 2015, contains very restrictive provisions on 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, thus diminishing the possibility of arbitrary interpretations and difficulties in the implementation of the Law, for both the relevant inspection services and the tobacco industry. The Foreign Investors Council encourages the efficient application of the Law on Advertising, which will enable a level playing field for all market participants.

The clearly expressed readiness of the highest state authorities to combat illegal activities in the market and declaring 2017 and 2018 the "Year of the fight against the grey economy," are a clear and positive step forward in this area. Accordingly, the Government of Serbia has established a Working Group on Combating Tobacco Smuggling, chaired by the Director of the Police.

The first results are reflected in the increase in the volume of seizures, primarily of illegal tobacco, but also increasing volumes of illegal cigarettes as well. However, the increased activity of bodies controlling the application of regulations will remain without effect if not accompanied by appropriate court rulings.

REMAINING ISSUES

Illegal trade in tobacco products – The positive trend of increase in revenues from excise taxes on tobacco products registered in the previous year continued in 2017 (RSD 99.2 billion, compared to RSD 91.8 billion in 2016). Nevertheless, despite market stabilization, the illegal cut tobacco market still has an evident impact, jeopardizing the viability of the entire supply chain within the tobacco industry (growers, processors, manufacturers, distributors, and retailers), as it does on employment and GDP, which are directly affected by the tobacco products production chain. Moreover, illegal tobacco products have a negative impact on consumers because of their unknown origin, uncontrolled manufacturing, storage, and transportation conditions, their availability to minors, the absence of statutory health warnings, the illegal advertising, and similar. The Government of Serbia is investing great efforts in combating the illicit trade in tobacco products, which is evident, primarily through the seized quantities of tobacco and cigarettes. According to the Customs Administration, 81,000 cartons of illegal cigarettes were seized in 2017, almost 6% more than in the previous year, which was otherwise record-breaking. Also, the number of procedures initiated by the Ministry of Interior initiated against various offenders in the illicit trade of tobacco and tobacco products increased, which reflects a more serious approach in this field. However, there still is a clear lack of adequate reaction from the prosecutor and courts.

For the most part, the existing Tobacco Law is compliant with all EU directives, except Directive 2014/40/EU, which the Member States were required to implement for the most part in 2016, with a deadline for compliance of two to six years. The length of the transition period reflects the complexity of this Directive, even for EU Member States whose administrative capacities surpass Serbia's. At a moment when the legal market for tobacco and tobacco products is in the phase of sensitive consolidation

and recovery, we think that it would be counterproductive to jeopardize such a trend with amendments to the existing regulations to prematurely align them with the Directive. Specifically, such amendments would impose additional levies and obligations exclusively on entities operating legally on the market, whilst they would have no impact on entities engaging in illicit trade, or might even stimulate their competitiveness. On the other hand, the FIC supports possible amendments to the Law that would be addressed to further combat the illegal tobacco and tobacco products market, one that would be adopted in consultation with the industry and professional community. The Tobacco Administration has shown an enviable level of transparency and the necessary public-private dialogue in the process of the preparation of the Law on Amendments to the Law on Tobacco.

The regulation that governs the field of tobacco and tobacco products is largely in compliance with relevant EU directives, while in some areas, such as tobacco advertising, it is even more rigorous than in some EU Member States. Any hasty changes to legislation can lead to further distortion of the legal market for tobacco and tobacco products which will result, primarily, in a further expansion of the black market.

FIC RECOMMENDATIONS

- It is necessary for all the relevant public institutions, led by the working group for combating tobacco smuggling, to continue to focus on efficient implementation of the law in order to combat the illegal tobacco market, which has a significant negative effect on all of society. The Foreign Investors Council also supports efforts of the Serbian Government in combating the illicit trade in tobacco and tobacco products and proposes once again the formation of a special department within the Prosecutor's Office which would be responsible for excise goods.

- Continue with the open dialogue between the Government of Serbia and the tobacco industry in all important matters concerning business conditions in the tobacco products market. The Foreign Investors Council strongly supports this kind of dialogue, based on the principles of participation, transparency, accountability, effectiveness, and coherence.

- Efficient implementation of the Law on Advertising. The Council believes that the regulator must ensure efficient implementation of the rules in the field of advertising of tobacco products that would create a level playing field for all market participants.

- The existing Tobacco Law, although satisfactory, requires certain adjustments that may be efficiently achieved through amendments to the existing Law. Additionally, certain problems in the practical application of the Law should be eliminated. Given that these changes are not of such a nature that they would require the change of the entire legal framework, the FIC supports limited amendments of the Tobacco Law, currently being drafted.

- The Foreign Investors Council strongly supports the Serbia's European integration process and the harmonization of domestic legislation with the EU acquis. That said, the FIC also believes that the alignment with the Directive should be postponed until Serbia's accession to the EU, taking into account the current state of the tobacco product market in Serbia, the substantial changes to the regulations and the additional obligations imposed by the Directive on legitimate market participants, and the significant transition period envisaged for the Member States themselves, reflecting the complexity of the Directive. In addition, such an approach would allow Serbia, until its entry to the EU, to learn from all the positive and negative experiences which have resulted from the implementation of the Directive in other Member States (which are yet to be seen) and to opt for the solutions it deems most appropriate.

INSURANCE SECTOR

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
LIFE AND NON-LIFE INSURANCE/COMPOSITE COMPANIES AND SHARED SERVICES				
It is necessary, to the largest possible extent, to minimize the discrimination between composite market participants and those participants who have, by fulfilling their legal obligations under the previous Insurance Law (by separating the companies engaged in life insurance from those engaged in non-life insurance activities), been brought into an unequal position, through amendments to the Law on Value Added Tax which would provide that the "Joint services" for separated companies with the same shareholder are defined as the trade in services which is not taxable, as regulated by the Laws of the European Union.	2015			√
INSURANCE COVERAGE FOR NATURAL DISASTERS AND OTHER ACTS OF NATURE				
We believe it would be necessary to establish / prescribe a strategy for insurance against natural disaster and other acts of nature to ensure that in the event of a major adverse event, a significant share of claims would be transferred to insurance companies. It would be important to avoid new charges on existing contracts that would result in additional expenditures for a small number of the insured who now have insurance coverage, a measure already proposed by the Ministry of Finance.	2015			√
Given the social effect of this type of measures, the implementation could be carried out gradually, as follows: i) through introduction of mandatory insurance for all state-owned and public property and infrastructure; ii) through the introduction of mandatory coverage for all property designated as collateral for financing; iii) through the introduction of mandatory coverage against natural disaster and other acts of nature, including fire insurance, for every property, on the basis of the French model.	2015			√
THE LAW ON PERSONAL INCOME				
Amendments to the aforementioned articles of the Law to create the conditions for the introduction of tax relief for all types of life insurance premiums, which would not only stimulate the development of the insurance sector, but also create the conditions for improving the social function of these types of insurance, i.e. provide the necessary protection and financial resources to the policyholder's dependants in the event of an accident, at the same time relieving the state from the obligation to provide for these persons. Also, tax treatment and rights arising under tax regulations in the event of the conclusion of a contract on pension plans would also be equated with the tax treatment and the rights they have under a life insurance contract.	2015			√
CORPORATE GOVERNANCE ISSUES				
Insurance companies should be allowed to determine the number of executive directors, under their Memorandum of Association – Articles of Association, i.e. these articles should be harmonized with Article 417 of the Law on Companies of the Republic of Serbia - which allows companies to choose whether they will have one or more executive directors.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The election of the members of the supervisory board should be left to the competence of the shareholders' general meeting, which could then decide whether an independent member should be elected or not - it is not necessary to have such a restriction in place.	2015			√
The membership in management should only be limited to another joint - stock insurance company and/or another holding company engaged in insurance activities, and only to the Republic of Serbia. With this exception, a person may not be appointed as a member of management if he/she is a member of management in another joint - stock insurance company, with which the insurance company shares the same shareholder.	2015			√
The requirements related to the submission and recognition of a foreign diploma should be simplified, i.e. the previous requirements should be reinstated.	2015			√
AUTO INSURANCE MARKET				
Influence bring about a change in the Tax Administration's approach to tax treatment of distribution of AI policies.	2016			√
Ensure equal market conditions and change the regulatory framework in order to apply the best practices already existing in other markets, in accordance with the European Union standards.	2013			√
Liberalization of AI prices would have immediate benefits for both the traditional distribution channels (independent outlets) and development of promising alternatives, such as the online distribution and sales outlets in banks.	2013			√
Insurance companies should be allowed to register cars at their own premises.	2013			√
Review the number and schedule of compulsory technical inspections for newer vehicles.	2013			√
Develop a joint project with the Association of Serbian Insures and police in order to enable the online sales of AI policies.	2015			√
LABOUR LAW				
The Insurance Law should liberalize the hiring of insurance sales agents and other under non-standard employment contract (service contract, contract on temporary and occasional work, supplementary work contracts etc.), on the same basis as in the case of insurance agency companies,	2015			√
or revise the Labour Law in Articles 197, 198, 199, 201, and 202, to allow non-standard forms of employment, without the current limitations. Additionally, the Articles of the previous Law on agency activities, currently not stipulated by the new law, should be reinstated in the Labour Law and by-laws.	2015			√
INSURANCE LAW				
Adoption of amendments to provisions of the Insurance Law on notification/provision of information to policyholders and insured persons.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Facilitate the merger of insurance companies engaged in life insurance and non-life insurance activities separately, if such companies have the same shareholders, i.e. if those shareholders hold the controlling share in both companies.	2013			√
Regulation of the tax issues related to the joint performance of activities in separate companies engaged in life insurance and non-life insurance activities, respectively, if such companies have the same shareholders.	2015			√
Adoption of a new set of insurance laws: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on Insurance Brokers and Agents.	2013			√
Amendments to Article 82, paragraph 4 of the Law so that in collective insurance contracts the insurer shall be obliged to inform the policyholder and enable the latter to inform the insured covered by that collective policy. Specifically, the obligation to provide information in collective policies should be transferred to the policyholder, or if that is not acceptable, it should at least be shared with the policyholder. Many companies include such a provision in their collective insurance contracts, but with the current legal definition it is not valid in case of court proceedings.	2017			√
INSURANCE CONTRACT LAW				
It is recommended that the issue of insurance contracts be excluded from the Civil Code provisions and be separately and comprehensively regulated under a special Insurance Contract Law, for the following reasons:				√
Alignment with changed circumstances Current regulations need to be aligned with the changed life circumstances. The insurance market is in constant development, so insurance contracts are present in our everyday lives more than most other contracts. Its specificity entails the need for this matter to be regulated by a law which would unify and regulate in detail all its elements, characteristics and enable all stakeholders to familiarize with it in an easier, simpler and more transparent manner. We should also bear in mind that the people's awareness of the need for insurance and, therefore, insurance coverage, is vastly higher now than at the time when the LCT, which now only partially regulates this area, was adopted. It is therefore necessary that the insurance contract law be aligned with modern trends, business and means of communication, since the way in which insurance functions today is considerably different relative to the time when the Law on Contracts and Torts was adopted, and should be adjusted accordingly. Due to the clients' changed needs, their more frequent opting for stipulating contracts online, without wasting any additional time, it is necessary to amend the current legal regulations governing the electronic signature of documents to enable the conclusion of insurance contracts on the Internet without a qualified electronic signature, which most people do not have. Therefore, a two-factor authentication protocol for the conclusion of a contract online can be proposed.	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Faster and easier adoption of the Law and subsequent amendments to the Law We should not neglect the fact that the adoption of the Civil Code is a slow process and may not be expected to happen in the coming years. The needs of the insurance market have long required different and more detailed regulation of insurance contracts. Adoption of the missing laws would be much easier and faster, than the adoption and entry into force of the Civil Code. Also, due to the specific importance of the subject matter of the insurance contract, the need for amendments to insurance contract-related regulations arises more often than in the case of the other aforementioned contracts regulated by the LCT or the Civil Code. This is especially the case in the process of accession of the Republic of Serbia to the EU, where legislative activities in this area are very lively and dynamic, with constant efforts being made to improve the regulatory framework. Such regulatory changes would be practically impossible or very difficult if the subject matter of the insurance contract remained within the scope of the Civil Code. On the other hand, the Insurance Contract Law leaves sufficient flexibility for amendments in accordance with the stated needs.	2017			√
Good comparative experiences A separate Insurance Contract Law is not an unknown concept in the world. It is present in Germany, France, UK, Spain, Portugal, Luxembourg, Sweden, Belgium and many other developed countries, and proved to be a very good solution. Serbia should be guided by the positive experiences of developed countries and apply European standards. In this way, Serbia would be the first country in the region to follow the example of the developed European countries in this area. The tendency at EU level to regulate the insurance matter separately is a sufficient indication that there should be a separate law in Serbia as well that would exclusively regulate insurance contracts.	2017			√
Consolidation of the subject matter of the insurance contract law Certain provisions of the insurance contract law are already contained in other laws and regulations, and not only in the Law on Contacts and Torts (in the Insurance Law, which is a statutory law, but also in the Regulation on Voluntary Health Insurance, in the by-laws of the NBS, in the Law on Consumer Protection, etc.). On the other hand, there is a part of the matter which is directly related to insurance contracts and is therefore of great importance, but is not regulated by our positive regulations at all. In Serbia's national legislation, there is no law specifically regulating insurance brokerage contracts and insurance agency contracts, or co-insurance contracts or reinsurance contracts, whose presence and significance in the insurance market may not be ignored. Accordingly, the whole matter related to insurance contract relations should be systematized and consolidated. This would facilitate their application because they would be governed by one regulation. The consolidation of the subject matter of the insurance contract law would make this area more accessible, and would at the same time create the conditions for minimizing the lack of knowledge of regulations. Integrating the matter comprehensively in a single law would certainly minimize the possibility of loopholes in the future.	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Significance of insurance contracts The legal and economic importance of insurance in the modern world, and in Serbia as well, should not be neglected. This area is very specific and complex, so it would be desirable to have it regulated by a lex specialis. This would ensure that insurance contracts are regulated in a comprehensive manner and increase the security of business transactions, thus minimizing the space for loopholes. In addition, the economic importance of the insurance contract justifies the use of special legislation which would ensure that the legislature devote greater attention to the matter than would be the case if it were just regulated together with other contracts within the Civil Code.	2017			√
DRAFT CIVIL CODE				
Opening of possibilities for investment in investment funds abroad above 25% of core capital if the local market is unable to offer better conditions.	2016			√

OVERVIEW OF THE INSURANCE MARKET

CURRENT SITUATION

There are 21 insurance companies in Serbia. 17 companies are engaged exclusively in insurance activities, while four companies are engaged in reinsurance activities. As far as insurance companies are concerned, four of them are life insurance companies, seven are non-life insurance companies and six are composite companies.

The market is still very concentrated: i) the market leader, Dunav, holds 26.8% of the market share by GWP criteria; ii) the three largest insurers hold 59.8% of the market share; and iii) the five leading insurance companies hold 77.2% of the market share.

The majority foreign-owned companies (15 out of 21) undoubtedly dominate the market accounting for 77.3% of total asset (62% in non-life insurance premiums and 93.1% in life insurance premiums).

Based on the data for the year 2017, the insurance market recorded a premium of RSD 93.1 billion (EUR 786 million), which is a nominal and real increase of 4.4% and 1.4%, respectively.

The following changes were observed in 2017 relative to the previous year:

- the insurance sector's revenues have increased by 8.1% to RSD 233 billion;
- the capital has increased by 6.3% to RSD 54 billion;
- technical reserves have increased by 8.2% to RSD 160.6 billion, and their principal amount has been invested into government securities, both in life and non-life insurance;
- the total premium has reached the level of RSD 93.1 billion, with a growth rate of 4.4%;
- the share of non-life insurance in total premium is still dominant at 75.6%, despite steady decrease; the non-life insurance premium has recorded a 6.6% growth, while the motor vehicle liability insurance, property insurance and full coverage motor vehicle insurance ("kasko") have also recorded growth;
- the share of life insurance in the total premium has decreased from 25.9% to 24.4%;
- the number of insurance companies has decreased from 23 to 21, while the number of employees in 10,813 realized a reduction at the rate of 1.3%

Insurance companies and their activities are regulated and managed according to the new Insurance Law, adopted in December 2014, and relevant by-laws of the National Bank of Serbia (NBS).

Other significant legal sources are the Law on Compulsory Traffic Insurance, as well as the by-law/Regulation on Voluntary Health Insurance adopted by the Government of the Republic of Serbia. The lateral relevant legal source is the Law on Traffic Safety.

INSURANCE COVERAGE FOR NATURAL DISASTERS AND OTHER ACTS OF NATURE 1.00

CURRENT SITUATION

Due to its geographical complexity, Serbia is prone to natural disasters and other extreme events, which are relatively frequent (2005, 2006, 2010, 2014 and 2015, in this century only). The number of sold insurance policies against natural disasters and other disasters did not drastically increase after the catastrophic floods in 2014, which resulted in damages exceeding EUR 1.5 billion, despite the fact that Serbia was impacted by floods in following years as well, only on a much smaller scale.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

In Serbia, insurance in general, but particularly insurance coverage against natural disasters and other "acts of nature", is regarded as an expense or a charge, not as a means of transferring risks, and for this reason its growth rate is the lowest in Europe.

FIC RECOMMENDATIONS

- We believe it would be necessary to establish a strategy for insurance against natural disasters and other acts of nature to ensure that in the event of a major adverse event, a significant share of claims would be transferred to insurance companies. Avoiding new charges on existing contracts is important, as these would result in additional expenditures for a small number of insured who now have insurance coverage, a measure already proposed by the Ministry of Finance.

  The implementation could be carried out gradually, through the introduction of mandatory:
  (i) insurance for all state-owned and public property and infrastructure;
  (ii) coverage for all property designated as collateral for financing;
  (iii) coverage against natural disasters and other "acts of nature", including fire insurance, for all property, based on the French model.

- A natural catastrophe (nat cat) insurance pool mechanism with obligatory or semi obligatory coverage should be considered. There are examples, which are far from perfect but show that these mechanisms are conducive to increasing national coverage and risk management (Romania and Turkey). Tax cuts for insurance should also be evaluated to promote nat cat insurance in the corporate sector.

THE LAW ON PERSONAL INCOME

CURRENT SITUATION

Taxation of natural persons is regulated by the Personal Income Tax Law. When it comes to life insurance, the law does not contain sufficient grounds for exempting life insurance premiums from taxation.

POSITIVE DEVELOPMENTS

Since the amendments of 2017, collective life insurance, covering all employees of a company, paid for by the employer, is no longer taxed.

FIC RECOMMENDATIONS

- Amendments to the Law to create conditions for the introduction of tax relief for all types of life insurance premiums, which would not only stimulate the development of the insurance sector, but also create the conditions for improving the social function of these types of insurance.

AUTO INSURANCE MARKET 1.00

CURRENT SITUATION

Auto Insurance (AI) is by far the most important segment of the insurance market in Serbia (34.4% of total in 2017) and the technical inspection facilities performing the compulsory annual inspection of all motor vehicles are definitely the most important distribution channels for these insurance policies. Article 44 and 45 of the Law on Compulsory Traffic Insurance prohibits the payment of any commission to these technical inspection facilities – whether directly and/or through related parties – which exceeds 5% of brokerage premium. This provision of the law has been ignored by the market for many years, with noticeable differences in the practices of individual companies, which paid the commission rates up to 50% regardless of the legal prohibition. Regardless of the increase in minimum tariff (up to 45% since 1 July 2014), which provided the market with the "necessary oxygen" in terms of the cash flow and profitability, the above practice brings into question the sustainability and predictability of the overall insurance market.

In 2015, 2016 and 2017, the AI market has deteriorated as a consequence of the new approach by the Tax Administration, in the distribution of AI, in connection with the payment of the lease of office space used for the purpose of selling motor vehicle liability insurance by sole traders. In its interpretation, the Tax Administration has transferred the tax liabilities to insurance companies, instead of the sole traders, by heavily fining these companies, which responded by filing action against the Tax Administration. As a result, business conditions in the market have worsened and some insurance companies have withdrawn from the active automobile insurance market.

Currently, companies operating in full compliance with the law and its strict interpretation by the National Bank of Serbia are not major AI market actors. A company cannot last in today's market, let alone expand its presence, without a more or less aggressive violation of legal provisions.

FIC RECOMMENDATIONS

- Liberalization of AI prices (erosion of paragraph 1 and 2 of Article 45 of the Law on Compulsory Traffic Insurance) would have immediate benefits for both the traditional distribution channels (independent outlets) and development of promising alternatives, such as the online distribution and sales outlets in banks.
- Insurance companies should be allowed to register cars at their own premises.

INSURANCE LAW 1.00

REMAINING ISSUES

I. Article 62, paragraphs 5 and 6 of the Law, requires at least one member of the supervisory board, and/or one member of the executive board to have active knowledge of the Serbian language and permanent residence in the Republic of Serbia, while other members of the executive board must have permanent residence in the Republic of Serbia, and all members of the executive board must be full-time employees in an insurance company.

Upon analysing the aforementioned provisions of the Law, through the prism of split companies, it has been concluded that the latter will have to duplicate the aforementioned functions and thus be directly punished for complying with the law. Furthermore Article 62(3)(1) stipulates that a member of a management body may not be a person who is a member of the management or supervisory body or a procurator in another insurance, reinsurance company or any other financial sector entity. This will result in an unequal market position, which is contrary to Article 84 of the Constitution.

II. Subject to the prior consent of the NBS, the insurance agency activity may be performed as a supplementary activity by the following:

- a bank with registered seat in the Republic of Serbia, established in accordance with the law governing banks;
- a financial leasing provider with registered seat in the Republic of Serbia, established in accordance with the law governing financial leasing;
- a public postal operator with registered seat in the Republic of Serbia, established in accordance with the law governing postal services.

In addition, insurance brokerage/insurance agency activities may also be performed by persons who are not subject to the Insurance Law, provided that the amount of the annual insurance premium per insurance contract does not exceed the amount of EUR 100, that the contract period does not exceed five years, and that it does not relate to compulsory or life insurance.

The Insurance Law should be amended to ensure that utility companies registered in Serbia in accordance with the Law on Public Utility Activities, in the same way as the public postal operator, may perform insurance brokerage activities with the prior approval of the National Bank of Serbia. The current solution of the Law on Insurance does not allow public utility companies to carry out these activities, although there is a long tradition in Serbia of stipulating insurance contracts and paying insurance premiums through public utility companies' accounts. This tradition was interrupted at the beginning of 2016, when the NBS banned the introduction of new policyholders into insurance policies through public utility companies' accounts. Bearing in mind the large number of insured persons paying the insurance premium in this way and the need of the market to continue this practice of expanding insurance coverage that has a wider social significance for easier accessibility of the insurance to the average user, it seems that the amendments to the Law on Insurance should enable interested public utility companies to engage in these activities.

III. Equal treatment must be guaranteed to all participants in the insurance market. In that sense, amendments to the law should enable the merger of companies that carry on life and non-life insurance business separately, if the companies have the same shareholders, or if those shareholders have a controlling share in both companies.

IV. To establish a more precise and systematic structure, the insurance business should be regulated by three different laws, modelled on the laws of some European countries, in accordance with EU guidelines and directives: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on Insurance Brokers and Agents. While the ISL deals primarily with the relationship between the supervisory authority and the insurance company, as well as with status issues, the ICL defines the relationship between the insured and the insurer, i.e. their mutual contractual obligations, and the Law on Insurance Brokers and Agents regulates the sale of insurance through other licensed persons or alternatively a tripartite law.

It is especially important to adopt the Insurance Contract Law because the relationships arising under insurance contracts are not fully regulated. First, a number of provisions governing insurance contracts are found in other laws and by-laws while there are various other laws which do not regulate the specific substance of the contractual relationship in insurance, but have an impact on the relationships arising from insurance contracts (e.g. the Consumer Protection Law etc.). Second, certain matters directly related to insurance contract relationships are not regulated by the LCT (or not regulated at all). In this sense, there are no provisions in the law of the Republic of Serbia which specifi-

cally regulate insurance brokerage agreements and insurance agency agreements, as well as co-insurance contracts or reinsurance contracts. There is a loophole, since certain insurance contract-related relationships are not regulated at all, and unwritten rules established in the insurance practice are applied. On the other side, too many sources of law are applicable to the relationships arising under insurance contracts, which leads to legal uncertainty.

FIC RECOMMENDATIONS

- Adoption of a new set of insurance laws: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on Insurance Brokers and Agents.
- Amend Article 98, Paragraph 2 of the Law on Insurance, to enable public utility companies registered in the Republic of Serbia in accordance with the Law on Public Utility Services, to perform insurance brokerage/agency activities with the prior consent of the NBS.

NEW LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

CURRENT SITUATION

The new Law on Prevention of Money Laundering and Terrorist Financing began to apply on 1 April 2018, and has serious implications for the operations of insurance companies selling life insurance.

Article 8 of the Law does not recognize life insurance contracts (so-called "risk insurance") as exceptions from the obligation to conduct actions and measures of customer due diligence, as defined in the previous Law.

Article 26 of the Law on the Prevention of Money Laundering and Terrorism Financing sets forth the obligation to determine the identity of the policyholder:

- at the moment when the party designates the latter, which entails collecting information about the name of the policyholder,
- at the moment of payment of the insured sum, and
- determine whether the policyholder is a holder of public office, and if so, take measures envisaged under Article 38 of the Law.

Pursuant to Article 30 of the Law "When establishing a business relationship, the submitting entity may, under the conditions laid down in this Law, rely on a third party to apply the actions and measures set out in Article 7, paragraph 1, items 1 to 5 of this Law." Pursuant to Article 30, paragraph 2 "A third party, referred to in paragraph 1 herein shall be understood to mean: 1) the submitting entity referred to in Article 4, paragraph 1, items 1, 3, 4, 7, 9 to 11, 13 and 16 and insurance companies licensed to carry on life insurance activity."

Article 124(1) of the Law envisages the submitting entity's obligation to take the actions and measures referred to in Articles 5 and 6 of this Law with regard to the clients with whom it established a business relationship before this Law entered into force within one year of the entry into force thereof.

REMAINING ISSUES

Related to Article 8, bearing in mind the legal nature of such contracts which provide only coverage for biometric risks (death and disability), and envisage no option of payment of surrender value, policy loan or advance or pure endowment policy, and in view of the existing modalities of payment, it is clear that the potential money laundering and terrorism financing risk as such is unfeasible and that it requires special treatment. Classification in the low-risk category and application of simplified procedures is not a mitigating circumstance, considering that significant resources are spent on the identification of the legal entity and beneficial owner.

Related to Article 26, when stipulating an insurance contract, the insurer cannot search the lists of politically exposed persons (PEP) with certainty only based on the beneficiary's name and surname or company name (due to insufficient information). The insurance company comes into direct contact with the beneficiary only when filing a request for payment, when they can determine and verify the beneficiary's identity (and collect a reasonable set of data sufficient for searching the PEP list), and may be able to obtain a statement of official status from the beneficiary.

Related to Article 30, insurance companies sell life insurance through insurance agents, i.e. insurance contracts are concluded by insurance agents on behalf of insurance companies, and these agents apply the same actions and measures of customer due diligence, but mediators and agents, referred to in Article 4, paragraph 1, item 6) of the Law, have been left out from the list of submitting entities who may be third parties in Article 30.

Related to Article 124(1), checking the existing portfolio of the policyholder implies the application of all actions and measures envisaged in Articles 5 and 6 of the Law. If this is not possible (i.e. relevant documentation cannot be obtained from the clients), the submitting entities will be obliged to terminate insurance contracts on 25 December 2018, pursuant to provisions of Article 6 of the Law. This would raise the issue of the return of the insurance premium following the actuarial calculation of its amount. Furthermore, it would also put the insurance company in a reputational risk, because long-term contracts with a saving component would be terminated for administrative reasons.

FIC RECOMMENDATIONS

- Article 8 of the Law should be amended so that the insurance company, insurance brokerage company, insurance representation company and insurance agent with license to perform life insurance operations, can skip customer due diligence actions and measures when stipulating a life insurance contract where the individual premium instalment or the sum of several insurance premium instalments to be paid in one calendar year per insured does not exceed the equivalent of EUR 1,000 in dinars according to the official NBS median exchange rate, or if payment of a single premium does not exceed the equivalent of EUR 2,500 in dinars.

- Amend provisions of Article 26 of the Law and clearly define that the procedure for determining and verifying the beneficiary's identity as well as their official status should be conducted after the submission of the request for payment, and before the payment of the insured sum.

- Amend Articles 30-33 of the Law and clearly define who the third parties are, and then consider granting mediators and agents special treatment.

- The law must clearly define that mediators and agents may perform actions and measures of customer due diligence on behalf of and in accordance with instructions of the insurance company, and in such a case the insurance company is not relying on actions and measures of these obliged entities, but merely entrusting them with these operations. This is in accordance with interpretations of Financial Action Task Force on Money Laundering (FATF) recommendations

- Obligation from Article 124 is not envisaged by European regulations (only in Croatia and Serbia); hence, two alternatives should be provided:
  - erasing the provision under Article 124, paragraph 1, of the Law, or
  - defining the provision in more detail to adjust the obligation to the insurance industry, and extend the legal deadline for another year. Envisage that clients' portfolio be assessed from the aspect of the clients' risk rating and classified in one of three risk categories, according to data available and publicly available lists and records.

LEASING

1.33

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			√
Amendment to the Law on Financial Leasing to explicitly transfer the obligation to settle unpaid parking tickets to the lessee, allowing the Parking Services to directly collect the payment from the lessees that are registered in the Registry of Motor Vehicles kept by the Ministry of Interior.	2016			√
Regulate operating leases by law and enable finance lease providers to offer operating lease services as well. By extending the jurisdiction of the National Bank of Serbia (NBS) to this type of leasing as well, one part of the financial flow would be included under the NBS surveillance and control system, which would lead to even greater safety of the financial system. The NBS has long considered that operating leases are a consequence of strict limitations that apply to finance leases (primarily to individuals). The regulation of operating leasing could result in the equalization of the rules for both types of leasing. Operating leases should be defined as a type of leasing in which all risks and benefits are transferred to the client. This basic principle of differentiation between finance and operating leases can be tested based on IAS 17 criteria. As the latter are descriptive, it is important to additionally specify and quantify them. Most importantly, the maximum allowed level (in percentages) of repayment of the initial value of the leased asset during the term of contract period should be defined, as well as the maximum term of the leasing contract in relation to the economic life of the leased asset.	2016			√
The Insurance Law should be harmonized with the Law on Financial Leasing, specifically the provisions on the right of the Guarantee Fund to seek recourse upon payment of damages caused by a vehicle not covered by mandatory insurance from the owner i.e. registered user of the means of transport, so the insurance company may seek recourse from the lessee and not from the leasing company.	2012			√
In developing a program of incentives for the economy (industry, agriculture, etc.) and drafting laws and regulations on this matter, policy makers should envisage the possibility of using other forms of financing, including bank loans and financial leasing, to support the implementation of incentives be. Given the fact that finance leases are also a suitable form of funding, they should be included in the subsidized programmes of the Government of the Republic of Serbia, in order to improve the competitiveness of the financial market and the offer favourable form of financing.	2016			√
Leasing and insurance companies should enjoy the same treatment as banks regarding Article 85 of the Law on Personal Income Tax, i.e. in the case of write off of receivables they should not be required to pay additional personal income tax if they have previously met statutory requirements. Amendments should include a simple change such as adding the word "insurance company" or "lessor" next to the word "bank customer".	2016		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Capital requirements for performing leasing operations involving immovable assets should be lowered in order to make real estate leasing more attractive on the Serbian market. We suggest that, for the performance of finance lease operations, the monetary share of the lessor's founding capital may not be below the Serbian dinar (RSD) equivalent of EUR 500,000 at the official median exchange rate on the date of payment, for leasing movable as well as immovable property.	2015			√
Launch an initiative to exclude in total leasing companies from obligations envisaged by the Law on prevention of money laundering and terrorist financing or to partially relax some of the requirements for leasing companies envisaged for the prevention of money laundering and terrorist financing.	2016			√
In order to improve the registration process of the leasing contract with the Serbian Business Registers Agency (SBRA), it is necessary that the SBRA: - develop a user application for electronic registration of leasing contracts; - in addition to the signed electronic document, also allow the electronic registration of leasing contracts signed in person.	2017	√		

CURRENT SITUATION

The development of leasing in Serbia dates back to the beginning of 2003, when the Law on Financial Leasing was adopted. There are 16 leasing companies currently operating in Serbia, mainly affiliates of distinguished financial institutions, leaders in the banking and finance markets in Central and South-East Europe. These groups have applied their knowledge and high corporate business standards to the Serbian market as well. As a result of market competition, it is expected that the number of active leasing companies will adjust to the market needs and drop in the future. This will contribute to further affirming the quality and high standard leasing services offered by market leaders so far.

POSITIVE DEVELOPMENTS

In 2017 there were improvements with respect to two recommendations but no improvement with respect to the remaining seven . . In the meantime, the position of leasing companies has been further compromised due to the inadequate legal protection of the leasing companies' assets which has emerged as an issue. The National Bank of Serbia did not initiate the adoption of the changes of the Law on Financial Leasing.

REMAINING ISSUES

1. Interest in financial leasing is taxable

Law on Value Added Tax (RS Official Gazette No 84/2004, 86/2004 - corr., 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 - adjusted RSD amount, 68/2014 - as amended, 142/2014, 5/2015 - adjusted RSD amount, 83/2015, 5/2016 - adjusted RSD amount, 108/2016 and 7/2017 - adjusted RSD amount), treats products and services of financial institutions in a different manner when defining the subject of VAT taxation.

Specifically, Article 4(2a) of the Law clearly states that the turnover of goods under a leasing contract is subject to VAT. Pursuant to the aforementioned Law, the VAT base is the value of the leased asset and interest.

On the other hand, in Article 25 of the same Law, the legislature envisaged that credit and insurance services are exempt from VAT.

Different tax treatment of products and services of financial institutions has led to increasing the costs of financing through leasing in comparison with other types of financing, and consequently less favourable for certain segments of clients, given that VAT on interest is an additional cost, which means that financial leasing companies are placed in an unfavourable position.

2. Leasing companies are charged parking fees incurred by users of leased vehicles

According to the decisions on public car parks in the cities and municipalities in Serbia, users of public car parks are mainly the drivers or owners of a vehicle, if drivers are not

identified. These decisions further envisage that any user of public car parks violating the provisions of these decisions by failing to pay the parking fee will be obliged to pay a fine. In the case of leased vehicles, decisions on public car parks do not take into account financial leasing transactions and thus fines are sent to leasing companies, even though these vehicles are used by the lessees.

3. Operating leases are not regulated by the law and financial leasing companies cannot provide operating leases and the high level of required capital slows down the expected development of the leasing industry

The operating leases are not regulated by special regulations, but exclusively by the Law on Contracts and torts (Official Gazette of the SFRY No 29/78, 39/85, 45/89 – Const. Court of Yugoslavia Decision and 57/89, Official Gazette of SFRY No 31/93 and Official Gazette of SCG No 1/2003 - Constitutional Charter) in Chapter XI - Lease, the Rulebook on criteria on the basis of which it is determined when the delivery of goods under a lease or lease contract is considered as the sale of goods (RS Official Gazette No 122/12) and a number of other legal acts regulating the exploitation of rights and obligations as of the lease itself (the object of an operating lease). Therefore, operating leases are not subject to the supervision of regulatory bodies in charge of financial leasing. With recent amendments to the Financial Leasing Act, financial leasing providers are allowed to engage in the lease of the leased asset, but exclusively assets leased under a financial leasing contract that were returned. This is a negligible part of the overall operating lease market, i.e. lease of movable properties in the Republic of Serbia. Operating leasing, by its very nature, (customers, suppliers, way of financing fixed assets, marketing strategy, etc.), is much closer to financial leasing than to classical short-term rent (rent-a-car). The Rulebook on the criteria on the basis of which it is determined when the delivery of goods under a leasing agreement or lease is considered as sale of goods was a big step forward for all leasing companies engaged in long-term leasing in Serbia, because it clarifies some of the dilemmas related to tax policies, primarily to the proper classification of financial and operating lease transactions. However, there is still a need for concrete legal solutions for operating leasing in Serbia, and above all, for amendments to the Financial Leasing Law, in terms of enabling financial leasing companies to provide long-term lease services, not only for items returned in financial leasing business activities, but also for newly purchased ones. This would be sufficient reason for even more financial leasing companies to start offering this type of service, i.e. financial products, and all of this under the supervision of institutions responsible for supervising the activity of financial leasing companies.

The level of required capital for real estate leasing is high amounting to EUR 5 million. The high level of required capital in other financial institutions (banks, insurance companies or pension funds) is in line with the intention to provide security in the management of client funds, leasing companies, on the other hand, manage their own funds and are not a depository institutions, they invest their own capital and the entire business.

At the several meetings organized by USAID, representatives of the ALCS and the NBS concluded that changing the law to reduce the required capital makes sense and that the NBS will support it.

4. The Guarantee Fund may file recourse claims against leasing companies for the damage caused by the lessee when using the leased asset

According to the Law on Insurance of Persons and Property, the Guarantee Fund of the Association of Serbian Insurers has the right to recourse, upon payment of the compensation of damages by the owner of the means of transportation for the amount paid for damages, plus interest and costs.

The Law on Insurance of Property and Persons is not aligned with the Law on Financial Leasing, which introduced a completely new legal transaction into the legal system of the Republic of Serbia that, according to the definition of the rules of liability for the use of the leased asset, is in conflict with the existing rule on the Guarantee Fund's right to file a recourse claim against the owner of the means of transportation. The fact that the lessor is not in a position to influence the behaviour of the lessee or other parties using the leased asset and prevent the use of the means of transportation in traffic without stipulating an agreement on compulsory insurance, as long as the lessee is in possession of the leased asset, has been completely neglected.

Currently, leasing companies are facing recourse requests by the Guarantee Fund of the Association of Serbian Insurers, which they can reject on grounds of the Law on Financial Leasing. On the other hand, despite understanding the

essence of the dispute, the Guarantee Fund has no legal possibility to subrogate against any other person, apart from the owner and possibly the driver of the means of transportation, on the grounds of personal liability of the person who caused the damage.

5. Financial leases are not included in the financing options in some of the state financial incentives programmes

Financial leasing as a form of financing is not envisaged by the Law on Incentives in Agricultural Production (RS Official Gazette of the Republic of Serbia No 10/2013, 142/2014, and 103/2015). Specifically, Article 3, regulating the types of incentives, provides support in the form of loans, but not financial leasing, which prevents leasing companies from participating in these programmes together with banks. One of the conditions is that the basic asset purchased for the purpose of performing activities in agriculture must be exclusively owned by the recipient of the incentive, which by unilateral interpretation excludes the acquisition of that asset through financial leasing, where the financial leasing company has legal ownership and the recipient of the incentive (lessee) has economic ownership. Also, one of the conditions for obtaining incentives is that the agricultural producer should not dispose the basic asset acquired with the incentives within a specified time limit. If the fixed assets acquired with the use of incentives are acquired through a financial leasing contract, monitoring compliance with this condition by the relevant authority would be an extremely complex if not impossible task, as financial leasing would be regulated by special acts, stipulating that the recipient of the subsidy cannot repay and/or dispose of the fixed asset before the expiry of the term prescribed by the incentive agreement, so that the financial leasing company would have the additional role of controller, on behalf of the relevant authority.

A positive example is the Decree of the Government of the Republic of Serbia on establishing the Small Business Support Programme for small companies to purchase equipment in 2016 and 2017. This programme included leasing companies along with the banks.

6. Leasing and insurance companies are required to pay income tax in the case of write off of receivables from personal income taxpayers

When a leasing company or insurance company fails to recover a debt from a customer through the courts, and subsequently adopts a decision to write off the irrecoverable debt, that company is still obliged to pay a 20% personal income tax rate because written-off receivables have the status of "other revenues". This is defined in Article 85 of the Law on Personal Income Tax. Consequently, in addition to suffering a loss resulting from uncollected debts, the leasing or insurance company is also obliged to pay personal income tax on these.

To make the paradox even greater, this is also included in the annual personal income tax base, and consequently, a person unable to settle its debt to a leasing or insurance company can become liable to pay the annual tax, if the value of the write-off, together with other revenues, exceeds RSD 2.1 million. This tax paradox was noticed by the Ministry of Finance, so the Law on Personal Income Tax was amended in 2013 to provide an exception for banks as creditors. However, other financial institutions, also under the control of the National Bank of Serbia (NBS), were "forgotten" on that occasion.

7. The lack of legal protection of leased assets of leasing companies is a problem.

As a precondition for the functioning of financial leasing (as a financing model in which leasing companies reserve the right of ownership) is adequate and complete protection of the leasing companies' assets. However, in addition to other obstacles facing the leasing industry in Serbia, a new obstacle has arisen recently that threatens to stop financial leasing in Serbia. It is the lack of full legal protection of the leased assets. According to the current jurisprudence, in the case of misappropriation of the leased assets, in the Supreme Court's view there is no objective element of the criminal offense of misappropriation under Article 207 of the RS Criminal Code, since the leasing contract, in its nature, leads to the acquisition of property rights. Contrary to constitutional principles, leasing companies in Serbia no longer have the constitutional right to protect their property. If the relevant prosecutor's office continues to apply the Supreme Court's wrong practice, refusing to bring criminal charges for the criminal offense of misappropriation of lease assets, the result will certainly be a very quick withdrawal of all leasing companies from the market of the Republic of Serbia due to the complete absence of ownership protection. Furthermore, the aforementioned Decision of the Supreme Court could lead to a huge increase in the number of criminal offenses.

FIC RECOMMENDATIONS

- Initiation of amendments to the Law on Value-Added Tax concerning interest taxation, to abolish VAT charged on interest contained in the leasing fee.
- Amendment to the Law on Financial Leasing to explicitly transfer the obligation to settle unpaid parking tickets to the lessee, allowing the Parking Services to directly collect the payment from the lessees that are registered in the Registry of Motor Vehicles kept by the Ministry of Interior. Regulate operating leases by law and enable financial lease providers to offer operating lease services as well.
- The Insurance Law should be harmonized with the Law on Financial Leasing, specifically the provisions on the right of the Guarantee Fund to seek recourse upon payment of damages caused by a vehicle not covered by mandatory insurance from the owner i.e. registered user of the means of transport, so that the insurance company may seek recourse from the lessee and not from the leasing company.
- In developing a program of incentives for the economy (industry, agriculture, etc.) and drafting laws and regulations on this matter, policy makers should envisage the possibility of using other forms of financing, including bank loans and financial leasing, to support the implementation of incentives be. Given the fact that finance leases are also a suitable form of funding, they should be included in the subsidized programmes of the Government of the Republic of Serbia, in order to improve the competitiveness of the financial market and the offer of favourable form of financing.
- Leasing and insurance companies should enjoy the same treatment as banks regarding Article 85 of the Law on Personal Income Tax, i.e. in the case of write off of receivables they should not be required to pay additional personal income tax if they have previously met statutory requirements. Amendments should include a simple change such as adding the word “insurance company” or “lessor” next to the word “bank customer”.
- Capital requirements for performing leasing operations involving immovable assets should be lowered in order to make real estate leasing more attractive on the Serbian market. We suggest that, for the performance of finance lease operations, the monetary share of the lessor’s founding capital may not be below the Serbian dinar (RSD) equivalent of EUR 500,000 at the official median exchange rate on the date of payment, for leasing movable as well as immovable property.
- Urgently resolve the problem of inadequate legal protection of leased assets. There should be consistent application of the Law in court proceedings conducted in this legal matter which should be in accordance with the Law and the Constitution of Serbia.

OIL AND GAS SECTOR

1.90

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to increase the legal certainty of companies, it is vital to regulate the area of the collection of parafiscal charges by establishing a functional audit system and by reducing the number of existing taxes and charges imposed by public service providers as well as by establishing better control in regulating new taxes and charges both at the local and national level.	2015		√	
The necessity to increase the predictability of business operations still exists, by involving and consulting industry representatives in the process of enacting or amending existing laws and by-laws which may have an impact on their businesses and also by consistent enforcement of the existing regulations and activity of competent authorities and institutions.	2015		√	
Although, in 2016, within the scope of the planned activities of inspection authorities, a number of inspections were conducted with respect to licenses for storing and trading in oil products in wholesale and controls to ensure the minimum technical requirements are met by retail and wholesale energy companies, it is still necessary that the Energy Agency establish a system of mandatory and regular controls in order to ensure that requirements are met for holding said licenses over the entire license validity period (not only at the moment of their issuance).	2016		√	
Having proven as a successful approach to fighting illegal trade, intensive control of the presence and concentrations of marker in oil products should be continued, as well as improvement in regulations by adopting suggestions made by energy companies.	2013		√	
It should be noted that it is still necessary to enact the Law on Explosive Substances accompanied with related by-laws which would define activities in the area of the manufacture and marketing of explosives and other hazardous substances.	2014			√
With a view precisely regulating the retail channel, in addition to the adopted Rulebook on Technical Standards for Fire and Explosion Protection at Petrol Stations for the Supply of Road Transportation Vehicles, Small Boats, Small Industrial and Sports Aircraft, a new Rulebook on Construction of Facilities for Flammable and Combustible Liquids and on Storage and Transloading of Flammable and Combustible Liquids, harmonized with the Law on Fire Protection still needs to be enacted.	2016	√		
The Rulebook on Minimum Technical Requirements for Trading in Oil Products and Biofuels (Official Gazette of the Republic of Serbia, No. 68/2013) should be amended or new regulations enacted that would simultaneously regulate the requirements for construction of automated unmanned filling stations, as well asrequirements for trading in oil products and biofuels	2016			√
The percentage of the total fiscal burden imposed on oil products marketed in the Republic of Serbia should be conisdered.	2015		√	
Inspection of oil products imported into the country for the purpose of re-export should be reinforced through the coordinated actions of the relevant authorities, in view of abuses to which such goods declared for this purpose are subject.	2016		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is vital to establish an improved coordination between the relevant government authorities regardnig the import, placement, use of base oils and control of their use, for the reason of which the introduction of marking base oils should be reconsidered, which the government has undertaken under Article 337, Paragraph 2 of the Energy Law, as well as to consider the measures under fiscal policy for the purpose of minimizing abuse of imported base oil that is not used as feedstock in oil and lubricant production.	2016		√	

CURRENT SITUATION

Crude oil prices trended higher in 2017, averaging around USD 52 per barrel and rising to an average of USD 65 by mid-2018. Consequently, oil prices positively affected companies operating in the oil and gas sector both globally and, to a certain extent, in Serbia as well. In 2017 market players in the country recorded a growth in sales and are continuing with regular business operations in 2018 as well.

In terms of adopting new legislation related to the oil and gas sector, a Decree establishing the Programme of Implementation of the Republic of Serbia's Energy Sector Development Strategy by 2025, with projections until 2030 for the period 2017 to 2023, was adopted in 2017. Additionally, a Draft Law on Fees for Using Public Goods was unveiled in 2018 and was in the process of public discussions.

The fiscal burden on LPG significantly affected its price, and drastically reduced the consumption of this product. The price of LPG in Serbia is among the highest in the region. At the end of 2017, the price of LPG in Serbia was EUR 0.63, which was higher than in Croatia (EUR 0.61), Montenegro (EUR 0.58), Bulgaria (EUR 0.55), Macedonia (EUR 0.53), Romania (EUR 0.52) and Bosnia and Herzegovina (EUR 0.37). The price of LPG in Serbia was only slightly lower than the prices in Slovenia (EUR 0.67), Austria (EUR 0.68) and Hungary (EUR 0.70), and much lower than in Greece (EUR 0.83). On the other hand, the fiscal burden on LPG in Serbia was highest compared with all of these countries, and it made up over 49% of the total price.

Activities on the control of illicit trade in oil derivatives, the quality of oil derivatives as well as the minimum requirements for licences of energy subjects, were conducted thoroughly, helping to keep illicit trade at a reasonable level.

The process of marking and quality monitoring of oil products remained consistent. In 2017, Market inspection collected 5,825 fuel samples and found 103 samples with an insufficient concentration of markers, or 1.8% of the total number of samples.

Controls by the Market inspection helped reduce violations of regulations and the number of customer complaints regarding the quality of fuel. In 2017, within the scope of the oil quality monitoring activity, a total of 3,760 samples of gasoline, diesel, gasoil 0.1, and heating oil were analysed. As a result, 67 samples, or 1.8% of the total number of analysed samples, were found not to comply with regulations in terms of quality, and 43,172 litres of Euro diesel was pulled from the market.

POSITIVE DEVELOPMENTS

The Government of Serbia declared 2017 and 2018 years of combating illicit trade and adopted an Action plan for the suppression of illicit trade for 2017/2018, with 108 envisaged measures. This is supposed to establish a more efficient oversight of the shadow economy, promote fiscal discipline and reduce administrative burden on citizens and economic entities.

Furthermore, with the adoption of amendments to the Decree on Marking of Oil Products and to the Decree on Monitoring the Quality of Oil Products in February of 2017, market inspectors are allowed to test for markers in fuel tanks of trucks, buses, and agricultural machinery. Additionally, innovations in laboratory inspections were aimed at increasing the efficiency of sampling analyses by requiring inspectors to analyse samples within a maximum of four days from the sampling.

Based on the Government's Conclusion on the Prevention of Illegal Trade in Oil Products, activities to prevent illicit trade continued with mutual cooperation between the Ministry of Interior, the Ministry of Finance, the Ministry of Trade, Tourism, and Telecommunications, and the Ministry of Mining and Energy. The control was focused on imports and use of base oils. In 2017, 58 inspection controls were conducted,

and 58 preventive decisions were passed, based on which approximately 50,000 litres of base oils was re-exported.

To further prescribe institutional control of base oil imports and use, the Coordination Committee for inspection oversight adopted in 2018 a Workflow of activities for inspection control in the area of illicit trade of base oils, which is to result in an obligatory and transparent method of controlling trade and use of base oils. In line with the adopted Workflow, control authorities and inspections will be obliged to automatically control base oil importers according to risk assessments.

Based on a plan of activities of inspection authorities, energy companies are controlled in order to determine whether they meet the minimum requirements for holding a license for:

- Storing oil, oil products, and biofuels;
- Trading in oil, oil products, biofuels, and compressed natural gas;
- Trading in motor and other fuels at fuelling stations for transport vehicles.

According to the Law on Energy, state authorities may revoke licenses, either temporarily or permanently, from energy companies at which irregularities have been detected with respect to meeting the requirements for holding such licenses and conducting such business activity. In 2017, a total of 611 inspections were conducted: 515 gas stations, 43 wholesale objects, 4 stations for the supply of vessels, 27 warehouses, 10 CNG filling stations, 6 gas canister filling stations and 6 facilities for the production, distribution and management of heating distribution systems; in 571 cases the reports declared that the minimum requirements were met, while 52 cases were not in the Inspectorate's jurisdiction.

It should be noted that annual plans of mandatory reserves have been adopted, based on the Rulebook on Defining Annual Program for Establishment and Maintenance of Mandatory Reserves of Oil and Oil Products, and mandatory reserves are to be successively built up by 2023 at the latest.

REMAINING ISSUES

Although there have been improvements in the control of illicit trade in oil products, this should remain in the permanent focus of the control authorities due to the fact that there is a constant significant interest for smuggling and illegal trade and use of these products in the country.

Imports of base oils were significantly lower, but an intensive control, with the implementation of the Workflow of activities for inspection control in the area of illicit trade of base oils, should still be carried out.

Inspections of oil products imported into the country for the purpose of re-export should be reinforced through coordinated actions of the relevant authorities.

To continue the reform of the parafiscal charges system, it is necessary to pass a Law on Fees for Using Public Goods which would take into account the comments and issues presented by the businesses community to the competent ministry. Furthermore, oil and gas companies in Serbia remain highly burdened by fiscal and parafiscal charges, with additional parafiscals continuously being imposed, as was the case with the new road connection fee.

It is also expected that a number of new regulations relevant for the sector will be drafted and enacted, among which are a Law on climate change which will transpose the EU Emissions Trading System Directive, by-laws for the Law on Mining and Geological Exploration, a Decree on amendments to the Decree on the Oil Products and Biofuels Quality Monitoring, a Decree on the Sustainability of Biofuels, a Decree on the Share of Biofuels on the Market, related rulebooks on biofuels, as well as other regulations.

Developing new regulations for the production and trade of explosives and other hazardous substances is still required.

FIC RECOMMENDATIONS

- In order to increase the legal certainty of companies, it is vital to continue with the reform of parafiscal charges area by enacting the Law on Fees for Using Public Goods, as well as avoid the introduction of new or increases of existing parafiscal charges.

- The necessity of increasing the predictability of business operations still exists, by involving and consulting industry representatives in the process of enacting or amending existing laws and by-laws that may have an impact on their businesses, and also by a consistent enforcement of the existing regulations, and activities of competent authorities and institutions.
- Having proven to be a successful approach to fighting illegal trade, intensive control of the presence and concentrations of markers in oil products should be continued, as should improvements in regulations by adopting suggestions made by energy companies, as well as the control of base oil imports by maintaining with the implementation of the Workflow of activities for inspection control in the area of illicit trade of base oils.
- It is still necessary to enact the Law on Explosive Substances, supported by related by-laws, all of which would define activities in the area of the manufacturing and marketing of explosives and other hazardous substances.
- Control of base oil imports and use should be maintained with the implementation of the Workflow of activities for inspection control in the area of illicit trade of base oils.

PHARMACEUTICAL INDUSTRY

1.30

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
ALIMS must respect the existing timelines prescribed by the Law on Medicines regarding new registrations, renewals and variations of the Marketing Authorization, as this would allow for prompter availability of new drugs, as well as continuity in the market supply of registered medicines.	2017			√
The ALIMS should start issuing permanent marketing authorizations along with the renewal of existing registrations to enable the timely approval of other items for the variation of the license, thus allowing patients in Serbia to receive adequate information about the medicine as well as regular supply of the market with medicines.	2017		√	
There is a need to expand the list of medicines that can be issued without a prescription (in accordance with practices in the EU), while removing these drugs from the reimbursement list. Licensing deadlines for the production or sale of psychoactive controlled substances in the Republic of Serbia should be shortened and harmonized with regulatory practices in the region. This will strengthen the competitiveness of domestic pharmaceutical companies and encourage exports.	2017	√		
The ALIMS should create a digitalization strategy to enable the electronic submission of all requests that currently involve extensive unnecessary paperwork.	2017			√
The legal framework must be completed and harmonized with EU acquis; transparency and predictability of business and legal security are the basic prerequisites for the sustainable functioning of the pharmaceutical industry in Serbia. Representatives of the pharmaceutical industry should to be included in the legislative process.	2013		√	
The Government must ensure the predictability of the decision-making process, with clear time frames and a transparent consultations process with the representatives of the industry. This primarily implies that the NHIF should come up with figures on savings made through each centralized drug tender, or when prices are adjusted in line with the Rulebook criteria. Based on these fundamental, transparent data, the Central Drug Committee could determine 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			√
In the upcoming period, the NHIF should rely more on Managed Entry Agreements since it is the only way for ensuring greater availability of innovative drugs whilst sustaining the stability of the financing of the health system. With that in mind, it is necessary to establish a clear framework for the negotiation process between the NHIF and the pharmaceutical industry, including the mandatory consultation phase between the two sides. As a result of negotiations, both sides should aim to conclude a Managed Entry Agreement (an agreement that defines the entry of a product on the reimbursement list), which would ensure sustainable financing for the product. Flexibility should also be increased with respect to the models of specific contracts (since each product has its own specifics that need to be incorporated in the contract). Maybe the most important first step should be the introduction of a MEA model which would enable the market authorization holder to commit to lower the price of the drug in the tender process without changing the "visible" price on the reimbursement list.	2017		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The added value of innovations in the healthcare sector should be recognized, as it is the basis for accomplishing the highest quality public health system and reducing treatment expenses; access to innovative therapies needs to be improved and accelerated, especially for groups of patients in biggest need. Local and foreign pharmaceutical companies share the same goal –provide the best possible therapy to all patients in Serbia.	2013			√
Striving for further consolidation of Serbia's health budget is of the utmost importance; to significantly increase efficiency or resources management and spending control; create favorable circumstances for a sustainable increase of the budget for medicines and harmonize this increase with the health needs of the insured in the Republic of Serbia.	2017			√
It is necessary for the state/Government to have a stand regarding the future of its health institutions, primarily pharmacies. If state-owned pharmacies do have a future in their present status, the strong recommendation is that their entrustment to private partners should be conducted according to the law, where private-public partnerships are crucial. They guarantee legality, transparency and maximize the benefits for everyone involved.	2017		√	
It is necessary for the state/Government to reassess the management and general framework of state-owned health institutions operations in order to ensure its sustainability. This also refers to retail margins of drugs financed by the NHIF which are too low; the contracting process between the NHIF and state-owned health institutions that do not guarantee the coverage of basic needs of these institutions; the participation of founders in managing the institutions and, finally, accountability for the consequences of bad management.	2017			√
State-owned healthcare institutions need to settle their debt to wholesalers as soon as possible to ensure the regular supply of required medicines to these institutions.	2017			√
Equalize customs duties for finished medicinal products and raw materials for medicines production.	2013			√
The same tax treatment should be applied to the whole pharmaceutical sector, in the field of import of finished products and raw materials.	2014			√
Adjust the VAT rate for raw materials to the rate applied to finished medicinal products.	2013			√
Abolish VAT on donations of medicines and medical devices to health institutions.	2014			√
Abolish outer packaging control labelling of medicines as an unnecessary expense for the industry, as it is merely an illusion that it can effectively protect against forgeries.	2013			√
Amend the Law on Waste Management (RS Official Gazette No 36/09, 88/10 and 16/16) as a precondition for the adoption of systematic and sustainable by-laws, in the first place the Rulebook on pharmaceutical waste management, in order to define the obligations of all participants in the process of pharmaceutical waste management; clearly differentiate the terms, obligations and actions of the manufacturer, license holder and distribution license holder, respectively, especially in the segment related to pharmaceutical waste management collected by the citizens.	2017			√

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 price does not contribute to the development of a free market and competition, but prevents the entry into the market of medicines that cannot fit into a determined price range. It is an administrative barrier which postpones the entry of medicines that already have market authorization.	2017			√
A new Rulebook on criteria for the pricing of medicines for human use should be adopted every three months, automatically whenever the difference between the official exchange rate of the National Bank of Serbia and the exchange rate under the applicable Rulebook exceeds 3%. Furthermore, the NHIF should use the same exchange rate and the same model of calculation for determining the price of medicines on the C list, as for medicines on the A, A1 and B list.	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			√
Expand groups of medicines that can be issued without prescription while at the same time excluding those medicines from the reimbursement list. Reduce deadlines for issuing licenses for manufacturing and traffic of psychoactive substances in the Republic of Serbia and harmonize them with the regulatory practices in the region. This will strengthen the competitiveness of local pharmaceutical companies and boost exports.	2013		√	

CURRENT SITUATION

Regular drug supply and access to the most advanced therapies are the key factors contributing to positive health care system performance, in every country. However, in addition to the smooth supply of medicines and access to therapies, the efficient functioning of public health care requires a systematically regulated and functionally operational link between its three underlying pillars: manufacturers, wholesalers and healthcare institutions (public and private). Furthermore, production of medicines is one of the most important sectors of the economy, globally, as well as in Serbia, not only in terms of its economic impact, but also in terms of its impact on the overall productivity and health of the nation. For the foregoing reasons, this industry's importance is both immense and multifaceted. First of all, the health of the nation is a major, if not the most important, factor of productivity and economic growth, directly linked to investments in health, both prevention and treatment. In that respect, healthcare outcomes are related not only to investments in prevention and promotion of healthy lifestyles, but equally to the quality of treatment and the efficient functioning of the stakeholders that lie at the heart of the system – the healthcare institutions and pharmacies.

International companies with market presence in Serbia are the major contributors to regular drug supply and the leading providers of access to modern therapies. On the other side, the local pharmaceutical industry is very important, not only for the regular drug supply and the efficient functioning of the healthcare system, but also for the Serbian economy as a whole. Among other, the basic pharmaceutical products and preparations manufacturing industry employed 4,630 people in 2017.

According to data provided by the Statistical Office of Serbia, the export of basic pharmaceutical products and preparations was worth EUR 225.3 million in 2017, accounting for 1.6% of Serbia's total export, i.e. 1.8% of the overall manufacturing industry. Relative to 2016, the industry recorded a 19.0% growth. These products have a considerable positive impact on public revenues, generating around EUR 50 million in taxes, contributions, customs duties and other applicable fees.

At the same time, Serbia spends 10% of its GDP on healthcare. It is important to underline that only 60% of this share is covered by state resources (National Health Insurance Fund - NHIF, Ministry of Health, local governments), while the remaining 40% of the healthcare costs are covered by out-of-pocket payments. This means that a considerable share of the funding is shifted to private individuals. By comparison, in the EU Member States, public funding ranges from 70% to 80% of total healthcare costs.

Approximately 18% of the overall healthcare budget in Serbia is allocated for medicines. Considerable progress has been made in improving access to modern therapies relative to the previous period, as a result of which Serbia significantly improved its ranking according to the European Healthcare Consumer Index. Yet, this progress is not sufficient, further strategic thinking and decisive actions are required to improve the efficient management of the healthcare budget, bearing in mind the extent and nature of the health risks to the population and the need to provide advanced treatment options for all diseases, in particular for the most serious ones. If not, it is not likely that there will be any healthcare system positive outcomes, such as a healthier nation, increased productivity, stronger economic growth and sustainability.

First, the overall mortality rate in Serbia is approximately 46% higher than the EU average (14.2/1000 vs. 9.7/1000). The average life expectancy in Serbia is also significantly lower relative to the EU average (74.7 vs. 80.2 years). Cardiovascular diseases, cancer, diabetes and chronic obstructive pulmonary diseases are a major threat to the health and life expectancy of the Serbian population. The gravity and complexity of the problem is illustrated by the discrepancy between the cancer incidence rate (18th in Europe) and mortality rate (2nd in Europe). Certainly, the treatment of the most serious diseases, such as cancer, which requires the application of advanced medical therapies, is very expensive. In 2018, around EUR 60 million or 3% of NHIF funds will be spent on treatments involving the administration of special-purpose, innovative medicines (C list of expensive medicines). Bearing in mind the discrepancy in the cancer incidence and mortality rate, it is clear that access to crucial medicines that could help decrease the high mortality rate is insufficient. Healthcare authorities in Serbia, specifically the NHIF, have clearly recognized this problem, which is evidenced by the significant progress made in the previous year. Even so, it is important that this positive trend be continued.

Second, in addition to ensuring the regular drug supply and continuous improvement of access to therapies, another important step would be to expand the indications for the medicines already available and included in the NHIF list, in order to improve the quality and outcomes of treatment.

Third, places that provide access to therapies, whether through direct application or prescription, are healthcare institutions. Private healthcare institutions are successful, operating with standard liquidity and more or less profitably as hospitals, community health centers and pharmacies. However, healthcare institutions owned by the state and with far more unfavorable financial performances are in the majority. The most acute problem is the inability of state-owned pharmacies, including community health centers with their own pharmacies that are over-indebted, often with frozen bank accounts and whose overall debt amounts to RSD 8 billion, to repay their due debt to drug wholesalers amounting to almost RSD 3.5 billion that they cannot pay on their own. The hospitals' debts that were partially settled in the previous period are on the rise again. This seriously affects the liquidity of drug wholesalers, disrupting the normal supply of state-owned pharmacies and hospitals and reveals the need for urgently finding a systematic solution to the problem.

Fourth, the absence of a systematic solution for the sustainability of state-owned pharmacies is an urgent problem and also a very relevant one, for healthcare beneficiaries

and manufacturers, wholesalers and pharmacies, equally. In relation to this issue, 12% retail margins for drugs are unsustainably low and far below comparable margins and prescription taxes in other countries and no amount of business acumen can compensate that.

Fifth, the incomplete regulatory framework, which is non-compliant with the EU acquis in many important aspects, causes great uncertainty in the healthcare sector and makes the decision-making procedures at various levels, including Government and NHIF, insufficiently transparent and legislative solutions hardly applicable in practice. Deadlines for important decisions that are often too lengthy and typically not met are also part of the problem.

POSITIVE DEVELOPMENTS

The positive trend in the negotiations process and the signing of special agreements between the NHIF and pharmaceutical companies has continued throughout 2017 and the first half of 2018. That said, it should also be noted that, relative to 2016, the budget allocated for this purpose is far smaller (8 new innovative medicines were added to the list through this process). Besides, by amending the relevant rules, the NHIF has made it possible for all license holders to apply for their products to be added to the NHIF list throughout the year.

Significant improvements were made in the communication and cooperation between industry representatives (Chamber of Commerce and Industry of Serbia; Inovia, Genezis) and the Ministry of Health in drafting regulations relevant for business activities across the industry. The procedure of issuing permits and licenses under the authority of the Ministry has been accelerated as well.

The representatives of the industry and ALIMS have continued to work on the implementation of agreements concerning the processing of applications for registration with ALIMS.

Finally, in 2018, in cooperation with the Ministry of Health, ALIMS has prepared a draft proposal of amendments to the rulebook on registration, to enable the implementation of the provision of the applicable Law on Medicines that allows for the issuance of permanent licenses for medicines – a provision that would considerably reduce the workload of ALIMS by making endless medicine renewal cycles obsolete, thus allowing the authorities to focus on processing the backlog of applications.

REMAINING ISSUES

1. Gaps in the process of including medicines on the NHIF Reimbursement List

The Rulebook on criteria for including/removing medicines on/from the Reimbursement List, as a key by-law in this area, needs to be amended to include clearer and more detailed criteria for the selection of medicines covered by the mandatory health insurance.

2. Taxes and commercial costs of doing business

The same tax and customs treatment should apply to imports of both finished products (medicines) and raw materials.

The Law on Payment Deadlines in Commercial Transactions (RS Official Gazette No 119/2012) contributed to the unequal treatment of local manufacturers and importers, as local manufacturers are required to collect payments for medicines from the wholesaler within 60 days, while this provision does not apply to importers (who offer longer payment terms of up to 210 days or more to wholesalers).

3. The "duality" of medicine prices

The pricing of medicines is subject to strict administrative control, and is a very lengthy, non-transparent process, also involving a two-tier pricing procedure.

Article 30 of the Rulebook on criteria for inclusion in the List of Medicines of April 2014 envisages that the difference in the price between the original and generic A-list medicines with the same or similar pharmaceutical properties and in the same dosage may not exceed 30%, which is co-paid by patients. This limits the availability of medicines, primarily of original and branded generic medicines, as they usually cannot fit into such a limited price range and, consequently, cannot be included on the list of medicines. Considering that this difference in price is not a financial burden for the NHIF, the possibility of a price difference of up to the maximum approved price would ensure much greater availability of original and branded generic medicines.

4. Illiquidity of state-owned healthcare institutions

The wholesalers' claims from state-owned public health institutions under public contracts for the procurement of medicines and medical preparations exceed EUR 35 mil-

lion (of which approximately EUR 26 million is owed by the pharmacies and health centers). State-owned public health institutions are not capable of repaying this debt, or even a tiny portion of it, since total claims of wholesalers from state public health institutions now exceed RSD 100 million.

The burden sustained by wholesalers and other drug suppliers in financing the debt of the public health care system is huge, crippling their capability to ensure future regular supply to pharmacies and hospitals. Such a situation is not sustainable – if the liquidity of wholesalers should come under further pressure, the consequences will be felt by all stakeholders in the pharmaceutical sector: producers, importers and, ultimately, the healthcare institutions and the healthcare system as a whole.

5. Administrative procedures and market authorization

The state administration still fails to abide by the legally prescribed deadlines and is slow in issuing various permits and licenses that are vital for the efficient running of business operations.

As of 1 January 2018, ALIMS applies a new pricelist for their services, which considerably contributed to increasing the applicants' expenses, specifically by 90%, on average. New services, such as Pharmacovigilance, are charged extra and the fees for some of the already existing services, such as documentary control of medicine lots were increased by 3 to 5 times, regardless of the fact that this service does not impose any additional costs on the National Laboratory, in terms of materials, (since the service is provided through documents, not lab tests). On the other hand, it imposes a considerable cost increase on importers of foreign medicines, while not affecting domestic producers.

In addition to delaying the registration process, the ALIMS is also significantly delaying the renewal of existing Marketing Authorizations (MA) for medicinal products, so that the MA regularly expires prior to the approval of the renewal. ALIMS is also delaying the procedure for the approval of changes in the license (variations). When it comes to new indications and safety variations, this leads to a significant delay in the availability of up-to-date information on the use of medicine to both physicians and patients.

FIC RECOMMENDATIONS

- ALIMS should:

  a) Respect the existing timelines prescribed by the Law on Medicines regarding new registrations, renewals and variations of the Marketing Authorization;
  b) Adopt a digitalization strategy to enable the electronic submission of all requests that currently involve extensive unnecessary paperwork.
  c) Expand the list of medicines that can be issued without a prescription (in accordance with practices in the EU), while removing these drugs from the reimbursement list.

- The Government should:

  a) Ensure the stable financing of medicine procurement through special-purpose transfers of budget funds to the NHIF, thereby covering the obvious shortage of funds in the NHIF's financial plan;
  b) Ensure the harmonization of the legal framework with the EU acquis; transparency, predictability and legal security are the basic prerequisites for the sustainable functioning of the pharmaceutical industry in Serbia. Representatives of the pharmaceutical industry should be included in the consultative process when any legislative act is drafted;
  c) Take a stand regarding the future of its health institutions, primarily pharmacies. If state-owned pharmacies do have a future in their present status, the strong recommendation is that their entrustment to private partners should be conducted according to the law, where private-public partnerships are crucial. They guarantee legality, transparency and maximize the benefits for everyone involved;

d) Urgently address the issue of settling debts of state-owned healthcare institutions towards wholesalers for supplied medicines and medical devices to ensure regular supply to these institutions.

- The NHIF should:

a) Determine the amount of funds necessary for the introduction of new medicines to the reimbursement list;
b) Ensure the predictability of the decision-making process, with clear time frames and a transparent consultations process with the representatives of the industry;
c) Ensure more flexibility with respect to the models of specific contracts (since each product has its own specifics that need to be incorporated in the contract). Maybe the most important first step should be the introduction of a MEA model which would enable the market authorization holder to commit to lower the price of the drug in the tender process without changing the "visible" price on the reimbursement list;
d) Continue improving the process of pricing medicines and including them in the reimbursement list. This process should be transparent, with clear rules, mandatory statement of reasons for the final decision and the right to legal remedy.

- The Ministry of Health should:

a) File a request with the Ministry of Finance for the special-purpose transfer of funds to the NHIF for the procurement of new medicines (based on the information received from NHIF);
b) Abolish the practice of determining medicines' maximum wholesale price;
c) Reduce deadlines for issuing licenses for manufacturing and traffic of psychoactive substances in the Republic of Serbia and harmonize them with regulatory practices in the region.

- The Ministry of Finance should:

a) Take a positive decision on a reasoned request by the Ministry of Health for a special-purpose transfer of funds to the NHIF for new medicines;
b) Equalize custom duties for finished medicinal products and raw materials for medicines' production;
c) Ensure the same tax treatment of the whole pharmaceutical sector, in the field of import of finished products and raw material;
d) Adjust the VAT rate for raw materials to the rate applied to finished medicinal products;
e) Abolish VAT on donations of medicines and medical devices to health institutions;

- The NHIF should define reference prices for all medicines on the reimbursement list and the difference in price should be paid by the insured persons 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. This should ensure improved access to original and branded generic drugs by patients.

PRIVATE SECURITY INDUSTRY

1.36

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continue monitoring the application of the Law on Private Security, while continuously insisting that its implementing by-laws be harmonized with EU models of legislation to the extent possible, while at the same time taking into account local specificities. 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.	2009		√	
Determine the legal employment status of all persons engaged in private security operations, i.e. those employed in this industry.	2017			√
Consider the possibilities for shortening the time and reducing the scope of the training programme, as well as speeding up the process of obtaining relevant licenses.	2017			√
Perform a security check, which is one of the preconditions for obtaining the license, prior to the commencement of the training programme, in order to avoid unnecessary administrative problems and unreasonable expenses related to persons who fail the security check.	2017			√
Consider performing medical examinations for a period longer than one year, at least for persons who perform private security operations without carrying any weapon.	2017			√
Determine an express liability of the MoI to inform the employer on any change in the status of the license of individuals, especially bearing in mind the fact that a security officers' ID is issued upon request of the employer's company and is returned to the MoI in case of employment termination.	2017			√
Precisely determine the possibility of engaging persons based on any agreement but the employment agreement, for any case of temporary and extraordinary engagements, all in accordance with the Labour Law, if such a person has the relevant license required for these operations.	2017			√
Precisely determine the meaning of the term "as of the date of change" in relation to the obligation to submit a notice to the MoI on the conclusion of the agreement, i.e. annex to the agreement on security services. It should be specified whether such a period is calculated from the agreement/annex to the agreement signature date or from the date of commencement of the security service provision, since very often in practice the agreement, i.e. the annex to the agreement signature date, does not coincide with the date of commencement in the security service provision, and that the change, specified by the agreement/annex to the agreement (e.g. the scope of work or authorization for security officers) occurs much longer after the conclusion of the agreement/annex to the agreement.	2017			√
Support the Ministry of Interior in its commitment to inspect all entities that are in the grey area to ensure that they comply with the adopted Law to the fullest extent.	2016		√	
Change by-laws to allow and enable distance learning as a legitimate way of training potential candidates for obtaining a security licence.	2015			√
The Government should encourage close co-operation between security sector stakeholders (both the public and private sectors).	2009	√		

CURRENT SITUATION

Finally, after being the only country in the region and in Europe without a law regulating this sector of the economy, Serbia got its Law on Private Security at the end of 2013. Amendments to this Law were adopted in 2015, but its application was postponed until 1 January 2017. Serbia's private security sector employs over 35,000 people and up to now, 82 centres have been opened with 140 training places, where 37,820 candidates have passed their professional exam. So far, 33,350 physical and 890 legal entities have been licensed (including self-protection/proprietary services).

The grey economy is plaguing this industry more than ever. Properly licensed companies compliant with the law, paying their taxes and contributions, have been faced with high licensing costs, and consequently their prices are non-competitive. Meanwhile, companies operating in the grey economy generate significant profits, enter the market with the lowest prices, intent on using their "privileged" position even after the expiration of the time limits that have been provided for full compliance with the Law on Private Security (1 January 2017).

Due to stringent requirements, the lengthy procedures for obtaining a license in accordance with the Law and a dramatic lack of workforce in the service sector, private security companies are in an unenviable situation. Positive practice examples from the region (Bosnia and Herzegovina, Croatia, and Slovenia) showed that the restrictions in terms of the required qualifications did not lead to positive trends in the security industry, on the contrary, they made it difficult to work in the private security industry for all of its stakeholders. Recognizing the benefits (increased employment rate, all private security companies doing business in accordance with the Law), the countries of the region decided to do away with the secondary education requirement as one of the criteria for obtaining a license.

In the practical application of the Law, there is plenty of room for rationalization, in terms of the manner in which the provision of certain security services is regulated. A concrete example of the non-compliance of the Serbian Private Security Law with positive practices in the EU is best seen in the case of transport of money by special vehicles. The applicable law on Private Security in Serbia imposes a number of crew members and a manner of working that is unjustified and costly. On the other hand, the EU practice shows that, for instance, a special vehicle could be left unattended by the crew if the vehicle is provided with technical security systems that will undoubtedly determine any attempt of theft, removal of or attack on the vehicle while the vehicle is unattended, which allows for much greater efficiency and productivity of the transport service, with lower costs and ultimately a lower price for the end-users. Also, there is no reason not to allow a driver to be the only crew member on board the special vehicle for the transportation of money the - in the case of armoured vehicles or vehicles equipped with electrochemical protection.

POSITIVE DEVELOPMENTS

The Ministry of Internal Affairs (MoI) has opened channels of communication with the industry, which is of the utmost importance. Finally, after more than a decade of attempts by stakeholders to influence the adoption of the Law, state authorities have realized the importance of bilateral communication, and formed an Expert Council for the improvement of private security, private investigator activities, and public-private partnerships in the security sector.

REMAINING ISSUES

Certain problems that were evident even before the adoption of the aforementioned Law were confirmed in practice following its application. This has become the key topic of the initiative by the members of the Association for Private Security of the Serbian Chamber of Commerce for amending some of the articles of the said Law. So far, the following problems have been identified:

- insufficiently clearly regulated supervision and control of the private security sector, as well as the terminological non-compliance of laws with international standards in the field of private security;
- insufficiently clearly defined conditions for the use of powers by a security officer;
- partial non-conformity with other legal and secondary legislation related to work and employment relations; administrative procedure for issuing private security licenses; providing security to public gatherings (i.e. sports events); handling firearms, etc.;
- the process of training and obtaining licenses for individuals is too lengthy, three months, on average. During this time, such persons cannot perform private security operations, while companies providing security services have difficulties in engaging licensed employees;

- the mandatory training programme is extremely rigid, overly ambitious, and lacking modern practices, such as dual education, distance learning, etc.;
- the MoI is under no obligation to inform such companies, as the employers, whether their employees have obtained the license, or whether their licenses have been withdrawn due to failure to meet some of the requirements.

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. Rather than the fiscal regulation of the security industry, the goal of the law's adoption and application should be normative.
- Support the Ministry of Interior (MoI) in its commitment to inspect all entities that are in the grey area so as to ensure that they comply with the adopted law to the fullest extent.
- Determine the legal employment status of all persons engaging in private security activities, or employed in this industry. In the conditions for attending training and obtaining a license, the professional qualification requirement should be amended to allow persons with primary school to obtain a security officer license. Security clearance is another precondition for obtaining the license, prior to the commencement of the training programme, to avoid unnecessary administrative problems and unreasonable expenses related to persons who do not pass the security clearance. Prescribe the express obligation of the MoI to inform the employer about any changes in the status of the license of individuals, especially bearing in mind the fact that a security officers' ID is issued upon request of the employer's company and is returned to the MoI in case of employment termination.

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top

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